PROBLEMS AND POSITIVE ASPECTS OF PORTUGUESE LEGAL SYSTEM REGARDING CROSS BORDER CONVEYANCING

Afonso Patrão
Assistente da Faculdade de Direito
da Universidade de Coimbra

I. INTRODUCTION

The main purpose of this study is to identify the positive aspects and problems with regard to cross border conveyancing on plots in Portugal[1]. International transactions are growing within European Union, especially concerning ownership of immoveable property; however, this expansion does not match the circulation of *deeds.* This means parties are compelled to draw the contract in the State of situation of the plot and not in any other (possibly more convenient)[2].

There are plenty of reasons to explain this situation, which we will not discuss. However, focusing in the European market, the impulse to perform the deed in the State of situation of the plot must be considered an obstacle to the basic freedoms: parties will have to move across Europe (or represent themselves) and may face both unknown notarial rules and a contract drawn in a language they don't understand — especially in countries with civil-law notarial systems.

In this context, favourable reception of foreign deeds may play an important role promoting international conveyancing over Land Property. We will discuss especially the rules of Portuguese legal system concerning this feature, analysing the possibility of drawing a deed before a foreign notary and submit it to Portuguese Land Registry authorities.

---

[1] This article arises from the study we developed concerning the implementation of CROBECO (Cross Border Electronic Conveyancing) — a project from European Land Registry Association (ELRA), which aims to smooth the way for electronic conveyancing.

[2] This is clearly pointed out by EUROPEAN PARLIAMENT, *Comparative Study on Authentic Instruments — National Provisions of Private Law, Circulation, Mutual Recognition and Enforcement, Possible Legislative Initiative by the European Union,* Study of the European Parliament n.º IP/C/JURI/IC/2008-019, (PE/408329), elaborado pelo Council of the Notariats of the European Union, disponível na internet via http://www.cnue.be/cnue-2010/fr/005/docs/aae-etude-acte-authentique-final-25-11-2008-en.pdf, consultado em 25 de Maio de 2011, p. 142

As it wouldn't be possible to perform a deep study on Portuguese rules, we decided to highlight the main positive aspects and possible problems of Portuguese law concerning cross-border conveyancing over plots in Portugal.

II. THE POSITIVE ASPECTS OF PORTUGUESE LEGAL SYSTEM REGARDING CROSS BORDER CONVEYANCING

Portuguese legal system, applicable as *lex rei sitae* and *lex auctoris* of Land Registry services, presents three noticeable positive aspects with regard to the cross border conveyancing: a consensual system of transfer of rights *in rem* (*i)*), very receptive rules on the acceptance of foreign deeds (*ii)*) and a centralised organisation of Land Registry (*iii)*).

a) Consensual Transfer of rights *in rem*

When rights *in rem* concerning land property are transferred (or constituted) by means of a contract, there is a classic difficult task of

distinguishing the application of *lex contractus* (which may freely be chosen by the parties) and *lex rei sitae,* which will rule the land property rights[3].

In fact, in Private International Law (PIL) systems that do not submit mandatorily contractual obligations to the *lex situs* (like European Union's rules on conflict of laws, which allows a free choice of law in these international contracts), it is necessary to identify which effects of the contract are ruled by the law of the State of situation of the plot and which ones are determined by

---

[3] Cf. Art. 3.º Rome I Regulation on the law applicable to contractual obligations.
The application of *lex rei sitae* to land property is a universal solution, although it isn't sustained on any international convention – cf. LUDWIG VON BAR, *The Theory and Practice of Private International Law*, 2.ª Edição, William Green & Sons Law Publishers, Edimburgo, 1892, p. 483, and LUDWIG VON BAR, *International Law - Private and Criminal*, Soule & Bugbee, Boston, 1883, p. 216; M. HANS LEWALD, "Droit International Privé de l'Allemagne (Conflits de Lois)", *Répertoire de Droit International,* Tome VII, Sirey, Paris, 1930, p. 367; ANNA GARDELLA, *Le garanzie finanziarie nel diritto internazionale privato*, Giuffrè Editore, Milão, 2007, p. 15; BERNARD AUDIT, *Droit International Privé*, 6.ª Edição, Economica, Paris, 2010, p. 147; ROBBY ALDEN, "Modernizing the Situs Rule for Real Property Conflicts", *Texas Law Review*, Vol. 65, 1986-1987, p. 585; WILHEM WENGLER, "The General Priciples of Private International Law", *Recueil des Cours de l'Académie de Droit International*, 1961-III, Tomo 104, 1961, p. 343; KURT SIEHR, "Internationales Sachenrecht - Rechtsvergleichendes zu seiner Vergangenheit, Gegenwart und Zukunft", *Vergleichende Rechtswissenschaft - Archiv für Internationales Wirtschaftsrecht*, Vol. 104, N.º 2, 2005, p. 146; GIAN CARLO VENTURINI, "Chapter 21: Property", *International Encyclopedia of Comparative Law,* Vol. III - Private International Law, Martinus Nijhoff Publishers, Dordrecht, 1974, pp. 3ss; J.-P. NIBOYET, *Traité de Droit Inernational Privé Français*, Tomo IV, Recueil Sirey, Paris, 1947, p. 198; FRANÇOIS RIGAUX e MARC FALLON, *Droit International Privé*, De Boeck & Larcier, Bruxelas, 2005, p. 668; ANDREA BONOMI, "La nécessité d'harmonisation du droit des garanties réeles mobilières", *L'Européanisation du droit privé: Vers un Code civil européen?,* Editions Universitaires Fribourg Suisse, Fribourg, 1998, p. 507; JAVIER CARRASCOSA GONZÁLEZ, "Derechos Reales (Capítulo XXIX)", *Derecho Internacional Privado,* Vol. II, 12.ª Edição, Ed. Comares, Granada, 2011, p. 871; ANTÓNIO FERRER CORREIA, "Conflitos de leis em matéria de direitos sobre coisas corpóreas", *Revista de Legislação e de Jusrisprudência*, Ano 117 e Ano 118, Números 3728 a 3732, 1985-1986, p. 298; TEIXEIRA D'ABREU, *Estudos sobre o Código Civil Portuguez*, Vol. II, Imprensa Académica, Coimbra, 1894, p. 28; JOÃO MOTA DE CAMPOS, "Um instrumento jurídico de integração europeia - A Convenção de Bruxelas de 27 de Setembro de 1968 sobre Competência Judiciária, Reconhecimento e Execução das Sentenças", *Documentação e Direito Comparado*, n.º 22, 1985, p. 115.
Cfr. art. 46.º Portuguese Civil Code (*"o regime da posse, propriedade e demais direitos reais é definido pela lei do Estado em cujo território as coisas se encontrem situadas"*); art. 51.º of Italian Legge 218/1995 - riforma del sistema italiano di diritto internazionale privato (*"Il possesso, la proprietà e gli altri diritti reali sui beni mobili ed immobili sono regolati dalla legge dello Stato in cui i beni si trovano")*; § 43. of German EGBGB ("*Rechte an einer Sache unterliegen dem Recht des Staates, in dem sich die Sache befindet"*); art. 87.º of Belgian Code on PIL (*"Les droits réels sur un bien sont régis par le droit de l'État sur le territoire duquel ce bien est situé au moment où ils sont invoqués")*; art. 3.º of French Civil Code(*"Les immeubles, même ceux possédés par des étrangers, sont régis par la loi française"*).

