PRIVATE INTERNATIONAL LAW IN COSTA RICA

JUAN JOSÉ OBANDO PERALTA



Private International Law in Costa Rica

Juan José Obando Peralta

This book was originally published as a monograph in the International Encyclopaedia of Laws/Private International Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Bea Verschraegen





Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands

Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom

Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4862-9

This title is available on www.kluwerlawonline.com

© 2013, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CRO 4YY.

Private International Law in Costa Rica

The Author



Juan José Obando Peralta was born in San José, Costa Rica in 1978. He earned his JD degree in Law at Universidad De La Salle, Costa Rica in 2000. He holds two Masters degrees from Universidad Interamericana de Costa Rica as well as Universidad de Murcia, Spain, both in the field of Private International Law. He has also made post-graduate courses at The Hague Academy of International Law as well as Universidad de Salamanca, Spain, also on the field of Private International Law. Mr Obando is a professor of Private International Law as well as Internet Law in three universities (Universidad de Costa Rica, Universidad

Latina and Universidad De La Salle) in Costa Rica both at the graduate and post-graduate level. Prof. Obando is also a registered arbitrator at the Centre for Conciliation and Arbitration of the Costa Rican Chamber of Commerce. He has been a visiting fellow at the Max Planck Institute of Comparative and International Private Law in Hamburg, Germany and also a visiting professor at the same institution. Prof. Obando is the author of several articles and is currently a Board member of the American Association of Private International Law (ASADIP). He is also the Research Director on *Sistema de Integración Centroamericana* (Central American Integration System) (hereafter SICA) studies for ASADIP. Prof. Obando is a founding member and Secretary General for the Central American and Caribbean Academy of Private International Law (ACECADIP).

The Author	3
List of Abbreviations	11
Part I. General Introduction	13
§1. HISTORICAL DEVELOPMENT	13
§2. GENERAL PRINCIPLES AND SPECIAL CHARACTERISTICS OF DOMESTIC PIL	16
§3. NATURE AND SCOPE	18
Part II. General Principles (Choice-of-Law Technique)	21
Chapter 1. Sources of PIL	21
§1. Human Rights and Constitutional Dispositions	21
§2. International Conventions	22
§3. Domestic Law	27
§4. CASE LAW	34
§5. International Customary Law	34
§6. Public International Law	35
§7. CENTRAL AMERICAN LAW	30
88 DOCTRINE (LEGAL WRITING)	3

Chapter 2. Connection	38
I. CHOICE-OF-LAW RULES (CONFLICT OF LAWS RULES) I. Multilateral/Unilateral Conflict Rules II. Elements of a Conflict Rule III. Legal Consequences	38 38 39 40
§2. CONNECTING FACTORS I. Nationality II. Domicile III. Residence IV. Habitual Residence V. Simple Residence VI. Lex Loci Actus, Lex Loci Contractus and Lex Loci Celebrationis VII. Lex Rei Sitae VIII. Choice of Law by the Parties	40 40 41 43 43 44 44 45
§3. Changes in Connecting Factors	46
§4. COMBINATION OF CONNECTING FACTORS	47
Chapter 3. Basic Terms	49
§1. CHARACTERIZATION (CLASSIFICATION)	49
§2. Preliminary or Incidental Question	49
§3. Renvoi	50
§4. Ordre Public (Public Policy)	51
§5. Evasion of the Law	54
Part III. Choice-of-Law Rules	55
Chapter 1. Persons	55
§1. NATURAL PERSONS I. Capacity II. Name III. Nationality IV. Change of Gender (Transsexuality)	55 55 57 58 60
82 IUDIDICAL PEDSONS	61

Chapter 2. Obligations	64
§1. Law of Contract	64
I. Party Autonomy	64
II. Objective Attachment	67
III. Formalities of Contracts	68
IV. Validity and Formation of Contracts	69
V. Performance of Contracts	70
VI. Breach of Contracts	70
§2. Particular Contracts	70
I. Contracts for Sale of Goods	70
II. International Distributorship, Representation and Manufacturing	
Agreements	71
III. Employment Contracts	73
IV. Insurance Contracts	75
V. Consumer Contracts	76
VI. E-Commerce Contracts	77
VII. Contract of Carriage	78
VIII. Trust Agreements	82
IX. Leasing/Factoring/Franchising/Joint Venture	83
X. Negotiable Instruments	86
XI. Letters of Credit	87
§3. Non-contractual Obligations	88
I. Lex Loci Delicti Commissi and Lex Loci Damni	88
II. Unjust Enrichment	89
Chapter 3. Property Law	90
§1. General Rules	90
I. Lex rei sitae	90
II. Movables and Immovables	90
III. Transfer of Property	92
§2. SPECIAL RULES	92
I. Immovable Property in Different Countries	92
II. Mortgages and Mortgage Bonds	93
III. Goods in Transit (Res in Transitu)	94
Chapter 4. Intellectual Property Rights	95
81 Authore' Digite	0

