

**Federal State Autonomous Educational Institution
for Higher Learning**

**THE NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS**

Faculty of Law

Approved at the Academic Council of Master Program
session «Private International Law» (Protocol № 17, 29
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**INTERNATIONAL FAMILY LAW
Course Syllabus**

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ETC	2
Contact hours	24
Self-study hours	52
Year of study	2
Format of course learning	Without use of online-course

1. Course Description

a. Title of a Course

International Family Law

b. Pre-requisites

The Course draws on students' knowledge acquired during their preceding years of university bachelor degree training in law or other social sciences, as well as skills developed through their prior university studies as necessitated by academic curricula including, specifically, academic skills of critical thinking,

critical reading, critical writing and reviewing, proficiency in general English and legal English. The syllabus follows the comprehensive curricula designed for preparing university masters students at the NRU HSE Faculty of Law in consistency with the Educational Curricular 40.04.01. “Jurisprudence” for masters’ degree in law, LL.M; NRU HSE Faculty of Law Curriculum 40.04.01. “Jurisprudence” for masters’ degree in Private International Law endorsed in 2018.

The aim of the course is to provide students with a theoretical and practical understanding of the international regulatory framework in the area of family law and the main trends in regulating family relations in national jurisdictions, covering the issues of conclusion of marriage, divorce, extra-marital cohabitation, the main spousal property regimes and division of matrimonial assets, child’s rights within the family, parental responsibilities and parental cross-border disputes over children, as well as issues of inter-country adoption. A special emphasis is placed on the standards developed in the jurisprudence of the European Court of Human Rights, the UN Convention of the Rights of the Child and the Hague Children’s Conventions.

c. Course Type (compulsory, elective, optional)

Elective

d. Abstract

International Family Law course aims to familiarize the students with the main trends in development of contemporary family law in foreign countries, specifics of family regulation in some national jurisdictions, and the main rules on solving cross-border family disputes stipulated in international instruments. The course will also analyze the main international documents related to family issues, jurisprudence of the European Court of Human Rights, some of the national legislative acts and foreign court judgments. Thus, the course will include elements of comparative law and private international law. Besides, it will also contain elements of international law – to the extent they concern family issues and child’s rights in family context. It is, therefore, desirable, that the students have already studied the courses «Russian Family Law» and «Private International Law».

The target audience is both students of the Faculty of Law of the HSE and foreign students. The course is taught in English.

2. Learning Objectives

The Course main objectives comprise:

- study of the main international agreements that form the standards of family law and child law, to the extent it relates to family issues (the UN

Convention of the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Hague Convention on Civil Aspects of International Child Abduction, the Hague Convention on 'Child Protection', EU regulations, and other international instruments related to family law);

- study of family law regulation in some national jurisdictions to identify the most important trends in development of family law;
- enhancing the students' skills of application and interpretation of the international instruments in the family law area;
- enhancing students' skills in solving practical problems in the field of cross-border family law disputes;
- extending skills required for conducting legal research and analyses in the area of International Family Law.

3. Learning Outcomes

Students must gain knowledge on:

- general standards of International Family Law under the main multinational and regional instruments;
- protection of family law rights in global prospective;
- solving practical problems in the field of cross-border family law disputes.

Skills and abilities:

- to use specific terms and sources of the International Family Law;
- practical abilities of research, analysis of the international instruments (such as UNCRC, ECHR, the HCCH conventions and EU regulations) and scientific works;
- skills to analyze and solve cases, building up of the legal position and
- developing strategy on the cross-border family law issues.

Students should gain the following competences:

- ability to work with information (search, evaluate, use information, necessary for fulfillment of academic and professional tasks, from various sources, including application of the systematic approach);
- ability to carry out professional activities in the international environment;
- ability to search, analyze, and work with legally relevant information by using the juridical, comparative and other specific methods, ability to

describe legal problems and situations in the field of International Family Law.

4. Course Plan

SUBJECT 1.

The 'Internationalization' of family law.

Marriage and extra-marital cohabitation in comparative and cross-border contexts

1. The subject-matter of the course and the main sources of International Family Law. The 'Internationalization' of family law.
2. What is the 'family': national approaches and international instruments.
3. Conclusion of marriage: national and international regulatory frameworks.
4. Extra-marital cohabitation, registered partnership and other 'new' family forms. The project of the Hague Conference on Private International Law on "Cohabitation outside Marriage".
5. Right to marry and right to divorce – jurisprudence of the ECHR.

SUBJECT 2.

Divorce in comparative and cross-border contexts. Property relations between spouses: a comparative overview of national regulation

1. Evolution of divorce law: from the 'fault-based' divorce to divorce 'by consent'. Legal separation.
2. Jurisdiction for divorce.
3. The main property regimes/systems: full community, community of acquisitions, deferred community, separation of property.
4. Marriage contract; pre-/postnuptial agreements. Duty to inform and full disclosure.

SUBJECT 3.

Divorce and division of property in a cross-border context

1. Divorce/separation and division of matrimonial assets.
2. Divorce and maintenance between the former spouses.
3. Division of property and trusts.
4. Property settlement agreements.

SUBJECT 4.

Child and the Family

1. Parentage issues in the cross-border context.

2. Who is the ‘parent’? International surrogacy arrangements (ISA): the key legal problems. The “Parentage/Surrogacy” project of the Hague Conference on Private International Law.
3. Parental responsibility and parental custody: national and international regulation.
4. The status of a child in the family. The main principles and provisions of the UN Convention on the Rights of the Child related to family issues.
5. The best interests of the child – the key concept of the UN Convention on the Rights of the Child.

