

Which law will apply? - Spain

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1 Sources of the rules in force

1.1 National rules

Most of the rules on conflicts of law are contained in the Preliminary Title of the Civil Code (Articles 9-12). There are also applicable legal provisions in some special laws, such as, for example, the Law on International Adoption.

1.2 Multilateral international conventions

With regard to applicable law, the following EU Regulations are currently in force in Spain:

-Regulation 1346/2000 on insolvency procedures

-Regulation 593/2008 on the law applicable to contractual obligations (Rome I)

-Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II)

-Regulation 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III)

- Regulation 650/2012 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.

Spain is also a Contracting State to several conventions on conflict of law. The main multilateral conventions in this regard are:

-Convention on the law applicable to surnames and forenames, Munich, 5 September 1980.

-Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, The Hague, 19 October 1996.

-Protocol on the law applicable to maintenance obligations, The Hague, 23 November 2007.

-Convention on the conflicts of laws relating to the form of testamentary dispositions, The Hague, 5 October 1961.

-Convention on the law applicable to traffic accidents, The Hague, 4 May 1971.

-Protocol on the law applicable to products liability, The Hague, 2 October 1973.

1.3 Principal bilateral conventions

With regard to applicable law, the Convention between the Kingdom of Spain and the Eastern Republic of Uruguay on conflicts of law in matters relating to child maintenance and the recognition and enforcement of court judgments and settlements relating to maintenance, Montevideo, 4 November 1987, is currently in force.

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Article 12.6 of the Civil Code establishes that 'courts and authorities shall apply ex officio the conflict-of-law rules in Spanish Law'.

2.2 Renvoi

Article 12.2 of the Civil Code states that reference to foreign law is deemed to be to its substantive law, irrespective of the renvoi that its conflict rules make to another law that is not Spanish law. This implies that only first-degree renvoi is accepted.

Second-degree renvoi is not allowed except in the case of bills of exchange, cheques and promissory notes, with regard to the capacity to enter into such obligations.

When an EU Regulation or International Convention is applicable, the special rules of these instruments relating to renvoi will apply.

2.3 Change of connecting factor

In Spanish law, there is no general rule for cases of mobility conflict, that is, changes in the circumstances used by the conflict rule as the connecting factor. Article 9.1 of the Civil Code, in relation to the age of majority, states that a change in the connecting factor does not affect an age of majority already acquired. The criterion employed is to consider the law that was applicable at the time when the legal situation arises even if the connecting factor subsequently changes.

When an EU Regulation or International Convention is applicable, the special rules of these instruments relating to mobility conflict will apply.

2.4 Exceptions to the normal application of conflict rules

Article 12.3 of the Civil Code states that in no case will the foreign law apply if it is contrary to public policy. Hence, application of the foreign law is ruled out if it leads to a result that is in clear breach of the basic principles of Spanish law. Constitutionally recognised principles are considered to be essential.

2.5 Proof of foreign law

The content and validity of the foreign law must be proved by the parties, and the court can check this by any means that it considers necessary for its application. The system is a mixed one combining the principle of submission of pleadings and examination only upon application by the party with the possibility of the court cooperating in carrying out checks. In exceptional cases where the content of the foreign law cannot be proved, Spanish law will apply.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The question of determining the law applicable to contractual obligations is regulated, in general terms, by Regulation 593/2008 of the European Parliament and of the Council (Rome I Regulation). Cases where the Rome I Regulation are not applicable are resolved in accordance with the provisions of article 10.5 of the Civil Code, which is based on recognition of freedom of choice provided that the applicable law is expressly chosen and that this law has some connection with the matter in question. Failing this, the national law common to the parties is applied; failing this, the law of their common habitual residence, and, in the last instance, the law of the place where the contract was concluded.

3.2 Non-contractual obligations

This matter is governed by Regulation (EC) 864/2007 of the European Parliament and of the Council of 11 July 2007 (Rome II). In matters relating to traffic accidents and manufacturer liability, the conflict rules contained in the Hague Conventions of 1971 and 1973, respectively, are applied.

Matters not included in any of the above provisions come under Article 10.9 of the Civil Code, according to which cases of non-contractual liability are governed by the law of the place where the event that gave rise to them occurred. Unauthorised negotiorum gestio is governed by the law of the place where the agent performs the principal activity and unjust enrichment is governed by the law under which the transfer of value to the enriched party occurred.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

Article 9 of the Civil Code states that the applicable law in these matters is determined by the nationality of the natural persons. There are provisions concerning cases of dual nationality and indeterminate nationality. Dual nationality is determined on the basis of whether it is dual nationality according to Spanish law or dual nationality not provided for by Spanish law. Dual Nationality Treaties exist with Chile, Peru, Paraguay, Nicaragua, Guatemala, Bolivia, Ecuador, Costa Rica, Honduras, the Dominican Republic, Argentina and Colombia. In these cases the provisions of the international treaties apply; if they make no provision, preference is given to the nationality corresponding to the last habitual residence and, failing this, the last nationality acquired. If the dual nationality is not provided for in Spanish law and one of the nationalities is Spanish, this takes precedence, although the principle of non-discrimination on the grounds of nationality must be applied if both nationalities are of EU countries. For persons of indeterminate nationality, the law of the place of habitual residence is applied as the personal law. In the case of stateless persons, Article 12 of the New York Convention of 28 September 1954 applies, under which the applicable law is the law of the stateless person's country of domicile or, failing that, the law of his or her country of residence.

