International Civil Procedure
(Course)
(Syllabus)

Approved by the Academic Council
of the Basic Higher Education Program.
28.07.2019, prot. № [4].

- Course Description
  
a. Title of a Course.
  
International Civil Procedure
  
b. Pre-requisites.
  
Preparatory courses are: 1) Private International Law; 2) Civil Procedure Law (including Arbitrazh [Commercial] Procedure Law); 3) Public International Law; 4) Family Law.
  
c. Course Type (mandatory, elective, optional).
  
Mandatory.
  
d. Abstract.
  
The International Civil Procedure Law Course provides an overview of the legal principles governing interaction between the jurisdictions in the field of adjudication of civil and commercial disputes. On the basis of the said principles the course addresses the basic notions of International Civil Procedure including: 1) international jurisdiction; 2) international assistance in civil and commercial matters; 3) recognition and enforcement of foreign judgments; 4) cross-border insolvency; 5) other related matters.

- Learning Objectives
  
The aim of the course is to provide students with a theoretical and practical understanding of international and domestic regulatory framework in the field of adjudication of disputes involving foreign element. In particular, the course shall cover the following subjects: international jurisdiction in civil and commercial matters, including general, exclusive and contract jurisdiction; legal assistance in cross-border civil litigation; recognition and enforcement of foreign judgments; cross-border insolvency. Special consideration shall be paid to international standards of cross-border civil adjudication set out in various international instruments, including the Hague conventions and the EU Regulations. The International Civil Procedure Law Course aims to provide the students with understanding of the following issues: 1) general trends concerning development of principles of cooperation between states in the field of international adjudication; 2) foreign and domestic legislation governing the issue of adjudication of international disputes; 3) most important foreign and domestic case law regarding the said matters. Therefore, course will include elements of comparative law and national civil procedure law.

- Learning Outcomes
  
The students should obtain the following knowledge and understanding:
  
- the definition of International Civil Procedure and its interplay with other fields of law (private international law; public international law; international criminal law);
• the basic principles of International Civil Procedure including: 1) principle of sovereignty; 2) principle of reciprocity; 3) principle of *lex fori* (application of its own procedural rules by the court); 4) principle of protection of human rights;
• the main sources of International Civil Procedure including the impact of the European Convention of Human Rights 1950 and the case law of the European Court of Human rights
• the concept of international jurisdiction and the main rules for establishing jurisdiction existing in Anglo-American and European countries;
• the concept of international assistance in civil and commercial matters (letters of rogatory) including the nature and definition of service of process, peculiarities of obtaining evidence abroad and other court actions taken in support of foreign proceedings;
• the concept of recognition and/or enforcement of foreign judgements, distinction among the said notions; peculiarities of recognition of foreign judgments regarding personal status and family matters;
• the concept of cross-border insolvency and its interplay with recognition and enforcement of foreign judgments.
• notarial activity and certification (apostillation) of public documents in the field of International Civil Procedure;

The students should obtain the following skills and abilities:
• to understand and correctly apply main definitions regarding International Civil Procedure;
• to be able to conduct independent legal research and analysis of the treaties, legislation, judgments and other sources of International Civil Procedure;
• to use appropriate referencing and bibliographic methods;
• to read and correctly apply case law of the major jurisdictions including Russian Federation, UK, USA, France, Switzerland and others.
• to use the major legal databases on International Civil Procedure and European law such as Heinonline, Lexis Nexis, WESTLAW, and the major journals, blogs or related websites for carrying out research activity and analyze current issues in the field of International Civil Procedure.

Students should gain the following competencies and abilities:
• to develop methodology to conduct legal research including correct identification of the relevant legal sources and case law necessary to complete their future relevant tasks;
• to be able to advise clients on the matters concerning international litigation and effect of proceedings pending before the Russian court in foreign countries;
• to be able to represent clients before the Russian courts, foreign courts and other public bodies (notaries, status registration authorities) on the matters relating to International Civil Procedure;
• to be able to write academic articles and theses (if applicable) relating to International Civil Procedure;
• to be able to advise state bodies and/or be able to draft international treaties relating to International Civil Procedure.

• Course Plan

Lecture 1 – Introduction to International Civil Procedure.