the law chosen by the parties[4]. This is a very difficult legal problem, and the arduousness of the distinction has been pointed out as one of the reasons for the low number of international security interests *in rem* in the European market[5].

We shall not discuss the problem in this article. The most common criteria for distinguishing the spheres of *lex contractus* and *lex rei sitae* is the "relative primacy of real statute", according to which the *lex situs* will rule not only the powers attributed by the right *in rem* but also the power of tracing, the parties' autonomy regarding its content and the requirements for its existence and transference[6]; *lex contractus* will apply to the contract's validity and obligational effects. As it can be seen, there is a clear separation between the *title* (submitted to *lex contractus*) and the *modus adquirenti,* which is determined by *lex situs.* Additionally, the aspects of the contractual relation where real and obligational aspects are interconnected, characterisation will favour *lex rei sitae:*

---

[4] Evidently, this problem will not occur in PIL systems which submit the contract on immoveable property to *lex rei sitae* - v. g. swiss federal law on PIL (art. 119.º): *"les contrats relatifs aux immeubles ou à leur usage sont régis par le droit du lieu de leur situation",* although Swiss law admits derogation of this rule.
In fact, this problem is the reason for the advice of some legal authors to submit contracts on immoveable property to the *lex situs* or, at least, to the law indicated by *lex rei sitae's* conflict of laws rules. Cf. BERNARD AUDIT, *Droit International...* p. 673, who criticises the possibility of choice of law by the parties in contracts on immoveable property; LUÍS DE LIMA PINHEIRO, *Direito Internacional Privado*, Vol. II, 3.ª Edição, Almedina, Coimbra, 2009, p. 442.

[5] ANNA GARDELLA, *Le garanzie finanziarie...* p. 23.
The distinction of *lex rei sitae* and *lex contractus* in constracts over Land Property is a very old issue. In 1911 this problem was taken as the most serious difficulty of Private International Law — GIULIO DIÉNA, "Les conflits de lois en matière de droits réels à l'Institut de Droit International", *Revue de Droit International Privé et de Droit Pénal International*, Vol. VII, 1911, p. 562. With the same opinion, cf. ISABEL DE MAGALHÃES COLLAÇO, "Prefácio à obra", *A venda com reserva de propriedade em Direito Internacional Privado,* McGraw-Hill, Lisboa, 1991, p. XIII; RICCARDO LUZZATTO, *Stati Giuridici e Diritti Assoluti nel Diritto Internazionale Privato*, Giuffrè Editore, Milano, 1965, p. 300; FRANÇOIS RIGAUX e MARC FALLON, *Droit…,* p. 668.

[6] This criteria (extensively explained by M. HANS LEWALD, "Droit International Privé...", pp. 368-372; LUÍS DE LIMA PINHEIRO, *Direito Internacional...* Vol. II, p. 442; GIAN CARLO VENTURINI, "Property", p. 7) is established in written law in Italy and Belgium. In Italy, the conflicts rule on rights *in rem* states *"La stessa legge ne regola l'acquisto e la perdita",* (n.º 2 do art. 51.º da Legge 218/1995 — riforma del sistema italiano di diritto internazionale privato); Belgian law expressly declares *"l'acquisition et la perte de ces droits sont régies par le droit de l'État sur le territoire duquel ce bien est situé"* (article 87.º §1 PIL Code) and affirms the same law will determine *"les modes de constitution de modification de transmission et d'extinction de ces droits"* (art. 94.º, §1, n.º 5).
Thus, the definition of *rights in rem,* its existence and acquisition are named by BERNARD AUDIT, *Droit International...* p. 150 as *"questions proprement réelles".* These matters are ruled by *lex rei sitae* even in *inter partes* relations: if the *lex situs* demands *traditio* for transference of ownership, this is a mandatory requirement even in regard to the relations between parties (PIERRE MAYER e VINCENT HEUZÉ, *Droit international privé*, 10.ª Edição, Montchrestien, Paris, 2010, p. 495).

it will be *lex situs* to determine the system of transference of rights *in rem,* (*deed system; title system, etc.),* the moment of transfer of ownership and the legal possibility of selling[7].

