

DOCUMENTS AND BIBLIOGRAPHY

THE SPANISH CONFLICT-OF-LAW BASIC RULES^(*)

1. For some years now there has been a dearth of information in English language publications on Spanish legal texts related to Private International Law¹. This fact has made it quite difficult for readers of the *SYIL* to have direct reference to the rules that are generally cited in doctrine. Therefore, we decided to make up for this lack of information by presenting the basic rules of autonomous Spanish Private International Law. We will leave the presentation of conventional Spanish law related to Private International Law which would complete the information on the Spanish system of Private International Law for another occasion.

2. Whenever the translation of a legal text presented difficulties as regards the equivalency of terms, we have presented the translations next to the original Spanish version. In this way, those readers who have some knowledge of our language can refer to the original version in order to verify the sense of the terms used in order to better understand the text².

3. Due to time and space limitations, it is impossible to present all of autonomous Spanish Private International Law or give exhaustive coverage to the three main types of problems related to private international law which are international judicial competence, the determination of applicable law, and the

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1. See *Nederlands Tijdschrift voor International Rechi*, vol. XXI, 1974, pp. 368-376, *cit.* by J.D. González Campos and J.C. Fernández Rozas, *Derecho Internacional Privado. Materiales de Prácticas*, Tecnos, Madrid, 1983, p. 428. In German see Rabels Z (1975), p. 725 ss. and A.N. Makarov, *Quellen — Nationale Kodifikation* —, pp. 258-270. In French see *Ann.suisse dr. int.*, vol. XXXII (1976), pp. 400-404 and *Rev.crit.dr.int.pr.* (1991), n.3 with note by A. Borrás Rodríguez in pp. 626-634.

2. We should clarify here that the legal texts compiled by professors Alegría Borrás Rodríguez, Nuria Bouza Vidal, Julio D. González Campos and Miguel Virgós Soriano were used for more information on these articles: *Legislación básica de DIPr*, Tecnos, 4th edition, Madrid, 1994, pp. 65—71, 81—83, 85—86, 391, 408 and 641—644. There is another compilation done by C. Esplugues Mota, *Código de Derecho internacional privado*, ed. Civitas, Madrid, 1989.

recognition and enforcement of foreign judgments³. Therefore, we have opted for a complete presentation of the internal rules on the first of these three problems (international judicial competence), civil rules on applicable law, and those rules that regulate the *exequatur*. But the most important reason for the fact that we have limited ourselves to presenting articles 8—16, 40—41, 49—51 and 107 of the Civil Code, articles 4 and 21—25 of the *LOPJ* and articles 951—958 of the *LEC* is that they are the starting point and the foundation of the Spanish system of Private International Law. We will introduce other rules that are dispersed and affect specific sectors little by little in the future.

3. For the evolution of the Spanish system of Private International Law and its actual regulation see the survey prepared by I. García Rodríguez in *SYIL* vol. 1 (1991), "Spanish Literature in the Field of Private and Public International Law and Related Matters", pp. 320-325 and in this *Yearbook*, pp. 408-410.

CIVIL CODE¹Preliminary Title²

On legal rules, their application and their enforceability

Chapter IV

Rules of Private International Law

Art. 8. 1. Criminal laws, police laws and public safety laws are binding on all individuals who find themselves in Spanish territory.

2. Spanish procedural laws will be the only laws applicable to actions that occur in Spanish territory and this does not affect the remissions to foreign law that these laws may stipulate as regards procedures that must be carried out outside of Spain.

Art. 9. 1. The personal law which is applicable to individuals is determined by nationality. This law governs capacity and civil status, family rights and obligations, and succession due to death.

CÓDIGO CIVIL¹Título Preliminar²

De las normas jurídicas, su aplicación y eficacia

Capítulo IV

Normas de Derecho Internacional Privado

Art. 8. 1. Las leyes penales, las de policía y las de seguridad pública obligan a todos los que se hallen en territorio español.

2. Las leyes procesales españolas serán las únicas aplicables a las actuaciones que se sustancien en territorio español, sin perjuicio de las remisiones que las mismas puedan hacer a las leyes extranjeras, respecto a los actos procesales que hayan de realizarse fuera de España.

Art. 9. 1. La ley personal correspondiente a las personas físicas es la determinada por su nacionalidad. Dicha ley regirá la capacidad y el estado civil, los derechos y deberes de familia y la sucesión por causa de muerte.

1. *Gaceta de Madrid*, 25 July 1889.

2. In accordance with the wording of Decree 1836/1974 dated 31 May (BOE 2.7.1974). Bear in mind that the rules of Private International Law of the preliminary title that was reformed in 1974, abolish articles 15 and 52.2 of the 1985 Code of Commerce in matters that are regulated by Private International Law. See art. 15 of the Code of Commerce. Art. 52.2 of the Code of Commerce: "The following are exempt from the provisions of the preceding article: 1. /.../ 2. Contracts drawn up in a foreign country in which the Law requires public deeds or certain formalities in order for them to be considered valid, even if these are not required by Spanish law. In both cases, contracts that do not meet the conditions respectively required will not produce obligation or legal action".

Changes in personal law will not affect legal age status acquired in accordance with prior personal law.

2. The effects of marriage are governed by the personal law common to both spouses at the time the marriage is celebrated; in the absence of this law, by the personal law or the habitual residence law of either of the spouses chosen by both and authorized in a written document prior to the wedding; in the absence of this choice of law, by the law of the State in which both spouses made their habitual residence immediately after the wedding, and, in the absence of this, by the law of the place in which the marriage was celebrated.

Legal separation and divorce are governed by the law specified in art. 107.

3. Agreements or marriage settlements by which the economic regime of a marriage is stipulated, modified or replaced, are valid when they conform either to the law that governs the effects of marriage (art. 9.2), the law of the State of which one of the spouses is a national or the State in which one of the spouses habitually resides at the time the agreements or settlements are authorized.

El cambio de ley personal no afectará a la mayoría de edad adquirida de conformidad con la ley personal anterior.

2. Los efectos del matrimonio se regirán por la ley personal común de los cónyuges al tiempo de contraerlo; en defecto de esta ley, por la ley personal o de la residencia habitual de cualquiera de ellos, elegida por ambos en documento auténtico otorgado antes de la celebración del matrimonio; a falta de esta elección, por la ley de la residencia habitual común inmediatamente posterior a la celebración, y, a falta de dicha residencia, por la del lugar de celebración del matrimonio.

La separación y el divorcio se regirán por la ley que determina el artículo 107.

3. Los pactos o capitulaciones por los que se estipule, modifique o sustituya el régimen económico del matrimonio serán válidos cuando sean conformes bien a la ley que rijan los efectos del matrimonio, bien a la ley de la nacionalidad o de la residencia habitual de cualquiera de las partes al tiempo del otorgamiento.

Complementary Information on these Legal Articles

Art. 9.2 and 3: In accordance with the wording found in Law 11/1990 dated 15 October (BOE 18.10.1990). In cases in which there is a marriage between two Spaniards with different legal domiciles, see art. 16.3 of the Civil Code.

4. The nature and content of filiation, including filiation by adoption, and parent-child relationships are governed by the personal law of the child.

5. An adoption granted by a Spanish judge is governed, as regards requirements, by the provisions of Spanish law. However, the national law of the adoptee should be respected as regards his or her capacity and required consent:

1° If his or her habitual residence is outside Spain,

2° If he or she does not acquire Spanish citizenship through adoption even though he or she resides in Spain.

At the request of the adoptee or of the Attorney General, the Judge, taking into account the best interests of the adoptee, can also require any consent, hearing or authorization stipulated by the law of nationality or of habitual residence of the adoptive parent or of the adoptee.

Spanish consuls will have the same authority to grant an adoption as a judge does, provided that the adoptive parent is a Spanish citizen and the adoptee is domiciled

4. El carácter y contenido de la filiación, incluida la adoptiva, y las relaciones paternofiliales, se regirán por la Ley personal del hijo.

5. La adopción constituida por Juez español se regirá, en cuanto a los requisitos, por lo dispuesto en la Ley española. No obstante, deberá observarse la Ley nacional del adoptando en lo que se refiere a su capacidad y consentimientos necesarios:

1° Si tuviera su residencia habitual fuera de España.

