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# Cases on European private international law

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# **CASES ON EUROPEAN PRIVATE INTERNATIONAL LAW**

## **Second edition**

**Murcia, Spain, 2024**

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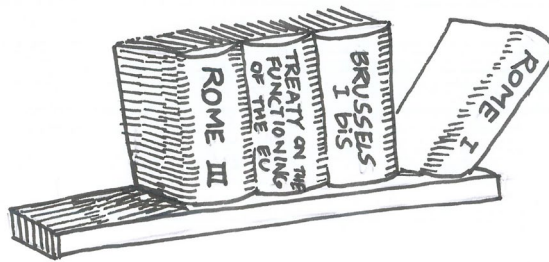
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## - PREFACE -

In the year 212 A.D., the so-called *Edict of Caracalla* or *Constitutio Antoniniana* extended Roman citizenship to all free inhabitants of the Roman Empire, with the exception of a few people. Despite the fact that the reasons for this decision continue to be strongly debated still today, -perhaps the Emperor's desire to increase state revenues was one of those-, it is true that, from that moment on, all Europe was led to a legal unification under Roman Law.

In the year 2024 A.D., this book includes not 212 but exactly 219 practical cases for students of private international law to be analyzed. European private international law operates today as the real civil constitution of the European Union. A set of regulations that unites peoples in the Union and respects legal diversity proper to the Member States. European private international law provides legal certainty for free movement of persons, goods, capital, firms and services. European private international law is one of the strongest pillars of Europe. Accordingly, not only does it deserve much attention from an academic perspective, but also from a practical view.

This work is the perfect complement to the book A.-L. CALVO CARAVACA / J. CARRASCOSA GONZÁLEZ (EDITORS), *European private international law*, 2nd edition, RRC, Murcia, 2024. This is also the perfect moment and time for the authors to thank our mentor, professor Dr. D. *Alfonso-Luis Calvo Caravaca*, for his wise teachings. Moreover, the authors appreciate the beautiful artwork by illustrator *Alessandro Sánchez Pennaroli*, which helps to convey some of the key ideas contained in each section of the book. The authors would also like to thank *Umberta Pennaroli* for her meticulous revision and translation into English of the cases during the four years of its production.

These cases on European private international law have been conceived as an instrument for improving legal quality in the practical application and in the study of European private international law. In this regard, any opinion on these "Cases" will be very welcome, as it will help to outline, polish and improve these materials for the benefit of all legal operators dedicated to European private international law and, ultimately, for a correct and useful practice of the most fascinating sector of law, private international law.

Murcia, Spain, 13th May 2024

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(5) "**Red Europa-España de Derecho internacional privado**", (coordinador: Javier Carrascosa). <http://www.redespañaeuropa.es/>.

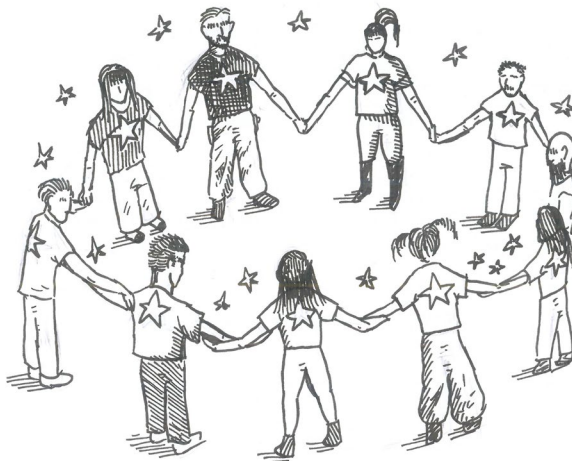
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## SECTION I GENERAL OVERVIEW



### I. Private international law. The fundamental issues.

- **CASE 1. When Einstein meets conflict-of-laws: parentage of a Spanish child and relativity of private international law.** A French judge declares that a Spanish minor "M", born in Paris but with habitual residence currently in Madrid, is the legal son of "F", a French citizen living in Paris. For this purpose, the French judge applied the "national Law of the mother", as it is provided for in French private international law (= Article 311-14 *Code civil France*: "*La filiation est régie par la loi personnelle de la mère au jour de la naissance de l'enfant ...*"). The mother was Moroccan so the French court applied Moroccan law to parentage. However, the same case would have been solved in a completely different way by a Spanish judge. Indeed, the Spanish courts would have applied the rules of Spanish private international law, by which the "*law of the habitual residence of the child*" applies to parentage (Article 9(4) *Civil Code Spain*). It would have led to the application of Spanish substantive Law as the child has his habitual residence in Spain.

**Question** = Which law applies to the parenthood of the Spanish child born in Paris?

**TIPS** = (1) Take into account the "relativity" of private international law; (2) Consider the objective scope of application of the European private international law rules.

- **CASE 2. A truck sale contract. To be or not to be (international).** A company is based in Stockholm sells a 40 tonnes truck to a Spanish truck driver with habitual residence in Seville. The truck proved to be overcharged as a consequence of a secret agreement of some European and American truck sellers concluded five years before. The driver is considering the possibility of suing the Swedish company before the Spanish courts.

**Question** = Should the sale of the truck be regarded as a private international law case?

**Tips** = (1) Keep in mind the role of the foreign elements in a legal case; (2) Take into consideration the different theories about when a legal case should be regarded as "international"; (3) Keep in mind the position of European law at this regard.

- **CASE 3. Transfer of a property located in Spain by a German seller to Colombian buyer. Love and business should not come together but they do.** A Colombian national having habitual residence in Madrid, Spain, bought a piece of land of 400 acres situated in Granada, Spain, from a German national domiciled in Germany. Two years later, the buyer brought a lawsuit against the seller claiming that the land is contaminated with persistent organic pollutants.

**Question** = Which three private international questions arise out from this situation?

**Tips** = (1) Take into account the modern structure of national laws with regard to private international law; (2) Take notice of Article 81 TFEU.

- **CASE 4. Forum Non Conveniens across the Atlantic, COVID and international litigation for tort liability.** Several German nationals living in Spain were infected with the COVID-19 virus as a result of the use, in a Spanish hospital, of deteriorated medical products manufactured in Canada. The victims decide to file a lawsuit against the manufacturer for damages. They brought the action before the courts of Montreal, *i.e.* the courts corresponding to the "domicile of the defendant".

**Question** = Are these courts obliged to hear the case?

**Tips** = (1) Take into account the doctrine of forum non conveniens; (2) Be aware of the so called "relativity" of private international law.

- **CASE 5. *Forum Shopping and divorce. What is national can become international.*** A French husband and a French wife live and work in Paris. The marriage is in crisis. The man leaves France and goes to New York, where he permanently settles and finds a new job. The wife remains in Paris. She decides to file a formal complaint for divorce before marrying her new boyfriend, an English national.

**Question 1** = In the event of divorce before the French courts, which private international law rules will be applied?

**Question 2** = What in the case of a divorce before of the New York courts?

**TIPS** = (1) Take into account, again, the "relativity" of private international law between the European Union and third States; (2) Keep in mind the meaning and operation of "*forum shopping*"; (3) Do not forget the role of the "Rome III Regulation".

- **CASE 6. *Another place, another time, another methodology. The unilateral conflict rule and General Data Protection Regulation of 2016.*** Article 3 of Regulation (EU) 2016/679 of 27 April 2016 [General Data Protection Regulation] declares that the rules of that Regulation apply: (i) to the processing of personal data carried out by an establishment that is located in the territory of the European Union; (ii) to the processing of personal data of persons residing in the European Union by a person in charge or manager not established in the European Union, in certain cases; (iii) to the processing of personal data carried out in Embassies and consulates of Member States located in third States.

**Question** = In the event of a violation of privacy of a Spanish national with habitual residence in New York, which law governs the issue?

**TIPS** = (1) Keep in mind Article 3 GDPR 2016; (2) Take into consideration the different types of legal rules of private international law; (3) Be aware of the "pure unilateralism" approach.

- **CASE 7. *Methodology is important. Inheritance and Article 21 ESR.*** Article 21 ESR states: "... (...) *the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death*".

**Question** = What type of private international law rule is this legal provision?

**TIPS** = (1) Be aware of the idea of localization in private international law; (2) Bear in mind the multilateral character of the classic conflict rule.

- **CASE 8. The power of the conflict rule. Pollution in Morocco. Article 4(1) Rome II.** Article 4(1) Rome II [law applicable to non-contractual obligations], states: "(....) *the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs (....)*". In the event of civil liability derived from the pollution caused by a company based in Spain and causing damage to certain forests in Morocco, the applicable law should be ascertained.

**Question 1** = What type of rule is this legal provision?

**Question 2** = Which law should govern the liability which can be requested to the Spanish company?

**TIPS** = (1) Kindly be mindful of the differences between direct and indirect solution in private international law; (2) Reflect on the structure of this conflict rule; (3) Take notice of the localization mechanism used by this rule; (4) Bear in mind the concept of "seat of the legal situation" as created by F.K. VON SAVIGNY.

## II. The private international law of the European Union. Sources, methods, matters.

- **CASE 9. Marriage across the borders.** An Irish national marries a Spanish national in Moscow. Two years later they move to Spain and establish their habitual residence in Murcia, Spain. Their lawyers are interested to figure out which law applies to the matrimonial property regime.

**Question** = Should this case be governed by private international law or by Spanish substantive law?

**TIPS** = (1) Take into consideration the impact of the foreign elements in a legal situation; (2) Be aware of exclusivity of private international law.

- **CASE 10. Love across the borders. Marriage between two women in Spain and legal effects in Hungary.** A Hungarian woman marries a Mexican woman in Barcelona, Spain. Both have their habitual residence in this city. Four years later, they move to live permanently in Budapest. According to Article L of the Hungarian Constitution (25 April 2011), marriage is defined as "*the voluntary union between a man and a woman*".

**Question** = Should this marriage be regarded as valid in Hungary?

**TIPS** = (1) You should be mindful of Article 21 TFUE; (2) Take into account the existence of potential limping legal situations.



- **CASE 11. National law vs. European law. Company incorporated under the Law of Cyprus and Spanish founding partners.** Several Spanish nationals set up a public limited company by shares in Nicosia under Cypriot law. The company carries out all its economic activities in Spain. Article 9 of the Spanish law on commercial companies (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*) requires any company whose main economic activities are carried out in Spain, to be incorporated under Spanish law.

**Question** = Does the aforementioned company need to re-incorporate under Spanish law in order to be considered as a legal person in the Spanish market or not?

**TIPS** = (1) Consider the role of evasion of the law in this case; (2) Keep in mind the principle of primacy of European Law; (3) Bear in mind the different obstacles to free movement of persons and legal situations in the European Union.

- **CASE 12. Child in foster care with a Portuguese national in Spain.** A Spanish child lives under a foster care regime with a Portuguese national. Both have habitual residence in Madrid. The Portuguese national receives a job offer in Lisbon. According to Article 60 of the Portuguese civil code, "*à constituição da filiação adoptiva é aplicável a lei pessoal do adoptante....*", i.e., the national law of the adopter, in this case, Portuguese law. On the contrary, in accordance with Spanish private international law, the law applicable to an adoption is, in general, the law of the child's habitual residence, in this case, Spanish law. Should Portuguese law be more severe than Spanish law when establishing the adoption, for instance, the Portuguese national may feel discouraged to move to Portugal and, thus, refrain from relocating. As a matter of fact, if the Portuguese national was considering the possibility of adopting the child, he may decide not to go back to his home country, in the event that there adoption rules are more severe than in Spain.

**Question** = Where may one find the origin of this obstacle to a free movement of individuals within the European Union?

**TIPS** = (1) Bear in mind the results of having different national conflict rules in different Member States of the European Union; (2) It is strongly recommended considering the impact of Article 81 TFUE with regard to this issue.

- **CASE 13. *When love is over. Divorce between an Italian and a Spanish national.*** Two spouses, of Italian and Spanish nationality respectively, habitually reside in Malaga, Spain. The marriage is going through a deep crisis in 2004. The Italian husband receives a job offer in Milan, Italy. According to the Spanish private international law rules in force in 2004, in the event the divorce claim is filed before Spanish courts, the Law applicable to divorce is Spanish substantive law (the law of the common habitual residence of the spouses). On the contrary, in the event of a divorce before Italian courts, the law applicable will be Italian substantive law (common national law of the spouses).

**Question** = Is the Italian national free to change his habitual residence and move to Italy in order to work there?

**TIPS** = (1) Be aware of the obstacles to free movement of persons in the European Union with regard to this case; (2) Take notice of the role of European private international law in this field.

- **CASE 14. *A fresh start. Spanish national divorced in Norway moving back to Spain.*** A Spanish national getting divorced in Oslo decides to go back to Spain. Nevertheless, since the divorce judgment was given in default of appearance, the judgement will not be enforced in Spain according to the Spanish rules governing the enforcement of foreign decisions.

**Question 1** = Does this fact operate as a legal obstacle for the Spanish national in order to move to Spain?

**Question 2** = What kind of legal remedy might you consider to this issue?

**TIPS** = (1) Bear in mind that Norway, at present, is not a Member State of the European Union; (2) Take into consideration the free circulation of judgements in Europe as a general principle.

- **CASE 15. *Best interest of the child. Adoption of a child in Poland and potential validity in Spain.*** Two Spanish nationals adopt a Albanese child in Warsaw. The adoption, which is perfectly legal according to the laws of Poland, may not be recognized in Spain.

**Question** = In the event that the adoption is not to be regarded as valid in Spain, should this fact be regarded as an obstacle to the free movement of European citizens in the European Union?

**TIPS** = (1) Take into account the relativity of private international law as an obstacle to free movement of persons in the European Union; (2) Evaluate the potential legal limping situation in this case.

- **CASE 16. *When the rain comes. Last will and testament made in Ireland of an Italian testator wishing to move to Spain.*** An Italian national with habitual residence in Dublin made a valid will in Westport, Ireland, according to the substantive law of Ireland. Sick of being always in the rain and "under the weather", he decides to move permanently to Sotogrande, Cádiz, Spain.

**Question** = As his lawyer, you are requested to declare whether the will made by the Italian national in Dublin should be deemed as valid under Spanish law or not.

**TIPS** = (1) Do not forget that a lat will and testament could be regarded as valid and invalid in different Member States at the same time; (2) You should be mindful of the impact of the European Succession Regulation 650/2012 in the problem here.

- **CASE 17. *A contract is a contract. Creation of European private international law rules in order to overcome private law obstacles to intra-European Union free movement.*** In December 2023, a Spanish company sells 200 tonnes of lemons to a German company under a contract signed in Barcelona and made in accordance with English laws.

**Question** = In the event that the German company breaches the contract, which kind of legal undertakings would be useful to the Spanish company in order to enforce the contract as it was signed?

**TIPS** = (1) Bear in mind the principle of predictability in European private international law; (2) Consider the role of European private international law as an element to increase free movement of wealth and economic factors in the European Union.



## SECTION II

### INTERNATIONAL FAMILY LAW AND CIVIL STATUS OF NATURAL PERSONS



#### III. Natural person.

- **CASE 18. *Born in the EU, not in the USA. Name of a Portuguese national.*** A Portuguese national is born in Granada, Spain. He has to be registered in the Spanish Civil Register (Article 9 *Spanish Act on Civil Registry 2011*).

**Question** = It is necessary to determine the law governing the name and surname of the Portuguese national born in Spain.

**TIPS** = (1) You should be mindful of the Munich Convention of 5 September 1980; (2) Evaluate the different connecting factors used by the Convention and the role of national private international law here.

- **CASE 19. *I want to break free. Change of name of an Italian national in Spain.***

An application is made to the Spanish Civil Register for a change of name of an Italian citizen who has been habitually residing in Spain for the past 10 years. It is necessary to determine the jurisdiction of the Spanish courts and the applicable law to this matter.

**Question** = Do the Spanish authorities have international jurisdiction to agree with the application?

**TIPS** = (1) Be aware of the distinction between jurisdiction and applicable law in the field of the name and surnames of natural persons; (2) Keep in mind the Istanbul Convention (*Convention relative aux changements de noms et de prénoms signée à Istanbul le 4 septembre 1958*).

- **CASE 20. *That was then and this is now. Name and surname of an American woman who becomes Spanish.*** An American national habitually residing in Spain acquires Spanish nationality after having married a Spanish national. It is necessary to determine the law applicable to the name and surnames of the American national after the marriage.

**Question** = Which law applies to the name and surnames of the American national after his marriage.

**TIPS** = (1) Take into account the Munich Convention of 5th September 1980; (2) Consider the right to a name in International law; (3) Think about the so called "second step theory" in private international law.

- **CASE 21. *Two faces. Dual Spanish-Italian nationality.*** A baby girl is born in Ibiza, Spain. She is the daughter of a Spanish mother and an Italian father. She is registered in the Italian Civil Registry with the surnames provided for in Italian law.

**Question** = Which law governs the law applicable to the surnames of the baby girl born in Ibiza?

**TIPS** = (1) Consider ECJ 14 October 2008, C-353/06, *Grunkin-Paul*; (2) Keep in mind the connecting factors used to determine the law applicable to name and surnames in the Member States of the European Union; (3) Take into consideration the role of Article 21 TFUE in this case.

- **CASE 22. Legal capacity and capacity to act of a Moroccan national.** A husband and wife of Moroccan nationality have been living in France for nine years. They are westernised, never return to their country and never intend to go back to their homeland.

**Question** = Which law applies to the legal capacity and capacity to act of both natural persons?

**TIPS** = (1) Be aware of the potential application of a foreign law to legal capacity; (2) Take notice of Article 3(3) of the French Civil Code; (3) Do not forget the methodological impact of the old and wise French Cour d'appel de Paris 13 June 1814, *Busqueta* [Sirey, 1814, 2, p. 393].

- **CASE 23. Live and let work. Law applicable to the capacity of an Algerian worker.** An Algerian worker lives in the south of France. He is hired as a seasonal agricultural worker in Huelva, Spain. The Algerian worker returns to Algeria during the holiday period each summer.

**Question** = Which law is applicable to the legal capacity of this worker in Spain?

**TIPS** = (1) Do not forget Article 9(1) of the *Civil Code of Spain*; (2) Take notice of the principle of stability of the applicable law.

- **CASE 24. Dual nationality and freedom of movement under European law.** A psychologist with habitual residence in Havana holds both Italian and Cuban nationality. As soon as he had the chance, he crosses the Ocean and arrives to Spain with the intention of living permanently in Málaga, Spain.

**Question** = Is he entitled to open a psychologist practice in Madrid as an European citizen?

**TIPS** = (1) Be aware of "freedom of establishment" (Article 49 TFEU); (2) You should also be mindful of the dual nationality of a natural person for the purposes of private international law; (3) Bear in mind ECJ 7 July 1992, C-369/90, *Micheletti* [ECLI:EU:C:1992:295].

- **CASE 25. *I have no law. Personal law of a stateless person arrived to Spain.*** A stateless person has his *domicile of origin* in India, but his *de facto* residence is in Spain after having survived to a tsunami in Thailand.

**Question** = Which is the personal law of this man for the purposes of private international law?

**TIPS** = (1) You should be mindful of the role of the New York Convention 1954; (2) Reflect on the concept of "personal law".