This criteria is widely accepted[8] because it contains the fairest solution: it attends to the interests under the *situs rule* for property rights (protection of third parties, for example) and it responds to the parties' autonomy in matter of contractual relations.

This means a transaction regarding a plot in Portugal will not generate any difficulty arising from any kind of property requirement in order to the perfection of the settlement: it will not be necessary any kind of *transference contract, registration* or *payment.* The mere consensus is enough for the property transaction.

Evidently, this system promotes a free choice-of-law for contracts concerning immoveable property: because a valid contract is the only requisite for the transference, parties feel free to choose a *lex contractus* they find more

---

[7] LUÍS DE LIMA PINHEIRO, *Direito Internacional...* Vol. II, p. 442; YVON LOUSSOUARN, et al., *Droit International Privé*, 8.ª Edição, Dalloz, Paris, 2004, pp. 560 e 564; HENRI BATIFFOL e PAUL LAGARDE, *Traité de Droit International Privé*, Tomo I, 8.ª Edição, LGDJ, Paris, 1993, p. 161.

[8] This criteria is supported by ANTÓNIO FERRER CORREIA, "Conflitos de leis...", p. 326; ANTÓNIO FERRER CORREIA, "A venda internacional de objectos de arte e a protecção do património cultural", *Revista de Legislação e de Jusrisprudência*, Anos 125 e 126, N.º 3823 a 3831, 1993-1994, p. 66; ANTÓNIO FERRER CORREIA, "Parecer sobre os pontos de um questionário relativo à transferência da propriedade nas vendas internacionais de objectos mobiliários", *Boletim do Ministério da Justiça*, N.º 28, 1952, pp. 60ss; M. HANS LEWALD, "Droit International Privé...", pp. 368ss; HENRI BATIFFOL e PAUL LAGARDE, *Droit International...* Tomo I, p. 466; ANNA GARDELLA, *Le garanzie finanziarie...* p. 25; YVON LOUSSOUARN, et al., *Droit International...* pp. 563ss; FRANÇOIS RIGAUX e MARC FALLON, *Droit...,* p. 675; HENRI BATIFFOL, *Aspects philosophiques du droit international privé*, Dalloz, Paris, 1956, p. 236; ANDREA BONOMI, "La nécessité...", p. 507.
There are, however, other criteria that some Authors put forward. We'll just point them down, because they are truly a minority.
On one hand, there is the criteria (that could be called *absolute primacy of real statute*) according to which any prerequisite for the existence of a property right should be determined by *lex situs,* including the parties' legal capacity and the transferring contract. RICCARDO LUZZATTO, *Stati Giuridici...* pp. 305ss; JOSEPH STORY, *Commentaries on the Conflict of Laws*, 3.ª Edição, L. H. Bridgham, Boston, 1912, pp. 718ss.
On the other hand, some Authors propose (regarding contracts of transference of rights *in rem*) a distinction between the *internal relations,* that should be submitted to *lex contractus,* and effects towards third parties, which would remain under *lex rei sitae.* Cf. RUSSEL J. WEINTRAUB, *Commentary on the Conflict of Laws*, 4.ª Edição, Foundation Press, New York, 2001, pp. 502ss; WILLIS L. M. REESE, "American Choice of Law", *American Journal of Comparative Law*, Vol. 30, 1982, p. 142; ALBERT A. EHRENZWEIG, *A Treatise on the Conflict of Laws*, West Publishing Co., St. Paul, 1962, pp. 622ss; LUÍS DE LIMA PINHEIRO, *A venda com reserva de propriedade em Direito Internacional Privado*, McGraw-Hill, Lisboa, 1991, p. 90.
This criteria is also present in Swiss Federal Law on PIL (art. 104.º) and in some Hague Conventions (1955, 1958 and 1986).

suitable for their interests, since it isn't necessary to perform a second *real* contract which might be incompatible with the *lex contractus.* In fact, if the *lex rei sitae* establishes other requisites for a transfer other than a valid contract (such as a *real contract*) choosing a different *lex contractus* to rule all the relations between them will not be very attractive, since they must celebrate a second real contract submitted to *lex rei sitae*.

In this sense, a consensual system of property rights transference favours the possibility of choice of a foreign law, which is a major advantage. In fact, if a part of the contractual relationship should be submitted to a particular law, possibly unknown of the parties, this would materialise an obstacle to the acceptance of cross border conveyancing. Under Portuguese legal property system, this issue doesn't exist, since it is possible to submit of the whole contractual relation to the law chosen by the parties.

b) Acceptance of foreign deeds

It is a common idea that the compliance of notarial obligations prescribed by *lex rei sitae* (or by the *lex contractus*) is only possible if the deed is performed by a public notary of the country of situation of the plot.