2° Aunque resida en España, si no adquiere, en virtud de la adopción, la nacionalidad española.

A petición del adoptante o del Ministerio Fiscal, el Juez, en interés del adoptando, podrá exigir, además, los consentimientos, audiencias o autorizaciones requeridas por la Ley nacional o por la Ley de la residencia habitual del adoptante o del adoptando.

Para la constitución de la adopción, los Cónsules españoles tendrán las mismas atribuciones que el Juez, siempre que el adoptante sea español y el adoptando esté

Art. 9.4: In accordance with the wording found in Law 21/1987, 11 November (*BOE*, 17.11.1987).

Art. 9.5: In accordance with the wording found in Law 11/1990, 15 October (*BOE*, 18.10.1990). Bear in mind art. 21 of the 1989 United Nations Convention on the Rights of Children.

within the geographical scope of the Consulate. The preliminary proposal will be drawn up by the public entity corresponding to the adoptive parent's last place of residence in Spain. If the adoptive parent never resided in Spain, no preliminary proposal is required; however, the consul will request the local authorities of the adoptive parent's place of residence to provide the information needed to evaluate the adoptive parent's identity.

As regards adoptions granted by competent foreign authorities, the adoptee's law will govern issues of capacity and required consent. The consents required by that law can be given before the proper authorities of the country in which adoption proceedings are initiated, or subsequently, before any other competent authority. As regards the adoption of a Spanish citizen, the consent of the public authorities corresponding to the adoptee's last place of residence in Spain must be obtained.

6. Custody and other institutions for the protection of individuals who lack legal capacity are governed by the national law of the individual in question. However, provisional or urgent measures of protection are governed by the law of the State of the individual's habitual place of residence.

domiciliado en la demarcación consular. La propuesta previa será formulada por la entidad pública correspondiente al último lugar de residencia del adoptante en España. Si el adoptante nunca tuvo residencia en España no será necesaria propuesta previa, pero el Cónsul recabará de las autoridades del lugar de residencia de aquél informes suficientes para valorar su identidad.

En la adopción constituida por la competente autoridad extranjera, la Ley del adoptando regirá en cuanto a capacidad y consentimientos necesarios. Los consentimientos exigidos por tal Ley podrán prestarse ante una autoridad del país en que se inició la constitución o, posteriormente, ante cualquier otra autoridad competente. En su caso, para la adopción de un español, será necesario el consentimiento de la entidad pública correspondiente a la última residencia del adoptando en España.

6. La tutela y las demás instituciones de protección del incapaz se regularán por la ley nacional de éste. Sin embargo, las medidas provisionales o urgentes de protección se regirán por la ley de su residencia habitual.

Art. 9.6: See the 1961 Hague Convention on Jurisdiction and Applicable Law Relating to the Protection of Minors.

The formalities involved in granting custody and other protective institutions in which Spanish judicial or administrative authorities take part, will be carried out according to Spanish law.

Spanish law is applicable when stipulating protective and educational measures related to minors or individuals who lack legal capacity and have been abandoned in Spanish territory.

7. The right to support between relatives is regulated by the law of nationality common to both the person giving and the person receiving the support. However, the law of the habitual place of residence of the person who is claiming a right to support will be applied when this individual is not entitled to support according to the law of nationality common to both parties. In the absence of both laws, or when neither of the laws allows support to be obtained, the domestic law of the authority that hears the claim will be applied.

When there is a change in the nationality of both individuals or in the habitual residence of the person receiving support, the new law will be applied from the time at which the change takes place.

Las formalidades de constitución de la tutela y demás instituciones de protección en que intervengan autoridades judiciales o administrativas españolas se sustanciarán en todo caso, con arreglo a la Ley española.

Será aplicable la ley española para tomar las medidas de carácter protector y educativo respecto de los menores o incapaces abandonados que se hallen en territorio español.

7. El derecho a la prestación de alimentos entre parientes habrá de regularse por la ley nacional común del alimentista y del alimentante. No obstante, se aplicará la ley de la residencia habitual de la persona que los reclame cuando ésta no pueda obtenerlos de acuerdo con la ley nacional común. En defecto de ambas leyes, o cuando ninguna de ellas permita la obtención de alimentos, se aplicará la ley interna de la autoridad que conoce de la reclamación.

En caso de cambio de la nacionalidad común o de la residencia habitual del alimentista, la nueva ley se aplicará a partir del momento del cambio.

Art. 9.7: This art. has been replaced by the Hague Convention on the Law Applicable to Maintenance Obligations dated 2 October 1973, as that convention operates *erga omnes*. Bear in mind also the 1956 New York Convention on obtaining Maintenance Obligations in foreign countries.

8. Succession due to death is governed by the national law of the deceased at the time of his/her death, regardless of the nature of the goods or the country in which they are located. However, the stipulations included in a last will and testament or in the succession agreements that were made in accordance with the national law of the testator at the time they were drawn up will remain valid even if another law governs the succession; however, the share of the estate that passes by law to the family or dependents will be in accordance with the law that governs the succession itself. The rights that according to law are attributable to the surviving spouse will be governed by the same law that regulates the effects of marriage, except for the share of the estate that passes by law to the descendants.

9. For the purposes of this chapter, as regards situations of dual citizenship contemplated by Spanish law, the provisions of international treaties will be binding. If these treaties do not stipulate anything in

8. La sucesión por causa de muerte se regirá por la Ley nacional del causante en el momento de su fallecimiento, cualesquiera que sean la naturaleza de los bienes y el país donde se encuentren. Sin embargo, las disposiciones hechas en testamento y los pactos sucesorios ordenados conforme a la Ley nacional del testador o del disponente en el momento de su otorgamiento conservarán su validez, aunque sea otra la ley que rijan la sucesión, si bien las legítimas se ajustarán, en su caso, a esta última. Los derechos que por ministerio de la ley se atribuyan al cónyuge superviviente se regirán por la misma ley que regule los efectos del matrimonio, a salvo siempre las legítimas de los descendientes.

9. A los efectos de este capítulo, respecto de las situaciones de doble nacionalidad previstas en las leyes españolas se estará a lo que determinen los tratados internacionales, y, si nada estableciesen, será

Art. 9.8: Last addendum added by Law 11/1990 dated 15 October (BOE, 18.10.1990). Bear in mind the European Convention related to the Establishment of a System for Registering Last Wills and Testaments dated 16.5.1972 (BOE, 5.10.1985) and the 1989 Hague Convention on the Law Applicable to Succession due to Death (not in effect). Also see art. 16.2 Cc regarding the rights of the surviving spouse provided for in the Aragón Code of Civil Law.

Art. 9.9: Bear in mind that Spain is a party to several treaties relating to dual nationality such as the ones with Chile, Colombia, Peru, Paraguay, Nicaragua, Guatemala, Bolivia, Ecuador, Costa Rica, Honduras, the Dominican Republic and the Republic of Argentina.

this regard, the nationality of the last country in which the individual was a resident will prevail, and in the absence of this, the most recently acquired nationality.

Spanish nationality will prevail in cases in which the other nationality held is not contemplated in our laws or in international treaties. If an individual holds two or more nationalities and none of them is Spanish, the provisions of the following section will prevail.

10. The personal law of individuals who do not hold nationality in any country or whose nationality is unknown, will be the law of that individual's habitual place of residence.

11. The personal law of juridical persons is determined by their nationality and governs every thing related to capacity, establishment, representation, functioning, transformation, dissolution, and closure.

The respective personal laws of all parties will be taken into account in a merger of companies with different nationalities.

Art. 10. 1. Possession, ownership and other rights related to immovable property as well as their disclosure, will be governed by the law of the place in which they are located.

This same law will be applicable to movable property.

For the purposes of constituting or

preferida la nacionalidad coincidente con la última residencia habitual y, en su defecto, la última adquirida.

Prevalecerá en todo caso la nacionalidad española del que ostente además otra no prevista en nuestras leyes o en los tratados internacionales. Si ostentare dos o más nacionalidades y ninguna de ellas fuera la española se estará a lo que establece el apartado siguiente.

10. Se considerará como ley personal de los que carecieren de nacionalidad o la tuvieran indeterminada, la ley del lugar de su residencia habitual.

11. La ley personal correspondiente a las personas jurídicas es la determinada por su nacionalidad y regirá en todo lo relativo a capacidad, constitución, representación, funcionamiento, transformación, disolución y extinción.