- **CASE 26. *In the land of the Maltese knights. Stateless person with domicile in Malta and habitual residence in Spain.*** A stateless person domiciled in La Valeta has his habitual residence in Madrid, Spain. He has "dual domicile", since under Maltese law he is domiciled in Malta and under Spanish law he is domiciled in Spain (Article 40 Spanish civil code).

**Question** = Which is the prevailing nationality of this man in order to determine his capacity to marry?

**TIPS** = (1) Be aware of the personal law paradigm; (2) Take notice of Article 9(9) Spanish civil code.

- **CASE 27. *Personal law of a refugee in Poland.*** Escaping from the war in his country, an Ukrainian national obtains refugee status in Poland, the country where he *de facto* resides. However, he still holds the nationality of Uzbekistan. Two months later he moves to Spain and starts working as an actor.

**Question** = Which the personal law of this man for the purposes of private international law?

**TIPS** = (1) Bear in mind Article 12 of the Geneva Convention relating to the Status of Refugees made the 28th July 1951; (2) You should also be mindful of the concept "personal status".



#### IV. Formation of marriage & registered partnerships. Legitimacy, and adoption.

- **CASE 28. *When marriage evaporates, does love do the same? Marriage between two Hungarian women in France.*** A Hungarian woman marries another Hungarian woman in France, the country where they have been living for years. Subsequently, one of the women returns to Hungary. Seen that same-sex marriages "do not exist" for the Hungary legal system, she marries a man in Budapest.

**Question** = May this Hungarian woman, even if she is considered already married to another woman in France, marry a man in Budapest?

**TIPS** = (1) Take into account the "relativity" of private international law; (2) Consider the possibility of a legal limping situation here.

- **CASE 29. *Marriage between two women in Spain and legal effects in Lithuania.*** A Lithuanian woman marries a Colombian woman in Spain. Both have their habitual residence in Barcelona. Two years later, they move to live permanently in Vilnius.

**Question** = Does this marriage exist as a valid marriage in Lithuania?

**TIPS** = (1) Bear in mind the chances for divorce in this case; (2) Take into account the relativity of private international law even in European Area of Justice; (3) Consider the role of public policy here; (4) Take notice of ECJ 5 June 2018, C-673/16, *Coman-Hamilton* [ECLI:EU:C:2018:385]; (5) Bear in mind Article 21 TFUE.

- **CASE 30. *Partnership with multiple places of common residence and succession upon death.*** A German national and a Italian national have lived together for eight years. They registered their civil union in a Spain official registry and lived a few years in Spain and then in Germany and Italy. The Italian cohabitant makes a will before an Italian notary in accordance with Italian law (Article 22 European succession Regulation). After the death of the Italian cohabitant, the German national claims his inheritance rights.

**Question 1** = Is the German national entitled to apply for inheritance rights?

**Question 2** = Which Law determines whether such a registered union exists in other countries?

**TIPS** = (1) Take into account how European of private international law determines the law applicable to preliminary questions; (2) Reflect on Arts. 22 and 23 ESR.

- **CASE 31. *I am your father. Recognition of parentage in a private document.***

An American national admits to be the father of a girl born from a French woman who habitually resides in Madrid (Spain). The alleged daughter has French nationality. The recognition of parentage is made by a letter written in New York (USA) and sent to the alleged daughter in Madrid, Spain.

**Question** = Should this acknowledgement of parentage be regarded as valid?

**TIPS** = (1) Analyze Article 9(4) and 11(2) of the Spanish civil code; (2) Take into consideration the formal and substantial validity of recognition of parentage.

- **CASE 32. *Law applicable to child custody and guardianship measures after divorce.*** A Spanish court grants a divorce decree between Lebanese spouses, both with habitual residence in Beirut. The children of the couple have their habitual residence in Málaga, Spain, and are all of them Lebanese nationals.

**Question** = Which law should govern the custody and guardianship of these children, as well as maintenance obligations towards them?

**TIPS** = (1) Take into account the Hague Convention 19 October 1996 [protection of children]; (2) You should be mindful of the Hague Protocol of 23 November 2007 [law applicable to maintenance obligations].

- **CASE 33. *When genetics meets private international law. Surrogacy in California and two intended parents in Spain.*** Two Spanish men, legally married to each other in Spain, move to San Diego, California where they contract the services of a surrogate mother. This woman, who is a Cuban national, carries and gives birth to twins using the genetic material of both of the Spanish nationals. The children, born in California, are registered in the California Civil Registry as children of both Spanish nationals.

**Question** = Is it possible to request the registration of the birth and parentage of the children in the Spanish Civil Registry by a simple transcription of the Californian birth certificate?

**TIPS** = (1) Take into account the role of Spanish public policy here; (2) Consider the biological link between the twins and the Spanish nationals; (3) Keep in mind Article 8 ECHR 1950; (4) Be aware of ECtHR 26 June 2014, 65192/11, *Mennesson vs. France* [ECLI:CE:ECHR:2014:0626JUD006519211] and subsequent case law rendered by the European Court of human rights.

- **CASE 34. *Let children live. Adoption in France of a Ukrainian child.*** A simple adoption is made in France of a Ukrainian girl who is habitually residing in Madrid by Ukrainian adopters with habitual residence in Paris.

**Question** = Does the Hague Convention of 19 May 1993 apply to this adoption?

**TIPS** = (1) Distinguish between "transnational adoption" and international adoption"; (2) Bear in mind the objective scope of application of the Hague Convention on adoption of 29 May 1993.

- **CASE 35. *Adoption means different things in different countries. Incidental recognition of adoption during succession proceedings.*** In the context of succession proceedings before a Spanish judge, the recognition of a "simple adoption" of a Turkish child made in Poland is requested. The adoption appears certified "*as made in accordance with the Convention*".

**Question** = Does this adoption produce legal effects in Spain?

**TIPS** = (1) Take notice of how private international law solve the question of unknown legal institutions in the forum country; (2) Bear in mind the nature of simple adoptions; (3) You should be mindful of the expression "the adoption will be recognized *by operation of law*"; (4) Describe the role of the public policy exception here.

## V. Matrimonial property regimes and property consequences of registered partnerships.

- **CASE 36. *Money and love are always in fight. Matrimonial property regime: applicable law.*** Two French nationals got married in Mexico in December 2023. Just after the celebration of the marriage, the husband moved to Paris and the wife moved to Madrid for job reasons. In 2024 they finally bought an apartment in Rome and start living together there. However, in 2025 they split. The husband returns to Paris and the wife goes back to Madrid.

**Question** = Which law governs the matrimonial property regime of the spouses?

**TIPS** = (1) Bear in mind that connecting factors may change in time; (2) You should be mindful of Article 26 and Recital 49 Regulation 2016/1103;

- **CASE 37. *Money does not know national boundaries. Law applicable to matrimonial property.*** An English national and a Dutch national got married in Gibraltar. Shortly after marriage, they moved and started living together in Warsaw. One year later, they moved to Amsterdam and lived there for five years. Then they decide to get separated.

**Question** = Which law governs the matrimonial property regime of the spouses?

**TIPS** = (1) It can be helpful to consider Article 26 Regulation 2016/1103; (2) Do not forget in which country the spouses had their last common habitual residence; (3) Reflect on the role and meaning of the predictability principle in the world of the conflict of laws.

- **CASE 38. *My money, my signature. Law applicable to matrimonial property and law chosen by the spouses.*** Two Spanish nationals got married in Las Vegas. Shortly after marriage they moved to London. Three years later, they establish their new habitual residence in Athens. Once in Athens they draft a private marriage contract and chose the law of Greece as the applicable law to the matrimonial property regime.

**Question** = Which law governs the matrimonial property regime of the spouses?

**TIPS** = (1) Take notice of the scope of spouses' right of choosing the applicable law in the field of international family law; (2) Consider Article 22 Regulation 2016/1103; (3) Keep in mind the role of notaries in cases like this.

## **VI. Divorce, legal separation and nullity of marriage.**

- **CASE 39. *Is jurisdiction for divorce universal? Divorce in Spain of spouses residing in Mexico.*** A Spanish husband and an Italian wife habitually reside in Mexico DF. The husband takes a plain and two days later he files for divorce before a Spanish court.

**Question** = Do the Spanish courts have jurisdiction to hear this divorce?

**TIPS** = (1) It would be appropriate to take into consideration the grounds of jurisdiction contained in the Brussels II-ter; (2) Reflect on the possibilities of applying the national rules of international jurisdiction of a Member State.

- **CASE 40. *European expats do exist. Cross-border divorce. Spouses habitually residing outside the European Union.*** A Spanish national is married to an Canadian woman and both habitually reside in London. The Spanish husband comes back to Spain for the summer holidays and files for divorce before the Spanish courts.

**Question** = Do the Spanish courts have jurisdiction to hear the case?

**TIPS** = (1) Take into account the legal devices used relatively by the Brussels II-ter Regulation to help European spouses to have access to divorce; (2) Explore Article 6(1) Brussels II-ter.

- **CASE 41. *Spanish expats do also exist. Divorce in Spain of two Spanish spouses habitually residing in Miami.*** Spanish husband and Spanish wife habitually reside in Miami, Florida, US. They have property in France as well as in Spain. Both had agreed in writing that, in the event of a divorce, the French courts would hear the case. Nevertheless, the husband brings a lawsuit for divorce before the Spanish courts.

**Question** = Do the Spanish courts have jurisdiction to hear the divorce?

**TIPS** = (1) Take into account the choice of court agreement as a head of international jurisdiction in Regulation Brussels II-ter; (2) Bear in mind Article 3 Brussels II-ter.

- **CASE 42. *Diversity in Europe. Law applicable to cross-border divorce in case of same-sex marriage.*** A French man marries another French man in Madrid in 2023. Two years later, both move to Warsaw, where they have lived ever since. In 2024, the spouses had chosen Spanish law in a marriage contract signed and dated, as the law applicable to their divorce. Both spouses apply for divorce before the courts of Warsaw.

**Question** = Will they be able to get a divorce decree from a Polish court?

**TIPS** = (1) Take into account the position of Poland with regard to the Rome III Regulation; (2) You should be mindful of Article 5 Rome III; (3) Keep in mind the free movement of spouses in the European Union with regard to same-sex marriage.

- **CASE 43. *The main cause for divorce is marriage. Law applicable to cross-border divorce and marriage as a preliminary question.*** A Spanish man marries an Indian woman in Gibraltar in 2013. After having lived in France for several years, in January 2025 they move to Murcia, Spain. The husband brings an action for divorce before the judges of Murcia and the wife opposes, claiming that the marriage is null and void because she was forced by her father to get married.

**Question** = Which law governs the divorce?

**TIPS** = (1) Keep in mind Article 8.1 Rome III; (2) Consider the preliminary question to divorce in this case; (3) Keep in mind Article 9(1) of the Spanish civil code; (4) You should be mindful of Article 1(2)(b) and (c) Rome III).

- **CASE 44. *Land of the Virgin Queen. Law applicable to divorce.*** A Spanish man and an American woman got married in Virginia (USA), where they habitually reside after the marriage. Two years later, the husband moves his habitual residence to Bilbao, Spain, and ten months later files for divorce before the Bilbao courts. The spouses had signed a private document in which they submitted their potential divorce to Spanish law.

**Question** = Which Law shall govern this divorce?

**TIPS** = (1) Take into account how the Rome III Regulation contemplates the validity of a choice of law agreement; (2) Do not forget Article 5 Rome III; (3) Do not forget the role of the first common habitual residence of the spouses in Article 8(b) Rome III.

- **CASE 45. *L.A. is my lady. Marriage in L.A. and divorce in the European Union.*** A Polish man marries a Polish woman in Los Angeles in August 2019. They return to Warsaw and sign an agreement in a private document in which they choose Polish law to govern a potential divorce. In September 2024 they move to Valencia to live permanently there. In February 2025, the husband brings a lawsuit for divorce before the Spanish courts, drafting his claim under Polish law. The wife objects and argues that, on the contrary, the divorce should be governed by Spanish law, as it is the law of the State of the spouses' common habitual residence at the time the action for divorce is brought.

**Question** = Which law applicable to this divorce?

**TIPS** = (1) Please consider the formal requirements of the choice of law agreement in the Rome III Regulation; (2) Bear in mind the place of forum shopping in the Rome III Regulation.

- **CASE 46. *Wherever I lay my hat, that is my home. Divorce in Spain.*** A Spanish woman and a Dutch man marry in London. Five years later they move their habitual residence to Seville, Spain. Eleven years later, the husband files a petition for divorce before the Spanish courts. All their property is located in the United Kingdom.

**Question** = Which law applies to the divorce?

**TIPS** = (1) It is strongly recommended considering the fact of dual nationality in Rome III; (2) Reflect on an economics perspective in solving this case.

- **CASE 47. *Extra ecclesiam nulla salus. Law applicable to canonical marriage annulment.*** A Spanish woman enters into a canonical marriage in China with a Chinese man. In China, Catholic marriage does not produce any legal effect. After four years, they move to Madrid and the husband brings an action for nullity of the marriage before the Spanish courts.

**Question** = Which Law shall govern the annulment of this marriage?

**TIPS** = (1) Be aware of Article 49 of the Spanish civil code; (2) Explore how the Rome III Regulation deals with nullity of marriage.

- **CASE 48. *It is all Greek to me. Divorce judgment rendered by a Greek court.*** A private divorce agreement is made by two Spanish nationals in France assisted by their lawyers. The divorce agreement is officially registered by a French Notary. There is no divorce judgement but a divorce private agreement officially registered in France.

**Question** = Does this private divorce agreement produce legal effects in Spain?

**TIPS** = (1) Keep in mind Article 65 Brussels II-ter; (2) Consider what this legal provision means for the future of international family law.

## VII. Parental responsibility.

- **CASE 49. *Across the Gibraltar strait. International jurisdiction and parental responsibility. Moroccan child habitually resident in Spain.*** A four-year-old Moroccan child moves from Morocco to Málaga, Spain. Dreadfully, six months later, he loses his parents in a traffic accident. Consequently, parental responsibility measures need to be adopted for the child.

**Question 1** = What is the competent court in this case?

**Question 2** = Which law applies to measures relating to parental responsibility?

**TIPS** = (1) Consider the Brussels II-ter Regulation and the Hague Convention of 19 October 1996 at the same time; (2) Do not forget, especially, Article 15 of the above mentioned convention.

- **CASE 50. *International jurisdiction and parental responsibility. Travelling children.*** A 6-year-old German child lives with his hippy parents in a camper van. They move around Europe aimlessly. The child was born in Germany, but has never lived there on a stable and continuous basis. Following the parents' death, a dispute arises over the child's guardianship. The child has been living in Russia for ten months.

**Question 1** = Is relevant to determine where the habitual residence of the child is located in that case?

**Question 2** = Does the Brussels II-ter Regulation apply?

**TIPS** = (1) Take into account the country where the child habitually resides; (2) Consider Article 5 of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; (3) Reflect about the potential non application of the Brussels II-ter Regulation to this issue.



- **CASE 51. *Not all those who wander are lost. International litigation and parental responsibility.*** Two Greek spouses have twin sons in Portugal, where they all habitually reside. One summer, the whole family travels to France to spend their holidays happily wandering from one campsite to another. Once in France, the social services of the Parisian regional government, considering that the children are neglected, place them in a children's home. The parents try to prove that the children are under their parental authority and to exercise the rights and duties inherent to it. The French authorities argue that, now that the children are in France, the law governing the exercise of parental authority, the rights and duties of their parents, is substantive French law.

**Question** = What is the applicable law in this case?

**TIPS** = (1) Take into account the habitual residence of the children; (2) Consider the Brussels II-ter Regulation.

- **CASE 52. *International jurisdiction and parental responsibility. Jurisdiction of the courts of Valencia, Spain, in a case of divorce.*** A Tunisian husband has been habitually resident in Madrid for five years. He brings an action for divorce before the courts of Valencia against his wife, also a Tunisian national, who habitually resides in Valencia. They have two children who live in Amsterdam with their grandmother.

**Question** = Which authorities hold jurisdiction to decide on the custody of the children?

**TIPS** = (1) It is desirable to bear in mind, for the purposes of determining the appropriate court, the Brussels II-ter Regulation; (2) You should be mindful of Articles 3 and 7(1) of Brussels II-ter; (3) Consider Articles 10 and 13 Brussels II-ter as well.

- **CASE 53. *Parental responsibility and choice of court. Ukrainian child in Spain.*** The parents of a 14-year-old Ukrainian girl are in dispute over her custody. The three of them habitually have been habitually residing in Spain for five years. Then the father moved his habitual residence to Antwerp with the child. The mother still habitually resides in Almería, Spain. The parents agree in writing to institute legal proceedings before the Spanish courts for the custody of the child. The child has assets in Spain.

**Question** = Which authorities are competent to grant the measures of parental responsibility of the child?

**TIPS** = (1) Please keep in mind Article 10 Brussels II-ter; (2) Consider the role of choice-of-court agreements in European private international law.

- **CASE 54. *We always have Paris. International litigation and parental responsibility. Child residing in France.*** A child is born out of wedlock to Colombian parents in Paris, where they all habitually reside. When the child is 7 years of age, the parents break off their joint cohabitation. The father moves to Barranquilla, Colombia, while the mother stays in Paris with the child. Both adults litigate over parental authority, custody and access to the child.

**Question 1** = What is the competent court to decide the dispute?

**Question 2** = Which law applies to the above mentioned legal measures?

**TIPS** = (1) Be aware of the country corresponding to the child's habitual residence in the light of Article 7(1) Brussels II-ter; (2) Do not forget the rule *lex fori in foro proprio*; (3) You should also be mindful of Article 15(1) Hague Convention 1996.

- **CASE 55. *Building castles in Spain. International jurisdiction, divorce and parental responsibility. Child in Spain.*** Two Scottish spouses habitually resident in Barcelona file for divorce before the courts of this city. The court has jurisdiction to decide on the divorce as both spouses have their habitual residence in Spain at the time the application is filed (Article 3 Brussels II-ter). The spouses have two children who are habitually resident in Glasgow with their grandmother.

**Question** = May the Spanish courts deciding on the divorce also deal with the parental responsibility of the children?

**TIPS** = (1) Take into consideration the habitual residence of the children here; (2) Take notice of The Hague Convention of 19 October 1996 [protection of children] and the position of the United Kingdom.

## VIII. Child abduction.

- **CASE 56. *Wrongful child removal to France.*** A French father takes his children from Switzerland to France, where he applies for divorce and for the custody of the children. On the contrary, the mother, who habitually resides in Zurich, requires the France Central Authority to return to Switzerland the abducted children, according to the Hague Convention of 25 October 1980.

**Question 1** = What rules would apply to this matter?

**Question 2** = Should children be returned to Switzerland?

**TIPS** = (1) Bear in mind Article 16 of the 1980 Hague Convention of 25 October 1980; (2) Be also aware of Article 7(1) Brussels II-ter.

