

**COMILLAS**

UNIVERSIDAD PONTIFICIA

ICAI

ICADE

CIHS

2018 - 2019  
COURSE  
DESCRIPTIONS

**SUBJECT DETAILS**

Data on the subject	
Full Name	Private International Law II
Code	E000002220
Degree	<a href="#">Bachelor's Degree in Law</a>
teaching at	Dual Degree Program in Law and International Relations (E-5) [Fifth Year] Bachelor's Degree in Law and Diploma in Business Law (E-1) [Fourth Year] Bachelor's Degree in Law and Diploma in Business Law (E-1) (French) [Fourth Year] Dual Degree Program in Business Administration and Management [ADE] and Law (E-3) [Fifth Year]
Level	European Bachelor's Degree
Type	Semester course
ECTS Credits	4,5
Basis	Mandatory (Bachelor's degree)
Department / Area	Private law / Private International Law

Data on the teaching staff	
<b>Teacher</b>	
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## SPECIFIC DATA ON THE SUBJECT

### Framework of the subject

#### Contribution of the degree to the professional profile

In the recent evolution of Private International Law, the international laws on civil procedure are becoming important nowadays in a context of increasing Europeanisation of the legal systems of the EU Member Estates.

This subject, firstly, deals with international jurisdiction of state courts and recognition and enforcement of foreign judgments and decisions. By offering a practical focus, in which case law occupies a privilege position, the students will learn the rules applicable to the subject and the main institutions of Private Law. Secondly, they will analyse the main characteristics arising from the presence of a foreign component in proceedings and international legal assistance (taking evidence, service of documents, and information on foreign law).

This will complete the study of Private International Law and will provide a general overview of the principal issues faced by this field of law currently required by legal professionals.

### Competences - Goals

#### Competences to be developed

##### Generic Competences

CGP09	Development of interpersonal skills: empathy, tolerance, respect, ability to bring conflicting interests together
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	RA1	The knowledge of other foreign legislative bodies and the understanding of the social and cultural reasoning that underlies in the background of each political policy in other countries enhance the tolerance with other type of lifestyles and circumstances, contributing to understand that the manners and values of student's social reality are not the unique solution and neither are they sometimes the best one.
	RA2	The knowledge of other foreign legislative bodies and the understanding of the social and cultural reasoning that underlies in the background of each political policy in other countries enhance the tolerance with other type of lifestyles and circumstances, contributing to understand that the manners and values of student's social reality are not the unique solution and neither are they sometimes the best one.
<b>Specific Competences</b>		
CED01	Positioning Law and legal relations in a globalised context.	
	RA1	The private relations with a foreign component are the core of the Private International Law. This kind of relations are the privilege place to raise awareness of the interactions becoming more frequent with other foreign legal systems, the issues arising in the process of determining the scope of the international jurisdiction of States and the applicable law to each component in the international relation. The student will have to evidence that he or she knows that interaction process between a state legal system and other foreign legal systems and to identify the practical consequences that it may give place. The students will be able to obtain the wide-range of different legal systems and, considering them as a source of enrichment, they will assess positively the respect of the adequate determination and adjudicating the private international relations. Likewise, by means of this subject, the student will be capable of assessing the advantages and inconveniences that the process of globalisation, also in the legislative area, produces in the international relations.
CED05	Analysing the issues of a legal problem, being able to propose alternatives to solve it.	
	RA1	The students will evidence his/her skills to detect the presence of a foreign component in the relation and, thus, its international basis.
	RA2	They will be capable of make the difference and separating the problems on the conferral of international jurisdiction, the position of Spanish courts regarding its international jurisdiction and the convenience or not to follow a given proceeding with such state courts, including the specific procedural issues that may arise.



	RA3	They will also be capable of identifying the main issues that may be present in the process of determining the applicable law (assessment, renvoi, harmonisation, preliminary question, public policy, etc.) and place different alternatives with legal basis to find out its solution. To round off this competence the students will be able to identify, in the cases that it could be possible to have the freedom of choice of a forum or a freedom of choice of the applicable law, which of all these alternatives prefers, justifying his or her response from both logical and legal perspectives.
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## COURSE SYLLABUS AND CONTENT

### Content – Modules

#### MODULE 1. International Civil Procedural Law

##### Topic 1. International Civil Procedural Law

1. Prerequisites, object and content of Private International Law.
2. Distinction between 'forum' and 'ius'.
3. Sources of international civil procedural law: European, conventional and state regulation.
  - 3.1. Regulations and other acts of the institutions of the European Union.
  - 3.2. International treaties.
  - 3.3. Domestic regulations.
  - 3.4. Case law. Special consideration on the Court of Justice of the European Union's case law.

#### MODULE 2. International Jurisdiction

##### Topic 2. International jurisdiction: general issues and legal framework

1. Concept.
2. Sources. General International Law. Legal regime of European Union, Treaty Law, Domestic rules.
3. Criteria for international jurisdiction and its scope.