En la fusión de sociedades de distinta nacionalidad se tendrán en cuenta las respectivas leyes personales.

Art. 10. 1. La posesión, la propiedad y los demás derechos sobre bienes inmuebles, así como su publicidad, se regirán por la ley del lugar donde se hallen.

La misma ley será aplicable a los bienes muebles.

A los efectos de la constitución o cesión de derechos

ceding rights on goods in transit, these will be considered to be located in the place of departure, except when the sender and the receiver have expressly or tacitly agreed that the final destination of the goods should be used for this purpose.

2. Ships, aircraft and transport by rail, and all of the rights re-lated to them, are subject to the law of the place in which they are regis-tered. Automobiles and other means of transport by highway are subject to the law of the land in which they are found.

3. The issuance of security bonds is governed by the law of the place in which they are emitted.

4. Intellectual and indus-trial property rights are protected within Spanish territory in accor-dance with Spanish law, subject to the provisions of the international treaties and agreements to which Spain is a party.

5. Contractual obligations will be governed by the law expressly stipulated by the parties to the contract, provided that it has some connection with the business in

sobre bienes en tránsito, éstos se considerarán situados en el lugar de su expedición, salvo que el remitente y el destinatario hayan convenido, expresa o tácitamente, que se consideren situados en el lugar de su destino.

2. Los buques, las aeronaves y los medios de transporte por ferrocarril, así como todos los derechos que se constituyan sobre ellos, quedarán sometidos a la ley del lugar de su abanderamiento, matrícula o registro. Los automóviles y otros medios de transporte por carretera quedarán sometidos a la ley del lugar donde se hallen.

3. La emisión de los títulos-valores se atenderá a la ley del lugar en que se produzca.

4. Los derechos de propiedad intelectual e industrial se protegerán dentro del territorio español de acuerdo con la ley española, sin perjuicio de lo establecido por los convenios y tratados internacionales en los que España sea parte.

5. Se aplicará a las obligaciones contractuales la ley a que las partes se hayan sometido expresamente, siempre que tengan alguna conexión con el negocio de

Art. 10.5: See the 1980 Rome Convention on the law applicable to contractual obligations that displaces art. 10.5 of the Civil Code. Bear in mind that a large number of international conventions directly and materially regulate certain contracts and aspects re-lated to them. Thus, as regards the international sale of goods, see art. 1 of the Vienna Convention on the international sale of goods dated 11 April 1980 (BOE, 30.1.1990).

question; in the absence thereof, by the national law common to both parties; in the absence of this, by the law of the habitual residence of both parties, and, as a last resort, by the law of the place where the contract was signed.

In spite of the stipulations of the previous paragraph, if there is no express submittal to a specific law, for contracts dealing with immovables, the law of the place where the property is located will be applied, and as regards the sale of tangible goods in commercial establishments, the law of the place where these establishments are located will be applied.

6. As regards obligations that are derived from employment contracts, if there is no express submittal by the parties, and subject to the provisions of section 1 of art. 8, the law of the place where the work is carried out will be applied.

7. Donations will be regulated in all cases by the national law of the donor.

8. The Spanish legal system will consider valid those contracts acquired through purchase that are signed in Spain by foreigners who lack legal capacity according to their national law, if the reason they lack said legal capacity is recognized under Spanish law. This rule will not

que se trate; en su defecto, la ley nacional común a las partes; a falta de ella, la de la residencia habitual común, y, en último término, la ley del lugar de celebración del contrato.

No obstante lo dispuesto en el párrafo anterior, a falta de sometimiento expreso, se aplicará a los contratos relativos a bienes inmuebles la ley del lugar donde estén sitos, y a las compraventas de muebles corporales realizadas en establecimientos mercantiles, la ley del lugar en que éstos radiquen.

6. A las obligaciones derivadas del contrato de trabajo, en defecto de sometimiento expreso de las partes y sin perjuicio de lo dispuesto en el apartado 1 del artículo 8, les será de aplicación la ley del lugar donde se presten los servicios.

7. Las donaciones se registrarán, en todo caso, por la ley nacional del donante.

8. Serán válidos, a efectos del ordenamiento jurídico español, los contratos onerosos celebrados en España por extranjero incapaz según su ley nacional, si la causa de la incapacidad no estuviese reconocida en la legislación española. Esta regla no se aplicará a los contratos

Art. 10.6: As regards contracts between a Spanish company and a Spanish employee, see art. 1.4 of the 1980 Workers Statute.

be applied to contracts having to do with real estate located in foreign countries.

9. Non-contractual obligations will be governed by the law of the place where the event from which they are derived took place.

Business management practices will be regulated by the law of the place where the manager carries out his principal duties.

In cases of unjust enrichment, the law to be applied is the one under which the transfer of the estate assets in favor of the party being enriched is carried out.

10. The law which regulates an obligation covers requirements for compliance and the consequences of non-compliance and forfeiture. However, the law of the place of compliance will be applied when enforcement requires judicial or administrative intervention.

11. Obligatory legal representation will be regulated by the law which governs the legal relationship from which the power of representation is derived, while voluntary representation — if there is no express submittal — is governed by the law of the country in which the power of representation is used.

relativos a inmuebles situados en el extranjero.

9. Las obligaciones no contractuales se regirán por la ley del lugar donde hubiere ocurrido el hecho de que deriven.

La gestión de negocios se regulará por la ley del lugar donde el gestor realice la principal actividad.

En el enriquecimiento sin causa se aplicará la ley en virtud de la cual se produjo la transferencia del valor patrimonial en favor del enriquecido.

10. La ley reguladora de una obligación se extiende a los requisitos del cumplimiento y a las consecuencias del incumplimiento, así como a su extinción. Sin embargo, se aplicará la ley del lugar de cumplimiento a las modalidades de la ejecución que requieran intervención judicial o administrativa.

11. A la representación legal se aplicará la ley reguladora de la relación jurídica de la que nacen las facultades del representante, y a la voluntaria, de no mediar sometimiento expreso, la ley del país en donde se ejerciten las facultades conferidas.

Art. 10.9: Bear in mind art. 4, 1991 Law on Unfair Competition and the 1971 Hague Convention on the Law Applicable to Traffic Accident and the 1973 Hague Convention on the Law Applicable to Product Liability. All of these displace art. 10.9 of the Civil Code in matters that they regulate. With more specific scope, a series of international conventions regulate extracontractual responsibility or aspects tied to this responsibility in very heterogeneous sectors.

Art. 11. 1. The formalities related to contracts, last wills and testaments and other legal acts are governed by the law of the country in which they are sanctioned. However, these acts will also be considered valid if they are carried out in accordance with the formalities required by the law applicable to their content or the personal law of the person or persons involved in the legal act. Acts and contracts having to do with real estate carried out in accordance with the formalities stipulated in the place where these are located are also considered valid.

If these acts were to be authorized on ships or aircraft that are under way, they will be understood to be done in the country in which the vessel is registered. Military ships and aircraft are considered to be part of the national territory of the State to which they belong.

2. If the law regulating the content of acts and contracts requires a certain formality in order for these acts or contracts to be considered valid, this formality will always be complied with, even if the act is authorized in a foreign country.

Art. 11. 1. Las formas y solemnidades de los contratos, testamentos y demás actos jurídicos se regirán por la ley del país en que se otorguen. No obstante, serán también válidos los celebrados con las formas y solemnidades exigidas por la ley aplicable a su contenido, así como los celebrados conforme a la ley personal del disponente o la común de los otorgantes. Igualmente serán válidos los actos y contratos relativos a bienes inmuebles otorgados con arreglo a las formas y solemnidades del lugar en que éstos radiquen.

Si tales actos fueren otorgados a bordo de buques o aeronaves durante su navegación, se entenderán celebrados en el país de su abanderamiento, matrícula o registro. Los navíos y las aeronaves militares se consideran como parte del territorio del Estado al que pertenezcan.

2. Si la ley reguladora del contenido de los actos y contratos exigiere para su validez una determinada forma o solemnidad, será siem-pre aplicada, incluso en el caso de otorgarse aquéllos en el extranjero.

Art. 11: The law applicable to the format of last wills and testaments is determined in accordance with the provision of the 1961 Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions, as this convention operates *erga omnes*.

