

ALFONSO-LUIS CALVO CARAVACA
JAVIER CARRASCOA GONZÁLEZ
(EDITORS)

European Private International Law



ALFONSO-LUIS CALVO CARAVACA
JAVIER CARRASCOSA GONZÁLEZ
(EDITORS)

EUROPEAN PRIVATE INTERNATIONAL LAW

Authors

ALFONSO-LUIS CALVO CARAVACA
Professor of private international law - University Carlos III of Madrid, Spain

JAVIER CARRASCOSA GONZÁLEZ
Professor of private international law - University of Murcia, Spain

SILVIA MARINO
Professor of international law and European Union Law - University of Insubria, Italy

MARÍA ASUNCIÓN CEBRIÁN SALVAT
Assistant professor of private international law - University of Murcia, Spain

ISABEL LORENTE MARTÍNEZ
Assistant professor of private international law - University of Murcia, Spain

GRANADA, 2022

© Los autores

Editorial Comares, S.L.
Polígono Juncaril
C/ Baza, parcela 208
18220 Albolote (Granada)
Tlf.: 958 465 382

<https://www.comares.com> • E-mail: libreriacomares@comares.com
<https://www.facebook.com/Comares> • <https://twitter.com/comareseditor>
<https://www.instagram.com/editorialcomares/>

ISBN: 978-84-1369-379-8 • Depósito legal: GR. 730/2022

Fotocomposición, impresión y encuadernación: Comares

SUMMARY

PREFACE	IX
ACKNOWLEDGEMENTS	XI
LIST OF ABBREVIATIONS	XIII
CHAPTER I. Private international law. The fundamental issues	1
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER II. The private international law of the European union. Sources, methods, matters . .	41
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER III. Natural person.	69
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González / Asunción Cebrián Salvat</i>	
CHAPTER IV. Formation of marriage and registered partnerships. Legitimacy, legitimation and adoption.	85
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER V. Matrimonial property regimes and property consequences of registered partner- ships	109
<i>Silvia Marino</i>	
CHAPTER VI. Divorce, legal separation and nullity of marriage	133
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER VII. Parental responsibility.	153
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER VIII. International child abduction	173
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González / Isabel Lorente Martínez</i>	
CHAPTER IX. Maintenance Obligation	185
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González / Isabel Lorente Martínez</i>	

CHAPTER X. International succession law	201
<i>Javier Carrascosa González</i>	
CHAPTER XI. International jurisdiction and international business. The Brussels i-bis Regulation	229
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XII. Legal persons and companies	261
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XIII. Contracts (I). The Rome I Regulation	277
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XIV. Contracts (II): contracts of carriage, insurance contracts, agency and donations	309
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XV. Contracts (III). Consumer contracts	323
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XVI. Contracts (IV). Individual employment contracts	339
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XVII. Torts. The Rome II regulation	349
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XVIII. Rights in rem, property and trusts.	377
<i>Javier Carrascosa González</i>	
CHAPTER XIX. Intellectual property rights.	389
<i>Javier Carrascosa González</i>	
CHAPTER XX. Insolvency proceedings.	401
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XXI. Free movement of judgments in civil matters in the European Union	415
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XXII. Arbitration in international business	435
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XXIII. The law governing the process. Taking of evidence and service of documents in the European Union.	453
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González / María Asunción Cebrián Salvat</i>	
CHAPTER XXIV. European Regulations on uniform, specific and harmonised civil procedure	471
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	
CHAPTER XXV. Mediation in private international law	487
<i>Alfonso-Luis Calvo Caravaca / Javier Carrascosa González</i>	

PREFACE

This work presents the updated content of current European private international law. It is, in fact, a book of law written by several authors from Spain and Italy: professors Alfonso-Luis Calvo Caravaca, Javier Carrascosa González, Silvia Marino, María Asunción Cebrián Salvat and Isabel Lorente Martínez.

This book is intended for anyone interested in studying and learning about the private international law system of the European Union. In this sense, it attempts to clearly explain the fundamental structures of this fascinating branch of law as well as to convey a series of interesting, intuitive, constructive and brilliant ideas that may set the course for the future.

This book understands EU private international law as a product of the culture of European society. European private international law is not a mere set of rules, a series of European regulations that come out of nowhere: it is a very important part of the (legal) culture of Europe; it is a cultural product that is part of European civilisation. In this sense, the authors believe in Europe and in the values that Europe has represented for more than two hundred years. We believe in Europe as an ideal of a free and diverse society made up of free and diverse people. This book is a tribute to freedom – to freedom of movement of persons, families, goods, capitals, companies and services, and also a homage to business freedom in a market economy. It is a tribute to private international law, which makes all these freedoms possible. Additional materials for the study of these subject matters, such as European case law and legislation, may be found at <http://www.accursio.com/documentos1.php>. The book includes beautiful artwork by illustrator *Alessandro Sánchez Pennaroli*, which helps to convey some of the key ideas contained in each chapter.