- **CASE 57. *Is asthma strong enough? Return of children and the Brussels II-ter Regulation. Minor wrongfully removed from The Netherlands to Spain.*** An American mother, a Spanish father and their daughter have their habitual residence in Maastricht. The Spanish father takes the child to Granada, Spain. The courts of Granada are asked to return the child, but they refuse because they consider that the return of the child might put her in danger since she suffers from asthma.

**Question 1** = Which are the applicable rules to the issue?

**Question 2** = How can the mother proceed in this case?

**TIPS** = (1) Do not forget Article 29(5) Brussels II-ter; (2) You should also be mindful of Article 42(1)(b) Brussels II-ter as well as Article 34 Brussels II-ter.

- **CASE 58. *Wrongful removal of a child to Spain and Brussels II-ter Regulation.*** A German court grants the custody of a minor to his German father, who habitually resides in Germany. The child has his habitual residence in Germany with his father. He has been convicted several times for abusing his wife. The mother, a Spanish national habitually resident in Tarragona, has access to the child. She takes advantage of a weekend in Rome and takes the child with her to Tarragona. The German father asks the return of the child to Germany before a Spanish court.

**Question** = Does the 1980 Hague Convention apply in this case?

**TIPS** = (1) Take into account the relations between the Brussels II-ter Regulation and the Convention on the Civil Aspects of International Child Abduction (1980 Hague Convention); (2) Evaluate the fact that the father has been convicted for abusing his wife.

- **CASE 59. *Wrongful child transfer from Namibia to Spain. A second rate child?*** A child of 12 years of age has his habitual residence in Windhoek. During a holiday in Sicily with his mother, she takes him from there to Madrid.

**Question** = Should the child be returned to Namibia according to The Hague convention 25 October 1980?

**TIPS** = (1) Consider the Hague Convention on the Civil Aspects of International Child Abduction 1980; (2) Take notice of the position of Namibia with regard to the Hague Convention 1980.

- **CASE 60. *Wrongful transfer of a child from Sri Lanka to Spain.*** A court of Kandy, Sri Lanka, grants a divorce to a Sri Lanka husband national and a Spanish wife. The Sri Lanka husband and father is entrusted with the custody of their 7-year-old son. The Spanish mother, taking advantage of one of her visits to her son in Sri Lanka, brings him to Alicante, Spain.

**Question 1** = Does the 1980 Hague Convention apply to this case?

**Question 2** = Should the child be returned to Sri Lanka?

**TIPS** = (1) Consider that the child is under 16 years old; (2) You should be mindful of the position of Sri Lanka with regard to the Hague Convention on the Civil Aspects of International Child Abduction 1980; (3) Bear in mind the role of the Spanish Central Authority in this case; (4) Take into consideration the concept of "*physical or psychological harm*" for the purposes of Article 13(b) Convention.

- **CASE 61. *The return of children and the third mechanism implemented by the Brussels II-ter Regulation.*** A Dutch father with habitual residence in L.A. and a Spanish mother with habitual residence in Madrid have a child who usually resides in Amsterdam with his grandmother. Both parents have a legal dispute before the Dutch courts on the custody of that child. As the child usually resides in The Netherlands, the Dutch courts have jurisdiction competent to decide on his custody. They grant custody to the Dutch father. However, abruptly the mother takes the child to Getafe, Madrid, Spain, with her.

**Question** = Should this child be returned to the Netherlands?

**TIPS** = (1) Keep in mind the role of the "declaration of enforceability" in this case; (2) Do not forget Article 42(1) Brussels II-ter.

## IX. Maintenance obligations.

- **CASE 62. *International jurisdiction and maintenance obligations.*** A Spanish national domiciled in California returns to Spain and establishes his habitual residence in Valencia, Spain. He claims maintenance from an American national with habitual residence in New Jersey.

**Question** = Do the Spanish courts have jurisdiction to hear the case?

**TIPS** = (1) Take into account Article 3(b) Regulation 4/2009; (2) Bear in mind the concepts of domicile and habitual residence.

- **CASE 63. *International litigation and maintenance obligations. Applicable law.*** An Italian national habitually resident in England claims maintenance from his brother, an Italian national habitually resident in Spain, before a Spanish court.

**Question** = What is the law applicable to maintenance obligations?

**TIPS** = (1) You should be mindful of The Hague Protocol 2007 on maintenance; (2) Think about the universal application of Regulation 4/2009; (3) Evaluate the different connecting factors used by The Hague Protocol 2007.

- **CASE 64. *Maintenance between spouses.*** French husband and wife, both habitually resident in Casablanca, Morocco, bring a contentious divorce action before the French courts. Both have chosen French law as the law applicable to the divorce according to Article 5 Rome III.

**Question** = What is the law applicable to the compensation claimed by the wife (pension for imbalance after the divorce)?

**TIPS** = (1) Assess Articles 5, 3, 4 and 6 The Hague Protocol 2007; (2) Consider the choice of law agreement.

- **CASE 65. *International jurisdiction and maintenance obligations. Many courts come to play.*** A Spanish maintenance creditor habitually resident in Luxembourg claims maintenance from his alleged father, a Spanish national with habitual residence in Madrid, Spain.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Consider Article 3(a) Regulation 4/2009; (2) Take into account also Article 3(b) and 4 Regulation 4/2009 as well as Article 3(c) Regulation 4/2009.

- **CASE 66. *International jurisdiction and maintenance obligations.*** A Spanish national with habitual residence in New York claims maintenance from another Spanish national with domicile in L.A.

**Question** = May the Spanish national residing in New York bring the action before the Spanish courts?

**TIPS** = (1) Take into account Article 4 Regulation 4/2009; (2) Bear in mind the chances of an alternative adjudication in the United States of America.

- **CASE 67. *International jurisdiction and maintenance obligations. The power of habitual residence as a ground of international jurisdiction.*** A Spanish national domiciled in New York returns to Spain and establishes his habitual residence in Castellón, Spain. He claims maintenance from a Moroccan national with habitual residence in Rabat.

**Question** = Do the Spanish courts have jurisdiction to hear the case?

**TIPS** = (1) Evaluate the key question: the habitual residence of the maintenance creditor; (2) Assess Article 3(b) Regulation 4/2009.

- **CASE 68. *International litigation and maintenance obligations. Competent courts and applicable law.*** A Scottish woman moves from Scotland to the United States, where she lives for 3 years and has a child with an American national. When the relationship breaks down, mother and son move to Spain. The son has dual British and American nationality. Once they have settled in Barcelona, Spain, the woman files a claim for maintenance from the father of the child on his behalf before the courts of that city.

**Question** = What is the applicable law to that case?

**TIPS** = (1) Consider Article 4 The Hague Protocol 2007; (2) Keep in mind who is the maintenance creditor here; (3) Do not forget the role and impact of a content-oriented conflict rule; (4) Explore the limits of a choice of law agreement in The Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

- **CASE 69. *Law applicable to maintenance and preliminary question of parentage.*** A Spanish national habitually residing in Berlin, Germany, sues another Spanish national before the Spanish courts and claims both maintenance and parentage as his alleged son. Admittedly, the law applicable to parentage must be previously determined.

**Question** = Which law applies to the determination of parenthood for the purposes of maintenance?

**TIPS** = (1) Explore how to solve a preliminary question here; (2) Take into consideration the scope of application of the law governing maintenance in The Hague Protocol 2007.

- **CASE 70. *International litigation and maintenance obligations. Applicable law and special rule on defence.*** A French national habitually resident in Lisbon claims maintenance before a Spanish court from a French maintenance debtor who has his habitual residence in Spain. The international jurisdiction of the Spanish courts is clear (Article 3(a) Regulation 4/2009). Nevertheless, the defendant objects the application of Portuguese law.

**Question** = Which law applies to the maintenance obligation?

**TIPS** = (1) Bear in mind Article 3 The Hague Protocol 2007; (2) You should be mindful of the potential reaction of the defendant against the application of the law of the common nationality of the parties.

## **X. Succession upon death.**

- **CASE 71. *Family and business. International jurisdiction and succession.*** An American national runs business in New York and L.A. When he is not working, he lives with his family in Seville, Spain, where his family resides permanently. Unfortunately, the American national dies in London, victim, apparently, of COVID-19.

**Question** = Which courts have jurisdiction to deal with any disputes arising out of the succession of the American national?

**TIPS** = (1) Take into consideration Article 4 European Succession Regulation (ESR); (2) Explore the concept of "centre of interest of his family and social life" (Recital No 24 ESR) and how to specify it.

- **CASE 72. *International jurisdiction in succession matters and brief last habitual residence of the deceased.*** An Austrian national has always had his habitual residence in Vienna. He sells a large part of his property in Austria and moves permanently to Valencia, Spain, where he lives with his wife in a hotel. He never leaves Spain again: after one year of habitual residence in Spain, the deceased dies without having made a will. He owned two properties in Austria. The succession is disputed by the relatives of the deceased.

**Question 1** = Which courts do have jurisdiction to hear this controversy?

**Question 2** = Which law governs the succession?

**TIPS** = (1) Evaluate the notion and operation of "forum non conveniens" in the European Succession Regulation; (2) Consider Article 21 ESR; (3) Take into consideration the differences between jurisdiction and applicable law in this case.

- **CASE 73. Choice of law applicable to the succession and deceased with multiple nationalities.** A Moroccan national had his habitual residence in Gibraltar. However, all his assets and property are located in Spain. His family habitually resides in Murcia, Spain. Before a notary in Gibraltar, the Moroccan national makes a document stating that he wishes his succession upon death to be subject to Iranian law. The man dies in Gibraltar two months later. It seems that the deceased held both Moroccan and Iranian nationality but one of his sons affirms that his father was a stateless person.

**Question** = Which law is applicable to his succession upon death?

**TIPS** = (1) Bear in mind Article 22 ESR; (2) Explore the impact of dual nationality in the European Succession Regulation.

- **CASE 74. Legitima portio at stake. International jurisdiction of the courts of the Member State corresponding to the nationality of the deceased.** A Spanish citizen has had his habitual residence in Belgium for 15 years. He makes a will before a notary in Brussels and declares his intention of leaving his children a part of his assets according to Spanish *legitima portio*. When the testator dies, some distant relatives of his, all of them Spanish and habitually resident in Spain, object the will.

**Question** = Which courts, Spanish or Dutch, have international jurisdiction to decide the matter?

**TIPS** = (1) Be aware of Articles 7(a) and 6(a) ESR with regard to this case; (2) Take into account the links between jurisdiction and applicable law in the European succession Regulation.

- **CASE 75. Last but not least. Succession upon death. Law of the country of the last habitual residence of the deceased.** A South Korean national has different businesses in Germany and Russia. He works in different parts of the world, without a stable physical location. His family lives permanently in Almería, Spain, where he also lives when he is not working. Sadly, he dies in Tokyo victim of his addiction to sedative pills made in North Korea.

**Question** = Which law should governs his succession upon death?

**TIPS** = (1) Take notice of where the "centre of interest of his family and social life" has to be located; (2) Consider Recital No 24 ESR.



- **CASE 76. *Time, flowing like a river. Time, beckoning me. Choice of law applicable to the succession and change of the connecting factor in time.*** A Dutch national has his habitual residence in Seville, Spain, where he owns a large luxury villa called *Shandi*. In Seville, he makes a will where he states that he wants his succession to be governed by Dutch law. Two years later, the man acquires Spanish nationality and loses his Dutch nationality. Subsequently, he dies and his children go to court to annul the will and to request the Spanish judge to declare that the law governing the succession should be Spanish, not Dutch law (Article 21(1) ESR), on the basis that the deceased died as a Spanish, not a Dutch national and his last habitual residence was in Spain and not in The Netherlands.

**Question** = Which is the law applicable to the succession?

**TIPS** = (1) Consider the nature of the connecting factor used by the European succession Regulation; (2) Keep in mind the time factor in private international law in this case.

- **CASE 77. *Janus, the god with two faces and two residences. Law applicable to succession matters. Dual residence.*** A Russian national resides in Milan, Italy, during the winter and in Granada, Spain, during the summer. He is a financial investor and works from several offices located in Spain, Italy, Russia and the USA, depending on the time of year. Most of the year, however, he is constantly travelling on business around the world. He has several assets in Italy, but he also owns several industrial buildings and flats located on the Costa del Sol, Spain. Most of his relatives live permanently in Granada, Spain. He made a will in London but did not choose the law applicable to his succession. He acquires Spanish nationality two months before his death.

**Question** = Which law governs his succession upon death?

**TIPS** = (1) Bear in mind the possibilities of having two habitual residences in the context of the European Succession Regulation; (2) Explore Article 4 ESR and 21(1) ESR; (3) You should be mindful of the "social link" of the deceased with a specific country; (4) Consider where the "centre of the social life of the deceased" should be situated in this case.

- **CASE 78. *How to cut the Gordian knot. Abrupt transfer of the habitual residence of the deceased and exception clause.*** A Bosnian citizen has habitual residence in Sarajevo. Abruptly but discreetly, without saying anything to anyone, he moves his habitual residence to Madrid, Spain, where he rents a small flat and dies a year later. All of his relatives and creditors reside in Sarajevo. Several properties owned by the deceased are also located in Sarajevo.

**Question** = Which is the law governing his succession upon death?

**TIPS** = (1) Think about the principle of predictability in the field of international jurisdiction as well as in the field of applicable law in this case; (2) Reflect on the rationale of Article 21(2) ESR.

- **CASE 79. *Am I who I think I am? Law applicable to the status of "child" of the deceased.*** A Spanish national dies in Singapore, where he usually spent the summer holidays. His habitual residence was in Hong-Kong for the last 15 years. He was married to an Italian woman and had two natural children and one child adopted in Poland by simple adoption. All the children had rejected their Spanish nationality and held exclusively Italian nationality. The deceased's assets consisted of shares in various companies and real estate in Spain and Italy. He had made a will by which he left all his assets "*to his legally recognised children*" and had indicated that he wished his succession upon death to be governed by Spanish law. One of the children contests the validity of the will on the ground that one of the beneficiaries is a person adopted by the deceased under "simple adoption". Therefore, according to that him, the child who was adopted in Poland should not be regarded as a "legally recognised child" of the deceased.

**Question** = Which law applies to determine whether the children should be considered as the testator's children?

**TIPS** = (1) Take into consideration Article 22(1) ESR; (2) Bear in mind the second step of the conflict rule when dealing with in the concept of "child" in the context of an inheritance

- **CASE 80. *The foreign State as an heir.*** A French national dies in Spain, where he had been habitually resident for twelve years. He leaves an enormous estate consisting of immovable property located in Spain and France, as well as movable property located in Spain. The deceased dies intestate and without relatives. He had made a declaration before a Spanish notary in which he stated his wish to subject his succession upon death to French law. Accordingly, French law governs the succession (Article 22(1) ESR) and the heir is the French State. Note, however, that this operates only for the assets located in France. As a matter of fact, Article 768 French Code states: "*A défaut d'héritiers, la succession est acquise à l'Etat*" provided that the assets are "*vacants et sans maître*".

**Question** = Who should be regarded as the heir with regard to the movable and immovable property of the deceased?

**TIPS** = (1) Consider Article 33 ESR; (2) Bear in mind the legal provisions of the Member States allowing the State to acquire ownership of a estate in cases where there is no owner; (3) Think about the concept of *res nullius (bona vacantia)*; (4) Be also aware of ownerless movable assets.

- **CASE 81. *Saved (or not) by the bell. Will made in articulo mortis. Inheritance rights of the doctor and the notary.*** A British national dies in Cádiz, Spain, the town where he had been residing for twelve years. He leaves an estate consisting of property located in Spain and Gibraltar. He had made a will *in articulo mortis* after a shipwreck occurred in waters of Portugal in which he left certain real estate in Gibraltar to his private doctor and to the Spanish notary before whom the will was made. The children of the deceased contest the validity of the will as to its substance before a Spanish judge.

**Question** = Should this last will and testament be regarded as valid in Spain?

**TIPS** = (1) Explore the aims of Article 23 European Succession Regulation; (2) Think about the concept of legal capacity of the heirs and the law applicable to the matter.

- **CASE 82. *Law applicable to succession upon death and non-unified legal system.*** A North American national passes away in Paris victim of a car accident. He leaves real estate located in Spain. The deceased had been habitually resident in Almería, Spain, for twenty-two years. The alleged heirs are the deceased's children. In a will made in Spain three months before his death, the deceased indicated that his succession should be governed by American law and specifically by the law of the State of Florida, the State where the testator had resided for ten years before having moved to Almería.

**Question** = Which is the law applicable to the succession?

**TIPS** = (1) Bear in mind Article 22(1) ESR; (2) You should be mindful of the fact that the United States of America is a State with more than one legal system; (3) Please take notice of Article 36 ESR; (4) Evaluate the principle of the closest connection in the European Succession Regulation.

- **CASE 83. *Two for the price of one. Law applicable to succession upon death and matrimonial property regime.*** A Spanish national has been married to an English national since 2012. The spouses resided in Spain for ten years. In 2023 they moved to reside permanently in New York. The deceased acquired the US nationality in 2024 and, by a will made in Florida, left all his assets to his wife. He left nothing to his children. The deceased's assets consist of real estate in Spain and France. The children contest the validity of the will.

**Question 1** = Which law governs the matrimonial property regime?

**Question 2** = Which law governs the succession of the Spanish national?

**TIPS** = (1) Keep in mind the rules applicable to the dissolution of the matrimonial property regime; (2) Take notice of Article 26(1)(a) Regulation 2016/1103; (3) Take into consideration the significance of a community of property regime; (4) Keep in mind Article 21(1) ESR; (5) Take into account the law governing the inheritance rights of the surviving spouse in the field of the European Succession Regulation.

- **CASE 84. *Real estate and succession upon death.*** A Spanish national, whose last habitual residence was in Vienna, dies in Madrid victim of a heart attack. He was the owner of a flat in Vienna and carried out a *professio juris* in favour of Spanish law before an Austrian notary. His son, who is a Spanish national habitually resident in Toledo, wonders whether he is the owner of this property once the inheritance has been accepted before a Spanish notary. Austrian law requires registration in Austria for the transfer of ownership to take place, *i.e.* registration in accordance with the *Lex Rei Sitae* (Austrian Law) is necessary for the transfer of property.

**Question** = Who is the owner of the assets involved in this succession?

**TIPS** = (1) You should be mindful of Article 23 ESR; (2) Think about Article 1(2)(l) ESR; (3) Reflect on the tension between the *Lex Successionis* and the *Lex Rei Sitae* in this case.

- **CASE 85. *Too much, too soon. Personal will made by a foreign testator victim of ecoanxiety.*** A North Korean national, aged 17, with domicile and habitual residence in Pekin, makes a personal will in Spain during a holiday. Sadly, the testator dies victim of ecoanxiety. According to the law of North Korea, legal age arrives at seventeen. On the contrary, legal age under Spanish law only takes place at the age of eighteen.

**Question** = Is this last will and testament valid from the perspective of its formal validity?

**TIPS** = (1) Explore Article 1 of the Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions; (2) Bear in mind Article 688 of the Spanish Civil Code; (3) Keep in mind Article 9(1) of the Spanish Civil Code.