3. Spanish law will be applied to contracts, last wills and testaments and other legal acts authorized by Spanish diplomatic or consular civil servants in foreign countries.

Art. 12. 1. The qualification which determines the rule of conflict to be applied will always be done in accordance with Spanish law.

2. Remission to foreign law will be understood to be remission to material law, without taking into account the *renvoi* that rules of conflict can make to laws other than Spanish law.

3. In no case can a foreign law be applied when it is contrary to public policy.

4. The use of a rule of conflict in order to evade a mandatory Spanish law will be considered fraudulent evasion of the law.

5. When a rule of conflict

3. Será de aplicación la ley española a los contratos, testamentos y demás actos jurídicos autorizados por funcionarios diplomáticos o consulares de España en el extranjero.

Art. 12. 1. La calificación para determinar la norma de conflicto aplicable se hará siempre con arreglo a la ley española.

2. La remisión al derecho extranjero se entenderá hecha a su ley material, sin tener en cuenta el *reenvío* que sus normas de conflicto puedan hacer a otra ley que no sea la española.

3. En ningún caso tendrá aplicación la ley extranjera cuando resulte contraria al orden público.

4. Se considerará como fraude de ley la utilización de una norma de conflicto con el fin de eludir una ley imperativa española.

5. Cuando una norma de

Art. 12.2: Bear in mind that some international conventions displace or are of preferential application (arts. 4 and 8 of the 1973 Convention on the Applicable Law to Maintenance Obligations; art. 1 of the 1961 Convention on the Conflict of Laws Relating to the Form for Testamentary Dispositions; arts. 4 and 17 of the 1989 Convention on the Applicable Law to Succession due to death; art. 3 of the 1971 Convention on the Law Applicable to Traffic Accidents; art. 4 of the 1973 Convention on the Law Applicable to Products Liability, and art. 15 of the 1980 Convention on the Law Applicable to Contractual Obligations).

Art. 12.5: Bear in mind that some international agreements are of preferential application (art. 14 of the Convention on Jurisdiction and Applicable Law relating to the protection of minors; art. 1.2 of the Convention on the Conflict of Laws relating to the Form of Testamentary Dispositions dated 5 October 1961; art. 16 of the Convention on the Law Applicable to Maintenance Obligations dated 2 October 1973, and art. 12 of the Convention on the Law Applicable to Product Liability dated 2 October 1973).

remits to the legislation of a State in which there coexist different legislative systems, the determination of which will be applicable will be made according to the law of that State.

6. The Courts and authorities will apply the rules of conflict of Spanish law *ex officio*.

Anyone who invokes foreign law must accredit its content and effectiveness by those means of proof considered admissible under Spanish law. However, in order to apply foreign law, the judge can also make use of any methods he considers necessary to inform himself and can issue any court order he deems appropriate to meet that end.

conflicto remita a la legislación de un Estado en el que coexistan diferentes sistemas legislativos la determinación del que sea aplicable entre ellos se hará conforme a la legislación de dicho Estado.

6. Los Tribunales y autoridades aplicarán de oficio las normas de conflicto del derecho español.

La persona que invoque el derecho extranjero deberá acreditar su contenido y vigencia por los medios de prueba admitidos en la ley española. Sin embargo, para su aplicación, el juzgador podrá valerse además de cuantos instrumentos de averiguación considere necesarios, dictando al efecto las providencias oportunas.

Art. 12.6.II: See arts. 340 and 341 of the *LEC*. Bear in mind the European Convention on Information on Foreign Law, done in London, 7 June 1968 and the Inter-American Convention on Proof of and Information related to Foreign Law, done in Montevideo, 8 May 1979. As regards the extra-judicial application of foreign law, see art. 91 of the 1958 Regulation of the Civil Registry; art. 36 of the 1947 Hypothecary Regulations; art. 168.4 of the 1944 Notary Regulations.

Chapter V
Scope of Application of Coexisting
Legal Systems within National
Territory³

Art. 13. 1. The application of the provisions found in this preliminary title regarding the determination of the effect of laws and general rules on their application, and of Title IV of Book I, except for the rules found in said title on the economic regime of marriages, will be general and direct throughout Spain.

2. As regards all else, and with full respect for the special and statutory laws in force in certain provinces or territories, the Civil Code will be considered supplementary law, except when the special rules of a province or territory stipulate another applicable law.

Capítulo V
Ámbito de aplicación de los
regímenes jurídicos civiles
coexistentes en el territorio
nacional

Art. 13. 1. Las disposiciones de este título preliminar, en cuanto determinan los efectos de las leyes y las reglas generales para su aplicación, así como las del título IV del libro I, con excepción de las normas de este último relativas al régimen económico matrimonial, tendrán aplicación general y directa en toda España.

2. En lo demás, y con pleno respeto a los derechos especiales o forales de las provincias o territorios en que están vigentes, regirá el Código Civil como derecho supletorio, en defecto del que lo sea en cada una de aquéllas, según sus normas especiales.

³ Art.149.1,8^a of CE (Spanish Constitution) permits the coexistence of the general spanish civil legal order with special and statutory civil laws in force in certain provinces or territories. This article distinguishes between State legislative competence for ruling on conflict of law, and Autonomous Community legislative competence to conserve, modify and develop special and statutory law where it exists. In this sense bear in mind the *Compiled Statuted on Civil Law of Aragon* (Law 15/1967, 8 April, modified by Law 3/1985, 2 May and 4/1995, 29 March); *Compiled Statuted on Civil Law of Catalonia* (Law 40/1960,, 21 July, modified by Law 13/1984, 20 March and 1/1984, 19 July), *Catalonian Succession Due to Death Code* (Law 40/1991, 30 December), *Catalonian Law for Adoption and Protection of Minor* (Law 37/1991, 30 December, modified by Law 8/1995, 27 July), among others; *Statutory Civil Law of Galicia* (Law 4/1995, 24 May); *Compiled Statuted on Civil Law of Balear Islands* (Law 5/1961, 19 April, modified by Law 8/1990, 28 June), *Balear Law of Care and Protection of Minor* (Law 7/1995, 21 March); *Compiled Statuted on Civil Law of Navarra* (Law 1/1973, 1 March, modify by *Statutory Law* 5/1987, 1 April); *Statutory Civil Law of the Basque Country* (Law 3/1992, 1 July, that derogates thee 1959 *Compiled*), and *Valencian Law on Historical Land-Leasing* (Ley 6/1986, 15 December).

Art. 14. 1. Legal residence will determine if an individual is subject to common civil law or special or statutory law.

2. Children of parents who legally reside in common law territory, or in special or statutory (foral) territory, have the same legal residence as their parents.

As regards adoption, adoptees who are minors acquire the legal residence of their adoptive parents.

3. If upon the birth or the adoption of a child the parents hold different legal residences, the child will have the residence of the parent with whom filiation was first determined; in the absence thereof, the child will be considered a legal resident of his or her place of birth, and as a last resort, the child will have common law residence.

However, the parents — or the parent who exercises or has been granted custody of the child — can give the child either of their legal residences within the first six months after the birth or the adoption.

The withdrawal or suspension of custody, or a change in the legal residence of the parents, does not affect the legal residence of the children.

In any case, from the time a

Art. 14. 1. La sujeción al derecho civil común o al especial o foral se determina por la vecindad civil.

2. Tienen vecindad civil en territorio de derecho común, o en uno de los de derecho especial o foral, los nacidos de padres que tengan tal vecindad.

Por la adopción, el adoptado no emancipado adquiere la vecindad civil de los adoptantes.

3. Si al nacer el hijo, o al ser adoptado, los padres tuvieren distinta vecindad civil, el hijo tendrá la que corresponda a aquél de los dos respecto del cual la filiación haya sido determinada antes; en su defecto, tendrá la del lugar del nacimiento y, en último término, la vecindad de derecho común.

Sin embargo, los padres, o el que de ellos ejerza o le haya sido atribuida la patria potestad, podrán atribuir al hijo la vecindad civil de cualquiera de ellos en tanto no transcurran los seis meses siguientes al nacimiento o a la adopción.

La privación o suspensión en el ejercicio de la patria potestad, o el cambio de vecindad de los padres, no afectarán a la vecindad civil de los hijos.