1. Necessity for coordination between the legal orders in the field of adjudication of civil and commercial disputes;
2. The notion of “*international civil procedure*” and its scope (interplay between the terms “international” and “civil” in the said definition).
3. Interplay between “international civil procedure” and other fields of law:
- interplay with the private international law (conflict of laws) with special emphasis to family matters involving foreign element;
- interplay with the public international law;
- interplay with international criminal law (interaction between the states regarding assistance on criminal matters).

4. Origin and development of international civil procedure as an academic study;
5. Contribution of the Russian (Soviet) academics in the field of “international civil procedure”;
6. Current trends and new issues in the field of international civil procedure.

Lecture 2 – General Principles and Sources of International Civil Procedure

1. The role of principles as the general foundations of the relevant branch of law;
2. The general principles of international civil procedure:
   - Principle of sovereignty;
   - Principle of reciprocity. Comity of nations (comitas gentium) as an alleged principle of international civil procedure;
   - Principle of application of national procedural law (lex fori principle);
   - Principle of protection of human rights
3. The role and place of international treaties in the field of international civil procedure;
4. The role and place of national legislation in the field of international civil procedure;
5. The role and place of ECHR practice in the field of international civil procedure;

Lecture 3 – Parties to an Action

1. Definition of procedural capacity and determination of a proper party to the dispute;
2. Interaction between procedural capacity and general capacity;
3. Historical restrictions on procedural capacity of foreign parties (Art. 11 of the French Civil Code 1804);
4. Historical reasons for introduction of security for costs (lat. cautio juicatum solvi);
5. Hague convention 1954 and abolition of cautio judicatum solvi;

Lecture 4 – International Jurisdiction and Lis alibi pendens

1. The role of proper determination of the venue in the context of international jurisdiction;
2. The principle actor sequitur forum rei and its application to the international jurisdiction;
3. The general principles underlying establishing jurisdiction in the contemporary legislation and jurisdictional agreement (including Regulation Brussels-Ibis);
4. The concept of “umbrella jurisdiction” and the concept of forum non conveniens;
5. The notion of antisuit injunction under the common law;
6. The concept of lis alibi pendens in the international civil procedure.

Lecture 5 – Service of Process abroad (Notification of Foreign Party)

1. The notion and nature of service of process. Service of process as an act of sovereignty;
2. Application of lex fori principle to service of process. (Assessment of service of process at the time of bringing lawsuit and at the time of recognition and enforcement of foreign judgment);
3. The concept of “due and timely” service of process and interplay between the said notions;
5. The requirements to the service of process under Art. 34 of the Brussels-I and Brussels-Ibis (Apostolides v Orams: C-420/07 (2009));
6. ECHR approach to service of process abroad (Case of Avotiņš v. Latvia, Application no. 462347)

**Lecture 6 – Obtaining evidence abroad (Letters of rogatory)**

1. The notion and nature of letter of rogatory. Letter of rogatory as an act of sovereignty;
2. Types of letters of rogatory;
3. Different methods for transmission of letters of rogatory;
5. Grounds for refusal of execution of letters of rogatory;
6. Manner of execution of letters of rogatory;

**Lecture 7 – Admissibility of Evidence obtained abroad**

1. Application of lex fori principle with regard to examination of evidence;
2. Difference between substantive and procedural rules with regard to parol evidence rule (prohibition of proof of existence of a document by means of oral testimony);
3. Admissibility of certain types of documentary evidence obtained abroad (affidavits);
4. Admissibility of documentary evidence obtained abroad (certification and apostillation of public documents);
5. Admissibility of privileged and/or improperly obtained evidence;
6. Admissibility of foreign expert testimonies.