The law applicable to the name of physical persons is governed by the Munich Agreement of 1980. The forenames and surnames of a physical person are determined by the law of the State of which the person in question is a citizen.

3.4 Establishment of parent-child relationship, including adoption

Article 9.4 of the Civil Code stipulates that the law applicable to the determination of biological parent-child relationships is that of the habitual residence of the child at the time the relationship is established. In the absence of a habitual residence of the child, or if this law does not permit establishment of the parent-child relationship, the applicable law will be the national law of the child at the time. If this law does not permit establishment of the parent-child relationship or the child lacks a nationality, Spanish substantive law will apply.

The law applicable to adoption is governed by a special regulation, Law 54/2007 on international adoption. Article 18 of this Law states that the conclusion of an adoption by the competent Spanish authority will be governed by Spanish substantive law when the adoptee has his or her permanent residence in Spain at the time of the adoption or has been or will be taken to Spain for the purpose of taking up residence in Spain.

The law applicable to the content of the parent-child relationship, either biological or by adoption, and the exercise of parental responsibility will be determined in accordance with the Hague Convention of 19 October 1996. Article 17 of the Convention stipulates that the exercise of parental responsibility is governed by the Law of the State of the child's habitual residence.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

Rules exist for the celebration of and consequences of marriage. With regard to the form of the celebration, the Civil Code states that in or outside Spain, you can be married: 1) by the judge, mayor or official indicated by the Code; 2) in the religious form legally provided for. It also states that Spaniards can get married outside Spain in the form laid down by the law of the place where the marriage is celebrated. If both parties are foreigners they can get married in Spain in accordance with the same provisions as for Spaniards or the provisions of the personal law of either party. The capacity for marriage and consent are subject to the national law of each of the spouses (Article 9.1 of the Civil Code.).

Under Article 9.2 of the Civil Code, the consequences of the marriage are governed by the common national law of the spouses at the time the marriage was celebrated. In the absence of a common national law, they are governed by the personal law or habitual residence of either party, chosen by them both in an authentic act executed before the marriage is celebrated. If this choice has not been made, the law of the common habitual residence immediately after the marriage took place applies and, failing this, the law of the place where the marriage took place.

Legal separation and divorce are governed by Regulation 1259/2010, which establishes enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III). Article 107.1 of the Civil Code stipulates that marriage annulment is governed by the law applicable to the celebration of the marriage.

There is no provision in Spanish private international law for unmarried couples (which means, in principle, resorting to analogy).

Maintenance obligations are governed by the Hague Protocol of 2007 on the law applicable to maintenance obligations.

3.6 Matrimonial property regimes

The rule governing the consequences of marriage (Article 9.2 of the Civil Code) includes both personal consequences and those affecting property. The common personal law of the spouses at the time the marriage is celebrated therefore applies; failing that, the personal law or the law of the habitual residence of either party, chosen by both of them in an authentic act executed before the marriage took place; if this choice has not been made, the applicable law is the law of the common habitual residence immediately after the marriage took place and, failing this, the law of the place where the marriage took place.

Contracts or agreements that stipulate, amend or replace the matrimonial property regime are valid if they comply either with the law that governs the consequences of marriage or with the law of the nationality or the law of the habitual residence of either of the parties at the time of execution (Article 9.3 of the Civil Code).

3.7 Wills and successions

Spain applies the provisions of Regulation 650/2012 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. Under this Regulation, the law of the habitual residence of the deceased at the time of death is applicable unless the deceased had chosen the law corresponding to his or her nationality as the applicable law.

The form of wills is governed by the Hague Convention of 1961.

3.8 Real property

Under Article 101.1 of the Civil Code, ownership, property and other rights over real estate, and its publicity, are governed by the law of the place where they are located, which also applies to movable property. For the purposes of establishing or assigning rights over goods in transit, these goods are deemed to be situated in the place from which they were dispatched, unless the consignor and the consignee have expressly or tacitly agreed that they are deemed to be situated in the place of destination. Ships, aircraft and means of railway transport, and all rights established over them, are subject to the law of the flag State or country of registration. Motor vehicles and other means of road transport are subject to the law of the place where they are. The issuing of securities is governed by the law of the place where they are issued.

3.9 Insolvency

Cases not coming under [Council Regulation 1346/2000 of 29 May 2000 on insolvency proceedings](#) are governed by [Bankruptcy Law 22/2003 of 9 July 2003](#). Article 200 of that Law states that as a general rule, insolvency proceedings in Spain and the effects thereof, and the procedures for carrying and concluding these proceedings, are governed by Spanish law. The Bankruptcy Law also contains private international law provisions establishing the law applicable to the various legal relationships involved in the proceeding.

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