- **CASE 86. *Playing tennis in an international scenario. Renvoi in favour of the law of a Member State (Article 34(1)(a) ESR)***. After having resided in Spain for ten years, an English national moves his habitual residence to Manchester, US. Five years later, he dies. All of his estate and personal property are located in Spain. A succession dispute arises before a Spanish judge, who has jurisdiction according to Article 10 ESR. The parties are in dispute as to which law is applicable to this succession upon death. The English conflict rules declare that the law of the country where the real estate is situated governs the succession upon death with regard to immovable property.

**Question** = Which is the law applicable to this succession?

**TIPS** = (1) Take into consideration Article 21(1) ESR; (2) Consider the mysteries of *renvoi* in Article 34(1)(a) ESR.

- **CASE 87. *An international merry-go-round: welcome renvoi at second degree. Application of the law of a third State (Article 34(1)(b) ESR)***. A Moroccan national habitually resident in Senegal owns property in Spain. Succession proceedings are brought before a Spanish court, which has jurisdiction according to Article 10 ESR. Problems arise as to which law should govern the succession and the question of *renvoi*. According to the conflict rules of Senegal, succession upon death is governed by the national law of the deceased. With accordance to the Moroccan conflict rules, succession upon death is governed by the national law of the deceased.

**Question** = Which law applies to the issue?

**TIPS** = (1) Explore Article 21(1) ESR; (2) Play the game of *renvoi* in Article 34(2)(b); (3) Reflect on the concept of "international harmony of legal answers" and the impact of the SAVIGNY's doctrine in this field.

## SECTION III

### INTERNATIONAL BUSINESS LAW



#### XI. Jurisdiction in civil and commercial matters. Regulation Brussels I-bis.

- **CASE 88. *We are family, but you are not included. Companies domiciled in a third State.*** Two Chinese companies have a dispute on the ownership of a property located in Seville, Spain, before a Spanish judge.

**Question** = Does the Brussels I-bis Regulation apply to determine the courts having jurisdiction to deal with this dispute or does not?

**TIPS** = (1) You should be mindful of the spatial or territorial scope of application of the Brussels I-bis Regulation; (2) Take into consideration Article 24 Brussels I-bis; (3) Keep in mind the impact of exclusive jurisdiction.

- **CASE 89. *Public law litigation.*** A company with registered office in Dublin has been fined by the Spanish administration for dumping polluting products into the sea. The company contests the fines before the Spanish courts. In order to determine its international jurisdiction, the question arises of whether the Spanish courts should apply the Brussels I-bis Regulation or not.

**Question** = Does the Brussels I-bis Regulation apply to the case to determine the courts having jurisdiction to deal with the dispute?

**TIPS** = (1) You should be mindful of public law relationships; (2) Consider the extent of "civil or commercial matters" for the purposes of the Brussels I-bis Regulation; (3) Be aware of the role of national law in determining jurisdiction in this case.

- **CASE 90. *Non-European parties to the legal proceedings.*** During a never ending wait for their respective flights at Barajas airport, Madrid, Spain, two companies based in Tokyo sign a contract for the supply of electricity. The contract is to be entirely performed in Taiwan. Three months later, one of the companies considers that the other company has not paid the agreed price in full. That company sues the other before the Spanish courts since the contract has been signed in Spain.

**Question** = Does the Brussels I-*bis* Regulation apply in order to determine if the Spanish courts will establish their international jurisdiction to deal with the matter or not?

**TIPS** = (1) Do not forget Articles 24, 25 and 26 Brussels I-*bis*; (2) Explore the role of the Spanish national rules governing international jurisdiction; (3) Be aware of the place where the contract has been concluded as a connecting factor in the field of international contracts.

- **CASE 91. *National or international. Legal dispute between persons domiciled in the same Member State.*** A French national domiciled in Murcia, Spain, buys a luxury car from another French national domiciled in the same Spanish city. The car is in Paris in at the time when the contract is signed. Later, the buyer does not pay and the seller decides to sue for breach of contract before the Spanish courts.

**Question 1** = Do the courts of Murcia apply the Brussels I-*bis* Regulation to establish their international jurisdiction?

**Question 2** = Do the French courts have international jurisdiction to deal with the matter?

**TIPS** = (1) Keep in mind when the Brussels I-*bis* Regulation has to be applied; (2) You should be mindful of Article 14 *Civil Code France*.

- **CASE 92. *EU-related (or not) disputes.*** A creditor company based in Belgium sues a debtor domiciled in Venezuela before the French courts for breach of contract. The contract contains an express choice-of-court agreement in favour of the courts of Marseille, France, in the event of a dispute arising from the contract.

**Question** = Which courts have jurisdiction to deal with the dispute?

**TIPS** = (1) Consider Articles 24, 25 and 26 Brussels I-*bis*; (2) Reflect on where the domicile of the defendant is located; (3) Evaluate the impact of Article 25 Brussels I-*bis*.



- **CASE 93. *I am in charge tonight. Exclusive international jurisdiction in the Brussels I-bis Regulation.*** A dispute arises between two citizens domiciled in Portugal and Spain respectively concerning the ownership of a beautiful villa located in Malta.

**Question** = Which courts have jurisdiction to deal with the controversy?

**TIPS** = (1) Be aware of alternative jurisdiction here; (2) Take notice of exclusive jurisdiction in Article 24 Brussels I-bis; (3) Reflect on the impact of choice-of-court agreements in this case.

- **CASE 94. *Alternative heads of jurisdiction under the Brussels I-bis Regulation.*** A company with registered office in Paris, France, enters into a contract for the sale of electric cars with a company -the buyer- with registered office in Madrid. The French company fails to deliver all the cars in Rome as the contract provided for.

**Question** = Which courts have jurisdiction to hear the case against the French company?

**TIPS** = (1) Explore alternative jurisdiction here; (2) Consider Article 4 Brussels I-bis; (3) You should be mindful of Article 7(1) Brussels I-bis; (4) Reflect on special jurisdiction in Brussels I-bis.

- **CASE 95. *International jurisdiction in the field of contracts under the Brussels I-bis Regulation.*** A company with registered office in Rome, Italy, signs a tourist consultancy contract, to be performed entirely in Dublin, with a company based in Amsterdam, The Netherlands. The contract includes a choice-of-court agreement made by the parties in favour of the courts of Almería, Spain. The Dutch company fails to pay the amount that was agreed in the contract. Consequently, the Italian company brings an action for breach of contract before the Irish courts.

**Question** = Do the Irish courts have jurisdiction to decide this controversy?

**TIPS** = (1) Reflect on the place of performance of the contract here and Article 7(1) Brussels I-bis; (2) Be aware of the impact of a choice-of-court agreement made by the parties; (3) Evaluate Article 25 and 6 Brussels I-bis here.

- **CASE 96. *The more grounds of jurisdiction you have, the better it is. Alternative grounds of international jurisdiction under the Brussels I-bis Regulation.*** A company with registered office in Lisbon, Portugal, sues a company with registered office in Warsaw, Poland, for breaching the contract of sponsorship of a sportsman. The contract should have been performed in Valencia, Spain.

**Question** = Which are the appropriate courts to solve the dispute?

**TIPS** = (1) Think about the different options the Portuguese company has here; (2) Reflect on the place of performance of the contract and Article 7(1) Brussels I-bis.

- **CASE 97. *My country land. Exclusive jurisdiction and action to reclaim ownership of immovable property.*** An Irish national domiciled in Dublin considers bringing an action aimed at reclaiming ownership of property against Russian squatters who have entered his house in Murcia, Spain. The plaintiff wishes to bring his claim before an Irish judge and subsequently seek enforcement of the Irish judgment in Spain. He wonders if that is possible.

**Question** = Do the Irish or the Spanish courts have international jurisdiction to hear this dispute?

**TIPS** = (1) You should be mindful of exclusive jurisdiction and Article 24 Brussels I-bis on this case; (2) Bear in mind actions *in rem* on real property; (3) Please take into consideration also Article 27 Brussels I-bis.

- **CASE 98. *When holidays finish in court. Conflict of exclusive jurisdiction and lease of real estate.*** Two German nationals domiciled in Berlin, enter into a tenancy agreement of a villa located in Murcia, Spain, for a period of three months and intended for private use. The tenant ceases to pay the rent because, in his view, the property is in very poor condition. The landlord wants to collect the rent and files a lawsuit in the Berlin courts. One month later, the tenant files a lawsuit against the landlord before the Spanish courts. International jurisdiction is at the heart of this dispute.

**Question** = Which courts have international jurisdiction to hear the case?

**TIPS** = (1) Take into account Article 24(1) and Article 4 Brussels I-bis; (2) Keep in mind who is the court first seised here and the role of Article 31(1) Brussels I-bis.

- **CASE 99. *A tribute to Juan Bermúdez from Huelva, Spain. Litigation over property located in Bermuda.*** Two British nationals domiciled in Madrid, Spain, are in dispute over the ownership of a property in Bermuda worth 2.000.000 euro.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Explore Bermuda (as a potential jurisdiction); (2) Consider Article 4 Brussels I-bis; (3) Take into consideration the possibilities of enforcement in Bermuda of a judicial decision rendered by court of a Member State.

- **CASE 100. *Derogating effects of the choice-of-court agreement.*** A company based in Alicante, Spain, and a company based in Valletta, Malta, conclude, in writing, a choice-of-court agreement in favour of the courts of Athens, concerning all disputes arising from a contract for the sale of electric cars. Under the contract, the cars had to be delivered in Naples. Nevertheless, they never were. The international jurisdiction of the Spanish courts is in doubt.

**Question** = Which courts have jurisdiction to deal with the matter?

**TIPS** = (1) Bear in mind the negative effects of the choice-of-court agreement; (2) Explore the chances of Article 7(1) Brussels I-bis to find application in this case; (3) Do not forget tacit choice-of-court agreements covered by Article 26 Brussels I-bis.

- **CASE 101. *Implicit choice-of-court agreement.*** A company with registered office in New York, USA, and a company with registered office in Lisbon, Portugal, sign a supply contract containing a choice-of-court agreement in favour the Lisbon courts. Due to disagreements, the American company sues the Portuguese company before the courts of Valencia, Spain. The defendant contests the claim on its substance.

**Question** = Do the Spanish courts have international jurisdiction to hear the dispute?

**TIPS** = (1) Be aware of Article 26 Brussels I-bis; (2) Keep in mind the nature and purpose of express and tacit choice-of-court agreements.

- **CASE 102. *China in my eyes. Choice-of-court agreement made by parties without domicile in a Member State.*** Two companies, with registered offices respectively in Shanghai, China, and Mexico DF, have a dispute over a contract for the sale of goods that was to be performed entirely in Paris, France. However, the Chinese company brings a claim before the courts of Murcia, Spain. The Mexican company appears and objects to the merits of the case.

**Question** = Which courts have jurisdiction to settle the dispute?

**TIPS** = (1) You should be mindful of Article 26(1) Brussels I-*bis*; (2) Keep in mind a potential default of appearance by the defendant; (3) Take into consideration the country where the parties have their domicile.

- **CASE 103. *Hybrid submission.*** A Paris-based company and a Madrid-based company conclude a contract for the supply of software. The contract includes a clause declaring that "*in the event of a dispute arising from this contract, the parties may refer the matter to the Spanish courts or activate the arbitration procedure provided for by the International Court of Arbitration in Paris*".

**Question 1** = What kind of choice of court is this?

**Question 2** = Is this choice of court valid as its substance?

**TIPS** = (1) Reflect on hybrid choice of court and its consistency with Brussels I-*bis*; (2) Consider the non-symmetrical choice of court agreements; (3) Keep in mind the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); (4) Take notice of Article 25 Brussels I-*bis*.

- **CASE 104. *Choice of Ukrainian courts.*** A Cádiz-based company and a company based in Kiev, Ukraine, conclude a contract for the supply of electric trucks containing an agreement, made in writing, in favour of the courts of Kiev for the case of any disputes between them. The Ukrainian company breaches the contract as the trucks were never been delivered in Spain, as the contract stated. The Spanish company sues before the Spanish courts. The Ukrainian company contests the jurisdiction of the Spanish courts based on the existent choice-of-court agreement in favour of the courts of Kiev

**Question** = Which courts should hear the case?

**TIPS** = (1) Please be mindful of the role of the place of performance of the contract as a head of international jurisdiction; (2) Keep in mind the Spanish rules on international jurisdiction; (3) Reflect on how the Brussels I-*bis* Regulation governs the choice of court in favour of third States courts.

- **CASE 105. Subrogation and choice-of-court agreement.** An Milan-based company and a Valencia-based company sign a contract containing a choice-of-court agreement clause in favour of the courts of Marseille, France. Another company based in Berlin is subrogated to the legal position of the Milan-based company.

**Question** = Does the above choice-of-court agreement bind this third company?

**TIPS** = (1) Take into account the effects of subrogation on a choice of court agreement; (2) Consider Article 25 Brussels I-bis.

- **CASE 106. The ball is in your court. Claim on immovable property.** A Spanish national with domicile in Granada, Spain, decides to bring an in order to claim ownership of a piece of land situated in Malta against a defendant domiciled in Paris. The international jurisdiction of the French courts is disputed.

**Question** = Which courts have jurisdiction to deal with the dispute?

**TIPS** = (1) Do not forget that the defendant is domiciled in France and the impact of Article 4 Brussels I-bis; (2) Bear in mind Article 24(1) Brussels I-bis; (3) Take into consideration exclusive jurisdiction rules in Brussels I-bis.

- **CASE 107. Home, sweet home. The defendant's domicile.** A company based in Milan, Italy, plans to sue a company based in Valencia, Spain, for breach of an international distribution contract. The Valencia company's obligations under the contract were to be performed in Warsaw. The contract does not contain any choice-of-court agreement.

**Question** = Which courts may hear the case?

**TIPS** = (1) Keep in mind Article 7(1) Brussels I-bis and the place of performance of the service under the contract; (2) Be aware of Article 4 Brussels I-bis; (3) Reflect on who takes advantage of the domicile of the defendant as a ground of international jurisdiction in Brussels I-bis.

- **CASE 108. Specific grounds of international jurisdiction and the Brussels I-bis Regulation.** A Barcelona-based creditor is considering suing a Dublin-based company for breach of a contract that had to be performed in Spain. The goods should have been delivered in Tarragona, Spain, but they never were.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Be aware of the options for the plaintiff to bring legal action under Brussels I-bis; (2) Please be mindful of Article 7(1) Brussels I-bis; (3) Bear in mind that two are better than one. Also here.

- **CASE 109. *Defendant's domicile and international jurisdiction.*** A Swedish holidaymaker spending his holidays in Gran Canaria, Spain, is sued by an English creditor before a Spanish court for breach of contract. The defendant contests the jurisdiction of the Spanish court since, -he claims-, he is domiciled in Sweden, not in Spain.

**Question** = Should the Spanish courts hear the case?

**TIPS** = (1) Please do not forget Articles 62 Brussels I-*bis* and 40 of the Spanish Civil Code; (2) Kindly consider the habitual residence of the Swedish national; (3) Be aware of the law applicable to determine the domicile of a natural person in Brussels I-*bis*; (4) Explain whether a natural person can have a two domiciles and two habitual residences (or more) for the purposes of Brussels I-*bis*.

- **CASE 110. *Every law has its loophole. Interim measures and international litigation.*** A creditor domiciled in Athens, Greece, is considering to bring an action against a company with registered office in Salamanca, Spain, for non-performance of a contract that should have been performed in Luxembourg. The plaintiff is also considering applying for different interim measures. The Spanish company, defendant, has numerous assets on French territory.

**Question** = Which is the most convenient procedural strategy in terms of jurisdiction for the creditor?

**TIPS** = (1) Bear in mind Article 7(1) Brussels I-*bis*; (2) Take into consideration the State where the assets are located and the role of Article 42(2) Brussels I-*bis*; (3) Take into account Article 35 Brussels I-*bis*.

- **CASE 111. *People who live in glass houses should not throw stones. Exclusive jurisdiction and court declaring of its own motion that it lacks international jurisdiction.*** Two French nationals domiciled in Paris, France, made a choice-of-court agreement in favour of the French courts in a dispute concerning the ownership of a villa in Tenerife, Spain. The question arises as to whether the French court can hear the dispute in accordance with the defendant's domicile (Article 4 Brussels I-*bis*) or, on the contrary, the court should declare that it lacks international jurisdiction of its own motion or at the request of a party.

**Question** = Do the French courts have international jurisdiction to hear the case?

**TIPS** = (1) Bear in mind exclusive jurisdiction in Brussels I-*bis*; (2) Keep in mind Article 27 Brussels I-*bis*; (3) Consider the validity and legal effects of this choice-of-court agreement.

- **CASE 112. *Non-appearance of the defendant and declaration of lack of jurisdiction of the court.*** A company with registered office in Madrid, Spain, is sued before the German courts by a company with registered office in Wittenberg, Germany, for breach of a contract that should have been entirely performed in Spain. The Spanish company does not enter an appearance before the German judge.

**Question** = Do the German courts have international jurisdiction in this dispute?

**TIPS** = (1) Take notice of Article 7(1) Brussels I-bis; (2) Bear in mind Articles 25 and 26 Brussels I-bis; (3) Reflect on examination as to jurisdiction by the court hearing the case; (4) Remember the reason why Wittenberg is still today considered as an important city.

- **CASE 113. *Interim measures and international litigation. The Mareva injunction is still alive.*** A Spanish company signs a sale of goods agreement with a Russian national domiciled in Poland. The contract is to be performed in Dublin, Ireland. Nonetheless, the Russian national does not pay what was agreed in the contract. The Spanish creditor company decides to apply for injunctive relief to prevent the defendant from transferring its assets to third parties or to other countries. The Spanish company applies to a judge in Dublin for a *Mareva Injunction* in order to freeze the defendant's worldwide assets, as the lawyers of the defendant manage its assets and professional interests from Dublin. The defendant has assets in Poland, France and Spain.

**Question** = Do the Dublin judges have jurisdiction to grant these interim injunctions on assets located in Poland, France and Spain?

**TIPS** = (1) Kindly do not forget Article 35 Brussels I-bis; (2) Take notice of Article 4 Brussels I-bis; (3) Take also into account Article 7(1) Brussels I-bis; (4) Explore the nature and purpose of a *Mareva Injunction*; (5) Reflect on the chances of forum shopping in this case.

- **CASE 114. *You can not have your cake and eat it too. Intra-European Union lis pendens.*** A claim regarding a breach of contract is pending before a Greek court since 1 January 2024. A Belgian company is the plaintiff, while an Italian national is the defendant. The same dispute is also pending before a Spanish court since 1 February 2024 in which the Italian national is the plaintiff.

**Question** = Which court should hear the dispute?

**TIPS** = (1) Evaluate if staying the proceedings is an option here; (2) Keep in mind the rule "*prior tempore*" in Brussels I-bis.

- **CASE 115. *Battle station, torpedo. Torpedo actions and the European area of justice.*** A Spanish company licenses a patent to an Italian company for the French territory only. Nevertheless, the Italian company uses the patent in Portugal. The Italian company, before being sued by the Spanish company, brings an action (negative declaratory action) before the Italian courts. The plaintiff claims that the Italian court should declare that there has been no infringement of the patent by the Italian company in the EU.