En todo caso el hijo desde

child is fourteen until one year after he is emancipated, he can opt for the legal residence of his place of birth or for the most recent legal residence of either of his parents. If he is not emancipated, he must be assisted by a legal representative.

4. Marriage does not affect legal residence. However, either spouse can opt for the legal residence of the other as long as the two are not separated legally or *de facto*.

5. Legal residence can be obtained:

1º After two years of uninterrupted residency, provided that the interested party states that it is his or her desire to do so.

2º After ten years of uninterrupted residency, provided no declaration to the contrary has been made during this time.

Both declarations must be recorded in the Civil Register and they do not have to be reaffirmed.

6. When there exists any doubt as to legal residency, place of birth will prevail.

Art. 15. 1. A foreign individual who acquires Spanish nationality must choose one of the following at the time of inscription of citizenship:

- a) The one corresponding to place of residence.
- b) The one corresponding

que cumpla catorce años y hasta que transcurra un año después de su emancipación podrá optar bien por la vecindad civil del lugar de su nacimiento, bien por la última vecindad de cualquiera de sus padres. Si no estuviera emancipado, habrá de ser asistido en la opción por el representante legal.

4. El matrimonio no altera la vecindad civil. No obstante, cualquiera de los cónyuges no separados, ya sea legalmente o de hecho, podrá, en todo momento, optar por la vecindad civil del otro.

5. La vecindad civil se adquiere:

1º Por residencia continuada durante dos años, siempre que el interesado manifieste ser esa su voluntad.

2º Por residencia continuada de diez años, sin declaración en contrario durante este plazo.

Ambas declaraciones se harán constar en el Registro Civil y no necesitan ser reiteradas.

6. En caso de duda prevalecerá la vecindad civil que corresponda al lugar de nacimiento.

Art. 15. 1. El extranjero que adquiera la nacionalidad española deberá optar, al inscribir la adquisición de la nacionalidad, por cualquiera de las vecindades siguientes:

- a) La correspondiente al lugar de residencia.
- b) La del lugar del naci-

to place of birth.

c) The most recent residence of either of his or her natural or adoptive parents.

d) The one corresponding to his or her spouse.

This choice will be made by the individual acquiring citizenship himself or with the assistance of a legal representative or by a legal representative, in accordance with the individual's legal capacity to acquire citizenship. When the acquisition of citizenship is done by means of a declaration or petition presented by a legal representative, the required authorization should determine the legal residence that must be chosen.

2. A foreign individual who acquires citizenship through naturalization will have the legal residence that the Royal Decree granting citizenship stipulates based on that individual's choice and the provisions of the previous section or other circumstances that come into play regarding the petitioner.

3. The recovery of Spanish citizenship includes the recovery of the legal residence that the individual had when he lost his citizenship.

4. Personal affiliation with a region or community that has its own or a different civil speciality

miento.

c) La última vecindad de cualquiera de sus progenitores o adoptantes.

d) La del cónyuge.

Esta declaración de opción se formulará, atendiendo a la capacidad del interesado para adquirir la nacionalidad, por el propio optante, por sí o asistido de su representante legal, o por este último. Cuando la adquisición de la nacionalidad se haga por declaración o a petición del representante legal, la autorización necesaria deberá determinar la vecindad civil por la que se ha de optar.

2. El extranjero que adquiera la nacionalidad por carta de naturaleza tendrá la vecindad civil que el Real Decreto de concesión determine, teniendo en cuenta la opción de aquél, de acuerdo con lo que dispone el apartado anterior u otras circunstancias que concurran en el peticionario.

3. La recuperación de la nacionalidad española lleva consigo la de aquella vecindad civil que ostentara el interesado al tiempo de su pérdida.

4. La dependencia personal respecto a una comarca o localidad con especialidad civil propia o

within the special or statutory legislation of the territory in question, will be governed by the provisions of this article and the previous one.

Art. 16. 1. The conflicts of law that can arise due to the coexistence of different civil codes within national territory will be resolved in accordance with the rules found in chapter IV with the following specifications:

1^a Personal law will be determined by legal residency.

2^a The provisions of sections 1, 2 and 3 of article 12 on qualification, renvoi and public policy will not be applicable.

2. Spouses whose economic regime is determined by the *Compilación aragonesa* (Aragon Code) are entitled to widow's rights as stipulated in the Code, even if they change their legal residence, with the exception in these cases of the share of the inheritance that passes by law to the descendants which is established by the law of succession.

This expected widow's right cannot be denied to someone who, in good faith, purchased goods not located in territory where this right is recognized if the contract was entered into outside of said territory and if the economic regime of the

distinta, dentro de la legislación especial o foral del territorio correspondiente, se regirá por las disposiciones de este artículo y las del anterior.

Art. 16. 1. Los conflictos de leyes que puedan surgir por la coexistencia de distintas legislaciones civiles en el territorio nacional se resolverán según las normas contenidas en el capítulo IV con las siguientes particularidades:

1^a Será ley personal la determinada por la vecindad civil.

2^a No será aplicable lo dispuesto en los apartados 1, 2 y 3 del artículo 12 sobre calificación, reenvío y orden público.

2. El derecho de viudedad regulado en la *Compilación aragonesa* corresponde a los cónyuges sometidos al régimen económico matrimonial de dicha *Compilación*, aunque después cambie su vecindad civil, con exclusión en este caso de la legítima que establezca la ley sucesoria.

El derecho expectante de viudedad no podrá oponerse al adquirente a título oneroso y de buena fe de los bienes que no radiquen en territorio donde se reconozca tal derecho, si el contrato se hubiera celebrado fuera de dicho

Art.16: Modified by Law 11/1990, 15 October (*BOE*, 18 October) on the reform of the Civil Code in application of the principle of non-discrimination due to sex.

spouse transmitting the goods was not re-corded.

Widow's usufruct also pertains to a surviving spouse when the deceased was a legal resident of Aragón at the time of his or her death.

3. The effects of marriage between Spaniards is regulated by the Spanish law that is applicable according to the criteria set out in article 9, and in the absence thereof, by the Civil Code.

In the latter case, the separate property regime stipulated in the Civil Code will be applied if this re-gime is mandated by the personal law of both spouses.

(...)

First Book
Title III.
On Domicile

Art. 40. As regards the exercise of rights and compliance with civil obligations, the domicile of physical persons is their habitual place of residence, and, when appropriate, the residence stipulated by the Law on Civil Procedures.

The domicile of diplomats who are assigned to a foreign country and enjoy the right of extraterrito-

territorio, sin haber hecho constar el régimen económico matrimonial del transmitente.

El usufructo viudal corresponde también al cónyuge superviviente cuando el premuerto tuviese vecindad civil aragonesa en el momento de su muerte.

3. Los efectos del matrimonio entre españoles se regularán por la ley española que resulte aplicable según los criterios del artículo 9 y, en su defecto, por el Código Civil.

En este último caso se aplicará el régimen de separación de bienes del Código Civil si conforme a una y otra ley personal de los contrayentes hubiera de regir un sistema de separación.

(...)

Libro Primero
Título III
Del domicilio

Art. 40. Para el ejercicio de los derechos y el cumplimiento de las obligaciones civiles, el domicilio de las personas naturales es el lugar de su residencia habitual, y, en su caso, el que determine la Ley de Enjuiciamiento Civil.

El domicilio de los diplomáticos residentes por razón de su cargo en el extranjero, que gocen del

Art. 40: See art. 52 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters, and arts. 62 to 70 of the LEC.

riality, is their last place of residence in Spain.

derecho de extraterritorialidad, será el último que hubieren tenido en territorio español.

Art. 41 When the domicile of a corporation is not determined by the law under which it was constituted or recognized nor by its by-laws or rules of the corporation, will be considered to be domiciled in the place in which its legal representation is established or in which its main functions are carried out.
(...)

Art. 41. Cuando ni la Ley que las haya creado o reconocido, ni los estatutos o las reglas de fundación fijaren el domicilio de las personas jurídicas, se entenderá que lo tienen en el lugar en que se halle establecida su representación legal, o donde ejerzan las principales funciones de su instituto.

Title IV
On Matrimony
(...)

Título IV
Del matrimonio
(...)

Chapter III. On the Way in Which a Wedding is to be Celebrated

Capítulo III. De la forma de celebración del matrimonio.