On one hand, some legal literature sustain that whenever the *lex contractus* determines a public document as a mandatory formality, not only is the submission to that solemnity demanded (because the formality is intended to guarantee the compliance of its norms) but there is also a restriction of the legal competence for performing those deeds to public notaries of that State: the State only delegated public faith to its notaries and not to foreign officers[9].

On the other hand, some Authors argue that the *preventive justice* purpose of the civil-law notarial system imposed by *lex rei sitae* will not be

---

[9] LUÍS DE LIMA PINHEIRO, *Direito Internacional...* Vol. II, p. 226; PETER SPARKES, "European Land Law: too narrow for second home owners in Spain", *European Property Rights & Wrongs*, Diana Wallis e Sara Allanson, 2011, disponível na internet via http://dianawallismep.org.uk/en/, consultado em 25 de Janeiro de 2012, pp. 29-34, p. 33. This idea is also argued by the Opinion n.º 76/92 of the Technical Council of DGRN (Portuguese governmental registrars' supervision board), pp. 18 e 24. According to LUDWIG VON BAR, *The Theory…,* p. 270, this theory assumes that foreign officers have no legal qualifications for drawing a deed equivalent to the one described by internal law: *"In conformity with this reasoning, we should have to deny validity to all transactions entered into before foreign officials, who did not possess the special qualifications which native law requires of the officials who are entitled in this country to give validity to the execution of such transactions".*

fulfilled unless the transaction takes place before a notary of that State (what is expressly assumed by the law of some countries)[10].

Finally, it is sustained that European Union's basic freedoms aren't applicable to public notaries, since they are public officers intended to assure the interests of the empowering State[11].

De iure condendo, we do not share this point of view; *de iure condito* this is not the reality according to Portuguese Law, which is extremely receptive to foreign deeds. In fact, there are minimal difficulties when applying for a registration of a right *in rem* over a plot in Portugal supported by a foreign deed. This affirmation is sustained in three main aspects.

Firstly, it should be noted the absence of any legal restriction to public notaries on drawing deeds over plots in Portugal, unlike what it happens in some European countries. This means it is legally possible for a dutch notary, for example, to perform a deed transferring ownership of a plot in Portugal.

Secondly, with regard to the formal recognition of foreign documents, Portuguese law generally does not demand any kind of procedure (legalisation or even apostille), which can only be imposed exceptionally, if there are justified doubts on the authenticity of the document[12]. Additionally, concerning the *effects* validation, the notarial document is not comparable to a judicial ruling: it is not submitted to any recognition procedure and its effects are taken from the law applicable (according to the rules on the conflict of laws)[13].

---

[10] For example, the French Civil Code (art. 2417.º): *"Les contrats passés en pays étranger ne peuvent donner d'hypothèque sur les biens de France, s'il n'y a des dispositions contraires à ce principe dans les lois politiques ou dans les traités"*. According to PIERRE MAYER e VINCENT HEUZÉ, *Droit international...* p. 353, in this situation it could exist a conflict between the obligation of intervention of a public notary (whose activity obeys the *lex auctoris*) and the law applicable to the form of the contract.
With regard to the French law, it should be noted that YVON LOUSSOUARN, et al., *Droit International...* p. 549, argue it is possible to create a mortgage over a plot in France in a foreign country, as long the deed is drawn by a French notary.

[11] Cfr. JAVIER CARRASCOSA GONZÁLEZ, "Derechos...", p. 904: *"No existe una libre prestación de servicios en la UE en relación con los Notarios. En efecto, el Notario es una autoridad pública «española» que ejerce, por delegación del Estado «español» un auténtico poder público que consiste en el control de legalidad del documento que se otorga ante dicho Notario, un control civil, fiscal y administrativo. La finalidad de dicho control es salvaguardar los intereses generales del Estado español".*

[12] Cf.. Article 365.º Portuguese Civil Code: *"Public or private documents concluded in foreign country according to foreign law have the same probative value as the correspondent documents concluded in Portugal; Legalisation may be demanded if there are justified doubts concerning the authenticity of the document or of its recognition"* (unofficial translation).

[13] Cf. PIERRE CALLÉ, *L'acte public en droit international privé*, Economica, Paris, 2004, pp. 272ss.

Finally, in Land Registry, not always a translation into Portuguese Language will be demanded. In fact, Portuguese Land Registration Code states the possibility of abdicating that requirement if two conditions are fulfilled: the foreign deed must be written in English, French or Spanish and the registrar must know the language[14].

c) Organisation of Land Registry

The Portuguese Land Registry services are organised in a way which make them particularly suitable for receiving foreign deeds and, therefore, promote cross-border conveyancing with regard to plots in Portugal.

In fact, Portuguese Land Registry is a governmental service (registrars are State officials). This permits, first of all, the absence of territorial competence, because there is a single public database of plots; therefore, any registrar can manage registries over several plots, wherever they are situated. Secondly, it allows the interconnection to other public databases (tax information, geographic databases).

Additionally, Land Registry database is fully electronic and all registration acts and information on the plots may be requested over the internet, from any point of the world.

This features promote cross-border conveyancing regarding plots in Portugal. In fact, the absence of territorial competence of registrars, combined with the possibility of abdicating translations of foreign deeds when the registrar knows the language, make possible to establish specialised registrars in foreign deeds, managing registries over several plots in Portugal and always renouncing the notarial translation into Portuguese language.