**Lecture 8 – Recognition and Enforcement Judgments**

1. Foreign judgment as an act of sovereignty. Limited territorial operation of foreign judgment;
2. Interplay between the notions “recognition” and “enforcement” of foreign judgment;
3. International treaty as a precondition for enforcement of foreign judgments;
4. Interplay between the notions “comity (comitas gentium)” and “reciprocity” with regard to recognition of foreign judgments;
5. Conditions for recognition and recognition of foreign judgments;
6. ECHR case law and recognition and enforcement of foreign judgments;

**Lecture 9 – Cross-border insolvency**

1. The nature of cross-border insolvency. Procedural and substantive effects of foreign insolvency;
2. Exclusive jurisdiction of the foreign court hearing insolvency matter (procedural effect of foreign insolvency);
3. Recognition of the capacity of foreign insolvency trustee (substantive effect of foreign insolvency)
4. Effect of the foreign insolvency on the performance of the contracts governed by foreign law (substantive effect);
5. Effect of foreign insolvency on international arbitration;
6. Legal framework concerning cross-border insolvency within EU (Regulation (EU) 2015/848)

**Lecture 10 – Notaries and International Civil Procedure**

1. General functions of the notaries in the field of international civil procedure;
2. Performance of the notarial functions with regard to foreign citizens;
3. Probate (inheritance) matters involving foreign element;
4. Interaction between the notaries as per the treaties on international assistance in civil and commercial matters;
5. Consulate employees and their notarial functions;
6. Validity of the actions taken by foreign notaries (e.g. issue of the notarized power of attorney) and its effect on the Russian proceedings

- **Reading List**

I. **General.**


II. **Specific (for each particular lecture)**

(i) **Lecture 1.**

• Vrellis S., Major Problems of International Civil Procedure as Compared to the ALI/UNIDROIT Principles and Rules, 56 RHDI 91, 110 (2003).

(ii) Lecture 2

• Takeshita K., Sovereignty and National Civil Procedure: An Analysis of State Practice in Japan Autumn2016, Vol. 9 Issue 2, p361-378. 18p

(iii) Lecture 3


(iv) Lecture 4

• Lenhoff A., International Law and Rules on International Jurisdiction, 50 Cornell L. Rev. 5 (1964)
• Silberman L., Comparative Jurisdiction in the International Context: Will the Proposed Hague Judgements Convention be Stalled?, 52DePaul L. Rev. 319

(v) Lecture 5

• Cooper, L. International service of process by mail under the hague service convention. Michigan Journal of International Law, 13(3) (1992), 698-719.

(vi) Lecture 6


(vii) Lecture 7

(viii) **Lecture 8**

- **Briggs A.**, Crossing the River by Feeling the Stones: Rethinking the Law on Foreign Judgments (2004) 8 SYBIL 1–22

(ix) **Lecture 9**

- **Halimi, R.** "An Analysis of the Three Major Cross-Border Insolvency Regimes" (2017). International Immersion Program Papers. 47

(x) Lecture 10.

• Biswanath S., A Diplomat’s Handbook of International Law and Practice Springer, 2012
• Phanor J.E., Powers of Attorney in International Practice University of Pennsylvania Law Review Vol. 98, No. 6 (May, 1950), pp. 840-863

• Grading System

Grading in this course will be based on three types of work product:
(1) Attendance, active participation and in-class discussion
(2) Essay
(3) Oral exam

An overall assessment formula comprises a sum total of the following variables: 
(sемinar attendance / participation)* 0.2 + (essay)* 0.3 + (exam)* 0.5 = final grade

• Examination Type
- Attendance, active participation and in-class discussion: 20%

Each student is expected to attend all the sessions having full understanding of the matters assigned including comprehension of the doctrine, case law and other relevant material. Sessions will be structured as a mix of lectures, seminars, and participative workshops in order to stimulate class discussion: the participants are expected to cover the assigned materials in advance for each class.

- Essay: 30%

This assessment component includes a 10-minute in-class presentation during one of the classes that serves to help steering the discussion of the relevant topic. Tentative topics per each session are presented further in the syllabus.

- Oral exam: 50%

Oral exam by the end of the course.