The authors would like to thank *Umberto Pennaroli* for the meticulous revision and translation into English of this work during the four years of its production. Special mention is also due to *Silvia Marino*, Professor of International Law and European Union Law at the Università dell'Insubria (Italy), who enthusiastically accepted to participate in this hazardous project. Many thanks also to Brian Mc Menamin for all his wise teachings on life and on the English language.

Where we are going we don't need roads, said Doc Brown in the movie "Back to the Future". Europe is moving towards a freer society. To achieve a freer world and a freer Europe we do not need roads: we need European private international law. This book is, in short, a hymn to freedom for Europe and to freedom for all people.

Madrid-Murcia, 19 March 2022, *feast of Saint Joseph*
Alfonso-Luis Calvo Caravaca
Javier Carrascosa González

ACKNOWLEDGEMENTS

This book has been possible thanks to the sponsorship of different institutions and has been released in the context of some research projects.

— Proyecto de investigación LOGOS (Fundación BBVA) «Los principios del Derecho romano en el Derecho europeo del siglo XXI» (Proyecto Roma-Europa: IP Javier Carrascosa). <https://proyectoromaeuropa.com/>).

— Grupo de Innovación Docente GID 22 «Ciencia jurídica aplicada y docencia creativa» de la Universidad de Murcia (coordinador: Javier Carrascosa).

— Grupo de investigación de la Universidad de Murcia E070-05 «Derecho internacional privado europeo» (IP Javier Carrascosa).

— Red Europa - España de Derecho internacional privado (coordinador ejecutivo: Javier Carrascosa) (<http://www.redespañaeuropa.es/>).

— Grupo Accursio: investigación, docencia y práctica del Derecho internacional privado (www.accursio.com) (www.accursio.com/www.facebook.com/accursioDIP), dirigido por Javier Carrascosa.

Some websites and blogs of private international law are an excellent source of information and reflection on this matter.

- | | |
|-------------------------------|---|
| — EAPIL Blog | https://eapil.org/blog/ |
| — Blog by Geert Van Calster | https://gavclaw.com/ |
| — Blog by Marina Castellaneta | http://www.marinacastellaneta.it/ |
| — Conflict of Laws.net | http://conflictoflaws.net/ |
| — Accursio | http://www.accursio.com/ |

LIST OF ABBREVIATIONS

European Regulations

Maintenance Regulation	Regulation 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation.
ESR	Regulation 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (European Succession Regulation).
Brussels I-bis	Regulation (EU) 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). (Brussels I-bis regulation).
Brussels II-ter	Regulation 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), known as the Brussels II-ter Regulation.
Rome I	Regulation 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I).
Rome II	Regulation 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).
Rome III	Regulation 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III).
EIR	Regulation 2015/848 of 20 May 2015 on insolvency proceedings (recast) (European Insolvency Regulation).

Other legal texts and courts

TFEU	Treaty on the functioning of the European Union
TUE	Treaty of the European Union
Protocol 2007	Protocol of 23 November 2007 on the law applicable to maintenance obligations.
<i>legge 218/95 Italia</i>	legge 31 maggio 1995, n. 218 di riforma del sistema italiano di diritto internazionale privato (Italy)

<i>Ley 29/2015 (Spain)</i>	Ley 29/2015, de 30 julio 2015, de cooperación jurídica internacional en materia civil (Spain)
<i>Spanish Civil Procedure Act 1/2000</i>	Ley de enjuiciamiento civil 1/2000
<i>Civil Code Spain</i>	Código civil 24 julio 1889 (Spain)
<i>Code PIL Belgium</i>	Loi portant le Code de droit international privé 16 juillet 2004 (Belgium)
<i>Civil code France</i>	Code civil / Code civil des Français 21 mars 1804
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Act to the Civil Code of Germany)
ECHR	European Convention on human rights
ECtHR	European Court of human rights
ECJ	Judgement of the European court of Justice / Court of Justice of the European Union

Fundación **BBVA**

**RED EUROPA-ESPAÑA
DE DERECHO
INTERNACIONAL
PRIVADO**



ACCURSIO DIP

*Grupo de investigación, docencia y práctica
del Derecho internacional privado*

**UNIVERSIDAD DE
MURCIA**



ISBN 978-84-1369-379-8

