

CONCISE INTRODUCTION TO POLISH PRIVATE INTERNATIONAL LAW

Private international law (in Polish: “*prawo prywatne międzynarodowe*”) is a legal discipline defined by Polish scholars either in a narrow or a wider sense.

I. **Narrowly defined** (definition by method)

The branch of law responsible for designating the law applicable to certain relationships, cases and situations with a private law dimension (e.g. marriages, contracts, torts/delicts, adoptions and successions) not confined to the competence of just one State (otherwise called ‘international’ or ‘cross-border’ private-law situations).

Its only function is designating the law, so it brings, theoretically, no substantive decisions with it, merely pointing at the competent law to remove any potential conflict, whether positive or negative (German: *Verweisungsrecht, Kollisionsrecht*; English: *the law of conflict of laws, conflicts law*); it contains only indirect rules of law (→ *conflicts rules*). In Poland, the latter are codified (see below).

II. **Widerly defined** (definition by function)

The branch of law responsible for regulating any ‘international’ or cross-border private law relationships, whatever the method applied. It contains both the rules of the PIL in the narrow sense (conflicts rules) and the provisions of civil and commercial law (substantive law rules) specifically governing cross-border situations, e.g. contracts for the international sale and transport of goods; international cheques, bills of exchange and promissory notes; and international successions. The latter are usually generated by international legislation such as, for instance, the UN Convention on Contracts for the International Sale of Goods, signed in Vienna on 30 April 1980 (abbreviated as: **CISG**); however, local law rules of this type can also exist (→ law of aliens).

→ **International law (law of nations)** – it is not inherently connected with PIL, the latter being functionally international, but genetically domestic, as it was initially an inherent part of civil law (see the medieval and early modern school of statutes, developed from the 13th to the mid-19th century).

→ **International civil procedure** – in many countries (e.g. France, Switzerland and the US) it is treated as an integral part of Private International Law in a wider sense (→ conflict of jurisdictions, recognition and enforcement of foreign judgments). In Poland it is still perceived as a separate branch, though the ways of both disciplines are increasingly converging (basically under the influence of EU law).

→ **Law of aliens** (*droit des étrangers, Fremdenrecht*) – provisions of domestic law concerning the status and capacity of foreign citizens and/or corporations in a country, for example their right to carry on business activities, invest in domestic companies, acquire immovable assets, etc. In France it is treated as an integral part of PIL, while in Poland the opposite applies.

→ **Nationality law** (*droit de la nationalité, Staatsangehörigkeitsrecht*) – domestic laws governing the acquisition and loss of the status of a citizen of the State. Every

State is free to issue its own laws in this respect, and to designate the ways in which a person becomes its national (it is the sphere of exclusive competence, *la domaine réservé* of each State). The nationality law has some significance for PIL, but it is not perceived as an integral part of it (again, with the exception of France).

CONFLICTS RULE (rule of the conflict of laws) – a rule of law belonging to the ambit of regulation of the Private International Law; as distinguished from **substantive law rules**. The latter are termed the “**proper law**” of the given relationship (Polish: *statut, prawo właściwe*; German: *Statut, anwendbares Recht*). For example, given that the law of the place where a tangible property object is situated applies to the ownership title, and the object at stake

A conflict rule consists of two basic parts: (a) object/operative facts and (b) legal effects of the rule.

I. Object/Operative facts (*substratum*)

In many continental countries, this part of the rule of law is called a ‘hypothesis’ (e.g. in Spanish: *el supuesto de hecho*). Here we can also call it the ‘scope of applicable law’ (German: *der Anknüpfungstatbestand*). In each provision of the law of the conflict of laws, the legislator has to specify for what kind of situations the applicable law is prescribed. It is done in an abstract and concise way, usually using words borrowed from the vocabulary of the substantive *lex fori*; for example, the law designated by Article 41(1) PIL applies to the ‘ownership and other absolute property rights’, and Article 49 PIL gives the answer to the question about the law applicable to the ‘form of marriage’, etc. There may be doubts whether these notions have a meaning that strictly corresponds to their understanding in the civil or commercial law of a given country, or whether they can be interpreted in a more flexible way for the purposes of conflict of laws regulations (for instance: is a foreign same-sex couple union a ‘marriage’, given that Poland does not recognize such an institution at all?). One may thus ask whether the understanding of such notions is exclusively the matter of the law of the *forum*. This problem is known as the → conflict of characterisations (*conflict des qualifications*, which was “discovered” and treated more thoroughly by Etienne Bartin, Franz Kahn and Ernst Rabel).

II. Effects of the rule (*connection*)

The relationship or situation specified in the former part of the conflicts rule has to find its substantive regulation somewhere; it has to be ‘localised’ in a legal sense. The conflicts rule obliges the judge to apply the law of a country designated by the → connecting factor (point of connection, German: *der Anknüpfungspunkt*, French: *le point de rattachement*, Spanish: *el punto de conexión*). In a typical bilateral conflicts rule (which designates either the law of the forum -here: Polish law- or the law of any other country), the connecting factor is formulated in an abstract way.