• Assessment criteria for an essay

<table>
<thead>
<tr>
<th>10-point scale</th>
<th>Assessment criteria</th>
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<tbody>
<tr>
<td>10 points</td>
<td>Excellent study that meets all the requirements, and also differs in</td>
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<tr>
<td>Points</td>
<td>Description</td>
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<tr>
<td>9 points</td>
<td>The essay meets all the requirements for this kind of work. The topic of the essay is fully discovered, the author's position is clearly expressed, there are logical and reasonable conclusions. The essay is written using a large number of legal acts based on the recommended main and additional literature, as well as other literature selected by the student independently. The essay is well-structured and designed.</td>
</tr>
<tr>
<td>8 points</td>
<td>The same requirements as for a score of 9 points. The student used additional literature in addition to the one proposed in the course syllabus.</td>
</tr>
<tr>
<td>7 points</td>
<td>The topic of the essay is fully discovered; the author's position is demonstrated, reasonable conclusions are formulated; necessary literature and regulations are used. The essay is correctly framed.</td>
</tr>
<tr>
<td>6 points</td>
<td>The topic of the essay is generally disclosed; the conclusions of the student are formulated, but not sufficiently substantiated; analysis of the problem is conducted with references to necessary regulations; both basic and additional literature is used; the author’s position is not clear. The essay is correctly framed.</td>
</tr>
<tr>
<td>5 points</td>
<td>The topic is disclosed based on the use of several primary and secondary sources; the author’s position is weakly reflected, conclusions are not substantiated; the information is presented inconsistently, without corresponding argumentation and analysis of legal norms, although references to legal acts can be found. There are drawbacks in the design of the work.</td>
</tr>
<tr>
<td>4 points</td>
<td>The topic is not fully disclosed; only the main (more than two) sources are used; there are references to legal acts, but the author’s position is not expressed; conclusions are absent. There are drawbacks in the design of the work.</td>
</tr>
<tr>
<td>3 points</td>
<td>The topic of the essay is not fully disclosed on the basis of two sources; the information is presented without author’s assessment and conclusions; no references to legislation. There are drawbacks in the design of the work.</td>
</tr>
<tr>
<td>2 points</td>
<td>The topic of the essay is not disclosed; the information is presented without author’s assessment and conclusions; no references to legislation. There are drawbacks in the design of the work.</td>
</tr>
<tr>
<td>1 point</td>
<td>Most of the essay’s text coincides with other source.</td>
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- **Topics for essays**

1. The nature of International Civil Procedure and its correlation with other branches of law (private international law; public international law; international criminal law);
2. The principle of sovereignty and its impact on International Civil Procedure;
3. The lex fori principle and its impact on International Civil Procedure;
4. ECHR and its impact on International Civil Procedure;
5. Reciprocity and international comity in the field of International Civil Procedure;
6. The nature of cautio judicatum solvi rule and its present status;
7. The general principles governing the rules for establishing international jurisdiction;
8. The general rules governing international jurisdiction with regard to immovable property;
10. The general principles of lis alibi pendens concept
11. Service of process abroad (nature, ways of transmission impact of the procedure, grounds for refusal of execution of letter of rogatory);
12. The concept of “due and timely” service of process;
13. The interrelation between procedural and substantive rules with regard to examination of evidence;
14. Methods of obtaining evidence abroad (International instruments, methods of transmission of documents, grounds for refusal of execution of letter of rogatory);
15. International treaty and its role in the field of recognition and enforcement of foreign judgments;
16. Interplay between recognition and enforcement of foreign judgments;
17. Recognition of foreign judgments on status and family matters (specific features);
18. The concept of transnational insolvency (main instruments establishing rules for international insolvency);
19. Procedural effects of international insolvency;
20. Substantive effects of international insolvency;
21. Recognition of foreign insolvencies under the Russian law;
22. Insolvency and international commercial arbitration;
23. Notaries and their role with regard to International Civil Procedure;
24. Consuls and their role with regard to International Civil Procedure.

A topic chosen by each student is subject to individual approval by the Course Instructor.

- Assessment criteria for oral exam: sample questions (two per person)