**Question** = Which courts should hear the case?

**TIPS** = (1) Kindly be mindful of what a "torpedo action" is; (2) Keep in mind Article 31(2) Brussels I-*bis*.

- **CASE 116. *Defendant with domicile in Zurich.*** A Spanish company brings a lawsuit against a company based in Zurich, Switzerland, for breach of contract. The contract had to be performed in Madrid. The defendant challenges the jurisdiction of the court of Madrid invoking the existence of a choice-of-court agreement in favour of the Paris courts.

**Question** = Which courts should deal with the matter?

**TIPS** = (1) Take into account the relativity of private international law; (2) Keep in mind Article 23 Lugano II Convention.

## **XII. Legal persons and companies.**

- **CASE 117. *Honesty is the best policy. Lawsuit against a company incorporated to the laws of Cyprus with a branch in Spain.*** A company based in Nicosia, Cyprus, has a branch in Spain. This branch signs a contract of sale with a Spanish company which has to be performed in Spain and Portugal. International jurisdiction needs to be determined following breach of the contract by the Spanish branch of the Cypriot company.

**Question** = Do the Spanish courts have international jurisdiction to solve the controversy?

**TIPS** = (1) Bear in mind the chances of suing a branch in Brussels I-*bis*; (2) Take notice of Article 7(5) Brussels I-*bis*.



- **CASE 118. *Annulment of a decision taken by a Maltese company.*** A Maltese judge renders judgment annulling a decision taken by the board of directors of a company incorporated under Maltese law. The company has its registered office in La Valeta, although all its business activities take place in Madrid. Some partners object to the recognition in Spain of the Maltese judgment.

**Question** = Should the recognition of this judgment be granted in Spain?

**TIPS** = (1) Consider Articles 24 and 35(1)(e) Brussels I-bis; (2) Be aware of the role of exclusive jurisdiction in Brussels I-bis when it comes to recognition of judicial decisions under this Regulation.

- **CASE 119. *All roads lead to Rome or to Madrid. Transfer of registered office from France to Spain with change of the law governing the company.*** A company governed by French law with registered office in Paris, requests the transfer of its registered office from Paris to Madrid, Spain. The French company requests, on the occasion of this transfer, to cease to be a company governed by French law and to become a company governed by Spanish law with its registered office in Saragossa.

**Question** = Does European law allow this change of applicable law of the company as well as the transfer of the official seat from France to Spain?

**TIPS** = (1) Kindly be mindful of Article 54 TFEU; (2) Think about the European freedom of establishment; (3) Be aware of the case law produced by the ECJ in this field.

- **CASE 120. *Company created in Ireland by Spanish partners.*** Several Spanish entrepreneurs move to Dublin and set up a private company limited by shares with a share capital of EUR 500. The company is engaged in the import of spirits of high alcoholic strength. The company is incorporated under Irish law and has its registered office in Dublin. One month later, the company establishes a branch in Cádiz, Spain, which carries on 99% of the company's business.

**Question** = Should such a company be considered as an existing and legally constituted legal person from the point of view of Spanish law?

**TIPS** = (1) Bear in mind the case law produced by the ECJ in the field of free movement companies in the European Union; (2) Evaluate the concept of "recognition" of companies incorporated to the law of other States; (3) Explore ECJ 9 March 1999, C-212/97, *Centros* [ECLI:EU:C:1999:126]; ECJ 30 September 2003, C-167/01, *Inspire Art* [ECLI:EU:C:2003:512]; ECJ 5 November 2002, C-208/00, *Überseering* [ECLI:EU:C:2002:632]; ECJ 12 September 2006, C-196/04, *Cadbury Schweppes y Cadbury Schweppes Overseas* [ECLI:EU:C:2006:544].

- **CASE 121. *You can't turn back the clock. Transfer of registered office from Spain to another Member State with preservation of legal personality and previous governing law.*** A company governed by Spanish law with its registered office in Madrid decides to transfer its registered office from Madrid to Budapest. Nevertheless, the company decides to remain a company under Spanish law, governed by Spanish law, but with its registered office in Budapest. Doubts arise as to the possibility of such a corporate transaction.

**Question** = Is the company in question allowed to change its seat from one Member State to another without changing the law governing the company?

**TIPS** = (1) Bear in mind Article 54 TFEU; (2) Explore the tension between the law of the original seat of the company and the law of destination of the company in European Law.

### **XIII. Contracts (I). The Rome I Regulation.**

- **CASE 122. *The analytical-distributive method and copyright licensing contracts.*** An Irish company which comes to a copyright licensing agreement with a Spanish company. According to the contract, the Irish company is entitled to use in Ireland the musical rights of several Spanish singers. The Spanish company sues the Irish company before the Spanish courts, claiming that this company did not pay the amounts as agreed in the contract. The contract expressly states that payments are to be made in Madrid. The defendant company contests the jurisdiction of the Spanish court, claiming not to be bound by the contract since it was signed by "a person not authorised" by the Irish company.

**Question 1** = Which courts have international jurisdiction in this case?

**Question 2** = Which law governs the contract?

**TIPS** = (1) Take into consideration Article 7(1) Brussels I-bis; (2) Keep in mind the concept of "*contractual matter*" in Brussels I-bis; (3) Consider the different kind of contracts under Article 7(1) Brussels I-bis; (4) Rome I Regulation is the key with regard to the applicable law here.

- **CASE 123. Breach of contract for the sale of goods and defendant domiciled in Canada.** A company based in Spain sues, before a Spanish judge, a company based in Canada, claiming that the Canadian company has breached a contract under which it was to deliver a 12-tonne load of paper to Valencia, Spain.

**Question** = Which courts do have jurisdiction to hear a dispute arising out from this contract?

**TIPS** = (1) Kindly be mindful of the place of performance of the obligations arising out of the contract as a head of jurisdiction in Brussels-I bis and in the Spanish rules on international jurisdiction; (2) Keep in mind that the defendant is not domiciled in a Member State; (3) Consider Article 6(1) Brussels I-bis; (4) Take notice of territorial jurisdiction.

- **CASE 124. When law is away, *lex mercatoria* will play. International contracts and choice of law.** Two companies, one Indian (seller) and one Spanish (buyer), conclude a contract for the sale of grains. The parties subject the contract exclusively to the "*Unidroit Principles of international commercial contract 2016*". It is necessary to determine the law applicable to this contract.

**Question** = Which law governs the contract at stake?

**TIPS** = (1) You should be mindful of a potential valid choice of law for the contract here; (2) Bear in mind Article 3(1) Rome I; (3) Explore the nature and purposes of the Unidroit Principles for commercial contracts; (4) Take into consideration the possibility of a contract without a law and a law without a State.

- **CASE 125. Better the devil (State law) you know than the devil (non State rules) you don't know. International contract and new *lex mercatoria*.** A Canadian company and a Spanish company enter into a contract for the building of a "turnkey" construction project. When problems arise in the delivery of the construction to be carried out in Canada by the Spanish company, both companies turn to a Spanish judge to settle the dispute. The contract includes a clause according to which the contract was exclusively subject "to the usages and business practices of the construction sector and to the new *lex mercatoria*".

**Question** = Which law governs the contract?

**TIPS** = (1) Think about the nature and goals of usages and non-legal rules applicable to international contracts; (2) Kindly be mindful of the nature and goals of the so called new *lex mercatoria*; (3) Consider Article 4(2) Rome I and the concept of "characteristic obligation".

- **CASE 126. *No questions no lies. No questions, no truth either. When is a contract "international"?*** Two Spanish companies enter into a contract for the international sale of a cargo of crude oil which, at the time of the contract, is in the hold of an Argentinean vessel anchored in the port of Singapore.

**Question** = May this contract be regarded as "international"?

**TIPS** = (1) Kindly be mindful of the international character of the situation; (2) Keep in mind Articles 1(1) and 3(1) Rome I.

- **CASE 127. *International contract for the international sale of goods subject to English law.*** A Spanish company sells vegetables to an Irish company. The contract is concluded in Dublin. The contract includes a choice-of-law agreement according to which the contract is governed by Irish law. The Spanish company claims that it has been deceived by the Irish company and that it never really consented to subject the contract to English law.

**Question** = Which is the law governing the contract?

**TIPS** = (1) Please take notice of which is here the putative law of the contract; (2) Bear in mind Article 3(5) Rome I as well as Article 4(1)(a) Rome I.

- **CASE 128. *International lease of immovable property.*** A lease of business premises located in Marbella, Spain, is concluded between a Portuguese landlord with habitual residence in Lisbon and a Belgian tenant with habitual residence in Amsterdam. The contract does not comprise any choice-of-law agreement.

**Question** = Which law governs this contract?

**TIPS** = (1) Consider the place where the property is situated; (2) Explore Article 4(1)(c) Rome I (3) Be aware of the impact of the *lex rei sitae* in this case.

- **CASE 129. *International distribution contract.*** A company based in Madrid (manufacturer), agrees with a company based in Budapest (distributor), the exclusive distribution of hybrid and electric cars in Romania, Bulgaria, Hungary and Italy.

**Question** = Which law governs this contract?

**TIPS** = (1) Consider the place where the distribution contract has to be performed as well as the country in which the car distributor has his habitual residence; (2) Explore Article 4(1)(f) Rome I.

- **CASE 130. *A bird in the hand is worth two in the bush. International contract and habitual residence of a businessman.*** An Italian national resides with his family eight months of the year in Marbella, Spain, and the rest of the year in Milan, Italy, where he runs his business. The Italian national frequently contracts with Ukrainian businessmen as part of his commercial activities.

**Question** = Where should the place of the habitual residence of the Italian national be located for the purposes of the Rome I Regulation?

**TIPS** = (1) You should be mindful of Article 19(1)(II) Rome I; (2) Bear in mind the concept of "habitual residence" referred to natural persons.

- **CASE 131. *A cat in gloves catches no mice. Complex contracts and international litigation.*** A company based in Vienna agrees with an Algerian company the sale of a factory situated in Algeria, as well as the provision of services necessary for its start-up and a supply of industrial materials. The price is 1,500,000 euro to be paid into a Swiss bank.

**Question** = Which law governs this contract?

**TIPS** = (1) Reflect on what complex contracts are about; (2) Be aware of Article 4(1) Rome I; (3) Take into consideration the concept of "characteristic performance of the contract".

- **CASE 132. *Balancing test. International countertrade contract and Article 4(4) Rome I.*** A Spanish company enters into an agreement with a Brazilian company. The Spanish company is obliged to deliver a consignment of televisions which have been manufactured by this company in Spain. The Brazilian company has to deliver a container of computers which have been manufactured by them as an exchange. The contract was signed in L.A. following an offer from the Spanish company addressed to the headquarters of the Brazilian company. Both goods must be delivered in Rio de Janeiro, Brazil.

**Question** = Which law governs this contract?

**TIPS** = (1) Please, think, if applicable, about contracts without characteristic performance; (2) Reflect on Articles 4(1) and (2) Rome I; (3) Bear in mind the links of the contract with Brazil as the case may be.

- **CASE 133. *International contract for the sale of immovable property.*** A contract for the sale of a beautiful villa in the Lake of Como, Italy, is concluded in Madrid between two Spanish nationals residing in Madrid.

**Question** = Does the Spanish law govern this contract?

**TIPS** = (1) Keep in mind the legal discipline of contracts involving rights *in rem* in immovable property; (2) Consider Article 4(1)(c) Rome I; (3) Be aware of Article 10(1) of the Spanish civil code; (4) Reflect on just one word here: "*manifestly*".

- **CASE 134. *International patent licence contract and choice of law.*** In a lawsuit arising out of an international patent licence contract for the delivery of an anti COVID-19 vaccine, the plaintiff, a Spanish company, brings an action under German law. The defendant, a German company, responds to the application under German law as well. The vaccines should have been delivered in Madrid, but they never were. The contract includes a choice-of-law agreement in favour of English law.

**Question** = Which law governs this contract?

**TIPS** = (1) Take into consideration a potential implied choice of law here; (2) Keep in mind Article 3(1) Rome I.

- **CASE 135. *International contract and exception clause.*** A company based in Nicosia, Cyprus, enters into a software development agreement with a Spanish company. The Cypriot company will maintain the software of the Spanish company. The contract specifies that the service will be provided from a branch office in the Cayman Islands, which is based there for tax reasons. The contract was negotiated and signed in Cyprus and contained a clause whereby, if any disputes arose from the contract, the Spanish courts would have exclusive jurisdiction to deal with the issue. After one year, the Cypriot company ceases to fulfil its obligations and the Spanish company sues the Cypriot company in the Madrid courts. The law applicable to this contract needs to be determined.

**Question** = Which law applies to this contract?

**TIPS** = (1) Keep in mind Articles 4(1)(b) and 19(2) Rome I; (2) Be aware of the quality of the links between the contract and the Cayman Islands; (3) You are kindly requested to implement a law and economics view to give an appropriate answer to the issue of the governing law of this contract.

- **CASE 136. *Contract for the international sale of goods and choice of law.*** A contract for the sale of computers signed in Miami between a Mexican company and a Spanish company includes a choice-of-law agreement in favour of English law. The validity of the contract is challenged as to its substance.

**Question** = Which law decides the validity of this contract?

**TIPS** = (1) Take into account the legal regime of the so called *pactum de lege utenda* (choice-of-law agreement) under Rome I; (2) Explore Article 4 Rome I in the event of a non valid choice of law made by the parties; (3) You should be mindful of the role of national conflict of law rules in this case; (4) Explore also Articles 11 and 3(5) Rome I.

- **CASE 137. *Look before you leap. Law applicable to the obligations arisen from the negotiation of an international contract.*** A company with registered office in Paris enters into negotiations for the conclusion of a sale of mobile phones agreement with a company with registered office in Madrid, the Spanish company being the seller of the phones. The negotiations take place in Vienna. The Paris-based company breaks off the negotiations without any justified reason and in bad faith. The contract was never concluded. One may wonder about the law governing liability arising from the break of negotiations.

**Question** = Which law governs this contract and potential liability arisen out of the break of preliminary negotiations?

**TIPS** = (1) Explore characterization of the liability that the French company might have incurred; (2) Do not forget Articles 4 and 7(2) Brussels I-bis; (3) Consider Article 12 Rome II and Article 10(1) Rome I; (4) You should be mindful of the hypothetical law of the contract.

- **CASE 138. *Nobody's perfect. Law applicable to the existence of an international contract.*** A Lebanese company makes an offer for the sale of wheat to a Spanish company, using its own general terms and conditions of contract as reference. Those terms and conditions include a choice-of-law agreement in favour of Lebanese law. The Spanish company replies based on its own general terms and conditions, which contain a choice-of-law agreement in favour of Spanish law. Both parties start to fulfil their respective obligations without signing any paper.

**Question** = Can it be said that the contract has been legally concluded and therefore does exist?

**TIPS** = (1) Consider Article 4(1)(a) Rome I and the "Law of the hypothetical contract"; (2) Reflect on the different criteria on the formation of contracts in Comparative Law.

- **CASE 139. *Nothing is certain but death and taxes (and overriding mandatory rules). International contract and overriding provisions of the lex fori.*** A contract is concluded between a Russian airline and a Spanish airline. According to the contract, both companies share the Spanish market and agree not to compete with one other in the same slots. The parties submit the contract to English law. The Russian company brings an action before the Spanish courts for the nullity of the contract. There are some substantive rules in Spanish law that consider that this contract violates the Spanish antitrust rules (Defence of free competition Act 15/2007 of 3 July).

**Question** = Which law governs the contract?

**TIPS** = (1) Keep in mind the impact of overriding mandatory rules in the private international law of contracts; (2) Take into consideration Article 3(1) Rome I as the general rule in the Regulation.

- **CASE 140. *International contract and mandatory provisions of third States.*** A Spanish company buys oil from an Iran State-owned company. A Spanish court is asked to declare the contract null and void on the ground of breach of US regulations prohibiting trade with Iran. Some of the oil should be delivered in Florida while some in Morocco. Thus, the United States is a country where some of the obligations arisen from of the contract have to be performed.

**Question** = Should the American legal rules be applied to the contract?

**TIPS** = (1) You should be mindful of the chances for the Spanish court to apply the US rules in question; (2) Take into consideration Article 9(3) Rome I; (3) Please implement an analysis of the interests involved in the case here.

- **CASE 141. *The squeaky wheel gets the grease. International contract and third States' mandatory laws.*** A Spanish company sells American-made aircrafts to a Ukrainian company. US law prohibits the sale to Ukraine of dual-use technology used in these aircrafts. The Ukrainian company, faced with the non-delivery of the aircrafts, sues the Spanish company before the Spanish courts. The Spanish company argues that it did not deliver the aircrafts so as not to violate US mandatory provisions. It is necessary to determine the law applicable to this dispute.

**Question** = Which rules apply to this contract?

**TIPS** = (1) Evaluate the options for the Spanish court to apply American mandatory provisions in this case; (2) Consider carefully Article 9 Rome I; (3) Keep also in mind Article 4(1)(a) Rome I).



- **CASE 142. *There's more than one way to skin a cat. Law applicable to the contract and private international arbitration under the Geneva Convention 1961.***

A company based in Warsaw and a company based in Madrid are involved in an arbitration arising out of a contract for the international sale of goods. The two companies have their seat in different States, both of which are contracting States to the Geneva Convention 1961.

**Question** = Which rules apply to this contract?

**TIPS** = (1) Consider the European Convention on International Commercial Arbitration, Geneva, 21 April 1961; (2) Be aware of Article VII of the above mentioned Convention; (3) Explore the impact of the Rome I Regulation in this case.

- **CASE 143. *Clothes do not make the man. Law applicable to the formal validity of an international contract.*** A contract is concluded by e-mail between the representative of a Chinese company, who is in New York, and the manager of a Spanish company operating from Spain. The contract is governed by Illinois law as the law chosen by the parties in writing.

**Question** = Which law is applicable to the formal validity of this contract?

**TIPS** = (1) Take notice of Article 11 Rome I; (2) Explore "alternative reasoning" as the rationale of Article 11 Rome I.

- **CASE 144. *Do not judge a book by its cover. Law applicable to the international contract and the Lizardi doctrine.*** An 18-year-old Chinese national buys an Aston Martin luxury car in Spain, paying in cash. After two months, the Chinese national contests the sale and asks for it to be declared null and void claiming that, as a Chinese, he is subject to guardianship under Chinese law. The seller maintains that the sale of the Aston Martin is valid.

**Question** = Is the contract of sale of the Aston Martin luxury car valid or is it null and void?

**TIPS** = (1) Take into consideration Article 13 Rome I; (2) Explore the pioneer judgment rendered by the French Cour de Cassation 16 January 1861, *Lizardi* [D.P. 1861.1.193, *Sirey*, 1861.1 p. 305, note MASSE].

#### **XIV. Contracts (II). Contracts of carriage, insurance contracts, agency and donations.**

- **CASE 145. *Law applicable to gifts with foreign elements. Love, marriage, regrets, money: Life.*** A gift is made from an Italian husband to his Spanish wife. They got married in Paris. they both are habitually resident in Spain just after marriage. The gift is made outside the marriage contract and the spouses expressly submit the gift to French law. The husband has second thoughts and decides to revoke the gift. Therefore, it is necessary to determine the law applicable to such gift.