III. POTENTIAL DIFFICULTIES

Not everything is good, though. In fact, cross-border conveyancing regarding plots in Portugal may face some difficult problems: some of them may me solved, others concretise an obstacle hard to overcome.

---

[14] Art. 43.º/3 Portuguese Land Registration Code: *"Documents written in foreign language must be translated under notarial law, unless they are written in English, French or Spanish and the official knows the language"* (we undersigned the text; unofficial translation).

a) Portugal is not a EULIS country

Portugal is not part of EULIS project, a service that allows land registry customers such as banks, lenders, estate agents and lawyers, reliable, direct and easy access to land and property information in member European countries. This means there is a potential difficulty: how can a public notary from another Member State access Land Registry information concerning plots in Portugal? This problem may, in practice, preclude the cross-border transactions.

Nevertheless, the characteristics mentioned before about Portuguese Land Registry may mitigate this issue.

If fact, since the Land Registry is *electronic*, *governmental* and there is *no territorial competence*, it is possible for foreign notaries or parties to request all the information electronically. The Land Registry information is available over the internet, which means it is possible for any party to request the supply of a *electronic permanent Land Registry certificate* – a *password* that any party can buy over the internet, allowing a real time access to Land Registry databases. Thus, any party or conveyancer can be sure, from any point of the World, of the status of the immoveable property, since it is possible to access directly the Land Registry information. In consequence, *if the conveyancer reads Portuguese language* and *if the conveyancer understands the Portuguese property law,* there is really no need for using EULIS, since there is internet access to Land Registry databases.

Problems arise, though, if the conveyancer doesn't know the Portuguese language or doesn't understand the legal property system, in which case the internet access is useless. In fact, this is one of the main features of EULIS: in EULIS system, not only the Land Registry information can be provided in English but there is a *glossary,* which explains the legal aspects essential for a conveyancer to understand the status of the plot.

Therefore, the absence of Portugal in EULIS may create a crucial obstacle to cross-border conveyancing, that can only overcome by integrating Portuguese Land Registry information in European projects designed to smooth cross border conveyancing - like EULIS or CROBECO (which contains a *help desk* in charge of providing the necessary information to the conveyancer).

b) Requirements established by Portuguese Law for the validity of the transfer

Another arising problem concerning cross-border transactions over plots in Portugal regards the set of obligations Portuguese legislation assigns the public notary. In fact, Portuguese Law establishes an assortment of duties to the conveyancer, in order to the transfer to legally occur.

Being more specific: according to Portuguese Law, Notaries shall, prior to performing the deed, collect personal information from seller and purchaser (and representation entitlements), including marital status[15], certify that Land Registry and Tax databases publish the ownership of the seller[16], attest that there are no discrepancies between the description of the plot, the Land Registry information and the Tax Administration Database[17], verify that taxes have been paid before the transaction (information provided by the buyer)[18], guarantee the existence of the Technical Property ID (a document with technical information on the buildings)[19] and certify the existence of Usage Licence (issued by municipal authorities)[20]. If any of these requirements is not fulfilled, the Notary shall refuse the drawing of the deed.

Three questions arise from these norms: is a foreign Notary duty-bound to these rules or are they applicable only to Portuguese notaries (i)? If binding foreign Notaries, how can a foreign Notary know of the existence of such requirements (ii)? In this case, how can a foreign Notary fulfil such obligations, since they seem specially designed to national conveyancers (iii)?

i) Is a foreign notary duty-bound to these obligations?

The first problem regards the definition of the sphere of application of those norms; the answer will depend on its characterisation. This issue offers some legal controversy.

If those rules are taken as statutory norms, regarding the notarial activity (rules on the drawing of the notarial deed), its application is determined by the *auctor regit actum* principle*:* according to this theory, those rules are interpreted

---

[15] Art. 46.º and 47.º Notarial Code.

[16] Art. 54.º and 57.º Notarial Code.

[17] Art. 54.º and 57.º Notarial Code.

[18] Art. 49.º Código IMT and art. 63.º Código Imposto Selo.

[19] Art. 9.º of Decree-Law 68/2004, 25th March.

[20] Art. 1.º of Decree-Law 281/99, 26th July, altered by Decree-Law 116/2008, 4th July.

as determining *how to be a Portuguese Notary,* defining his (or her) powers and competences[21]; those rules are comparable to the norms on books archive, document organisation, notarial deeds' language and confidentiality of the Notary's activity[22]. In this case, obviously, a foreign conveyancer will not be duty-bound to these obligations, and shall regard the *notarial norms* of the State where he or she acts.

Other possible characterisation is to take those notarial obligations as requirements for the transfer of property, applicable as a prerequisite of *Lex Rei Sitae* for the transfer of property. In fact, we've seen before that, according to the traditional criteria, *lex situs* will rule not only the powers attributed by the rights *in rem* but also the right of tracing, the parties' autonomy regarding its content and the conditions of its existence and transference[23]. If characterised as *conditions for the transfer,* a foreign conveyancer *will be duty-bound* to such obligations, because the *lex rei sitae* is competent for determining *what is needed* for the transfer of ownership.