§2. Patent Law and Trademarks	97
§3. RIGHTS OF PERSONALITY	98
Chapter 5. Company Law	100
§1. Introduction	100
§2. APPLICABLE LAW I. Place of Incorporation II. Activities of Foreign Companies III. Bankruptcy of a Company or a Trader	100 100 101 101
Chapter 6. Insolvency	104
§1. GENERAL REGIME	104
Chapter 7. Family Law	105
§1. Introduction	105
§2. Heterosexual Marriage	106
§3. Unmarried Couples	107
§4. Same-Sex Marriage	107
§5. SAME-SEX UNIONS	108
§6. DISSOLUTION I. Annulment II. Divorce and Legal Separation III. Legal Effects of Marriage and Divorce A. Personal Effects B. Patrimonial Effects IV. Spousal Support	109 109 110 111 111 112 113
§7. PARENTS AND CHILDREN I. Filiation II. Parental Authority III. Child Custody IV. International Child Abduction V. Child Support VI. International Adoption VII. International Surrogacy A. Nature and Scope	114 114 115 116 117 120 121 123

Sper C. Gest D. Gest	ational Surrogacy ational Surrogacy & Eg	g Donation; Gestational	124 125
	ogacy & Donor Sperm a Donor Embryo	and Gestational Surroga	126
Chapter 8. Law	of Succession		127
§1. LEX SUCCESSI	IONIS		127
Part IV. Annex:	International Civil	Procedure	131
Chapter 1. Sour	rces of International	Civil Procedure (IC	CP) 131
§1. Introduction	N		131
§2. Relevant C	HARACTERISTICS		132
Chapter 2. Inter	rnational Jurisdiction	n	134
I. CategoriII. Internati	IAL COMPETENCE RULE es of International Com onal Lis Pendens y from Jurisdiction		134 134 137 138
§2. Treaties			139
	ognition and Enforceign Judgments	ement of	14
§1. EXEQUATUR I. Domesti II. Treaties	c Law		14: 14: 14:
§2. INTERNATION I. Domesti II. Treaties	NAL JUDICIAL COOPERA c Law	TION	14: 14: 14:
Chapter 4. Inte	rnational Arbitration	1	14

Annex 1: Joint declaration of Costa Rica and Colombia	
to the Bustamante Code.	149
Table of Cases	151
Selected Bibliography	165
Index	173

10

Private International Law in Costa Rica

Juan José Obando Peralta

This book was originally published as a monograph in the International Encyclopaedia of Laws/Private International Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Bea Verschraegen



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4862-9

This title is available on www.kluwerlawonline.com

© 2013, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Juan José Obando Peralta was born in San José, Costa Rica in 1978. He earned his JD degree in Law at Universidad De La Salle, Costa Rica in 2000. He holds two Masters degrees from Universidad Interamericana de Costa Rica as well as Universidad de Murcia, Spain, both in the field of Private International Law. He has also made post-graduate courses at The Hague Academy of International Law as well as Universidad de Salamanca, Spain, also on the field of Private International Law. Mr Obando is a professor of Private International Law as well as Internet Law in three universities (Universidad de Costa Rica, Universidad

Latina and Universidad De La Salle) in Costa Rica both at the graduate and post-graduate level. Prof. Obando is also a registered arbitrator at the Centre for Conciliation and Arbitration of the Costa Rican Chamber of Commerce. He has been a visiting fellow at the Max Planck Institute of Comparative and International Private Law in Hamburg, Germany and also a visiting professor at the same institution. Prof. Obando is the author of several articles and is currently a Board member of the American Association of Private International Law (ASADIP). He is also the Research Director on *Sistema de Integración Centroamericana* (Central American Integration System) (hereafter SICA) studies for ASADIP. Prof. Obando is a founding member and Secretary General for the Central American and Caribbean Academy of Private International Law (ACECADIP).

The Author

The Author	3
List of Abbreviations	1
Part I. General Introduction	13
§1. HISTORICAL DEVELOPMENT	13
§2. GENERAL PRINCIPLES AND SPECIAL CHARACTERISTICS OF DOMESTIC PIL	16
§3. Nature and Scope	18
Part II. General Principles (Choice-of-Law Technique)	2
Chapter 1. Sources of PIL	2
§1. HUMAN RIGHTS AND CONSTITUTIONAL DISPOSITIONS	2
§2. International Conventions	2:
§3. Domestic Law	2
§4. Case Law	3
§5. International Customary Law	3
§6. Public International Law	3
§7. CENTRAL AMERICAN LAW	3
88 DOCTRINE (LEGAL WRITING)	3

Chapter 2. Connection	38
§1. CHOICE-OF-LAW RULES (CONFLICT OF LAWS RULES) I. Multilateral/Unilateral Conflict Rules	38 38
II. Elements of a Conflict Rule III. Legal Consequences	39 40
§2. Connecting Factors	40
I. Nationality	40
II. Domicile	41
III. Residence	43
IV. Habitual Residence V. Simple Residence	44
VI. Lex Loci Actus, Lex Loci Contractus and Lex Loci Celebrationis	44
VII. Lex Rei Sitae	45
VIII. Choice of Law by the Parties	46
§3. Changes in Connecting Factors	46
§4. Combination of Connecting Factors	47
Chapter 3. Basic Terms	49
§1. CHARACTERIZATION (CLASSIFICATION)	49
§2. PRELIMINARY OR INCIDENTAL QUESTION	49
§3. Renvoi	50
§4. Ordre Public (Public Policy)	51
§5. Evasion of the Law	54
Part III. Choice-of-Law Rules	55
Chapter 1. Persons	55
§1. Natural Persons	55
I. Capacity	55
II. Name	57
III. Nationality	58
IV. Change of Gender (Transsexuality)	60
82 JUDIDICAL PERSONS	61