

The Present Situation of Private International Law in England

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A. THE POSITION OF PRIVATE INTERNATIONAL LAW IN ENGLAND

Private international law (otherwise, and perhaps more commonly, known in England as the conflict of laws) has been taught at English universities for decades, and currently forms an optional free-standing module in the majority of undergraduate law programmes.

It has never, however, found a place among those core modules required for entrance into the legal profession as a solicitor or barrister. It is for perhaps this reason that an academic chair in private international law has (until recently) never been countenanced at an English law faculty. Most faculties instead subsume the specialism into overarching titles, such as international commercial law or English private law. The sole exception to this practice can be found at Oxford University, where England's first professorship in private international law has been newly established.

B. THE POSITION OF ACADEMIC TEACHERS AND RESEARCHERS

There are, broadly speaking, four categories of academic positions in England: lecturer, senior lecturer, reader, and professor.

To be appointed as a lecturer, the candidate must normally hold a good honours degree in law, as well as a postgraduate research degree in law (i.e. a PhD or equivalent), although some institutions accept a professional qualification as a viable alternative (i.e. admittance as a solicitor or barrister). The candidate must also have experience of teaching law at higher education level, or demonstrable potential to teach at such a level (where it is the candidate's first academic post.)

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Significantly, they must also possess, or have the capacity to develop, a strong research and publication record. Whilst exact salaries vary according to institution and location, a lecturer can expect a minimum annual salary of around £25,000 GBP (€36,437 Euros.)

The requirements for obtaining the higher position of senior lecturer are similar to those of its junior counterpart, except that the candidate must exhibit an impressive publication and research portfolio; in other words, the potential must have been realised. There is also a greater onus on involvement in the management of the law faculty as candidates reach senior positions. Senior lecturers can expect normally a minimum salary of approximately £33,000 GBP (€48,097 Euros.)

Readers in Law must also possess the necessary qualifications. The distinction between a lecturer (whether they be junior or senior) and a reader lies in the calibre of their work; a candidate must be an internationally recognised researcher with a record of high-quality research publications (monographs as well as journal articles.) Salaries are generally to be found in the region of £40,000 GBP (€58,270 Euros.)

Applicants for a chair (i.e. a professorship) should be eminent in their field, with an outstanding research and publication record that promises the potential to produce even more significant output of a recognised international quality during the tenure of the chair. A majority of professors are authors or co-authors of one of the standard works in their area. Salaries for professorships fall outside of the normal scale structure, and are negotiated individually. A typical minimum salary for a professor, however, would be around £45,000 GBP (€65,585 Euros.)

The holder of an academic chair is normally provided with a secretary, shared among other chairs in the law faculty. A dedicated research assistant is rather less commonplace, and many law faculties simply provide one or two research associates who are at the disposal of all senior researchers. “Start-up grants” are often used to entice outstanding scholars to a particular institution, and can be used for anything connected with their position, such as accommodation, conferences, research support and IT equipment. A separate yearly stipend is also generally provided for the acquisition of books.

A plethora of English law professors, specialising in private international law, also hold a relevant professional qualification (having been called to the Bar, or qualified at a law firm as a solicitor). It would be accurate to state that most professionally-qualified senior academics are not active legal practitioners; it is often a conflict of interests (and against the relevant university’s terms of

employment) to pursue both an academic career and a career in the law. Instead, it has become increasingly prevalent in recent years for holders of an academic chair to act as “consultants” in complex, specialist cases; law firms either pay a retaining fee to the academic, or pay for the amount of consultative work done.

Perhaps the most common method for combining the roles of academic and practitioner is for eminent academics to be a door tenant at a leading set of barristers’ chambers. They then occasionally advise full-time members of chambers on issues relating to their chosen field, and sporadically provide advice to clients in non-contentious matters.

Whilst they are not academic teachers, per se, some of the most eminent scholars in the field of private international law in England are judges; the General Editor of Dicey and Morris on the Conflict of Laws, for example, is a High Court Judge. In addition, the most recently appointed Lord of Appeal in Ordinary (Law Lord) is a specialist in private international law. Many academics also provide legal advice to law-making bodies, such as the House of Lords, which intermittently requests expert evidence on an aspect of private international law for the purposes of informed discussion.

C. SPECIALISING INSTITUTIONS IN THE FIELD OF PRIVATE INTERNATIONAL LAW

Given the long tradition of private international law in England, it is perhaps surprising that there is no institution or centre that could truly be said to specialise in private international law.

There are, however, several institutes and bodies that incorporate conflict of laws issues within their remit. These include (but are not limited to):

- a) The British Institute of International and Comparative Law
- b) The Law Commission
- c) The Advisory Committee on Private International Law (part of the Department of Constitutional Affairs)
- d) The Financial Markets Law Committee

The British Institute of International and Comparative Law (BIICL) is a leading research institute, and disseminates the prolific research output of its members through publications, conferences and discussion. The BIICL is also responsible for the editorship and publication of the *International and Comparative Law Quarterly* – probably the pre-eminent journal in the field of private international

law since its inception in 1952. In addition, Visiting Research Fellows are provided with the opportunity to carry out independent research whilst making full use of the BIICL's permanent staff, IT facilities and extensive library. The BIICL also launched their first subject-specific email discussion forum in 2004, focussing on the analysis of recent developments and themes in private international law, which enables experts throughout England to discuss and identify areas of particular topical interest and, in turn, allows the BIICL to tailor its programme of seminars and lectures accordingly.