We will not discuss the correct characterisation of these rules. In fact, even if in theory it could be possible for a foreign notary not to comprise to these obligations, pragmatically speaking there is no real choice: it is possible

---

[21] The *auctor regit actum* principle (which says a public authority shall apply its law) has origins in NIBOYET, being applied to the activity of any public authority: it is the case of the *"notaire, l'officier de l'état civil, le conservateur des hypothèques"* (FRANÇOIS RIGAUX e MARC FALLON, *Droit…,* p. 104). In fact, because of the public nature of the notary's affairs, his (or her) activity will be submitted to the *lex auctoris,* the law of the State where the notary performs. In this sense, PIERRE CALLÉ, *L'acte public…,* p. 16 (*"Il est certain que les règles procédurales d'élaboration des actes publics sont gouvernées par la* lex auctoris*"*); PIERRE MAYER e VINCENT HEUZÉ, *Droit international...* p. 351 (*"c'est à l'État qui institue un organe qu'il revient de préciser, d'une part, les conditions de fonctionnement, d'autre part, la portée qu'il s'attache à ses actes"*).
It is a principle easy to accept because it is specially obvious: it is undiscussed that a public official acts according to the law of the State which enacted him (or her). It's reasoning is the sovereignty delegation in notarial authorities (PIERRE CALLÉ, *L'acte public…,* p. 42 — *"La délégation de souveraineté, comme fondement de l'activité notariale, est difficilement contestable"*).
It must be noted, however, that this isn't an absolute rule, regarding all aspects of the notarial deed: many times the public notary reviews the parties' legal capacity, the validity of a contract or the formal requirements of a foreign law: the *auctor regit actum* rule is directed to the norms on the notarial activity, the Notary's competence and the drawing of the deed. Although unnecessary, the *auctor regit actum* rule is expressly announced in Spanish law (art. 11.º/3 Spanish Civil Code) regarding the notarial activity of consular authorities. On this subject, cf. PILAR BLANCO-MORALES LIMONES, "Forma de los Actos Jurídicos (Capítulo XIV)", *Derecho Internacional Privado,* Vol. II, 12.ª Edição, Ed. Comares, Granada, 2011, p. 13.

[22] These rules are certainly determined by *lex auctoris.* Cf. PIERRE CALLÉ, *L'acte public…,* p. 9; FRANÇOIS RIGAUX e MARC FALLON, *Droit…,* p. 104.

[23] Cf. M. HANS LEWALD, "Droit International Privé...", pp. 368-372; LUÍS DE LIMA PINHEIRO, *Direito Internacional...* Vol. II, p. 442; GIAN CARLO VENTURINI, "Property", p. 7.

that the Land Registry authorities characterise those norms as prerequisites of *lex rei sitae;* in this case, if a foreign notary does not fulfil them, there is a risk on non recognition of the deed.

This practical approach is common in projects of cross-border conveyancing; as an example, the CROBECO project assumes the need of its compliance in order to assure the parties of the transaction's success[24].

ii) How can a foreign notary know of the existence of such rules?

This question assumes an important difficulty. In fact, even knowing that comprising such obligations is important to assure the parties of the transaction's success, a foreign notary must know exactly what steps should be followed according to *lex rei sitae.* It's a matter of information more than difficulty.

In our opinion, this issue only can be solved by a cooperation project between conveyancers and land registrars. In fact, either by some cooperation between Land Registry Authorities and Coveyancers (informing the notary of the steps he or she should follow), either by a centralised information portal (like the *European E-Justice Portal*), it is essential for the european conveyancers to be sure of the requirements imposed by *lex rei sitae* for the deed to be recognised in the State of situation of the plot.

This judgement is actually the same taken by European Land Registry Association (ELRA), since the CROBECO project (Cross Border Electronic Conveyancing) aims precisely to establish that kind of mutual support; additionally, CNUE (Council of Notaries of the European Union) adopted in 2nd July 2012 a decision aiming to simplify cross-border real estate transactions.

iii) Fulfilment of such obligations by a foreign notary.

Even assuming a foreign notary can easily collect information on the requirements of Portuguese Law on the validity of the transfer, some of the obligations seen *supra* seem specially designed to Portuguese conveyancers, being uneasy to fulfil by a foreign notary.

---

[24] Cf. EUROPEAN LAND REGISTRY ASSOCIATION, *Common Conveyancing Reference Framework* — disponível na internet via http://www.eurogeographics.org/sites/default/files/CommonConveyancingReferenceFramework.pdf, consultado em 30 de Janeiro de 2011,

However, this task is not so difficult to achieve as it might seem, in part because of special rules of Portuguese law with regard to cross border conveyancing on immoveable property in Portugal. In order to understand ourselves, we should analyse the comprising of the obligations we mentioned before.

The first obligation (collect personal information from seller and purchaser) is not problematic, since it is usual in the notary's activity. In exchange, the other responsibilities are less obvious for a foreign conveyancer.

One of the most difficult tasks could be the certification, by the notary, of tax payments *before the transaction*[25], since a foreign notary is not always aware of the Portuguese fiscal system. Nevertheless, this aspect was considered by Portuguese legislation: a foreign notary *will not have such obligation,* since the tax payments for deeds drawn in foreign countries shall occur in a one-month period *after the transaction.* There is a special rule intended to smooth cross-border conveyancing, making the foreign notary's activity easier[26].

Another source of trouble could be the obligation for the notary to certify the existence of a *usage license* and of a *technical property ID*[27]*.* However, this turns not to be a real difficulty, since these documents, according to Portuguese Law, are *paper certificates* that shall be handed to the buyer in presence of the notary. Thus, the only main difficulty is for the Notary to know how these documents look like and how to be sure of their authenticity, a problem that must be solved by one of the means mentioned earlier (a proper cooperation between Land Registry Authorities and Notaries or a transparent and wide information Web Portal – like the *E-Justice Portal*).

