

# European Conflict of Law and Comparative Private Law

**Elective  
Past  
Papers**

LL.B. IV



# **GHAQDA STUDENTI TAL-LIĠI**

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2020/2021

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## ABOUT GhSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at [resources@ghsl.org](mailto:resources@ghsl.org).



## Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

### 1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

### 2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

### *3. Organisational Skills*

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

### *4. Taking your own class notes*

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

### *5. Participation*

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

### *6. Practice is the key to success*

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.



FOURTH & FIFTH YEAR LAW  
ELECTIVE UNITS PAST PAPERS

**EUROPEAN CONFLICT  
OF LAWS &  
COMPARATIVE PRIVATE  
LAW**



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in the publication, feel free to e-mail [academic@ghsl.org](mailto:academic@ghsl.org).

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY CREDIT EXAMINATION

LL.D II Yr

ECL 5000 – European Conflict of Laws

Friday 23<sup>rd</sup> JANUARY 2009 14:15 -15:15

Instructions to Candidates: Answer ONE question only.

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1. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters.

Discuss.

2. 'The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor... In addition to the defendant's domicile there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.'

Discuss this statement with reference to Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. Provisions on family law were not contemplated by the founding fathers of the European Community. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss.

4. According to its preamble (paragraph 3), the purpose of the Rome Convention of 1980 on the Law of Contractual Obligations is to establish uniform choice of law rules for contractual obligations throughout the Community.

Discuss.

END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY CREDIT EXAMINATION

LLD II Yr

ECL 5000 – European Conflict of Laws

Monday 1<sup>st</sup> February 2010 10:30 -11:30

**Instructions to Candidates: Answer ONE question only.**

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1. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters.

Discuss.

2. Provisions on family law were not contemplated by the founding fathers of the European Union. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss.

3. According to its preamble (paragraph 3), the purpose of the Rome Convention of 1980 on the Law of Contractual Obligations which is now Regulation EC No 593/2008 is to establish uniform choice of law rules for contractual obligations throughout the EU.

Discuss.

4. *"In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice"* (paragraph 12 of the preamble to Council Regulation 44/2001).

Discuss the alternative grounds of jurisdiction in matters relating to a contract and in matters relating to tort with reference to the case-law of the European Court of Justice.



5. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law and to the Draft Common Frame of Reference (DCFR).

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END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY CREDIT EXAMINATION

LL.D II Yr

ECL 5000 – European Conflict of Laws

Monday 31<sup>st</sup> January 2011 10:30am -11:30am

Instructions to Candidates: Answer ONE question only. All questions carry equal marks.

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1. Explain the significance of Article 81 TFEU (ex-Article 65 EC) in the field of judicial cooperation in civil & commercial matters.
2. As from 11 January 2009, the Rome II Regulation (Regulation EC) No 864/2007) on the law applicable to non-contractual obligations directly applies in all EU Member States, with the exception of Denmark.

Discuss this Regulation making particular reference to the scope of its application.

3. The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor... In addition to the defendant's domicile there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.'

Discuss this statement with reference to Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

4. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law, the Draft Common Frame of Reference (DCFR), and COM (2010) 348 final published on 1<sup>st</sup> July 2010.

5. Provisions on family law were not contemplated by the founding fathers of the European Community. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss.

END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY EXAMINATION 2012  
LL.D I Yr & LL.D II Yr

ECL 5062 – EUROPEAN CONFLICT OF LAWS &  
COMPARATIVE LAW

FRIDAY 27<sup>TH</sup> JANUARY 2012

09:15am – 11:15am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks

- 
1. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters. This has been strengthened by the Treaty of Lisbon.

Discuss.

2. Discuss the extent to which the Brussels Regulation I (Council Regulation (EC) 44/2001) ensures the free movement of EU judgments in civil and commercial matters. Do you think that common rules on the recognition and enforcement of third State judgments would be desirable?

3. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law, the Draft Common Frame of Reference (DCFR), and COM (2010) 348 final published on 1<sup>st</sup> July 2010 and the subsequent proposal {SEC (2011) 1165 final} on a Common European Sales law published on 11th October 2011.

4. The problem of ascertaining the applicable law is more difficult in the case of contract than in almost any other area.

Discuss

5. Harmonisation or approximation is the process whereby legal rules from different jurisdictions are brought closer to each other in effect. Harmonisation is a common method used by the European Union to bring the laws of the Member States closer to each other by means of Directives in order to achieve the Internal Market.

Discuss

END OF PAPER

UNIVERSITY OF MALTA

FACULTY OF LAWS

SEPTEMBER 2012 EXAMINATION

LL.D I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws

6<sup>th</sup> September 2012 9:15 am -11:15 am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters. This has been strengthened by the Treaty of Lisbon.

Discuss.

2. Provisions on family law were not contemplated by the founding fathers of the European Union. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss.

3. According to its preamble (paragraph 3), the purpose of the Rome Convention of 1980 on the Law of Contractual Obligations which is now Regulation EC No 593/2008 is to establish uniform choice of law rules for contractual obligations throughout the EU.

Discuss.

4. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law, the Draft Common Frame of Reference (DCFR), COM (2010) 348 final published on 1<sup>st</sup> July 2010 and the subsequent proposal {SEC (2011) 1165 final} on a Common European Sales law published on 11<sup>th</sup> October 2011.

END OF PAPER

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY EXAMINATION

LL.D I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws & Comparative Private Law

Thursday 31<sup>st</sup> January 2013 09:15am -11:15am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. In July 2010: the European Commission published a short *Green Paper on Policy Options towards a European Contract Law for Consumers and Businesses*, in which it sets out the choices for future action in the field of contract law. This could provide the context in which this debate could be had, although indications are that the European Commission has already made up its mind about how to proceed.

Discuss

2. When do rules on recognition and enforcement under the Brussels I (Regulation 44/2001/EC) apply?
3. In 1992 O. Remien voiced his strong doubts about the process of Europeanisation of private law in an article with the significant title 'Illusions and reality of a European private law'. While admitting that in certain fields various national systems had come closer, preparing the way to unification, he warned that a comprehensive Europeanization is still in the distant future and has to cope with serious obstacles.

Discuss.

4. The regulation of cross border civil and commercial litigation is a burgeoning EU policy area. Legislative measures and other initiatives now provide a framework for the regulation of cross border service of documents, obtaining evidence, establishing jurisdiction and enforcement judgements, enforcing orders, legal aid, Alternative Dispute Resolutions, small claims among other matters.

Discuss the extent to which the above interventions can be regarded as representing success in this policy field.

5. Jack and Jill both Maltese citizens, are happily married with children in Malta. After a number of years married together Jack receives the news that he has been accepted as an official of the European Union and the family moves to Luxembourg. The couple rents a completely furnished new apartment in central Luxembourg City for the price of EUR 24,000. They buy additional furniture worth EUR 20,000 over the course of the first year.

After 6 months, the new furniture starts showing signs that it has not been glued properly together. Jill informs the supplier who puts the blame on the manufacturer and promises swift action. The manufacturer acknowledges that problem is related due to a defect of the glue used but time passes and nothing happens.

In the meantime Jill discovers that her husband was having an affair with his assistant from Romania, Helena. She falls into a depression and decides to quit Luxembourg and return to Malta with the children for good. In the meantime Jack and his Romanian lover get a new post with another institution and move to Brussels.

While in Malta Jill tries to rebuild her life and ensures that she can maintain herself and her children all under age. In the meantime Jack is worried that without his children with him, he would lose the generous EU's children allowance of EUR 300 per month per child. While in Brussels, Helena feels that it is time to put her relationship with Jack on a more serious note and get married.

Back in Luxembourg the landlord finds that rent for the new apartment has not been paid for 6 months while the contract still has 18 more months to run. The landlord also finds damage to the property and would like to seek action against the couple but cannot find them in Luxembourg.

Please advise *Jack, Jill, Helena, the landlord and the manufacturer* about their rights under EU law with regards to the applicable law and jurisdictional issues.

END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY EXAMINATION  
LL.D I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws & Comparative Private Law

Thursday 31<sup>st</sup> January 2013 09:15am -11:15am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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Discuss.

4. The regulation of cross border civil and commercial litigation is a burgeoning EU policy area. Legislative measures and other initiatives now provide a framework for the regulation of cross border service of documents, obtaining evidence, establishing jurisdiction and enforcement judgements, enforcing orders, legal aid, Alternative Dispute Resolutions, small claims among other matters.

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END OF PAPER



UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2014 EXAMINATION  
LL.D I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws & Comparative Private Law

Monday 3<sup>rd</sup> February 2014 09:15am -11:15am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. Discuss the main differences between the Brussels I (Regulation 44/2001/EC) and the Brussels I Recast (Regulation 1215/2012/EU).
2. Provisions on family law were not contemplated by the founding fathers of the European Union. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss

3. The Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (CESL) is the modest return on decades of efforts towards the unification of European private law. This optional instrument (Article 3), limited to some cross-border contracts, seems to be the only feasible legislative outcome, though it shatters the hopes of the European Parliament and of leaders such as Christian von Bar, who speculated in 2010 that it was the dawn of a European Civil Code.

Discuss

4. Discuss the differences and similarities between 'civil law' and 'common law'.

5. Jack and Jill both Maltese citizens, are happily married with children in Malta. After a number of years married together Jack receives the news that he has been accepted as an official of the European Union and the family moves to Luxembourg. The couple rents a completely furnished new apartment in central Luxembourg City for the price of EUR 24,000. They buy additional furniture worth EUR 20,000 over the course of the first year.

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Please advise *Jack, Jill, Helena, the landlord and the manufacturer* about their rights under EU law with regards to the applicable law and jurisdictional issues.

END OF PAPER

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.D. I & II Yr**  
**SEPTEMBER 2015 SUPPLEMENTARY EXAMINATIONS**

**EXAMINATION: ECL5062 – European Conflict of Laws and Comparative Private Law**

**DATE:** SATURDAY 5<sup>TH</sup> SEPTEMBER 2015

**READING TIME:** 10.00AM – 10.05AM

**DURATION OF EXAM:** 10.05AM -- 12.05PM

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**Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.**

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1. Discuss the main differences between the Brussels I (Regulation 44/2001/EC) and the Brussels I Recast (Regulation 1215/2012/EU).