Art. 49. A Spaniard can marry inside or outside of Spain:

Art. 49. Cualquier español podrá contraer matrimonio dentro o fuera de España:

1º Before the judge or civil servant indicated in this Code.

1º Ante el Juez o funcionario señalado por este Código.

2ª In the legally stipulated

2ª En la forma religiosa

Art. 41: Also see art. 6 of the 1989 Law on Corporations and art. 120.1 of the 1989 Rules for the Mercantile Register. See art. 53 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters and art. 66 of the *LEC*.

Art. 49: New wording for arts. 49, 50, 51 and 107 in accordance with Law 30/1981 dated 7 July (*BOE*, 20.7.1981). Bear in mind the Convention of the International Commission on Civil Status which favors facilitating marriages celebrated in foreign countries, the 1980 Convention of the International Commission on Civil Status regarding the issuance of capacity-to-marry certificates. For n. 2 bear in mind art. VI.1) of the Agreements between the Holy See and Spain dated 3 January 1979 on legal matters (*BOE*, 15.12.1979) and arts. 7 of the Evangelical, Muslim and Jewish covenants: see in this Journal the note by I. García Rodríguez, pp. 31-43.

religious ceremony.

He or she can also marry outside of Spain in accordance with the stipulations of the law of the place where the wedding is celebrated.

Art. 50. If both parties are foreigners, the wedding can be celebrated in Spain according to the stipulations established for Spaniards or by complying with the stipulations of the personal law of either of the parties.

Art. 51. The following individuals will be competent to authorize a marriage:

1° The judge in charge of the Civil Register.

2° In municipalities where no such judge resides, the Mayor or delegate designated in the regulations.

3° The diplomatic or consular civil servant in charge of the Civil Register in foreign countries.
(...)

legalmente prevista.

También podrá contraer matrimonio fuera de España con arreglo a la forma establecida por la ley del lugar de celebración.

Art. 50. Si ambos contrayentes son extranjeros, podrá celebrarse el matrimonio en España con arreglo a la forma prescrita para los españoles o cumpliendo la establecida por la ley personal de cualquiera de ellos.

Art. 51. Será competente para autorizar el matrimonio:

1° El Juez encargado del Registro Civil.

2° En los municipios en que no resida dicho Juez, el Alcalde o el delegado designado reglamentariamente.

3° El funcionario diplomático o consular encargado del Registro Civil en el extranjero.
(...)

Art. 50: As regards dispensing with obstacles, see the 1961 International Commission on Civil Status which favors facilitating foreign marriage ceremonies.

Art. 51: See art. 49.1 of the Civil Code. Bear in mind art. 5, letter f) of the 1963 Vienna Convention. Spanish consuls may be subject to some limitations when the law of the receiving State prohibits the exercise of this function within its territory (Argentina, Austria, Switzerland).

Chapter XI
Rules of Private International Law

Art. 107. Legal separation and divorce are governed by the national law common to both spouses at the time they file the petition; in the absence of a common national law, by the couple's habitual residence law and, if the spouses had their habitual residences in different States, according to Spanish law, Spanish courts are always competent.

Declarations of legal separation or divorce dictated by foreign courts will take effect in the Spanish legal system when they are recognized according to the provisions of the Law on Civil Procedures.

Capítulo XI
Normas de Derecho Internacional Privado

Art. 107. La separación y el divorcio se regirán por la ley nacional común de los cónyuges en el momento de la presentación de la demanda; a falta de nacionalidad común, por la ley de la residencia habitual del matrimonio y, si los esposos tuvieran su residencia habitual en diferentes Estados, por la ley española, siempre que los Tribunales españoles resulten competentes.

Las sentencias de separación y divorcio dictadas por Tribunales extranjeros producirán efectos en el ordenamiento español desde la fecha de su reconocimiento conforme a lo dispuesto en la Ley de Enjuiciamiento Civil.

Art. 107.: As regards the international judicial competence of Spanish courts in matters of annulments, legal separation or divorce, see art. 22.3 LOPJ.

**ORGANIC LAW OF JUDICIAL
POWER 6/1985, 1 JULY³**

**LEY ORGÁNICA 6/1985, DE 1
DE JULIO³, DEL PODER
JUDICIAL**

Preliminary Title
On Judicial Power and the Exercise
of Jurisdictional Power

Título Preliminar
Del Poder Judicial y del Ejercicio de
la Potestad Jurisdiccional

(...)
Art. 4. Jurisdiction will cover all
persons, all matters and the entire
Spanish territory as established in
the Constitution and in the law.
(...)

(....)
Art. 4. La jurisdicción se extien-
de a todas las personas, a todas las
materias y a todo el territorio
español, en la forma establecida en
la Constitución y en las leyes.
(...)

First Book
On the Extent of Jurisdiction and the
Creation and Organization of the
Courts

Libro Primero
De la extensión y límites de la
jurisdicción y de la planta y orga-
nización de los juzgados y tribunales

Title One
On the Extent and Limits of
Jurisdiction

Título Primero
De la extensión y límites de la
jurisdicción

Art. 21. 1. Spanish courts of law
will hear all cases that arise in
Spanish territory between Span-
iards, between foreigners and
between Spaniards and foreigners
in accordance with this Law and
the international treaties and

Art. 21. 1. Los Juzgados y Tribu-
nales españoles conocerán de los
juicios que se susciten en territorio
español entre españoles, entre
extranjeros y entre españoles y
extranjeros con arreglo a lo
establecido en la presente Ley y en

Art. 4: See art. 21 *LOPJ* and art. 51 *LEC* that was abolished by the two previous articles

Art. 21.: Bear in mind the treaties to which Spain is a party that include rules on competence, like the 1968 Brussels Convention and the 1988 Lugano Convention, both on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

3. *BOE* n.157, 2.7.1985, correction of errors *BOE* n.264, 4.11.1985.

agreements to which Spain is a party.

2. Cases of immunity from jurisdiction and enforcement established by the rules of Public International Law are excepted.

Art. 22. In the civil sphere, Spanish courts will :

1º have exclusive competence in matters related to real property rights and the leasing of real estate located in Spain; in matters of the constitution, validity, nullity or dissolution of corporations or corporate persons that are domiciled in Spanish territory and in matters related to the agreements and decisions taken by their administrative organs; in matters related to the validity or nullity of the inscriptions made in a Spanish register; in matters related to the registration or the validity of patents and other rights which require deposit or registration when the deposit or registration is requested or carried out in Spain; in matters related to the recognition and enforcement in Spanish territory of judicial resolutions and arbitration decisions issued in a foreign country.

los tratados y convenios internacionales en los que España sea parte.

2. Se exceptúan los supuestos de inmunidad de jurisdicción y de ejecución establecidos por las normas del Derecho Internacional Público.

Art. 22. En el orden civil, los Juzgados y Tribunales españoles serán competentes:

1º Con carácter exclusivo, en materia de derechos reales y arrendamientos de inmuebles que se hallen en España; en materia de constitución, validez, nulidad o disolución de sociedades o personas jurídicas que tengan su domicilio en territorio español, así como respecto de los acuerdos y decisiones de sus órganos; en materia de validez o nulidad de las inscripciones practicadas en un Registro español; en materia de inscripciones o de validez de patente y otros derechos sometidos a depósito o registro cuando se hubiere solicitado o efectuado en España el depósito o registro; en materia de reconocimiento y ejecución en territorio español de resoluciones judiciales y decisiones arbitrales dictadas en el extranjero.

Art. 22.: Bear in mind art. 9.2 *LOPJ* ("In addition to their own cases, civil courts will hear any case that is not attributable to another jurisdiction") and the international treaties to which Spain is a party that include international jurisdiction rules. See the 1968 Brussels Convention and the 1988 Lugano Convention, both on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

2º have general competence over cases in which the parties expressly or tacitly submit to Spanish courts or when the defendant is domiciled in Spain.