Real problems affect, however, the other notarial obligations: the corroboration that Land Registry and Tax Databases publish the ownership of the seller and that there are no discrepancies between the description of the plot, the Land Registry information and the Tax Administration Database. In fact, since Portugal is *not* a EULIS Country, how can a foreign notary perform such duties?

---

[25] Art. 49.º Código IMT and art. 63.º Código Imposto Selo.

[26] Cf. Art. 36.º, n.º 2, Código IMT: *"If the transaction is formalised in a deed drawn in a foreign country, the tax payment shall occur during the next month"* (unofficial translation).

[27] Art. 9.º of Decree-Law 68/2004, 25th March; Art. 1.º of Decree-Law 281/99, 26th July, altered by Decree-Law 116/2008, 4th July.

If the foreign notary knows the Portuguese language and understands the property legal system, there is no palpable problem. In fact, since Portuguese Land Registry is *public* and *electronic,* there are *electronic certificates, passwords* which allow the access to Land Registry information over the internet – *worldwide and real time.* The password may be requested over the internet by any of the parties and given to the conveyancer, allowing the notary to proceed to that kind of certification. The same solution applies to Tax Databases information: the owner may request over the internet (worldwide and real-time) the tax information on the plot, giving the authentic electronic certificate to the conveyancer.

Problems arise, though, if the conveyancer doesn't know the Portuguese language or doesn't understand the Portuguese property legal system. In this case, the absence of a glossary may turn impossible for a foreign notary to draw the deed, although the language problem can be solved (concerning the Land Registry information, it is possible to request a paper certificate, which could be translated into English according to Notarial law in general terms; concerning tax database information, the official document is issued through the internet, requested by the owner and can be translated in general terms).

Once again, it's our belief that this problem (making the conveyancer be sure of the status of the plot, regarding Land Registry and Tax databases) can only be solved with a cooperation project between conveyancers and Land Registry authorities. Conveyancers need to have access to reliable information, a glossary to understand Land Registry information and a connection to the authorities of the State of situation of the plot, in order to direct possible questions.

This, too, was understood by European Land Registry Association (ELRA) in Crobeco Project, since the building of a CROBECO help-desk and the CROBECO portal would precisely respond to these issues.

a) Confidence of foreign parties

When performing a contract, foreign parties are often suspicious about the risks involved in the transaction. One of the main concerns regards the risk of buying illegal properties, which could have to be demolished; consequently, the buyer would want the notary to assure him or her that the property is not

illegal. Regretfully, a foreign notary is not familiarised with the Portuguese legal system and, therefore, would not provide that certainty. In consequence, parties would not be confident in a cross-border transfer, being pressured to draw the deed before a Portuguese conveyancer.

Portuguese legal system helps in this point. In fact, as seen before, one of the tasks of the conveyancer according to Portuguese Law is to certify the existence of a usage licence, an information provided by the seller[28]. Consequently, a foreign notary only needs to know how a *usage license* looks like and to be sure of its authenticity. Of course, this verification (of the authenticity of the usage license) would be easier within a proper cooperation between Land Registry Authorities and Notaries or a transparent and wide information Web Portal, like the *E-Justice Portal*.

b) The legality control for the notary: *lois de police* from Portuguese legal system

Another problem arises if the notary who performed the deed is not responsible for certifying the parties of the validity of the contract. In fact, if that was the case (for example, if the deed was drawn by an English notary), there is a strong possibility for the deed not to be recognised in Portugal.

It is known that, with regard to the formal validity of international contracts, European legislation sustains the *favor negotii* principle, aiming to promote the contract's legal value: on one hand, parties are free to choose the *lex contractus*[29]*;* on the other hand, the contract is formally valid as long as it follows, alternatively, the *lex contractus* or the law of the country where it is

---

[28] Art. 1.º of Decree-Law 281/99, 26th July, altered by Decree-Law 116/2008, 4th July.
As seen before, we do not discuss if a foreign notary is duty-bound to these obligations (since they are a requisite imposed by *lex rei sitae* in order for the transfer to occur) or if these rules only compel Portuguese notaries (since they are rules on drawing a deed and, therefore, only compel Portuguese conveyancers [*auctor regit actum*]). In fact, even if in theory it would be sustainable for a foreign notary not to follow those rules, in practice, if they are not followed, there is a risk of non-recognition of the deed.

[29] Cf. Art. 3.º Regulation Rome I – REGULATION (EC) No 593/2008 of the European Parliament and Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I).This solution was already present in the Rome Convention of 1980 on law applicable to contractual obligations.

concluded[30]. In consequence, if the contract was concluded in England or in a scandinavian country, the fact that no *public document* was drawn should not be a problem, since the contract would be formally valid according to the law of the country where it was concluded.