##### Topic 3. International jurisdiction: rules on the conferral of jurisdiction



1. Exclusive jurisdiction: meaning and matters.
2. Express and tacit submission: concept, requirements and effects.
3. Domicile of the defendant.
4. Special jurisdiction rules by reason of the subject-matter.
  - 4.1. Civil and commercial matters.
  - 4.2. Matrimonial and parental responsibility matters.
  - 4.3. Maintenance matter.
  - 4.4. Succession matter.

#### Topic 4. Problems in the application of international jurisdiction rules

1. Examination as to international jurisdiction.
2. International lis pendens.
3. International related actions.
4. Provisional and protective measures.
5. Plurality of defendants.

### **MODULE 3. Procedure with a foreign component, international legal assistance and international legal cooperation**

#### Topic 5. Procedure with a foreign component, international legal assistance and international legal cooperation

1. Introduction.
2. Law applicable to proceedings.
  - 2.1. Application of lex fori in procedural matters. Scope of the rule.
  - 2.2. Eligibility to be a party, procedural capacity, representation and legal defence.
  - 2.3. Evidence.
  - 2.4. Free legal aid.
3. International judicial assistance.
  - 3.1. Sources.
  - 3.2. Service of documents.
  - 3.3. Taking of evidence.



3.4. Information on foreign law.

## MODULE 4. Extraterritorial application of foreign decisions, acts and documents

### Topic 6. Recognition and enforcement of foreign decisions, acts and documents (I)

1. Introduction.
2. Sources: European Union, Treaties and Domestic law.
3. Effects of foreign judgments.
4. Automatic recognition and exequatur.

### Topic 7. Recognition and enforcement of foreign decisions, acts and documents (II)

1. Foreign decisions capable of being recognised and enforced (exequatur).
2. Prerequisites for recognising and enforcing.
3. Proceedings to recognise and enforce.
4. Recognition of other decisions, acts and public instruments.

## TEACHING METHODOLOGY

### General methodology of the subject

### Contact hours methodology: Activities

Master classes. The professor develops the subject with a practical and applied guidance and with a focus on student participation. Whenever necessary, the materials that the student must know in advance will be pointed out by the professor to take proper advantage of the classes. At the end of the session, an exercise is proposed, whenever appropriate, to check the learning process itself, which is then included on the course page.

CED01, CED05



Solving practical cases and exercises in class. They can have as their focus either practical cases studies, legal texts or case law. In the first class, the professor will explain the methodology proposed, thus enabling students in the subsequent classes to take centre stage through group work, individual or group presentations. After the preparation of the exercise, a general debate takes place in which the difficulties raised can be resolved and other relevant aspects can be dealt with. At the end of the session, an exercise is proposed, whenever appropriate, to check the learning process itself, which is then included on the course page.

CGP09, CED01,  
CED05

Guided work. The professor guides the students on the key issues to take into consideration to reach the legal response that requires an international legal situation. The students comment in class the features that concur in the case study at hand and discuss with teacher and his/her classmates.

CGP09, CED01,  
CED05

### Outside class methodology: Activities

Preparing master classes with the material proposed by the professor.

CED01, CED05

Guided work. Preparing the case studies and commentaries on a text (legislation or case law) proposed by the professor.

CED01, CED05

Solving practical cases. The student analyses the different aspects and solutions of an international legal problem in order to examine and be presented in class.

CED01, CED05

Self-studying. The student studies the materials proposed by the professor, the basic bibliography and class notes of the master classes with the aim of understanding and assimilating the content of the subject.

CED01, CED05

## SUMMARY OF STUDENT WORK HOURS

NUMBER OF CONTACT HOURS			
Master classes	Solving practical cases	Guide work	
30,00	15,00	5,00	
NUMBER OF INDEPENDENT WORK HOURS			
Master classes	Guide work	Solving practical cases	Self-studying
25,00	15,00	10,00	25,00
<b>ECTS CREDITS: 4,5 (125,00 hours)</b>			



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## GRADE EVALUATION AND CRITERIA

Evaluation Activities	Indicators	Evaluation weighting
<p>Solving practical exercises in class and legal problems during the semester</p>	<p>Practical exercises to be done by the student in class to learn to identify the components of a legal problem in a globalised context and to develop his or her interpersonal skills.</p> <p>The student is capable of identifying the pre-requisites of a legal problem in a globalised context, under Private International Law, realizing the regulatory deficiencies and difficulties in case-law and, if necessary, proposing new solutions.</p> <p>The student exposes adequately the content of his or her analysis in oral presentations or in writing, is able to listen to his or her classmates in an atmosphere of dialogue and mutual respect, accepts the observations and inputs made by other classmates, and completes his or her work to the extent that it is necessary.</p> <p>Although solving small exercises and practical cases in class entails a suitable mean to their learning, the exercises and cases will be evaluated, but not necessarily graded for the final grade of the subject. They allow students to follow the development of the subject from a practical point of view in the learning process, rectify and insist in those aspects concurring more difficulties in such a process and include items to be debated in class that entail the development of critical judgement.</p> <p>The evaluation of this work expresses the communication with the student on the outcome of his or her learning process. It will only be graded the active participation during the semester taking into consideration all the essays and case studies made.</p>	<p>10 %</p>