**Question** = Which law should be applied to the possibility of revoking the gift?

**TIPS** = (1) Consider how to implement characterization with regard to a gift in terms of private international law; (2) Keep in mind Regulation 2016/1103 of 24 June 2016 [matrimonial property regimes]; (3) Consider the Rome I Regulation; (4) Bear in mind where the common place of habitual residence of the parties is located.

- **CASE 146. *If you play with fire, you will get burned. Law applicable to agency in Brazil.*** An individual, who claimed to have a "general power of attorney" granted in Brazil a few years earlier, sold several estates located in Spain to a third party. Coincidentally, the third party was himself. The power of attorney did not contain any choice of law. It is necessary to determine the law applicable to the agency.

**Question** = Which is the law applicable to agency in this case?

**TIPS** = (1) Take into consideration the chances of Regulation Roma I to be applied to agency; (2) Take notice of Article 1 Rome I; (3) Keep in mind Article 10(11) of the Spanish civil code and the different connecting factors.

## **XV. Contracts (III). Consumer contracts.**

- **CASE 147. *International consumer contracts on the Internet. Advertising accessible from anywhere.*** A website includes commercial advertising written in Dutch concerning DIY products which are sold online by a company based in Amsterdam. The website allows the products to be purchased by an electronic order form. The website, however, while being accessible from any country in the world, shows prices only for purchases from the Netherlands. Some Dutch consumers habitually residing in Spain travel to The Netherlands and buy DIY products from the Dutch firm and pay 3.000 EUR. Nevertheless, two months later, the products prove to be completely useless.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which is the law applicable to these consumer contracts?

**TIPS** = (1) Reflect on the meaning of the expression "*commercial activities directed to a Member State*" in Brussels I-bis; (2) Be aware of Article 17(1)(c) Brussels I-bis; (3) Consider Article 4(1)(a) as well as Article 6(1) Rome I.

- **CASE 148. *Contract concluded by consumers and choice-of-law agreement.*** A Spanish national habitually resident in Murcia, Spain, receives an offer by mail from a company based in Iran for the purchase of beautiful carpets mad in Turkey. The Spanish national buys 10 carpets. The contract contains a choice-of-law agreement in favour of Iranian law. The carpets are sent to Spain but they turn out to be made of polyethylene plastic so the consumer complains to the Spanish courts.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which is the law applicable to the contract?

**TIPS** = (1) Keep in mind the concept of "passive consumer"; (2) Be aware of Article 17(1)(c) Brussels I-bis; (3) Evaluate also how European private international law protects consumers at the level of the determination of the applicable law to consumer contracts; (4) Bear in mind the so called mandatory provisions in the field of consumer protection in European private international law.

- **CASE 149. *The world is my oyster. International consumer contracts on the Internet.*** A Vienna-based company sells computer products via its website. The website is written in German and contains prices for foreign sales. An Austrian consumer living in the Balearic Islands contacts this company and buys products worth 1,000 Euro. The goods are defective. The competent courts need to be determined with regard to this issue.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which law governs these consumer contracts?

**TIPS** = (1) Take into consideration those "*activities directed to Spain*"; (2) You should be mindful of the language used in those activities; (3) Kindly be mindful of Article 6(1) Rome I.

- **CASE 150. *When in Rome, do as the Romans do. Cross-border consumer contract. Jurisdiction and active consumers.*** A German national residing in Madrid travels to Berlin during the sales period to buy a luxury watch. On his return to Madrid, he finds that the watch was a fake and he considers the possibility of suing the German business. It is necessary to determine which courts have jurisdiction in this matter.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which is the law applicable to these consumer contract?

**TIPS** = (1) Be aware of the presence of a potential "active consumer" in this case; (2) Evaluate Section 4, Chapter II Brussels I-*bis* from a global perspective; (3) Do not forget Article 4(1)(a) Rome I.

- **CASE 151. *It takes two to make a quarrel. International consumer contracts on the Internet.*** A Swedish writer domiciled in Murcia, Spain, is responsible for a website on which he merely provides information about his books. It is not possible to purchase those books via this website. A Finish national with domicile in Helsinki visits the website and sends a letter to the writer stating that he wants to buy his books. The Swedish writer accepts the order. Nevertheless, the books arrive in poor condition to the purchaser in Finland and he complains.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which law governs this contract?

**TIPS** = (1) Be aware of the distinction to be made between "passive" and "active" consumer in European private international law; (2) Kindly be mindful of who takes the "commercial initiative" here; (3) Evaluate Article 17(1)(c) Brussels I-*bis*; (4) Consider with care Article 4(1)(a) Rome I.

- **CASE 152. Law applicable to international contracts concluded by consumers.**

A Spanish doctor habitually resident in Madrid purchases two luxury electric cars after receiving an offer sent by mail to his home address in Madrid by a Polish seller. The cars were made in China. After three months the cars stopped working and got burned. The buyer decides to take legal action against the seller.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which is the law applicable to these contracts?

**TIPS** = (1) Bear in mind the concept of "passive consumer"; (2) Consider Article 17(1)(c) Brussels I-bis; (3) Explore the legal effects of the offer made by the e-mail sent from Poland to Spain.

- **CASE 153. Law applicable to international contracts concluded by consumers.**

**A dentist may also be a passive consumer.** A Spanish dentist habitually resident in Madrid purchases two beautiful *Édouard Manet* paintings after receiving an offer sent by mail to his home address in Madrid by a Dutch company. The paintings prove to be deteriorated as well as fake.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which is the law applicable to the contract?

**TIPS** = (1) You should be mindful of Article 17(1)(c) Brussels I-bis applies; (2) Take notice of Article 6 Rome I; (3) Evaluate the advantages of "suing at home" for consumers in international transactions.

- **CASE 154. Law applicable to international consumer contracts. Passive consumer and doing business in Spain.** A Polish lady with habitual residence in Elche, Spain, is visited by a salesman at her home in that city. He sells luxury watches on behalf of a Polish company. The lady buys a charming little luxury car. Nevertheless, the watch is not working properly and causes serious damage to her writs. The law applicable to this dispute needs to be determined.

**Question** = Which is the law applicable to this complaint?

**TIPS** = (1) Kindly be mindful of Article 6 Rome I; (2) Explore the *doing business rule* in European private international law.

## XVI. Contracts (IV). Individual employment contracts.

- **CASE 155. *All work and no play makes Jack a dull boy. Workers hired by a branch of an Italian company and work to be carried out in Belgium.*** Some Spanish workers are hired, in Spain, by a branch of an Italian company to carry out restoration work in Belgium. They also carry out minor work in Holland and Luxembourg. The contracts include a choice-of-court agreement in favour of Italian courts. The workers are dissatisfied with their pay and decide to bring an action against the employer.

**Question** = Which is the law applicable to these labour contracts?

**TIPS** = (1) Reflect on Section 5 of Chapter II Brussels I-bis; (2) Take notice of Article 21(1)(a) and (b) Brussels I-bis; (3) Take into consideration a potential choice of court agreement between employer and employee.

- **CASE 156. *Many hands make light work. Law applicable to an international employment contract and place of work in Spain.*** A Spanish company hires Moroccan workers to carry out works in Cádiz, Spain. The contracts do not contain any choice-of-law agreement.

**Question** = Which is the law applicable to these employment contracts?

**TIPS** = (1) You should be mindful of Article 8 Rome I; (2) Consider the nationality and the place of residence of both workers and the employer.

- **CASE 157. *Law applicable to an international employment contract and place of work in Portugal.*** A Portuguese football club hires a Spanish footballer to play in Portugal. The contract contains a choice-of-law agreement in favour of New York law.

**Question** = Which is the law governing the contract?

**TIPS** = (1) Consider Article 8(1) Rome I; (2) Bear in mind the role of the mandatory rules of Portuguese law here.

## XVII. Torts. The Rome II Regulation.

- **CASE 158. *Export of defective watches cars and damages in different States.*** A Spanish company makes luxury watches and sell them to Italy. The watches are re-exported from Italy to Finland by an Italian trader. The watches prove to be dangerous and harmful and some Finish buyers suffer damage. The Finish buyers injured by the Spanish watches decide to take legal action against the Spanish company.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Keep in mind Article 7(2) Brussels I-bis; (2) Explore Recital No 15 Brussels I-bis; (3) "*Predictability*" is the key word here.

- **CASE 159. *The stone that the builder rejected shall become the cornerstone. Environmental damage.*** A company with factories located in Cádiz discharges industrial waste into the Mediterranean Sea. The sea water causes damage to the facilities of a fish farm in the south of Portugal. The Portuguese company claims damages against the Spanish company.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Take into account the concept of "distance tort" in private international law; (2) Consider the notion of "harmful event" as used by Article 7(2) Brussels I-bis; (3) Evaluate *forum actoris* in this case.

- **CASE 160. *I know by heart. Heart transplantation in another country.*** A Dutch woman travels to Madrid to undergo heart transplantation. She returns to Amsterdam where, after a while, she realises that she has been infected with the HIV virus that causes AIDS. Some time later, she also infects her male partner. The two victims, husband and wife, consider suing the Spanish clinic in The Netherlands because the disease manifested itself there. The competent courts need to be determined in relation to this issue.

**Question** = Which courts have jurisdiction to hear the case?

**TIPS** = (1) Please do not forget the requirements for a tort to be considered as a "distance tort"; (2) Take into account Article 7(2) Brussels I-bis; (3) Evaluate the "ubiquity theory" from a value perspective.

- **CASE 161. *Beauty is in the eye of the beholder. Commercial defamation in several countries.*** A Polish company publishes defamatory information about the products of its commercial direct rival, a Spanish company. The publication is distributed in some daily newspapers in Germany, Portugal, Spain, Latvia, Poland and Morocco. The Spanish company has therefore suffered damage in several Member and non-Member States. It is necessary to determine which courts have jurisdiction in this matter as well as the applicable law.

**Question 1** = Which courts have jurisdiction to hear the case?

**Question 2** = Which law applies to the matter?

**TIPS** = (1) Take into account Article 4 Brussels I-bis; (2) Take notice of Article 7(2) Brussels I-bis; (3) Consider the role of national private international law to determine the law applicable to defamation.

- **CASE 162. *You reap what you sow. Law regulating civil liability arising from damage caused by products.*** A Turkish manufacturer exports carpets to Spain. A Ukrainian woman, habitually resident in Murcia, buys a carpet from a Spanish company. It turns out that the carpet had been dyed using toxic materials, which causes lung poisoning to the consumer, who has to be admitted to hospital as an emergency case. The victim decides to take legal action against the manufacturer.

**Question** = Which law applies to the matter?

**TIPS** = (1) Do not forget Article 28 Rome II; (2) You should be mindful of Article 4 of the Hague Convention of 2 October 1973 on the Law Applicable to Products Liability; (3) Bear in mind the purposes of Article 7 of the above mentioned Convention.

- **CASE 163. *Law applicable to civil liability arising from a road traffic accident occurred in Portugal.*** A road traffic accident was caused by a Portuguese bus, which hit a Spanish car in a road in Portugal. It is necessary to determine the law applicable to this matter.

**Question** = Which is the law applicable to the substance of the matter?

**TIPS** = (1) You should be mindful of the different sources of law in the area of liability arising out of traffic accidents; (2) Be aware of Article 28 Rome II; (3) Consider Article 4 of the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents; (4) Take into consideration the nature and purpose of the direct action against the insurance company.



- **CASE 164. *Damage and choice-of-law agreement. Flowers in the dirt may hurt.*** A flowerpot weighing two kilos falls from the windowsill of an English national's house in Ibiza. The flowerpot seriously injures another English national who was passing by. The victim has his habitual residence in London and the tortfeasor has his habitual residence in Ibiza.

**Question** = Which is the law applicable to civil liability arising out of the fact?

**TIPS** = (1) It is strongly recommended exploring Article 4(1) Rome II; (2) It is desirable to bear in mind the nationality of both parties; (3) It can be also helpful to assess the weight of the place where the damage occurred in the argumentation process.

- **CASE 165. *Physical damage and applicable law.*** A Spanish national with habitual residence in Valencia spends his holidays in a resort located in Sicily. The Spanish national intentionally causes damage to his brother-in-law's car on the eve of a trip he was about to take. Once back in Spain, the victim brings an action for damages before the Spanish courts. It is necessary to determine the law applicable to this matter.

**Question** = Which law applies to the matter?

**TIPS** = (1) It is advisable to take notice of Article 4(2) Rome II; (2) You should be mindful of which is the country most closely connected with the situation here; (3) It can be helpful to implement a law and economics perspective to evaluate the legal answer to this case.

- **CASE 166. *A place for everything and everything in its place. Law applicable to distance torts.*** A company from Cádiz, Spain, which manufactures miniature drones, has a test field in Spain. Some defective prototypes get out of control from that location and fall on a warehouse located in Morocco. The Moroccan company which owns the warehouse claims damages from the Spanish company. The law applicable to the case needs to be determined.

**Question** = Which law applies to the matter?

**TIPS** = (1) It is strongly recommended being aware of what a "distance tort" is; (2) You should be mindful of the country where the damage occurs; (3) Please consider the principle of predictability and foreseeability of the applicable law; (4) It might be useful to keep in mind Article 4(1) Rome II.

- **CASE 167. *Law of the country where the damage occurs. Corsica in my heart.***

A Spanish national on holiday in Corsica is run over by a jet ski driven by an Italian national, also on holiday on that beautiful island. The events take place on a beach in Ajaccio.

**Question** = Which is the applicable law to compensation derived from this accident?

**TIPS** = (1) It is desirable to bear in mind the nature of the risk created here by both parties; (2) It is desirable to bear in mind the role of the *lex damni* rule here; (3) It might be useful to keep in mind Article 4(1) Rome II.

- **CASE 168. *Do not kill the goose that lays the golden eggs. Law applicable to non-contractual obligations and indirect damage.*** A Spanish company, deceived by a malicious and greedy broker, buys securities on the Luxembourg stock market. The Spanish company loses the entire investment and the fact is made public. As a result, the Spanish company experiences a fall in its share price on the IBEX 35 in Madrid. The question arises of which law is applicable to the case, Spanish law or Luxembourgian law.

**Question** = Which law applies to the issue?

**TIPS** = (1) It might be useful to keep in mind the differences between direct and indirect damage in private international law; (2) It is strongly recommended being aware of the legal consequences of direct damage; (3) It is desirable to bear in mind the indirect loss suffered by the victim; (4) Please consider Article 4(1) Rome II.

- **CASE 169. *When you lose control and you got no soul. Law applicable to non-contractual obligations and indirect victims. A tragedy.*** A Hungarian national has his habitual residence in Budapest. His daughter dies in a car crash in Spain and this fact provokes great moral and emotional damage to the father to the extent that he loses his job.

**Question** = Is the father of the victim entitled to compensation?

**TIPS** = (1) It would be appropriate to take into consideration the position of the father as an indirect victim; (2) Take into account the direct victim here; (3) It can be helpful to assess the scope of the applicable law here; (4) It is strongly recommended considering the different types of damages which can be requested by the victims; (5) It is advisable to take notice of Article 4(1) and 15(f) Rome II; (6) Explore ECJ 10 December 2015, C-350/14, *Lazar*, No 25-28.

## **XVIII. Rights *in rem*. Property and trusts.**

- **CASE 170. *Humpty Dumpty sat on a wall.... Actions in rem over border real estate.*** A German national habitually resident in Venice, Italy, is the owner of a rural property lying partly on Spanish territory and partly on Portuguese territory. A group of Ukrainian farmers have invaded his land claiming to be the real owners of the farm and refuse to leave the property. The German national decides to take legal action but has doubts as to which courts have jurisdiction to hear the case.

**Question** = Which courts have jurisdiction to deal with the matter?

**TIPS** = (1) It might be useful to keep in mind what a "separate property" is for the purposes of private international law; (2) Kindly be mindful of property as a "contiguous immovable"; (3) It is advisable to take notice of Article 24 Brussels I-bis; (4) Please consider ECJ 6 July 1988, 158/87, *Scherrens vs. Maenhout* [ECLI:EU:C:1988:370].

- **CASE 171. *Dutch judgment on ownership of immovable property in Spain.*** A Dutch court rendered judgment on the ownership of a property located in Murcia, Spain. Both the parties appeared.

**Question** = Does the Dutch judgment produce legal effects in Spain?

**TIPS** = (1) It would be appropriate to take into consideration the subject matter of the Dutch decision; (2) It is strongly recommended being aware of Article 45(1)(e)(ii) Brussels I-bis; (3) Please consider the potential exclusive jurisdiction of the Spanish courts according to Article 24 Brussels I-bis.

- **CASE 172. *Dispute over ownership of immovable property located in Morocco.*** Two companies based in Spain are in dispute over the ownership of a property in Morocco. Both parties accepted the jurisdiction of the Spanish courts.

**Question** = Do the Spanish courts have jurisdiction to deal with the matter?

**TIPS** = (1) It might be useful to keep in mind Article 4 Brussels I-bis; (2) It can be helpful to assess where the defendant's domicile is located here; (3) It is advisable to take notice of exclusive jurisdiction to decide the case; (4) Consider ECJ 28 April 2009, C-420/07, *Meletis Apostolides vs. David Charles Orams, Linda Elizabeth Orams* [ECLI:EU:C:2009:271].

- **CASE 173. *Dispute concerning the ownership of immovable property situated in another Member State and choice-of-court agreement for the Spanish courts.*** A claimant domiciled in Portugal and a defendant domiciled in Spain bring a dispute concerning the ownership of a villa called "*Bishop's house*", which is located in Como, Italy, before the Spanish courts.

**Question** = Do the Spanish courts have jurisdiction to hear this dispute?

**TIPS** = (1) It can be helpful to assess the rules applicable to this choice-of-court agreement as it can be seen in Article 25 Brussels I-bis; (2) Please take notice of the object of these proceedings; (3) Please keep in mind that rights in rem in immovable property are involved here; (4) Please take into consideration Article 24(1) Brussels I-bis as well as Article 27 Brussels I-bis.

- **CASE 174. *Tenancy of property and potential exclusive-alternative international jurisdiction.*** An Irish national domiciled in Madrid rents his property in Marbella for one year to an Irish family domiciled in Westport. Problems arise with the payment of the rent. The landlord takes legal action against the Irish family.

**Question** = Should the landlord litigate in Spain or can he file his complaint before the Irish courts?

**TIPS** = (1) It would be appropriate to take into consideration that this is a tenancy of real estate situated in Spain; (2) Please consider Article 24(1) Brussels I-bis).

- **CASE 175. *A picture is worth a thousand words. Return of cultural property and the 1995 Unidroit Convention.*** A Brazilian art dealer hires a professional thief, who is a former KGB agent, to steal a Goya painting owned by a Spanish national domiciled in Madrid. The theft takes place in Madrid and the painting is taken to Los Angeles, where it is sold to a Canadian collector, who acquires the painting in good faith. After various enquiries, the painting is located in Brazil.

**Question 1** = Can the return of the painting to Spain and the declaration of ownership of the painting in favour of the first Spanish owner be requested?