3º In the absence of the above criteria and in matters related to a declaration of absence or death, when the person in question's last place of residence was in Spanish territory; in matters of incapacitation and measures of protection for minors and those who lack legal capacity and for their belongings, when these individuals habitually reside in Spain; in matters related to personal and patrimonial relations between spouses, in matters of annulment, legal separation and divorce when both spouses have their habitual place of residence in Spain at the time the suit is brought or if the plaintiff is Spanish and habitually resides in Spain, or when both spouses are Spanish, regardless of their place of residence provided that they mutually agree to present the petition or when one presents the petition with the consent of the other; in matters related to filiation or parent-child relationships when the habitual place of residence of the child at the time the suit is brought is Spain, or if the plaintiff is Spanish or has his habitual place of residence in Spain; in order to grant an adoption, when the adoptive parent or the adoptee is Spanish or habitually resides in Spain; in matters related to support, when the person responsible

2º Con carácter general, cuando las partes se hayan sometido expresa o tácitamente a los Juzgados o Tribunales españoles, así como cuando el demandado tenga su domicilio en España.

3º En defecto de los criterios precedentes y en materia de declaración de ausencia o fallecimiento, cuando el desaparecido hubiere tenido su último domicilio en territorio español; en materia de incapacitación y de medidas de protección de la persona o de los bienes de los menores o incapacitados, cuando éstos tuviesen su residencia habitual en España; en materia de relaciones personales y patrimoniales entre cónyuges, nulidad matrimonial, separación y divorcio, cuando ambos cónyuges posean residencia habitual en España al tiempo de la demanda o el demandante sea español y tenga su residencia habitual en España; así como cuando ambos cónyuges tengan la nacionalidad española, cualquiera que sea su lugar de residencia, siempre que promuevan su petición de mutuo acuerdo o uno con el consentimiento del otro; en materia de filiación y de relaciones paternofiliales, cuando el hijo tenga su residencia habitual en España al tiempo de la demanda o el demandante sea español o resida habitualmente en España; para la constitución de la adopción, cuando el adoptante o el adoptado sea español o resida habitualmente en España, en materia de alimentación, cuando el

for providing the support has his habitual place of residence in Spanish territory; in matters of contractual obligations, when these were created or are to be complied with in Spain; in matters related to extracontractual obligations, when the event from which they are derived took place within Spanish territory or when the author of the harm or its victim have their habitual place of residence in Spain; in actions related to personal property, if this property is located in Spanish territory at the time the suit is brought; in matters related to succession, when the deceased's last domicile was in Spanish territory or if he or she possessed real estate in Spain.

4º In like manner, in matters related to consumer contracts, when the purchaser is domiciled in Spain if the item being purchased is personal property and is sold in installments or when there exists a loan to finance the purchase; for any other type of contract for services or those related to personal property, when before entering into the contract there was a personal or advertised offering of the item in Spain or the consumer fulfilled the requirements needed to enter into the contract in Spanish territory; in matters related to insurance, when the insured and the insurer are domiciled in Spain; and in litigation related to the operation of a branch office, agency or commercial establishment that is located in Spanish territory. In matters related

acreedor de los mismos tenga su residencia habitual en territorio español; en materia de obligaciones contractuales, cuando éstas hayan nacido o deban cumplirse en España, en materia de obligaciones extracontractuales, cuando el hecho del que deriven haya ocurrido en territorio español o el autor del daño y la víctima tengan su residencia habitual común en España; en las acciones relativas a bienes muebles, si éstas se encuentran en territorio español al tiempo de la demanda; en materia de sucesiones, cuando el causante haya tenido su último domicilio en territorio español o posea bienes inmuebles en España.

4º Asimismo, en materia de contratos de consumidores, cuando el comprador tenga su domicilio en España si se trata de una venta a plazos de objetos muebles corporales o de préstamos destinados a financiar su adquisición; y en el caso de cualquier otro contrato de prestación de servicio o relativo a bienes muebles, cuando la celebración del contrato hubiere sido precedida por oferta personal o de publicidad realizada en España o el consumidor hubiera llevado a cabo en territorio español los actos necesarios para la celebración del contrato; en materia de seguros, cuando el asegurado y asegurador tengan su domicilio en España; y en los litigios relativos a la explotación de una sucursal, agencia o establecimiento mercantil, cuando éste se encuentre en territorio

to bankruptcy, the provisions of the law that regulates these matters will be applied.

5° With issues related to the adoption of provisional or security measures for persons or goods that are located in Spanish territory when these measures are to be carried out in Spain.

Art. 23. 1. In the criminal sphere, cases having to do with crimes or misdemeanors committed in Spanish territory or aboard Spanish ships or aircraft will fall under Spanish jurisdiction subject to the provisions of the international treaties to which Spain is a party.

2. In like manner, (Spanish courts) will hear cases on acts classified under Spanish criminal law as crimes even though they are committed outside of Spanish territory, provided that those who are held criminally responsible are Spaniards or foreigners who had acquired Spanish citizenship after the commission of the crime and when the following are true:

a) when the act is punishable in the place it was committed.

b) when the victim or the Attorney General bring suit in Spanish court.

c) when the delinquent has not been found innocent, been pardoned or been sentenced in a foreign country, or, in the last case,

español. En materia concursal se estará a lo dispuesto en su ley reguladora.

5° Cuando se trate de adoptar medidas provisionales o de aseguramiento respecto de personas o bienes que se hallen en territorio español y deban cumplirse en España.

Art. 23. 1. En el orden penal corresponderá a la jurisdicción española el conocimiento de las causas por delitos y faltas cometidos en territorio español o cometidos a bordo de buques o aeronaves españoles, sin perjuicio de lo previsto en los tratados internacionales en los que España sea parte.

2. Asimismo, conocerá de los hechos previstos en las leyes penales españolas como delitos, aunque hayan sido cometidos fuera del territorio nacional, siempre que los criminalmente responsables fueren españoles o extranjeros que hubieren adquirido la nacionalidad española con posterioridad a la comisión del hecho y concurrieren los siguientes requisitos:

a) Que el hecho sea punible en el lugar de ejecución.

b) Que el agraviado o el Ministerio Fiscal denuncien o interpongan querrela ante los Tribunales españoles.

c) Que el delincuente no haya sido absuelto, indultado o penado en el extranjero, o, en este último caso, no haya cumplido la

when he hasn't yet served his sentence. If he has served part of the sentence, that fact will be taken into account so as to subtract that time proportionately

3. Spanish courts will hear cases related to acts committed by Spaniards or by foreigners outside of Spain when, according to Spanish criminal law, these acts can be classified as one of the following:

a) Treason or crimes against the peace and independence of the State.

b) Acts against the Monarch, his or her consort, the heir to the throne or the Regent.

c) Rebellion or sedition.

d) Forgery of the royal signature or seal, of the State seal, of the signatures of Ministers, or of public or official seals.

e) Counterfeiting Spanish currency and the issuance thereof.

f) Any other type of falsification that directly harms the credit or interests of the State, and the introduction and issuance of the falsified item.

g) Attacks against Spanish authorities or civil servants.

h) Acts perpetrated during the exercise of their duties by Spanish civil servants residing in foreign countries and crimes against the Spanish government.

i) Acts related to the control of currency exchange.

4. The acts committed by

condena. Si sólo la hubiere cumplido en parte, se le tendrá en cuenta para rebajarle proporcionalmente la que le corres-ponda.

3. Conocerá la jurisdicción española de los hechos cometidos por españoles o extranjeros fuera del territorio nacional cuando sean susceptibles de tipificarse, según la ley penal española, como alguno de los siguientes delitos:

a) De traición y contra la paz o la independencia del Estado.

b) Contra el titular de la Corona, su Consorte, su Sucesor o el Regente.

c) Rebelión o sedición.

d) Falsificación de la firma o estampilla reales, del sello del Estado, de las firmas de los Ministros y de los sellos públicos u oficiales.

e) Falsificación de moneda española y su expedición.

f) Cualquier otra falsificación que perjudique directamente al crédito o intereses del Estado, e introducción o expedición de lo falsificado.

g) Atentado contra autoridades o funcionarios públicos españoles.

h) Los perpetrados en el ejercicio de sus funciones por funcionarios públicos españoles residentes en el extranjero y los delitos contra la Administración Pública española.

i) Los relativos al control de cambios.

4. Igualmente será com-

Spaniards or foreigners outside of Spanish territory will also be heard by Spanish courts if according to Spanish criminal law they can be classified as one of the following:

- a) Genocide.
- b) Terrorism.
- c) Piracy and hijacking of aircraft.
- d) Counterfeiting foreign currency.
- e) Acts related to prostitution.
- f) Illegal trafficking in psychotropic, toxic or narcotic drugs.
- g) Any other that according to international treaties or agreements should be pursued in Spain.