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<p>Essays: Analysis of cases studies or case law</p>	<p>The student analyses a real-life case or tailored case in which he or she will make decision on the procedural issues at hand or analyse the case-law of the domestic courts or of the European Court of Justice.</p> <p>The student makes evidence of his or her critical capacity to identify the legal problems that are brought to class, the applicable norms and the different alternatives to solve them.</p> <p>The student shows his or her understanding of the subject and his or her ability to put into practice the essential legal concepts learnt in the subject.</p> <p>This work will be evaluated by the teacher taking into consideration mainly the evolution of the student from the beginning of the semester to its finalisation, his or her analytical skills and capacity and his or her ability to synthesise the specific knowledge of the subject, clarity to express his or her ideas and communication skills to communicate orally his or her conclusions in class.</p> <p>It will be evaluated the internal structure of oral presentations, the clarity to express his or her ideas, the use of presentation means, personal reflection and critical judgment, ability to synthesise and to reach conclusions.</p>	<p>20 %</p>
<p>Final exam: theoretical and practical exam on the content of the subject in which the students will face and solve international disputes that may arise from between natural or legal persons subjected to Private Law</p>	<p>In the exam it will be proposed to the students a practical case, a text to be commented or questions to be interrelated. It will be allowed or not the use of materials to justify his or her response. It will be evaluated the development of the student in his or her analytical skills and ability to synthesise, since they will have to solve the text or case stated in the exam, the presence</p>	<p>70 %</p>



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	<p>of foreign components, analyse the legal consequences from an academic or case-law perspectives that may concur, and summarise in his or her conclusions the different solutions to be applicable and the student's position from a critical judgment on the case or text.</p> <p>The teacher will evaluate the following:</p> <p>The student shows that he or she has achieved a whole vision of International Civil Procedural Law, in the framework of state legal system, from an international legal perspective between subjects of private law.</p> <p>The student understands the own legal concepts of international civil procedural law, is capable of being linked together and with concepts acquired in the field of the applicable law.</p> <p>The student is capable of reasoning correctly in the analysis of a private international dispute, considering the solutions in the fields of international civil procedural law and applicable law.</p> <p>In his or her analysis, he or she will be able to make evidence of his or her ability to assess the diversity and multiculturalism, since in the written exam he or she will have to deal with situations linked to other societies and cultures that usually enter into contact with Spanish law and claim for a response under such law. This kind of evaluation process allows assessing whether the student identify the foreign components that may be laid down in the situation and is capable of proposing alternatives for solving it, being able to context it in that framework.</p>	
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## GRADES

The final exam has a predominantly practical orientation. The objective is to verify the understanding of the theoretical contents of the subject through, fundamentally, cases studies, comments on case law or analysis of legal texts. At least a grade of five out of ten in the exam is required for the other evaluation activities to be taken into account.

In the event that the course is not recognised and validated, the students of the Faculty that participate in exchange programs will obtain 85% of the grade in the exam and the remaining 15% in the evaluation of the guided work.

Written exam (100%). The permanent process of evaluation during the semester, if this is favorable, will be evaluated in the final grade with a possible increase of 5% on the final exam's grade as a maximum.

## BIBLIOGRAPHY AND RESOURCES

### Basic Bibliography

#### TEXT BOOKS (last editions)

Calvo Caravaca, A. L. y Carrascosa González, J. Derecho internacional privado. Comares. Granada.

Espinar Vicente, J. M. y Paredes Pérez, J. I. Tráfico externo y litigación civil. Dykinson. Madrid.

Fernández Rozas, J. C. y Sánchez Lorenzo, S. A. Derecho internacional privado. Civitas. Madrid.

Garcimartín Alferez, F. J. Derecho internacional privado. Civitas. Madrid.

Parra Rodríguez, C. (directors). Derecho internacional privado. Huygens. Barcelona.

Virgós Soriano, M. y Garcimartín Alferez, F. J. Derecho procesal civil internacional: litigación internacional. Civitas. Madrid.

#### LEGISLATION TEXTS (last editions)

Álvarez González, S., Esplugues Mota, C., Rodríguez Mateos, P. y Sánchez Lorenzo, S. Legislación de derecho internacional privado. Comares.

Borrás Rodríguez, A. y otros. Legislación básica de Derecho internacional privado. Tecnos.

Iriarte Ángel, J. L., Casado Abarquero, M. y Muñoz Fernández, A. Derecho internacional privado. Thomson Reuters Aranzadi