<table>
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<tr>
<th>10-point scale</th>
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<tbody>
<tr>
<td>10 points</td>
<td>The student showed outstanding knowledge of the subject with regard to both assigned questions.</td>
</tr>
<tr>
<td>9 points</td>
<td>The student showed deep knowledge of the subject with regard to both assigned questions.</td>
</tr>
<tr>
<td>8 points</td>
<td>The student showed good and sufficient knowledge of the subject with regard to both assigned questions.</td>
</tr>
<tr>
<td>7 points</td>
<td>The student showed good knowledge of the subject with regard to assigned questions, however, some insignificant mistakes were made.</td>
</tr>
<tr>
<td>6 points</td>
<td>The student showed good knowledge of the subject with regard to assigned questions, however, significant were mistakes were made during the answer to the questions.</td>
</tr>
<tr>
<td>5 points</td>
<td>The student showed only partial knowledge of the subject or severe mistakes were made during the during the answer to the questions.</td>
</tr>
<tr>
<td>4 points</td>
<td>The student failed to answer one of the questions or made egregious mistakes during the answer to the questions.</td>
</tr>
<tr>
<td>3 points</td>
<td>The student has fragmentary knowledge of the subject. Answer to the questions are barely satisfactory.</td>
</tr>
<tr>
<td>2 points</td>
<td>Unsatisfactory answers with regard to both questions.</td>
</tr>
<tr>
<td>1 point</td>
<td>Failure to answer any of the questions.</td>
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1. The notion of international civil procedure;
2. General principles of international civil procedure;
3. Interrelation between the international civil procedure and private international law;
4. Interrelation between the international civil procedure and public international law;
5. The main historical steps of development of international civil procedure;
6. The main sources of international civil procedure (main treaties and domestic legislation);
7. The interrelation between ECHR and international civil procedure;
8. The nature of cautio judicatum solvi;
9. The general rules governing establishing of the jurisdiction in international civil procedure;
10. The jurisdiction with regard to immovable property in international civil procedure;
11. The definition of forum non-convenience in international civil procedure;
12. The concept of lis alibi pendens in international civil procedure;
13. The concept of service of process abroad;
14. The definition of “due” and “timely” service of process;
15. Service of process under Art. 45 (b) of the Brussles-Ibis Regulation;
16. Ways of transmission of service of process abroad;
17. Transmission of service of process under the Hague convention 1965;
18. The rules of the Russian Civil Procedure Code and Arbitrazh (Commercial) procedure code regarding service of process;
19. The difference between the substantive and procedural rules with regard to examination of evidence in international civil procedure;
20. Admissibility of foreign expert-witness statement;
21. Apostillation and consular certification of official documents;
22. The nature of letter of rogatory. Methods of obtaining evidence abroad;
23. Transmission of requests for obtaining evidence under the Hague convention 1970;
24. The nature of foreign judgments;
25. The role of international treaties in the field of recognition of foreign judgments;
26. The concept of comity and reciprocity with regard to recognition of foreign judgments;
27. Recognition of foreign judgments under the Russian law;
28. Recognition of foreign judgments under Brussles-Isis Regulation;
29. Recognition of foreign judgments concerning status and in family matters;
30. The concept of cross-border insolvency;
31. Procedural effect of cross-border insolvency;
32. Substantive effect of cross-border insolvency;
33. Recognition of cross-border insolvency under the Russian law;
34. Recognition of cross-border insolvency as per Regulation (EU) 2015/848;
35. The role of notaries in the field of international civil procedure;
36. The role of consuls and consulate officers in the field of international civil procedure.

- **Methods of Instruction**

Classes will be structured as participative lectures in order to stimulate class discussion. This course uses interactive educational technologies (problematic lectures, Socrates method, work in small groups, interactive seminars; brainstorming sessions). Students are expected to be well prepared, they must carefully study the materials indicated before the seminar. Students are expected to spend 12-14 academic hours of house reading, researching, and preparation per week.

Every lesson will be followed by the correspondent seminars as specified in this program. In order to be prepared for lessons, it is necessary to use the sources and legal acts enlisted in this syllabus. To prepare for the seminar, it is necessary to study carefully the material assigned during the lesson. Particular attention should be paid to the basic principle, the sources, the definition and the correct terminology of International Civil Procedure. When preparing, it is recommended to refer to the works of the international authors and it is welcomed to refer to Russian scholars. It is compulsory to study, analyze and make reference to the decisions of foreign Courts. Comments on the most pressing issues of Public International Law can be found in heinoline.org database.
• **Special Equipment and Software Support (if required)**

The following equipment is essential to make teaching and learning comfortable and efficient:

- Personal computer (equipped with Microsoft Windows 10) with Internet access;
- Multimedia projector with remote control.