**Question 2** = Which law decides the ownership to the stolen painting?

**TIPS** = (1) Please keep in mind the Unidroit Convention on stolen or illegally exported cultural objects (Rome, 24 June 1995); (2) Please consider the rules applicable to the ownership of the Goya painting.

## **XIX. Intellectual Property.**

- **CASE 176. *International litigation and ownership of IP rights.*** A Spanish woman domiciled in Madrid who is a PhD student at a Spanish University, publishes a scientific paper in France. An Italian legal scholar claims that this paper is a plagiarism of a work of her own creation and decides to bring legal action.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which law applies?

**TIPS** = (1) It is desirable to bear in mind Article 4 Brussels I-*bis*; (2) You should be mindful of Article 7(2) Brussels I-*bis*; (3) Take into account Article 24 Brussels I-*bis* here; (4) Please consider Article 8 Rome II.

- **CASE 177. *Best things in life are free. Plagiarism of a novel.*** A British national with habitual residence in Barcelona downloads a copyrighted novel written by a Dutch author and publishes the book under his own name in Spain and Portugal. As a result of that, the sales in Spain of the novel written by the Dutch author are quite low. The victim wishes to sue the Spanish national.

**Question** = Which courts have jurisdiction to deal with the matter?

**Question** = Which law applies?

**TIPS** = (1) It is strongly recommended considering Article 4 Brussels I-*bis*; (2) Please keep in mind Article 7(2) Brussels I-*bis* and Article 8(1) Rome II).

- **CASE 178. *European trade mark dispute.*** A company with its registered office in Berlin registers a European trade mark called "VECINA" for cosmetic products. A Spanish national, domiciled in Madrid, uses in France, Spain, Italy and Portugal, a trade mark with the same name and for the same type of goods. The Berlin-based company decides to sue the Spanish national.

**Question** = Which courts have jurisdiction to deal with the matter?

**TIPS** = (1) It is desirable to bear in mind the damage suffered by the victim in the whole world; (2) You should be mindful of international jurisdiction as well as territorial jurisdiction here; (3) Evaluate the mosaic theory here.

- **CASE 179. *The book of life. Who is the author?*** An Italian national publishes in Italy a book of poems written in Latin. An Irish national domiciled in Spain claims to be the real author of the poems. The first step to shed some light on the case is to determine the law which governs the question of the authorship of the book. The second step is to identify the law applicable to the damage and the potential compensation.

**Question** = Which law applies to both issues?

**TIPS** = (1) Please keep in mind the material scope of European private international law with regard to authorship; (2) Be mindful of Article 8(1) Rome I; (3) You are kindly requested to reflect on the role of the *Lex Loci Protectionis* criterion in the third decade of the 21st Century.

## **XX. Insolvency proceedings.**

- **CASE 180. *Two divided by zero. Company with COMI in Spain and assets in France.*** A company with registered office in Albacete, Spain, enters into a financial crisis. All its real estate assets are located in France. It is necessary to determine the competent courts and the law applicable to the company's insolvency proceedings.

**Question 1** = Which are the appropriate courts to start insolvency proceedings against the company?

**Question 2** = Which law applies to the insolvency proceedings?

**TIPS** = (1) Explore the concept of COMI, do not be shy; (2) Please keep in mind Article 3 European Insolvency Regulation EIR; (3) It is also desirable to consider Article 7 EIR as well as Article 11 EIR; (4) It can be helpful to assess the effects of this insolvency on a lease of real estate located in France.

- **CASE 181. *Company with COMI in Spain and mortgage on property located in Portugal.*** A company with registered office in Madrid enters into financial crisis. All its real estate is located in Ireland. It is necessary to determine the competent courts and the law applicable to the company's insolvency proceedings.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which law applies?

**TIPS** = (1) Take into account where COMI is situated here for the purposes of Article 3 EIR; (2) Please take notice of Article 7 EIR and Article 8(1) EIR).

- **CASE 182. *Money talks. Company with new COMI in Spain and previous COMI in Germany.*** A company with registered office in Hamburg moves to Madrid, where the new registered office is set up. Two months later the company cannot pay its debtors and enters into financial crisis. All its real estate is located in Poland. The debtor company still conducts the administration of its interests in Germany.

**Question 1** = Which courts have jurisdiction to open insolvency proceedings against the company?

**Question 2** = Which law applies to the insolvency proceedings?

**TIPS** = (1) Please consider Article 3(1) EIR; (2) Explore the concept of 'main insolvency proceedings'; (3) Kindly be mindful of the so called "three-month period"; (4) Please keep in mind the presumptions in Article 3 EIR.

- **CASE 183. *Recognition in Spain of the opening of insolvency proceedings before the French authorities.*** A company has its COMI in France and many assets in Spain. As it becomes unable to meet its payments, it is necessary to open insolvency proceedings. The question arises as to where these insolvency proceedings should start.

**Question** = Where the insolvency proceedings should be opened?

**TIPS** = (1) Please consider where the COMI is situated; (2) You should be mindful of the effects of the insolvency proceedings in other countries.

## **XXI. Recognition and enforcement of judgements in civil and commercial in UE.**

- **CASE 184. *The tip of the iceberg. Icelandic judgment on contracts.*** A Spanish firm was ordered to pay EUR 2 million by an Icelandic judgment on contracts. The creditor asks for the enforcement of the Icelandic judgment in Spain.

**Question 1** = Which legal instrument applies to the issue?

**Question 2** = Is *exequatur* (declaration of enforceability) a necessary step previous to the enforcement of the Icelandic judgement in Spain?

**TIPS** = (1) It would be appropriate to take into consideration the Lugano II Convention; (2) It can be helpful to assess the meaning of *exequatur* in European Law.

- **CASE 185. *A word is enough to the wise. Claim served in German language to a Spanish defendant and recognition of the German judgment in Spain.*** Recognition is sought in Spain of an Austrian judgment declaring the nullity of a truck distribution contract signed between a Spanish company and an Austrian company. The Spanish company claims that, during the proceedings in Vienna, the claim was not served with a translation into Spanish language and, therefore, it was impossible for the Spanish company to understand the content of the claim. Consequently, this company did not appear and did not make any statement of defence in the Austrian proceedings. The Spanish undertaking was ordered to pay EUR 1 million.

**Question** = Should the Austrian judgment be recognized and enforced in Spain?

**TIPS** = (1) Please take notice of Article 45(1)(b) Brussels I-*bis*; (2) Evaluate whether the Spanish defendant was knowledgeable in German or not; (3) Please keep in mind what a judgment rendered *in absentia* is.

- **CASE 186. *Anti-suit injunction pronounced by a Cypriot court. Access to justice at stake.*** An anti-suit injunction given by a Cypriot court prevents the defendant from starting legal proceedings in the courts of other Member States. The plaintiff, domiciled in Madrid, asks for the recognition of that anti-suit injunction in Spain. According to Cypriot law, in the event of a new legal proceedings in Spain brought by one of the parties, the plaintiff may be punished and fined.

**Question** = Can this anti-suit injunction be enforced in Spain?

**TIPS** = (1) Explore the concept: "anti-suit injunction"; (2) Evaluate the effectiveness of the Brussels I-*bis* Regulation in the light of anti-suit injunctions; (3) It is strongly recommended being aware of the meaning and scope of access to justice; (4) Read carefully ECJ 27 April 2004, C-159/02, *Gregory Paul Turner vs. Felix Fareed Ismail Grovit, Harada Ltd, Changepoint SA*. [ECLI:EU:C:2004:228].

- **CASE 187. *Dutch judgment on compensation and default of appearance.*** A Lithuanian court renders judgment in a contractual dispute in which a company based in Spain was ordered to pay 290,000 US dollars to a company based in Lithuania. The judgment was rendered by default and is not final. Nevertheless, the Lithuanian company applies for the enforcement of the Lithuanian judgment in Spain in accordance with the Brussels I-*bis* Regulation.

**Question 1** = Does the Brussels I-*bis* Regulation apply to this case?

**Question 2** = Does the Lithuanian judgment be enforced in Spain?

**TIPS** = (1) Analyze the concept of "judgment given in default of appearance"; (2) It is strongly recommended exploring Articles 45 and 46 Brussels I-*bis*.



- **CASE 188. *Freezing of assets in Germany granted inaudita parte debitoris.*** A judge in Munich is hearing a dispute for breach of contract in which an entrepreneur domiciled in Germany is the defendant. The judge grants a precautionary seizure *inaudita parte debitoris* on assets located in Spain which belong to the businessman domiciled in Germany. The claimant wonders whether the freezing order can be enforced in Spain or not.

**Question** = Should the German freezing order be enforced in Spain?

**TIPS** = (1) It would be appropriate to take into consideration the concept of "judgment" in the meaning of Article 2(a) Brussels I-bis; (2) Take into account the meaning of "bilateral procedure" in the context of Brussels I-bis; (3) Please keep in mind Article 2(a) Brussels I-bis; (4) Analyze the certificate issued pursuant to Article 53 Brussels I-bis; (5) It is desirable to bear in mind Article 42(2) Brussels I-bis.

## XXII. Arbitration.

- **CASE 189. *There is no harm in asking him. Arbitration in London and examination of the validity of an arbitration agreement as to its substance.*** An American company concludes a contract for the sale of mattresses with a Spanish company. The contract includes a clause written in English in handwritten form drafted by the London company, which states: "*all disputes arising out of or in connection with this contract shall be settled by a special court of three arbitrators chosen by the parties and the arbitration shall take place in London*". The Spanish company brings an action for annulment of the arbitration agreement before the Madrid courts. One month later, the arbitral award is rendered in London. According to the award, the Spanish company is ordered to pay 300.000 EUR to the American company.

**Question 1** = Should the Spanish courts decide the dispute concerning the annulment of the arbitration agreement?

**Question 2** = May the arbitral award be enforced in Spain?

**TIPS** = (1) Please consider Article II of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards; (2) Think about the role of *exequatur* in the New York Convention 1958; (3) Explore with care the *kompetenz-kompetenz* rule.

- **CASE 190. *All that glitters is not gold. Arbitral award rendered in Poland and annulled by a Danish court.*** A Zurich-based bank concludes a loan contract in favour of a company with registered office in Almería (Spain). The contract contains a clause stating that: "*in the event of litigation, the Warsaw Court of Arbitration shall have jurisdiction and the arbitration shall be governed by the new lex mercatoria*". The Spanish company does not pay back the loan on time and the Swiss bank activates the arbitration proceedings. The arbitration ends with an award rendered in Poland in which the Almería company is ordered to pay 500,000 euro. The Almería company succeeds in having the award annulled by a Danish court on the ground of bias of some arbitrators. The Swiss company submits the award for *exequatur* (declaration of enforcement) in Spain.

**Question** = Should the arbitral award be recognized and enforced in Spain?

**TIPS** = (1) Please take notice of the New York Convention of 10 June 1958; (2) Explore the different ground for the refusal of the *exequatur* in the event of a foreign arbitral award.

- **CASE 191. *Arbitral award rendered in Washington and request of declaration of enforceability (exequatur) in Spain.*** Company A, based in Spain, and company B, based in New York, conclude a franchising contract which includes a clause stipulating that: "*in the event of a dispute, arbitration will be developed before the London Court of Arbitration, subject to the rules of that institution*". Company A does not comply with the contract and company B calls for arbitration in London. The arbitration ends with an award ordering company A to pay 200,000 EUR to company B. Company A claims that the above mentioned clause was inserted into the contract without its knowledge or consent. For this reason, company A contests the *exequatur* of the award in Spain.

**Question** = Should the arbitral award be enforced in Spain?

**TIPS** = (1) It is desirable to bear in mind which is the place where the arbitration took place; (2) Please consider Article II of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards; (3) Kindly be mindful of the nature and purpose of the declaration of enforceability of a foreign arbitral award.

## SECTION IV

### LAW APPLICABLE TO PROCEDURAL ISSUES AND MEDIATION



#### XXIII. Law applicable to procedure and the *lex fori regit processum* rule.

- **CASE 192. Private sale and purchase agreement signed in Dubai.** Two Spanish companies conclude a sale and purchase contract in a private document drawn up in English and made in Dubai. One of the companies wishes to provide the private document to prove, in legal proceedings before the Spanish courts, that the purchase contract was really concluded.

**Question** = Might the Spanish company use that document in legal proceedings pending in Spain to ascertain the existence of the contract?

**TIPS** = (1) Kindly be mindful of the need for a translation of the foreign document; (2) It is desirable to bear in mind Article 144 *Spanish Act on Civil Procedure 1/2000*; (3) It is strongly recommended considering the nature and purpose of the "apostille".

- **CASE 193. *Time flies. Law applicable to the statute of limitations.*** An American company sues a Spanish company before the courts of Madrid for breach of a contract governed by English law. The defendant claims that the action is time-barred. Some doubts arise as to the law applicable to the statute of limitations.

**Question** = Which law governs the question of the statute of limitations?

**TIPS** = (1) Explore the *lex fori regit processum* rule in and out of European Law; (2) Please consider characterisation in private international law with regard to this issue.

- **CASE 194. *Public deed of donation granted before a Swiss notary.*** A public deed of donation granted before a Swiss notary is presented as documentary evidence in legal proceedings pending in Spain.

**Question** = Might the Swiss notarial document be used in legal proceedings pending in Spain to ascertain the existence of the donation in question?

**TIPS** = (1) Please consider Contracting State to The Hague Apostille Convention of 5 October 1961; (2) Explore the legal nature of a donation deed; (3) Evaluate the Rome I regulation impact on this case.

#### **XXIV. Mediation.**

- **CASE 195. *Mediation and divorce made in Italy.*** A German husband and a Spanish wife with common habitual residence in Rome decide to apply for divorce. They agree to try mediation in Italy about the terms of the divorce. They have no children. They reach an agreement under which the divorce will be granted on no ground and in just one month with no intervention of any public authority. They would like to know whether this agreement is valid or not, enforceable or not.

**Question** = Should the agreement reached after mediation be regarded as valid in Spain?

**TIPS** = (1) Please consider the Rome III Regulation; (2) It is strongly recommended being aware of the impact of Regulation Brussels II-ter on the issue; (3) Please keep in mind Recital No 14 Brussels II-ter; (4) Take into account Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

- **CASE 196. *Mediator based in London and breach of contract***. English husband and wife with common habitual residence in Madrid decide solve a dispute concerning property located in Spain through mediation. The mediator is based in Dublin. Once the agreement is reached, the spouses refuse to pay the mediator, who files a formal complaint before the courts of Dublin. One may wonder about the law governing the contract made between the mediator and the two spouses.

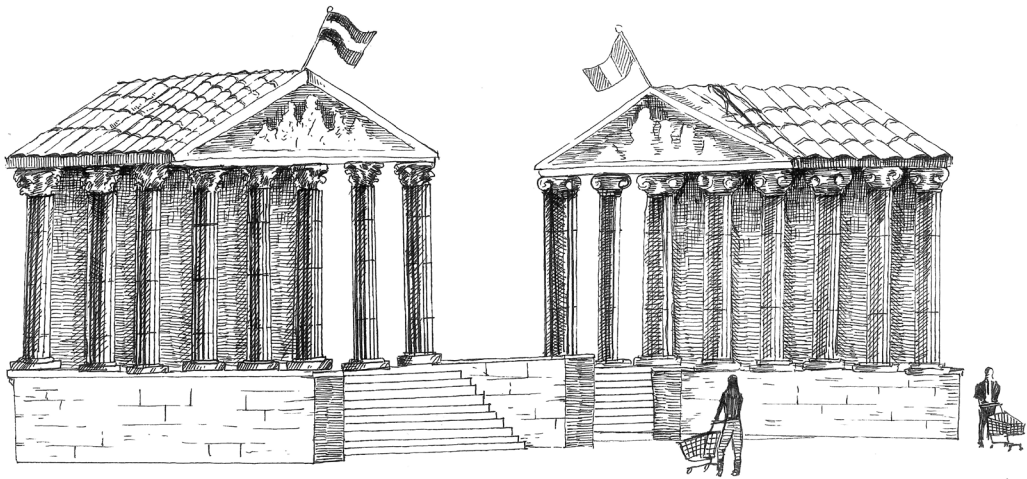
**Question** = Which law applies to the contract for mediation?

**TIPS** = (1) Please consider the Rome I Regulation; (2) It is desirable to bear in mind the place where the service provider has his habitual residence; (3) Keep in mind Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters.



## SECTION V

### ADVANCED CASES



#### XXV. International Family Law.

**197. Inheritance: Law of a Spanish Autonomous Community.** A Spanish citizen of Catalan "*vecindad civil*" who habitually resides in Berlin makes a will in Warsaw. He indicates that he wishes his succession *mortis causa* to be subject to Catalan law. The deceased has real estate in Warsaw, Berlin and also in Madrid.

**Question 1** = Which law governs the succession of this testator?

**Question 2** = Could *renvoi* be implemented in this case

**Question 3** = Which law governs the succession of the Spanish national?

**TIPS** = (1) Please consider the European Succession Regulation; (2) It is desirable to distinguish between formal validity and substantial validity of a last will and testament.

**198. Habitual residence is of the essence in European private international law.**

A German national and a Polish national married in Poland. They lived there with their children. After a few years, the husband initiated divorce proceedings before German courts and claimed that he no longer resided in Poland but had moved to live with his parents in his hometown in Germany. The German courts established that the plaintiff had already acquired habitual residence in Germany on the date on which he filed for divorce. They also made it clear, besides, that the applicant had not proved his habitual residence in that Member State for the entire six-month period preceding the filing of the application.

**Question 1** = Which version of the Brussels II-ter Regulation should prevail if two or more versions in the official languages of the European Union are different?

**Question 2** = What is the difference between the concept of "residence" and that of "habitual residence"?

**Question 3** = Who must prove the residence or habitual residence of the spouses in international divorce disputes?

**TIPS** = (1) It might be useful to keep in mind the role of habitual residence in European private international law; (2) It would be appropriate to ascertain the potential existence of more than one habitual residences in the European Union; (3) It is strongly recommended exploring how to solve discrepancies between legal texts drafted in different official languages in the European Union; (4) Bear in mind ECJ 6 July 2023, C-462/22, *BM vs. LO* [ECLI:EU:C:2023:553].

**199. The force of divorce.** A husband and wife with dual German and Italian nationality got married in Berlin. They divorced by mutual consent in the Italian Civil Register and filed an application for the divorce to be recognised in Germany.

**Question 1** = Should this non-judicial divorce be recognised in Germany under the Brussels II-ter Regulation?

**Question 2** = Should the Italian authorities assess their international jurisdiction to grant the divorce in accordance with the grounds of jurisdiction set out in the Brussels II-ter Regulation?

**Question 3** = Which law applies to non judicial divorces in the European Union?

**TIPS** = (1) It is advisable to take notice of the aim pursued by the Brussels II-ter Regulation with regard to the effects of foreign decisions; (2) Evaluate the impact of non judicial divorces in Brussels II-ter; (3) Reflect on ECJ 15 November 2022, C-646/20, *Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v. TB, with intervention of Standesamt Mitte von Berlin* RD [ECLI:EU:C:2022:879].