Example: Article 15 PIL [*The name of a natural person*]

(1) *The name and surname of a natural person will be subject to the law of his [or her] nationality [...].*

The object of law applicable: *name and surname of a natural person*
The connection: *law of the country of one’s nationality applies*

III. Table of frequently used connecting factors of Polish PIL

Name of the connecting factor	Name of the law applicable	Law applicable in Latin	<i>Substratum</i> example
Nationality	Law of nationality (of a natural person, a spouse, a child, etc.)	<i>Lex patriae</i>	Capacity of natural persons (e.g. Article 11(1) PIL)
Residence (permanent residence – not to be confused with habitual residence)	Law of the place of residence	<i>Lex domicilii</i>	Capacity and personal status of stateless persons and refugees – Article 3 PIL
Habitual residence	Law of the place of habitual residence	<i>Lex habitationis</i>	
Place (country) where the object is situated	Law of the place where the object is situated	<i>Lex rei sitae</i>	Absolute rights in tangible objects (<i>iura in rem</i>) – Article 41(1) PIL
Place (country) where the act was accomplished	Law of the country where the juridical act was accomplished	<i>Lex loci actus</i>	Form of juridical acts – Article 25(1), 2 nd sentence PIL
Registered office of a company	Law of the company's registered office	<i>Lex situs</i>	Corporations, other legal entities and organisational units – Article 17 PIL
Place where a company was incorporated	Law where the company was founded	<i>Lex incorporationis</i>	
Place of celebrating the marriage	Law of the place (country) where the marriage was concluded	<i>Lex loci celebrationis</i>	Form of marriage – Article 49(1) PIL
Place of arbitration	Law of the place of arbitration	<i>Lex loci arbitri</i>	Arbitration agreements – Article 39(2), 2 nd sentence PIL
Place of the damage	Law of the place where the damage occurred	<i>Lex loci damni</i>	Article 4(1) Rome II Regulation
Choice of law by the parties	Law chosen by the parties	<i>Lex voluntatis</i>	Article 3(1) Rome I Regulation, Article 14(1) Rome II Regulation
Place (country) where the court is seated	Law of the court's own seat (country)	<i>Lex fori</i>	Subsidiary connection for maintenance obligations –

			Article 4(2) of the 2007 Hague Protocol on Maintenance Obligations
<i>The connection is 'borrowed' from another conflicts law provision</i>	Law governing the act or the claim itself	<i>Lex causae</i>	Limitation of debts or actions – the prescription period – Article 26 PIL

IV. Sources of Polish Private International Law

The basic source of municipal rules of conflict of laws in Poland unquestionably is the [Act on Private International Law](#) of 4 February 2011 (Journal of Laws = *Dziennik Ustaw* No 80, item 432). It came into force on 16 May 2011, replacing the previous Act of 12 November 1965. The 2011 act is in fact a full Code of Private International Law, containing the General and Specific Part divided into 17 chapters (two other chapters include the introductory regulations). Some of its provisions, for example Articles 28 (1), 34, 56 (1), 59 (1), 63, 66 (1) of the act refer to other international and European Union law-of-conflict instruments.

It should be noted that the particular provisions of private international law are also contained in some other municipal law instruments, such as for instance:

1. Articles 355 to 359 of the Maritime Code of 18 September 2001 (consolidated text, see Journal of Laws of 2013, item 758, as amended);
2. Article 3a of the Act on Providing Services by Electronic Means of 18 July 2002 (consolidated text: Journal of Laws of 2013, item 1422);
3. Article 13 of the Act on Certain Financial Collaterals of 2 April 2004 (consolidated text: Journal of Laws of 2012, item 942, as amended);
4. Articles 77 to 84 of the Act on Letters of Exchange and Promissory Notes of 28 April 1936 (Journal of Laws No 37, item 282, as amended).

As a member (from 1984) of the [Hague Conference on Private International Law](#), Poland belongs to a number of its conventions, and especially to:

1. Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Annex to the Journal of Laws of 1969 No 34, issue 284);
2. Convention of 4 May 1971 on the Law Applicable to Traffic Accidents (Journal of Laws of 2003 No 63, issue 585);
3. 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 (Journal of Laws of 2010 No 172, issue 1158; OJ EU of 2008 L 151, p. 39).

Poland is also a party to other international treaties important for cross-border private law relationships, including the 1980 UN Convention on Contracts for the International Sale of Goods.

A particular category of private international law instruments currently in force are **bilateral treaties** concluded between Poland and several other countries. They carry various titles, but the most common is *“The Agreement on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters.”* Such legal instruments are in force between Poland and, for example, Austria, Belarus, certain former Yugoslavian countries, Bulgaria, the Czech Republic, Slovakia (both successors of Czechoslovakia), Estonia, France, Latvia, Lithuania, Mongolia, Romania, Russia, Ukraine and Vietnam. They contain both procedural and conflicts law provisions concerning exclusively mutual commerce in legal matters between contracting states.

As a Member State of the EU, Poland applies most of the EU’s private international law regulations; first and foremost, these are Rome I and II Regulations concerning the international law of contractual and non-contractual obligations respectively. The same will soon refer to the [‘Rome IV’ Regulation No 650/2012 of the European Parliament and of the Council 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](#), which begins to apply on and after the 17th of August, 2015. Due to the internal policy considerations, the Republic of Poland so far has not decided to join the enhanced co-operation in divorce and separation cases (see [‘Rome III’ Regulation No 1259/2010](#)).