The Law Commission conducts research for the purposes of codifying and simplifying English law. Consultation papers and reports are published by the Law Commission in order to make systematic recommendations for consideration by Parliament. There are five Law Commissioners overseeing various compartmentalised areas of law, each appointed for a five-year term. Private international law is not categorised as a distinct area of law, however, and is instead discussed and administered under one of the key spheres (e.g. choice of law rules in tort would be dealt with by the Common Law and Commercial Law team.)

Law Commission reports have been one of the fundamental tools in the legislative process since 1966, and to date more than two-thirds of the Law Commission's recommendations have been implemented. Of the eight reports produced by the Law Commission in the field of private international law, seven have been implemented by Parliament, and form the bedrock of some of the current conflict of laws rules in England.

The Advisory Committee on Private International Law is annexed to the Department for Constitutional Affairs (which is responsible for, inter alia, the justice and court system in England), and provides advice to government ministers on issues relating to private international law. The members of the Committee are appointed exclusively by ministers, and consist of judges, practitioners and academics expert in private international law. Current matters before the Committee include the continuing negotiations at the Hague Conference on Private International Law; preparatory work for discussions with the European Union (EU) on a Regulation to replace the 1980 Rome Convention on the Law Applicable to Contractual Obligations ("Rome I"); negotiations with the EU on the current proposal for a Regulation on the law applicable to non-contractual obligations ("Rome II"), and other topical projects in private international law.

The Financial Markets Law Committee (FMLC) was established by the Bank of England in 2002, with the goal of identifying significant issues that might give rise to material risks for the wholesale financial markets. Membership is exclusive and is limited to leading City practitioners and academics in the financial markets field. In common with the other bodies detailed above, it cannot be described as specialising in private international law, but it does cover such issues as and when they concern an aspect of financial markets practice. In 2005, for example, the FMLC published a response to a consultation by the European Commission on the insurance provisions of the proposed “Rome I” instrument.

D. SITUATION OF PRIVATE INTERNATIONAL LAW INFORMATION

Scholarly works in private international law have always been in abundance in England. In addition to renowned authorities such as Dicey and Morris on the Conflict of Laws and Cheshire and North on Private International Law, there are numerous monographs and commentaries on all aspects of private international law from a variety of publishers.

Private international law articles appear in a multitude of legal journals which focus either on a particular area of law, or the pursuit of legal research in general. These journals include (but are not limited to):

- a) Civil Justice Quarterly
- b) British Yearbook of International Law
- c) International and Comparative Law Quarterly
- d) Law Quarterly Review
- e) Lloyds Maritime and Commercial Law Quarterly
- f) Modern Law Review
- g) Oxford Journal of Legal Studies

Significantly, the new Journal of Private International Law was launched in 2005. The Journal, published twice a year, contains scholarly peer-reviewed articles, covering all aspects of private international law from both within the European Union and in the wider international community, written (in English) by scholars from anywhere in the world. The Journal also welcomes shorter articles, analyses of new treaties and conventions in the area, and review articles of important new publications. The Journal’s international ethos is reflected in its

Editorial Advisory Board, which includes academics and practitioners from most major jurisdictions.

Universities that offer private international law as a course in their undergraduate law programme normally have at least a basic selection of major works and publications in their library that fulfil the needs of the students studying the subject. For a comprehensive collection, however, academics have two major sources to refer to: the British Library in London (which receives a copy of every copyrighted publication produced in the United Kingdom and Ireland) and the Bodleian Law Library at the University of Oxford (the Bodleian also receives a copy of all copyrighted published works.)

E. FUNDING OPPORTUNITIES FOR RESEARCH IN PRIVATE INTERNATIONAL LAW

Funding and support for research is potentially available from a multitude of sources, including (but not limited to):

- a) Arts and Humanities Research Council
- b) British Academy
- c) Economic and Social Research Council
- d) Leverhulme Trust
- e) Nuffield Foundation
- f) Society for Research into Higher Education
- g) Society of Legal Scholars
- h) Socio-Legal Studies Association

Although the precise nature of the awards vary, it can generally be stated that research funding is allocated both on the basis of individual scholarship (e.g. an academic being provided with a period of research leave, enabling them to complete a significant project by the end of the award period), and collaborative scholarship (e.g. the conducting of research being used as medium for the cross-fertilisation of ideas between groups of experts in a particular field.)

Many of the sources are societal in nature (some with charitable status), and are administered by representatives from qualifying law schools. Others (such as the Arts and Humanities Research Council) are non-departmental public bodies. The British Academy is a fusion of public and private funding; it was established by Royal Charter in 1902 and receives a Parliamentary grant-in-aid, but also

administers its own funds arising from legacies and gifts (it is also a registered charity.) Competition for awards from all possible sources remains fierce.

F. CONCLUSION

The development of private international law as an academic subject in England has largely been an organic process. The absence of any specialising institution, an English version of Germany's "Max-Planck-Institutes", means that discussion and collaboration amongst private international law experts usually arises on an informal basis. Research in private international law, however, does not appear to have suffered as a result. On the contrary, the number and quality of publications is a mark of England's strength in the field, and the emergence of a specialist journal in private international law embodies its continual growth in English law.