**200. Divorce and choice of court.** A Spanish man and a Japanese woman get married in Tokyo in 2018. Before the marriage they signed a prenuptial agreement in where they agreed that, in the event of a divorce, the courts of Madrid would have exclusive jurisdiction to deal with the issue. After the marriage they established their habitual residence in Hamburg. In 2025, the husband brought an action for divorce before the Madrid courts.

**Question 1** = Do the courts of Madrid hold international jurisdiction to hear this divorce?

**Question 2** = Which other courts might also hear this dispute?

**Question 3** = Which law governs this divorce?

**TIPS** = (1) Kindly be mindful of the role of choice of courts agreement in the Brussels II-ter Regulation 2019/1111; (2) Evaluate the Rome III Regulation in order to specify the law applicable to divorce.

**201. Dual common nationality and divorce in two countries: double or nothing.** Mr Akos and Mrs Anka, both Hungarian nationals, married in Hungary in 1987. In 1990, they emigrated to France and established their habitual residence there. In 1995, both acquired French nationality, so that each of them holds both Hungarian and French nationality. In 2005, Mr. Akos filed for divorce before a court in Pest (Hungary). In February 2003, Ms Anka filed for divorce before a court in Paris (France).

**Question 1** = Based on the common nationality of the spouses, do the French courts have jurisdiction to deal with the controversy?

**Question 2** = Do the Hungarian courts have jurisdiction to grant the divorce?

**Question 3** = Which law applies to this divorce proceedings?

**TIPS** = (1) Consider Article 3 Brussels II-ter; (2) Take into account ECJ 16 July 2009, C-168/08, *Hadadi* [ECLI:EU:C:2009:474] and C. BRIÈRE, "Note to the ECJ 16 July 2009, *Hadadi*", *Revue critique de droit international privé*, 99 (1), janvier-mars 2010, pp. 190-193.

**202. A divorce in Togo?** Portuguese husband and Spanish wife got married at the Spanish Embassy in Guinea Bissau. They had two children. They all moved their habitual residence to Togo. Some time later, the Spanish wife files for divorce and child support in the Spanish courts.

**Question 1** = Which courts can hear this divorce and child support dispute?

**Question 2** = Which law governs the plaintiff's claims?

**TIPS** = (1) Take into consideration Articles 3 and 6 Brussels II-ter; (2) You should be mindful of ECJ 1 August 2022 C-501/20, *MPA vs. LCDNMT* [ECLI:EU:C:2022:619].

**203. A real estate property in Lithuania and an inheritance in Germany.** The German authorities issued a European Certificate of Succession which listed one subject as the sole heir of the entire estate but did not specify the particular immovable property located in Lithuania integrated in the inheritance. For this reason, the Lithuanian authorities refused, in accordance with the laws of Lithuania, the change of ownership of a property situated in Lithuania in favour of the heir named as such in the European Certificate of Inheritance issued by the German authorities.

**Question 1** = Is the rejection of the change of ownership in the Lithuanian registers by the Lithuanian authorities correct?

**Question 2** = Are the German courts entitled to decide on the inheritance with regard to immovable property outside Germany?

**TIPS** = (1) It might be useful to keep in mind the principle of "unity of succession"; (2) Think about the consequences of Article 1(2)(l) which excludes from the European succession Regulation: "*any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register*"; (3) Kindly be mindful of ECJ 9 March 2023, C-354/21, *R. J. R. vs. Registry centras VJ* [ECLI:EU:C:2023:184].

**204. A divorce a day keeps the love away.** Italian husband and German wife reside habitually in Ireland, where they got married. The husband moved to Austria and after seven months of habitual residence there, he filed for divorce before the Austrian courts.

**Question 1** = Are the Austrian courts competent to hear this divorce?

**Question 2** = Which law governs this divorce?

**Question 3** = Is there a place for forum shopping and/or for forum actoris in Article 3 Brussels II-ter?

**TIPS** = (1) You should be mindful of Article 3 Brussels II-ter; (2) Explore the concept of habitual residence in Brussels II-ter; (3) Take into account ECJ 10 February 2022, C-522/20, *OE vs. VY* [ECLI:EU:C:2022:87].

**205. *Two mothers are better than one.*** A Bulgarian national woman and a British national woman got married in Gibraltar in 2018. They had been resident in Spain since 2015. In December 2019, both women had a daughter, who was born and resides with them in Spain. The birth certificate of this daughter, issued by the Spanish authorities, mentions both women as 'mother A' and 'mother'. The child holds Bulgarian nationality. The Bulgarian authorities, however, refused to issue the Bulgarian birth certificate on the grounds that there was no proof of the identity of the child's biological mother and that the mention on a birth certificate of two female parents was contrary to the public policy of the Republic of Bulgaria, which does not permit same sex marriages.

**Question 1** = Is the child a citizen of the European Union?

**Question 2** = Does the child have the right to move and reside freely within the territory of the Member States?

**Question 3** = Are the Bulgarian authorities obliged to issue the child with an identity card or passport?

**Question 4** = Is the parentage as determined in Spain going to be recognized in Bulgaria?

**TIPS** = (1) It would be appropriate to take into consideration the mutual recognition principle as established by the European Court of justice; (2) It is strongly recommended reflecting on recognition of parenthood as a potential obstacle to the free movement of natural persons in the European Union; (3) Explore ECJ 14 December 2021, C-490/20, *V.M.A. vs. Stolichna obshtina, rayon "Pancharevo"* [ECLI:EU:C:2021:1008].

**206. *Surrogacy and refusal of registration.*** A child was born in Ukraine from the genetic material of an Italian citizen and an anonymous egg donor following a surrogacy contract. The Italian authorities refused to register the child in Italy.

**Question 1** = What is the role of Art. 21 TFEU in this case?

**Question 2** = Is the Convention on the Rights of the Child of 20 November 1989 applicable to this case?

**TIPS** = (1) Do not forget the aim of the European convention of human rights; (2) Analyze ECtHR 31 August 2023, *C vs. Italy*, No. 47196/21 [ECLI:EC:ECHR:2023:0831JUD004719621].

**207. To be or not to be a European citizen. Ukraine, Poland and Europe.** A Ukrainian national woman habitually resident in Poland was a co-owner of a property located in Poland. The woman asked a Polish notary to authenticate her will with a clause in favour of Ukrainian law as the law applicable to her succession. The Polish notary refused to authorize the will because, in his view, Article 22 European Succession Regulation only confers on nationals of EU Member States the right to designate the law applicable to their succession. In addition, he also stated that there is a bilateral agreement between Ukraine and Poland (Convention between the Republic of Poland and Ukraine on Legal Assistance and Judicial Relations in Civil and Criminal Matters of 24 May 1993), which does not provide for the possibility of choosing the law applicable to the succession and which follows the splitting principle of succession upon death, i.e. that the succession of immovable property is subject to the law of the country where the succession property is located.

**Question 1** = Are only European citizens entitled to make a *professio juris* to designate the law applicable to their succession upon death?

**Question 2** = May the succession be subject to the laws of different States in accordance with the European Succession Regulation?

**Question 3** = Do the Conventions signed by the Member States governing succession matters prevail on the European Succession Regulation?

**Question 4** = Is the Convention signed between Spain and Greece on 6 March 1919 governing the succession of Spanish nationals who die in Greece and Greek nationals who die in Spain currently still in force?

**TIPS** = (1) Take into account Article 75 European Succession Regulation; (2) Consider Article 22 European Succession Regulation as the main rule or as an exception to the general rule; (3) You should be mindful of ECJ 12 October 2023, C-21/22, *OP vs. Notariusz Justyna Gawlica* [ECLI:EU:C:2023:766].

## XXVI. International Business law.

**208. *I want to ride my bicycle. The cross-border bicycle case.*** The company Pantherwerke AG, domiciled in Germany, manufactures and markets bicycles. In 2007, Mr Kainz, who lives in Austria, bought a bicycle manufactured by Pantherwerke AG in an Austrian shop. In 2009, while riding that bicycle in Germany, Mr Kainz had a fall as a result of which he sustained various injuries. Mr Kainz claimed from Pantherwerke AG, on the basis of product liability, the sum of EUR 21.200, plus interest and related costs, and considered that Pantherwerke AG was liable for damage resulting from the accident. According to Mr Kainz, his fall was caused by a wrong design of the legs of the fork of the bicycle.

**Question 1** = Which courts have jurisdiction to hear Mr Kainz's claim against the German bicycle manufacturer?

**Question 2** = Which law governs Mr Kainz's claim against the German bicycle manufacturer?

**TIPS** = (1) It can be helpful to assess where the harmful event occurred in this case; (2) Think about the role of Article 7(2) Brussels I-*bis* as well as Article 4 Rome II Regulation; (3) It would be appropriate to take into consideration ECJ 16 January 2014, C-45/13, *Andreas Kainz v. Pantherwerke AG* [ECLI:EU:C:2014:7].

**209. *To be or not to be a consumer: that is the question and that is the first impression.*** A Spanish national habitually resident in Tudela, Spain, travelled to buy a Renault car from a dealer in Poitiers (France) and claimed to be a retail businessman. He bought the car from the French dealer. Some time later he filed a claim before the courts of Tudela, Spain. He affirms to be a non-professional citizen, just a consumer.

**Question 1** = May the buyer sue the French dealer in Tudela?

**Question 2** = Which law governs this contract?

**TIPS** = (1) Please consider the Brussels I-*bis* Regulation for jurisdiction and Article 6 Rome I for the applicable law; (2) Explore ECJ 9 March 2023, C-177/22, *JA v. Wurth Automotive GmbH* [ECLI:EU:C:2023:185].

**210. Polluting green cars made in Germany and at a good price. Emission controls can hurt hearts.** The well-known car company Volkswagen, based in Wolfsburg (Germany), manipulated the software that processes the exhaust emissions data of its vehicles by means of a "defeat device". That device is unlawful under Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1). This software makes it possible to show, when the tests are carried out, exhaust emissions which comply with the maximum values laid down, whereas, under real conditions, that is to say, when these vehicles are used on the road, the pollutants emitted actually reach proportions which exceed the prescribed limits several times over. Thanks to this software, which manipulates the data relating to these emissions, Volkswagen obtained, for vehicles equipped with an EA 189 engine, the type-approval required by EU legislation. A Spanish consumers' association, to which more than 570 consumers had assigned their rights against Volkswagen, claimed more than three million euros from the German company before Spanish judges. Had they known about the manipulation in question, consumers would not have bought the car, or they would have been able to buy them for a lower price. The market value of these cars is lower than the price actually paid. In other words: you pay a lot for a car that it is said that does not pollute and it turns out that it is a trick, that it does pollute but it is very expensive because it is a car that, it is said, is environmentally friendly and hardly pollutes at all.

**Question 1** = Which courts are competent to hear claims by car buyers against Volkswagen?

**Question 2** = Which law governs the merits of the claim by these buyers against Volkswagen?

**TIPS** = (1) Please consider the Brussels I-*bis* Regulation; (2) Bear in mind the place where the damage occurred; (3) Keep in mind ECJ 9 July 2020, C-343/19, *Verein für Konsumenteninformation vs. Volkswagen AG*, [ECLI:EU:C:2020:534].

**211. *Sunshine reaggae. The Brussels I-bis Regulation and forum non conveniens. Jamaica and the European Union.*** Mr Owusu, a British national, a house with a private beach in Jamaica from another British national. Both have their domicile in the United Kingdom. During his stay on the island he suffered a very serious accident. While bathing on the private beach, Mr Owusu hit a submerged sandbank and fractured a cervical vertebra. He became a quadriplegic. The victim sued the landlord in an English court for breach of contract, as the landlord had given assurances that the beach was not dangerous. The defendant challenged the English judge's jurisdiction because, in his opinion, the Jamaican courts were "*better placed to decide the case*", activating the forum non conveniens doctrine.

**Question 1** = Which is the applicable legal instrument for determining international jurisdiction here?

**Question 2** = Which court may hear the case?

**TIPS** = (1) Please consider the Brussels I-bis Regulation; (2) Bear in mind the place where the damage occurred; (3) Keep in mind ECJ 1 March 2005, C-281/02, *Andrew Owusu v. N.B. Jackson*, [ECLI:EU:C:2005:120]; (4) Explore the origin and impact of the forum non conveniens doctrine both in Common law and in European Law.

**212. *Problems in paradise. Swimming in Portuguese waters can bring some surprises.*** A French national is on holiday in Portugal. While bathing in Portuguese waters he is hit by a jet ski driven by a Spanish national and suffers severe personal injuries. An insurance company pays for the damages suffered by the Spanish victim and is subrogated to his rights. The insurance company sues the tortfeasor. He claims that the action is time-barred under French law, which is the law governing the insurance contract.

**Question 1** = Which law governs the limitation period for this non-contractual liability action?

**Question 2** = Which law governs the liability of the tortfeasor?

**TIPS** = (1) Please take into account the Brussels I-bis Regulation; (2) Explore ECJ 17 May 2023, C-264/22, *Fonds de Garantie des Victimes des Actes de Terrorisme et d'Autres Infractions (FGTI) v. Victoria Seguros SA* [ECLI:EU:C:2023:417].

**213. *Franchising is my madness.*** A Danish company and a Spanish company sign a pre-franchise contract by which they agree to sign a franchise contract for Danish baby products to be distributed in Spain by the Spanish company on an exclusive basis. After the agreed time, the Danish company refuses to sign the contract and the Spanish company sues the Spanish company for 1,000,000 EUR in damages.

**Question 1** = Which courts have jurisdiction to deal with the matter?

**Question 2** = Which law governs the merits of this case?

**TIPS** = (1) Please consider Article 7(1) and Article 7(2) Brussels I-bis Regulation; (2) Evaluate the ECJ answer in ECJ 14 September 2023, C-393/22, *EXTÉRIA* [ECLI:EU:C:2023:675].

**214. *Timeshare, freedom and the pursuit of happiness.*** An Irish businessman visits Irish holidaymakers in Majorca who are on holiday on the island, although they have their home in Dublin. He offers them to sign a contract for the timeshare of properties all over the world. The Irish national sign the contract. When he realises that the agreement was not good for him, he decides to apply for the contract to be annulled.

**Question 1** = Are the Spanish courts competent to hear this dispute?

**Question 2** = Which law governs the Irish citizens' claim?

**TIPS** = (1) Please consider Art. 17 Brussels I-bis Regulation; (2) Take into consideration Article 6 Rome I; (3) Take a look on ECJ 14 September 2023, C-632/21, *Diamond Resorts* [ECLI:EU:C:2023:671].

**215. *When holiday ends, litigation starts.*** A Spanish national travels to Amsterdam and rents a cottage in a resort with a windmill and a meadow with black and white cows. He pays 5,000 euros for a month's stay, which includes cleaning of the flat, sightseeing, excursions and the like. Dissatisfied with the quality of the property and services, the Spanish citizen decides to sue the Dutch company.

**Question 1** = Which type of contract is this?

**Question 2** = Which courts have jurisdiction to hear this dispute?

**Question 3** = Which law applies to this contract?

**TIPS** = (1) Please consider Art. 24(1) Brussels I-bis; (2) Analyze ECJ 16 November 2023, C-497/22, *Roompot Service* [ECLI:EU:C:2023:873].



**216. *It is a global world, after all. May the parties change a national legal situation into an international one?*** A Spanish company buys a consignment of iron ore from another Spanish company. The contract is signed in Bilbao, Spain, and any disputes arising therefrom are subject to the exclusive jurisdiction of the Dublin courts. The contract also states that it is governed by English law.

**Question 1** = Is this an international contract?

**Question 2** = Should the agreement conferring jurisdiction in favour of the courts of Dublin be regarded as valid?

**Question 3** = Which law governs this contract?

**TIPS** = (1) Please consider Art. 25 Brussels I-bis as well as Article 1 and Article 3.3 Rome I; (2) Take into account ECJ 8 February 2024, C-566/22, *Inkreal*, [ECLI:EU:C:2024:123].

**217. *He who holds many grounds of jurisdiction, he has the ace of gold.*** A contract for the carriage of a shipment of computer equipment from the Netherlands to Lithuania was concluded between companies in those two countries under the CMR Convention. Unfortunately, the goods were stolen during transport and the insurer paid more than 200,000 EUR in compensation. The carrier went to court in the Netherlands. The Dutch court limited the liability arising from the international contract of carriage in relation to the carrier. The contract included a clause conferring exclusive jurisdiction to hear any disputes arising from the contract to the Lithuanian courts. The beneficiary of the liability sued the carrier in Lithuania and the defendant, the carrier, invoked the incidental recognition of the Dutch judgment in Lithuania.

**Question 1** = What is incidental recognition?

**Question 2** = Should the choice of court agreement made in favour of the Lithuanian courts contained be regarded as valid?

**Question 3** = Should recognition of the Dutch judgement in Lithuania be granted?

**Question 4** = Does the CMR Convention prevail on the Brussels I-bis Regulation?

**TIPS** = (1) Consider Article 45 Brussels I-bis; (2) Read carefully article 31 of the Convention on the contract for the international carriage of goods by road (CMR) done at Geneva on 19 May 195; (3) Please take notice of ECJ 21 March 2024, C-90/22, *Rhenus Logistics UAB* [ECLI:EU:C:2024:252].

**218. *Like tomorrow does not exist, like it does not exist, I am happy in my motorhome (until I discover the truth)*.** Two Austrian spouses who live in Austria buy in Germany an Italian-made motorhome. The German dealer delivers the motorhome to them in Austria. After a few weeks of use, the buyers are shocked to discover that the vehicle contains a rigged emission control system. Disappointed by the false ecology of their motorhome, they decide to sue the Italian manufacturer.

**Question 1** = Which courts have jurisdiction to hear this dispute?

**Question 2** = Which law governs this contract?

**TIPS** = (1) Please consider Article 7(1) and (2) Brussels I-bis; (2) It can be helpful to assess the type of tort here; (3) Please take notice of ECJ 22 February 2024, C-81/23, *MA v. FCA Italy SpA, FPT Industrial SpA* [ECLI:EU:C:2024:165].

**219. *Trees in Brazil*.** A Swiss company sells trees planted in Brazil to a investor with habitual residence in Austria so that when they have grown sufficiently, they can be sold for a profit. In addition to the purchase contract, a lease contract and a contract for the provision of services were also concluded. The lease contract conferred the right to let the trees in question grow and the lease rent was included in the purchase price of the trees. The service contract provided that the Swiss company would cultivate, manage, harvest and sell the trees and transfer the net product of the sale to the EU. The investor habitually resident in Austria sued the Swiss company in the Austrian courts because he considered that it had breached its obligation to transfer ownership of the trees in question to him.

**Question 1** = What type of contract is this?

**Question 2** = Which courts have jurisdiction to hear the dispute?

**Question 3** = Which law governs the legal relations between these parties?

**TIPS** = (1) Consider Article 24 Brussels I-bis and the Lugano II Convention; (2) Read carefully ECJ 10 February 2022, C-595/20, *EU v. ShareWood Switzerland AG VF* [ECLI:EU:C:2022:86].

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## DERECHO GLOBAL Y CRISIS SANITARIAS HACIA UNA CONVENCIÓN MUNDIAL CONTRA LAS PANDEMIAS

