

2 New Books: Choice of Law for Mortgages // Divorce in Private International Law

For those able to read Portuguese, two new books have been recently released, as a result of theses defended earlier this year at the Universities of Coimbra and Lisbon. English abstracts provided by the Authors read as follows (more info, respectively, [here](#) and [here](#)):

AFONSO PATRÃO, *Freedom of Choice in Mortgage and a Reinforcement of International Cooperation*

Abstract: *This dissertation concerns the implementation of a European mortgage market, identifying obstacles to its accomplishment and offering solutions to overcome them.*

Considering statistical data that indicate national compartmentalisation of mortgage markets (as land security rights are essential for internal credit but, internationally, less than 1% of all international credit involves mortgages), we start by justifying the inclusion of international mortgages within the scope of European Treaties, demonstrating that the European Union objectives include the free movement of land security rights.

*Next, we identify obstacles to the acceptance, by lenders, of land security rights on immovable property in other Member States. These barriers, potentially contrary to European law, must be correctly understood in order to arrive at accurate solutions. As such, in Part I, we deal with the mandatory submission of land property rights and land registry to *lex situs*, analysing its purpose; we demonstrate substantial differences in European mortgage and land registry laws; we scrutinise the execution of a mortgage on a plot situated in another Member State; and we highlight the complexity of setting up a mortgage in a foreign country.*

In Part II, we assess the proposals which have so far been offered as solutions. In particular, we discuss the feasibility of unifying or harmonising mortgage laws; the introduction of Eurohypothec as an additional optional legal regime; the

securitisation of granted mortgage loans; and the establishment of the country of origin principle. The analysis concludes that standing proposals do not adequately solve the issue at hand.

Solutions are offered in Part III of the dissertation. The first suggestion is to recognise party autonomy in mortgages (conferring the right to choose the applicable law to land security rights), in harmony with the movement of dépeçage of private international law on property rights and with the purpose of European integration. We demonstrate that, provided that adequate precautions are taken, there is no reason for the obligatory application of lex situs.

In addition, we advocate strengthening of international cooperation in the field of mortgage constitution — especially between notaries of the country where the contract is concluded and registrars of the Member State where the plot is located.

These recommendations are designed to be introduced in a European Regulation, considering that they would be a factor in dismissing barriers on the free movement of capital.

JOÃO GOMES DE ALMEIDA, *Divorce in Private International Law*

Abstract: *The cross-border movement of people is an increasingly widespread reality, due mainly to technological progress. Within the European Union this phenomenon is also enhanced by the freedom of movement of persons, goods, services and capital. Nowadays, it is no longer unusual to find couples of different nationalities, couples with one or more common nationalities that habitually reside in a State that is not one of the States of their nationalities and even couples, with or without a common nationality, that do not habitually reside in the same State. And it appears that this trend will only grow stronger in the future. In brief, transnational family relationships – family relationships that are connected to more than one sovereign State – are increasingly common.*

Of the various kinds of transnational family relationships, the present dissertation focuses on the transnational divorce. Divorce is the dissolution of marriage. As such, it is a significant event in the lives of the spouses, as it extinguishes the marital bond, terminating the family relationship that arose from marriage. Transnational divorce raises specific questions: in which sovereign State must the applicant initiate the divorce proceedings? Which law applies to a transnational

divorce? Is it possible for a foreign judgment on transnational divorce to be recognised and produce its effects in the same way as a domestic judgment? These specific questions are answered, respectively, by the rules on jurisdiction, applicable law and recognition of foreign judgments.

These questions, although different, cannot be considered as totally unrelated. They are interconnected. The specific connections between the rules on jurisdiction, on applicable law and on recognition of foreign judgments on divorce justify a joint analysis, so that one does not lose sight of these connections and is able to avoid incoherent solutions. The present dissertation is a study of the issues raised by the Private International Law aspects of divorce law, from the perspective of Portuguese law.