SUBJECT 5.

Disputes over children: cross-border aspects

1. The ‘Hague Children’s Conventions’: the key concepts and main regulatory approaches.
2. Parental agreements: attempts of the Hague Conference on Private International Law to find a solution.
3. Cross-border relocation disputes.

SUBJECT 6.

Child removal from the family. Inter-country adoption

1. Child removal from the family: the key principles of the jurisprudence of the UN Committee on the Rights of the Child and the European Court on Human Rights.
2. Inter-country adoption: recent development.

5. Reading List

a. Required

1. Будылин С.Л. Титулы и ценности. Раздел семейного имущества и трасты [электронный ресурс] // Закон. 2017. № 2. С. 42-56. – Режим доступа:
<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&ts=14124178520864439118704359&cacheid=AC3E9229EBBF662320620625C6C3330C&mode=splus&base=CJI&n=105472&rnd=0.14289871872241044#08296149182825405>
2. Хазова О. Принцип 6 Декларации ООН прав ребенка 1959 года в контексте Конвенции о гражданско-правовых аспектах международного похищения детей 1980 года [электронный ресурс] // Труды Института государства и права Российской академии наук. 2017. Т. 12. № 6. С. 202-220. – Режим доступа:
<https://cyberleninka.ru/article/n/printsip-6-deklaratsii-oon-prav-rebenka->

[1959-goda-v-kontekste-konventsii-o-grazhdansko-pravovyh-aspektah-mezhdunarodnogo-pohischeniya](#)

3. Estin A.L. International Family Law Deskbook [электронный ресурс]. American Bar Association, 2017. – 352 p. - Режим доступа: https://proxylibrary.hse.ru:2424/view/Research_Reviews/9781784719852/9781784719852.xml?rskey=w5L21Q&result=91
4. Khazova O. International Children’s Rights Law: Child and the Family [электронный ресурс] // Kilkelly U., Liefaard T. (eds.) International Human Rights of Children. Springer, 2019. P. 161-186. - Режим доступа: https://link.springer.com/referenceworkentry/10.1007/978-981-10-4184-6_6#citeas
5. Scherpe J.M. (ed.) European Family Law [электронный ресурс]. Edward Elgar Pub. Vols. I-IV, 2016. – 1408 p. - Режим доступа: V.I: <https://proxylibrary.hse.ru:2424/view/9781785363009.xml?rskey=кynuaj&result=150;> V.II: https://proxylibrary.hse.ru:2424/search?access=user&level=parent&page=16&pageSize=10&q1=international+family+law&q2=family+law&q3=family+law&q4=family&sort=datedescending&t=LawACA_Main_ID; V.III: <https://proxylibrary.hse.ru:2424/view/9781785363047.xml?rskey=SCcFlK&result=152ж> V.IV: [https://proxylibrary.hse.ru:2424/view/9781785363061.xml?rskey=SCcFlK&result=153.](https://proxylibrary.hse.ru:2424/view/9781785363061.xml?rskey=SCcFlK&result=153)

b. Optional

1. Гонгало Б. Семейное право: учебник [электронный ресурс]. М., 2016. – 270 с. – Режим доступа: <http://opac.hse.ru/absopac/index.php?url=/books/reserve/IdNotice:300308/Source:default>
2. Handbook on European law relating to the rights of the child [электронный ресурс]. Luxemburg: Publ. Office of the EU, 2015. – Режим доступа: <http://fra.europa.eu/en/publication/2015/handbook-european-law-child-rights>
3. Joamets K. Eastern Partnership and Family Law. In: Kerikmäe T., Chochia A. (eds) Political and Legal Perspectives of the EU Eastern Partnership Policy [электронный ресурс]. Springer, 2016. P. 101-117. - Режим доступа: https://link.springer.com/chapter/10.1007/978-3-319-27383-9_7
4. Khazova O. Interpreting and applying the best interests of the child: the main challenges [электронный ресурс] // 'The best interests of the child – A dialogue between theory and practice'. Council of Europe, 2016. P. 27-30. – Режим доступа: <https://rm.coe.int/1680657e56#search=olga%20khazova>
5. McEleavy P. The European Court of Human Rights and the Hague Child Abduction Convention: prioritizing return or reflection? [электронный

ресурс] // Netherlands International Law Review. 2015. Vol. 62. P. 365-405. – Режим доступа: <https://link.springer.com/article/10.1007/s40802-015-0040-z> .

6. Grading System

Grading rates for written exam:

- Excellent 8 – 10 points
- Good 6 – 7 points
- Satisfactory 4 – 5 points
- Fail 1 – 3 points
- No attendance 0 points

7. Guidelines for Knowledge Assessment

- Seminar attendance / participation – 10%
- Self-study (in-between forms) – 20%
- Examination (test) – 70%

An overall assessment formula comprises a sum total of the following variables:

- *Final grade = seminar attendance/participation)* 0.1 + (in-between forms)* 0,2 + (exam)* 0.7*

8. Methods of Instruction

Classes are split into lectures and seminars. Lectures are conducted in the interactive mode with the focus on the feedback from masters' students. Students are expected to get prepared for the upcoming lectures, which enables them to better comprehend the subject matter delivered by the lecturer. Seminars are aimed at combining interactive methods and spontaneous individual or group debates on specified problem areas. Such interactive tutoring is based on both the prepared and spontaneous modes. Home assignments are intended for reviewing and analyzing international treaties, judgments, textbooks, as well as at preparing to the multitasking format of exercising during in-class teamwork.

9. Special Equipment and Software Support (if required)

Access to internet and computer-based drafting equipment.