

QUEEN MARY, UNIVERSITY OF LONDON
Centre for Commercial Law Studies

**INTERNATIONAL COMMERCIAL LITIGATION /
CONFLICT OF LAWS**

LLM and Diploma course 2013-2014

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Professor in International Arbitration and Commercial Law

About this Course

This course is taught in 90 min classes on Wednesdays from 4.15 pm to 5.45 pm. Classes are held at Lecture Theatre (Ground Floor), PG School of Law, 67-69 Lincoln's Inn Fields (nearest tube station Holborn Station).

Classes take the form of interactive seminars, offered by Professor Stavros Brekoulakis, commencing 2 October 2013. A small number of seminars are offered by Dr Eva Lein, Herbert Smith Senior Research Fellow in Private International Law, British Institute of International Comparative Law.

Course Objectives

The course examines matters relevant to the resolution of all commercial transactions before national courts. The course looks into general principles of International Commercial Litigation and Private International Law, and focuses in particular on issues related to Jurisdiction of National Courts, Conflicts between Jurisdiction of National Courts and International Arbitral Tribunals, Applicable Laws and Conflict of Laws rules, Recognition and Enforcement of National Judgments, Provisional Relief and Freezing Orders.

The approach taken is international and comparative, with emphasis on the English, European, and the US regime and legal framework. Sources relevant to the course include the traditional common law rules on jurisdiction and enforcement the EC 44/2001 Regulation on Jurisdiction and the Recognition and Enforcement of Judgments, the EC Regulations on Law Applicable to Contractual Obligations (Rome I) and Law Applicable to Non-Contractual Obligations (Rome II), as well as international treaties and instruments such as the 2005 Hague Convention on Choice of Court Agreements. Equally, the jurisprudence of the English courts, the Court of Justice of the European Union, and the US Supreme Court will be looked in detail. Where relevant, and by way of comparison, the legal rules and jurisprudence of other jurisdictions will also be reviewed.

Course outline

1st Term: 30 September – 13 December 2013

1. Theoretical importance and practical relevance of conflict of laws and private international law
2. International Jurisdiction on Individuals and Companies / Forum Shopping
3. The course and conduct of commercial litigation in England – common law rules on Jurisdiction
4. Key features of English litigation - Forum non conveniens and anti-suit injunctions
5. European Rules on Jurisdiction – Contractual claims
6. European Rules on Jurisdiction – Tortious claims
7. US Rules on Jurisdiction – Contractual and Tortious claims
8. Party autonomy and forum selection: choice of court clauses; the 2005 Hague Convention on Choice of Courts Agreements; arbitration clauses
9. Multi-*fora* litigation: *lis pendens* & related actions in parallel proceedings before different *fora*
10. Multiparty litigation: jurisdiction over Multinational Groups of Companies – Branches and Agents
11. Class Actions and similar forms of Collective Redress

2nd Term: 13 January – 28 March 2014

12. Interface between Arbitration and Litigation
13. *Forum Non Conveniens* in Europe– Interface between European Law and English Common Law
14. Introduction on Conflict of Laws: Connecting Factors and Theory on Conflict of Laws
15. European Rules on Conflict of Laws in Contracts- Rome I Regulation on Law Applicable to Contractual Obligations: Choice by the parties. Party autonomy and its limits
16. European Rules on Conflict of Laws in Tort; the EC Regulation on Law to Non-Contractual Obligations (Rome II)
17. US Conflict of Laws rules on Contract and Tort Comparison with European Rules
18. International Reach of National Legislation and Extraterritoriality
19. Provisional Measures and Freezing Orders
20. Enforcement of Foreign Judgments I – European Rules on Enforcement
21. Enforcement of Foreign Judgments II – English Traditional Regime- Comparison with US Rules
22. Litigation with State and State owned entities (half class) & Revision class (half class)

In addition to the above seminars, there will be four sessions of tutorials (one in the first term and three in the second term) and one revision class at the end of the second term, all aiming to revise the most important topics of the course and best prepare students for the final exam.

Method of Assessment

The course is assessed by a written examination (3 hours) at the end of the course. Students may take into the examination an *unannotated* copy of the primary course-materials, which will be distributed by the course convenor. No other books or material may be taken into the examination.

Copies of past examination papers, including those for the course previously taught within the London Intercollegiate LLM under the title “International Commercial Litigation”, are available at the IALS and college libraries and will also be released at course website (*QMplus Moodle*) at a time closer to the exams.

Information and Student contact

Professor Brekoulakis (s.brekoulakis@qmul.ac.uk) can be contacted at his office at PG Law School, 67-69 Lincoln's Inn Fields.