5. In cases related to sections 3 and 4, the provisions of section 2, letter c) of this article will be applied.

Art. 24. As regards matters of a contentious-administrative nature, Spanish jurisdiction will prevail when the pretension that is presented refers to general provisions or acts of the Spanish government. Spanish courts will also hear those cases that arise in relation to acts of Spanish public authorities in accordance with the provisions of the law.

Art. 25. As regards work-related

petente la jurisdicción española para conocer de los hechos cometidos por españoles o extranjeros fuera del territorio nacional susceptibles de tipificarse, según la ley penal española, como alguno de los siguientes delitos:

- a) Genocidio.
- b) Terrorismo.
- c) Piratería y apoderamiento ilícito de aeronaves.
- d) Falsificación de moneda extranjera.
- e) Los relativos a la prostitución.
- f) Tráfico ilegal de drogas psicotrópicas, tóxicas y estupefacientes.
- g) Y cualquier otro que, según los tratados o convenios internacionales, deban ser perseguidos en España.

5. En los supuestos de los apartados 3 y 4 será de aplicación lo dispuesto en la letra c) del apartado 2 de este artículo.

Art. 24. En el orden contencioso-administrativo será competente, en todo caso, la jurisdicción española cuando la pretensión que se deduzca se refiera a disposiciones de carácter general o a actos de las Administraciones Públicas españolas. Asimismo conocerá de las que se deduzcan en relación con actos de los poderes públicos españoles, de acuerdo con lo que dispongan las leyes.

Art. 25. En el orden social, los

issues, Spanish courts will be competent to hear cases related to:

1º Matters related to rights and obligations derived from a work contract when the services are carried out in Spain or when the contract is drawn up in Spanish territory; when the defendant is domiciled in Spanish territory or has an agency, branch office, delegation or any other type of representation in Spain; when the employee and the employer hold Spanish citizenship, regardless of where the service is being carried out or where the contract is drawn up; and, additionally, in the case of shipping contracts, if an offer was made in Spain to a Spanish worker prior to the issuance of the contract.

2º In matters related to monitoring the legality of the collective work agreements drawn up in Spain and claims derived from collective work conflicts that take place in Spanish territory.

3º In matters related to Social Security claims against Spanish entities or those that are domiciled or have an agency, delegation or any other type of representation in Spain.

Juzgados y Tribunales españoles serán competentes:

1º En materia de derechos y obligaciones derivados de contrato de trabajo, cuando los servicios se hayan prestado en España o el contrato se haya celebrado en territorio español o una agencia, sucursal, delegación o cualquier otra representación en España; cuando el trabajador y el empresario tengan nacionalidad española, cualquiera que sea el lugar de prestación de los servicios o de celebración del contrato; y además, en el caso de contrato de embarque, si el contrato fuere precedido de oferta recibida en España por trabajador español.

2º En materia de control de legalidad de los convenios colectivos de trabajo celebrados en España y de pretensiones derivadas de conflictos colectivos de trabajo promovidos en territorio español.

3º En materia de pretensiones de Seguridad Social frente a entidades españolas o que tengan domicilio, agencia, delegación o cualquier otra representación en España.

Art. 25: Bear in mind art. 9.5 *LOPJ*: "Industrial courts will hear cases that are filed which have to do with the work-related aspects of the Law, whether they be individual or collective disputes, social security claims or claims against the State when the State is held responsible according to labour law".

**CIVIL PROCEDURE CODE
DATED 3 FEBRUARY 1881 ⁴**

**LEY DE ENJUICIAMIENTO
CIVIL DE 3 DE FEBRERO DE
1881 ⁴**

(...)

Title VIII

On the Enforcement of Judgments

(...)

Second Section

**On Judgments Issued by Foreign
Courts**

(...)

Título VIII

De la ejecución de las sentencias

(...)

Sección Segunda

**De las sentencias dictadas por
Tribunales extranjeros**

Art. 951. Final judgments issued in foreign countries will have the force in Spain that is established by their respective treaties.

Art. 951. Las sentencias firmes pronunciadas en países extranjeros tendrán en España la fuerza que establezcan los Tratados respectivos.

Art. 952. If there is no special treaty with the nation in which a judgment is issued, it will have the same force that final decisions issued in Spain would have in that country.

Art. 952. Si no hubiere Tratados especiales con la nación en que se bayan pronunciado tendrán la misma fuerza que en ella se diere a las ejecutorias dictadas en España.

Art. 953. If a final judgment is issued in a country in which, according to jurisprudence, judgments issued in Spain would not be enforced, then that judgment would not have force in Spain.

Art. 953. Si la ejecutoria procediere de una nación en que por jurisprudencia no se dé cumplimiento a las dictadas por los Tribunales españoles, no tendrá fuerza en España.

Art. 951.: Bear in mind the treaties to which Spain is a party that include rules on enforcement, like the 1968 Brussels Convention and the 1988 Lugano Convention, both on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters.

4. Gaceta de Madrid 5.22.2.1881 and 5.3.1881.

Art. 954. If a judgment does not fall into one of the categories described in the previous three articles, it has force in Spain if the following conditions are met:

1^a The final judgment was issued as the result of the exercise of a personal action.

2^a The judgment was not issued by default.

3^a The obligation for which compliance was sought is legal in Spain.

4^a The final judgment meets authenticity requirements set in the country of issuance and those that Spanish law mandates for it to be certified in Spain.

Art. 955. Petitions for the enforcement of judgments handed down in foreign countries will be made before the Spanish Supreme Court.

The only exceptions are those cases which according to a treaty should be heard by a different court.

Art. 956. After translating the final judgment, and after a period of nine days in which the party against which the judgment is issued or the State Attorney can be heard in court, the Court will rule whether or not the judgment should be enforced.

This ruling cannot then be appealed.

Art. 954. Si no estuviere en ninguno de los casos de que hablan los tres artículos que anteceden, las ejecutorias tendrán fuerza en España, si reúnen las circunstancias siguientes:

1^a Que la ejecutoria haya sido dictada a consecuencia del ejercicio de una acción personal.

2^a Que no haya sido dictada en rebeldía.

3^a Que la obligación para cuyo cumplimiento se haya procedido sea lícita en España.

4^a Que la carta ejecutoria reúna los requisitos necesarios en la nación en que se haya dictado para ser considerada como auténtica, y los que las leyes españolas requieren para que haga fe en España.

Art. 955. La ejecución de las sentencias pronunciadas en naciones extranjeras se pedirá ante el Tribunal Supremo.

Se exceptúa el caso en que, según los Tratados, corresponda su conocimiento a otros Tribunales.

Art. 956. Previa la traducción de la ejecutoria hecha con arreglo a derecho, después de oír, por término de nueve días, a la parte contra quien se dirija y al Fiscal, el Tribunal declarará si debe o no darse cumplimiento a dicha ejecutoria.

Contra este auto no habrá ulterior recurso.

Art. 957. According to the previous article, the summons to appear in court will be issued by the court of the district in which the party resides.

Parties have 30 days in which to make their appearance in court.

At the end of that time, the Court will proceed to study the record of the case even if the party being summoned has not appeared.

Art. 958. If compliance is not ordered, the final judgment will be returned to the party who presented it.

If compliance is ordered, the district Court will be notified of the order by writ so that that Court can issue the corresponding order to the judge of the court of first instance of the judicial district in which the party convicted in the judgment resides or the district in which the judgment should be enforced so that the stipulations of the judgment can be put into effect through the means of enforcement established in the previous section.

Art. 957. Para la citación de la parte a quien deba oírse, según el artículo anterior, se librará certificación a la Audiencia en cuyo territorio está domiciliada.

El término para comparecer será el de treinta días.

Pasado dicho término, el Tribunal proseguirá en el conocimiento de los autos, aunque no haya comparecido el citado.

Art. 958. Denegándose el cumplimiento, se devolverá la ejecutoria al que la haya presentado.

Otorgándose, se comunicará el auto por certificación a la Audiencia, para que ésta dé la orden correspondiente al Juez de primera instancia del partido en que esté domiciliado el condenado en la sentencia, o del en que deba ejecutarse, a fin de que tenga efecto lo en ella mandado, empleando los medios de ejecución establecidos en la sección anterior.