2. In July 2010, the European Commission published a short *Green Paper on Policy Options towards a European Contract Law for Consumers and Businesses*, in which it sets out the choices for future action in the field of contract law. This could provide the context in which this debate could be had, although indications are that the European Commission has already made up its mind about how to proceed.

Discuss

3. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters. This has been strengthened by the Treaty of Lisbon.

Discuss.

4. Provisions on family law were not contemplated by the founding fathers of the European Union. However it soon appeared that the concept of the family and its organisation were not alien to European law.

Discuss.

5. Harmonisation or approximation is the process whereby legal rules from different jurisdictions are brought closer to each other in scope. Harmonisation is a common method used by the European Union to bring the laws of the Member States closer to each other by means of Directives in order to achieve the Internal Market.

Discuss with reference to the tools of Europeanisation.

END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2015 EXAMINATION  
LL.B I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws & Comparative Private Law

Tuesday 27<sup>th</sup> January 2015 09:15am -11:15am

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. Discuss the main differences between the Brussels I (Regulation 44/2001/EC) and the Brussels I Recast (Regulation 1215/2012/EU).
2. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law, the Draft Common Frame of Reference (DCFR), and COM (2010) 348 final published on 1<sup>st</sup> July 2010 and the subsequent proposal {SEC (2011) 1165 final} on a Common European Sales law published on the 11<sup>th</sup> October 2011.
3. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of judicial cooperation in civil matters. This has been strengthened by the Treaty of Lisbon.

Discuss the applicable legal basis.

4. The regulation of cross border civil and commercial litigation is a burgeoning EU policy area. Legislative measures and other initiatives now provide a framework for the regulation of cross border service of documents, obtaining evidence, establishing jurisdiction and enforcement judgements, enforcing orders, legal aid, Alternative Dispute Resolutions, small claims among other matters.

Discuss the extent to which the above legal instruments can be regarded as representing success in this policy field.

5. Jack and Jill both Maltese citizens, are happily married with children in Malta. After a number of years married together Jack receives the news that he has been accepted as an official of the European Union and the family moves to Luxembourg. The couple rents a completely furnished new apartment in central Luxembourg City for the price of EUR 24,000. They buy additional furniture worth EUR 20,000 over the course of the first year.

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Please advise *Jack, Jill, Helena, the landlord and the manufacturer* about their rights under EU law with regards to the applicable law and jurisdictional issues.

END OF PAPER

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
SEPTEMBER 2014 EXAMINATION  
LL.D I yr & LL.D II Yr

ECL 5062 – European Conflict of Laws & Comparative Private Law

Thursday 4<sup>th</sup> September 2014 10:30am -12:30pm

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. Discuss the main differences between the Brussels I (Regulation 44/2001/EC) and the Brussels I Recast (Regulation 1215/2012/EU).
2. Is a European Civil Code feasible? Discuss with particular reference to the tools needed to Europeanize Private law, the Draft Common Frame of Reference (DCFR), and COM (2010) 348 final published on 1<sup>st</sup> July 2010 and the subsequent proposal {SEC (2011) 1165 final} on a Common European Sales law published on the 11th October 2011.
3. The problem of ascertaining the applicable law is more complex in the case of contracts than in almost any other area.

Discuss

4. In 1992 O. Remien voiced his strong doubts about the process of Europeanisation of private law in an article with the significant title 'Illusions and reality of a European private law'. While admitting that in certain fields various national systems had come closer, preparing the way to unification, he warned that a comprehensive Europeanization is still in the distant future and has to cope with serious obstacles.

Discuss.

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY 2016 EXAMINATION

LL.B. Hons IV yr. LL.D I yr. & LL.D II yr.

ECL 4005 – European Conflict of Laws & Comparative Private Law

Monday 25<sup>th</sup> January 2016

10:00am -12:05pm – Duration of examination

10:00am-10.05 am. – Reading time

Instructions to Candidates: Answer any TWO questions only. All questions carry equal marks.

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1. Discuss the main differences between the Brussels I (Regulation 44/2001/EC) and the Brussels I Recast (Regulation 1215/2012/EU).
2. In July 2010, the European Commission published a short *Green Paper on Policy Options towards a European Contract Law for Consumers and Businesses*, in which it sets out the choices for future action in the field of contract law. This could provide the context in which this debate could be had, although indications are that the European Commission has already made up its mind about how to proceed.

Discuss

3. The European Small Claims Procedure established by Regulation (EC) No 361/2007 of the European Parliament and of the Council of 11 July 2007 is intended to improve access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs.

Discuss the above statement and make particular reference to the optionality of the instrument.

4. Harmonisation or approximation is the process whereby legal rules from different jurisdictions are brought closer to each other in scope. Harmonisation is a common method used by the European Union to bring the laws of the Member States closer to each other by means of Directives in order to achieve the Internal Market.

Discuss