Office hours (*please confirm by email*): Mondays 15:00-17:00

Course Webpage at QMplus

Regular access to the webpage of the course at QMplus (<https://qmplplus.qmul.ac.uk/login/index.php>) is essential. All Course materials, including handouts, slides of the classes, tutorial questions, additional reading material, past-exam papers, and the primary course materials will be posted for the student's reference. Students will be presumed to have become aware of any information or announcement posted on the Course Webpage.

Primary Course Materials

As soon as possible in the first term, students will be distributed one volume of primary course materials, containing all the laws, regulations and international treaties that are considered essential for the purposes of the course. Students are strongly advised to bring a copy of these primary course-materials with them in *every seminar and tutorial*, as references to the materials will be made regularly throughout the course. More importantly, students will be allowed to take a copy of the course materials in their final written examinations, provided that they are NOT annotated (students may underline or highlight, but NOT add any note whatsoever).

Tutorials

Four sessions of tutorials will be held throughout the year covering all the main areas of the course, i.e. jurisdiction, applicable laws, enforcement and special topics of procedure and applicable laws. Details about the venue and dates of the tutorials will be announced during the year. We consider tutorials a very essential part of the learning process for this course, where students have the opportunity to discuss in depth and detail topics reviewed in the class. Tutorial questions will be posted on the course webpage at least one week in advance, so that student have enough time to prepare for the discussion in the tutorial class. Although it is not mandatory, attendance of tutorials *is strongly suggested*, and indeed expected.

Recommended textbooks

There is no single textbook that fully matches the structure and content of the course. Three main textbooks are recommended, but there are other several ones that cover the four main areas of the course (i.e. jurisdiction, applicable laws, enforcement, special issues of procedure and applicable laws).

Students are advised to look into the following textbooks before deciding which one to buy.

Main Textbooks

The following three textbooks cover best (although not entirely) the structure and content of the course

- T Hartley, on *International Commercial Litigation*, 1st edition (CUP 2009)
- J D Hill, *International Commercial Disputes in English Courts*, 4th edition (2010)
- Cheshire, North and Fawcett, *Private International Law*, 14th edition (OUP 2008)

Further Relevant Textbooks and Reference Works

The following textbooks and reference works are highly relevant to the course and cover a big part of it –they can be used in addition to one of the above main textbooks

- R Fentiman, *International Commercial Litigation* (OUP 2010): this is an excellent textbook which covers the content of the course, although it does not follow its structure
- J H C Morris, *The Conflict of Laws*, 7th edition (Sweet & Maxwell 2009): a clearly written and updated textbook which covers big parts of the content of the course
- A Briggs, *The Conflict of Laws*,
- A Briggs, *Civil Jurisdiction and Judgments*, 5th edition (2009) and *The Conflict of Laws* 3rd edition (OUP 2013): the combination of these two books cover in detail the content of the course.
- Clarkson & Hill, *The Conflict of Laws*, 4th edition (OUP 2011): this covers in detail the second part of the course, but only briefly the first part
- Dicey, Morris & Collins, *The Conflict of Laws*, 14th edition (2010), with cumulative supplements: this is an extensive reference work (the most authoritative work on private international law) but it is not a textbook

Further books / monographs / collections of essays

In addition to the above textbooks, the following works will provide students with useful information in relation to some specific parts of the course (the books that are most relevant to parts of the course are indicated with an asterisk)

- * A Briggs, *Agreements on Jurisdiction and Choice of Law*, (OUP 2008)
- * G Born and P Rutledge, *International Civil Litigation in United States Courts: Commentary and Materials*, 4th edition (Wolters Kluwer, Austin, Boston, Chicago, New York, the Netherlands, 2007)
- J Castel, *Canadian Conflict of Laws*, 4th edition (Butterworths, Toronto 1997)
- L Collins, *Essays in International Litigation and the Conflict of Laws* (Clarendon Press, Oxford, 1994)

- Pitel & Rafferty, *Canadian Conflict of Laws* (Toronto: Irwin Law, 2010)
- * A Dickinson, *The Rome II Regulation: The Law Applicable to Non-Contractual Obligations* (2008 & 2010 supplement OUP)
- * J Fellas (Ed), *Transnational Commercial Litigation and Arbitration*, (Oceana 2004)
- * R Goode, *Commercial Law*, 4th edition (2010)
- * H van Lith, *International Jurisdiction and Commercial Litigation- Uniform Rules for Contract Disputes* (Asser Press 2009)
- * J Lookofsky & K Hertz, *EU- PIL: European Union Private International Law in Contract and Tort*, (Juris 2009)
- A Layton and Mercer (Hugh) (eds), *European Civil Practice* (Sweet and Maxwell, London, 2nd edn, 2004);
- * A Lowenfeld, *International Litigation and the Quest for Reasonableness: Essays in Private International Law* (Clarendon Press, Oxford, 1996);
- * A Lowenfeld, *Conflict of Laws: Federal, State and International Perspectives* (LexisNexis, Newark, NJ; San Francisco, CA, 2nd edn, 2002);
- * A Von Mehren, *Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- and Civil-Law Systems* (Hague Academy of International Law, General Course on Private International Law) 2002, vol. 295 *Collected Courses* (Martinus Nijhoff Publishers, The Hague, Boston, London, 2003);
- A Mills, *The Confluence of Public and Private International Law*, (Cambridge 2009);
- A Mourre, *Droit Judiciaire Privé Européen Des Affaires* (Bruylant 2003);
- *Schmitthoff's Export Trade*, 11th edition (Sweet & Maxwell 2007) ;
- Scoles (Eugene F) and Hay (Peter), *Conflict of Laws*, 4th edition, (West Group Publishing Co. 2004)
- * Silberman, Stein & Wolff, *Civil Procedure – Theory and Practice*, 3rd edition (Wolters Kluwer 2009)
- * S Symeonides, W Perdue and A von Mehren (Arthur T), *Conflict of Laws: American, Comparative, International*, 2nd edition (West, St Paul, Minn., 2003);
- * A Zuckerman, *Civil Procedure*, 3rd edition (Sweet & Maxwell 2011)

Leading Journals / Reviews from different jurisdictions

- American Journal of Comparative Law, *AmJCompL* or *AJCL*, since 1952 (USA)
- Annuario di diritto internazionale, *AnnDI*, since 1965 (Italy)
- British Yearbook of International Law, *BYbIL*, since 1920
- Canadian Bar Review, *Can.Bar.Rev.*, since 1923 (Canada)
- ** International and Comparative Law Quarterly, *ICLQ*, since 1952 (UK)
- Japanese Annual of International Law, *JAIL*, since 1950 (Japan)
- ** Journal of Private International Law, *JPIL*, since 2005 (UK)
- * Journal de droit international, *Clunet* or *JDI*, since 1874 (France)
- International Law Review, *NILR*, since 1975; Nederlands Internationaal Privaatrecht, *NIPR*, since 1982 (Netherlands)
- * Praxis des Internationalen Privat- und Verfahrensrechts, *IPRax*, since 1981 (Germany)
- * Recueil des Cours de l'Académie de Droit International de la Haye - Collected Courses of the Hague Academy of International Law, *RCADI*, since 1923

- Revista Española de Derecho Internacional, *r.e.d.i.*, since 1948 (Spain)
- * Revue critique de droit international privé (formerly Revue de droit international privé, later Revue de droit international privé), *rev.crit.d.i.p.*, since 1905 (France)
- Revue de droit international et de droit comparé, since 1908 (Belgium)
- Revue hellénique de droit international, *RHDI*, since 1948 (Greece)
- Rivista di diritto internazionale privato e processuale, *r.d.i.p.p.*, since 1965 (Italy)
- Rivista di diritto internazionale, *r.d.i.*, since 1921 (Italy)
- Schweizerische Zeitschrift für internationales und europäisches Recht, *SchwZIER* (Switzerland)

Useful web-sites and Blogs

- ** Conflict of Law Network: <http://www.conflictoflaws.net/>
- ALI Transnational Rules of Civil Procedure (<http://www.ali.org/ali/transrules.htm>)
- American Society of International Law (ASIL) Guide to electronic resources for international law <http://www.asil.org/>
- Court of Justice of the European Union: http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm
- Database of case-law of the Court of Justice of the European Union: http://curia.europa.eu/jcms/jcms/j_6/
- Council of Europe's European Convention on Information Foreign Law and legal Assistance: (<http://conventions.coe.int/>)
- * Hague Conference on Private International Law (<http://www.hcch.net>)
- * Max-Planck Institute Foreign and Private International Law, Hamburg, Germany, <http://www.mpipriv-hh.mpg.de/>
- * International Judicial Assistance and US Law Blog <http://lettersblogatory.com>
- * Institute of European and Comparative Private Law (University of Girona, Spain) (<http://civil.udg.edu/iecpl/>) provides links to international private law materials, and European private law materials (EU directives, treaties and principles) dealing with commercial law. It also includes national legal materials from eight European countries, Canada and United States.
- * European Private Law Forum (European University Institute) (<http://www.eui.eu/DepartmentsAndCentres/Law/ResearchAndTeaching/ResearchThemes/EPL/EPLForum.aspx>) The Forum is concerned with the harmonization of European Private Law. The web site provides access to the results of and information about the Forum's research activities.
- Private International Law Cross-Border Transactions or Transnational Law Conflict of Laws Print and Electronic Resources, compiled by Lyonette Louis Jacques at Chicago University (<http://www.lib.uchicago.edu/~llou/forintl.html>)
- UNIDROIT: International Institute for the Unification of Private Law <http://www.unidroit.org/>
- UNCITRAL: United Nations Commission for International Law (www.uncitral.org)
- US Dept of State Private International Law Database http://www.state.gov/www/global/legal_affairs/private_intl_law