This conclusion, however, is not that simple. In fact, in notarial systems where the conveyancer assumes a *preventive role,* assuring a superior degree of legal certainty, some of the rules on the formal validity of the contract will have a wider scope of application: it is our belief that a contract transferring rights *in rem* on immovable property is mandatorily submitted to some rules on formal validity of *lex rei sitae,* when this law imposes a notarial verification of the contract's substantial validity as an *ad substantiam* formality, notwithstanding the rules of *lex contractus* and of the law of the country where the contract was concluded. In other words, norms which mandatorily determine a control of legality by the conveyancer as a *ad substantiam formality* are *lois d'application*

---

[30] Art. 11.º Regulation Rome I – REGULATION (EC) No 593/2008 of the European Parliament and Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I). In fact, the formal validity of the contract is not determined by *lex contractus* (the law that would be more suitable to parties' interests, according to LUÍS DE LIMA PINHEIRO, *Direito Internacional...* Vol. II, p. 226 and ALFONSO LUIS CALVO CARAVACA e JAVIER CARRASCOSA GONZÁLEZ, "El Convenio de Roma sobre la Ley Aplicabe a las Obligaciones Contractuales de 19 de Junio de 1980", *Contratos Internacionales,* Editorial Tecnos, Madrid, 1997, pp. 123ss).
The scope of lex contractus does not comprise the formal validity (art. 12.º), which is submitted to a special rule (art. 11.º): the contract is formally valid as long as it satisfies, alternatively, one of various laws. This is intended to "a garantizar la armonía internacional de decisiones y facilitar el tráfico jurídico" (PILAR BLANCO-MORALES LIMONES, "Forma...", p. 7), choosing the law applicable by reference to a certain result. In this respect, cf. HAROLDO VALLADÃO, "O princípio da lei mais favorável no direito internacional privado", *Estudos em Homenagem ao Prof. Doutor A. Ferrer-Correia,* Vol. I, Faculdade de Direito da Universidade de Coimbra, Coimbra, 1986, p. 776 (*"a razão do princípio da lei mais favorável, quanto à forma extrínseca, apoiou-se moderadamente na ideia de que a forma é um requisito precário, secundário. Não deve nunca ser fundamental, inarredável"*).

immédiate[31] of *lex rei sitae,* being applicable for every contract on immovable property in Portugal[32].

This shouldn't be any surprise: in fact, Rome I Regulation expressly anticipates this possibility, determining the satisfaction of any rules from *lex situs* on the formal validity of the contract which are *lois d'application*

---

[31] Our favourite expression for these norms is the one used by Prof. Moura Ramos - *"norms of immediate and mandatory application"* (RUI MOURA RAMOS, *Direito Internacional Privado e Constituição - Introdução a uma análise das suas relações*, 2.ª Reimpressão, Coimbra Editora, Coimbra, 1991, p. 112; RUI MOURA RAMOS, *Da Lei Aplicável ao Contrato de Trabalho*, Almedina, Coimbra, 1990, p. 667; RUI MOURA RAMOS, "Aspectos Recentes do Direito Internacional Privado Português", *Estudos em Homenagem ao Prof. Doutor Afonso Rodrigues Queiró,* Faculdade de Direito da Universidade de Coimbra, Coimbra, 1984, p. 391). This option is due to a certain understanding of such rules: in our point of view, they are substantial norms which determine their own scope of application *prior* and *over* the rules on the conflict of laws. In this article, though, we use the internationally most common expression of FRANCESCAKIS - *lois d'application immédiate.*
For an analysis of the other expressions and meanings— auto-limited norms; spatially conditioned norm; *lois de police e de sécurité;* peremptory norms; legislatively localised laws; functionally limited norms; internationally mandatory norms; *lois de police*; *règles directes d'applicabilité*; *selbstgerechten Sachnormen* —, *vide* GERHARD KEGEL, "Die selbstgerechte Sachnorm", *Gedächtnisschrift für Albert A. Ehrenzweig,* C. F. Müller Juristischer, Karlsruhe - Heidelberg, 1976, pp. 53ss; FRANÇOIS RIGAUX e MARC FALLON, *Droit…,* p. 129; PIERRE LALIVE, "Tendances et méthodes en droit international privé : cours général de droit international privé", *Recueil des Cours de l'Académie de Droit International*, 1977-II, Tomo 155, 1977, p. 121; MARC FALLON, "Les conflits de lois et de juridictions dans un espace économique intégré - L'expérience de la Communauté Européenne", *Recueil des Cours de l'Académie de Droit International*, Tomo 253, 1995, pp. 129 and 213ss; RUI MOURA RAMOS, *Direito Internacional Privado e Constituição…,* p. 112, n. 150; ANTÓNIO MARQUES DOS SANTOS, *As Normas de Aplicação Imediata no Direito Internacional Privado — Esboço de uma Teoria Geral*, Vol. II, Almedina, Coimbra, 1991, 697ss; MARIA HELENA BRITO, *A Representação nos Contratos Internacionais - Um contributo para o estudo do princípio da coerência do direito internacional privado*, Almedina, Coimbra, 1999, p. 702, n. 379; DÁRIO MOURA VICENTE, *Da Responsabilidade Pré-Contratual em Direito Internacional Privado*, Almedina, Coimbra, 2001, pp. 627ss; JOÃO BAPTISTA MACHADO, *Âmbito de Eficácia e Âmbito de Competência das Leis*, (reimpressão), Almedina, Coimbra, 1998, p. 277. NUNO ANDRADE PISSARRA, "Normas de Aplicação Imediata e Direito Comunitário", *Normas de Aplicação Imediata, Ordem Pública Internacional e Direito Comunitário,* Almedina, Coimbra, 2004,p. 22.

[32] It is known the classical Private International Law method (used in every European country and being the basis of European Union's PIL system – CHRISTIAN KOHLER, "Lo spazio giudiziario europeo in materia civile e il diritto internazionale privato comunitario", *Diritto Internazionale Privato e Diritto Comunitario,* CEDAM, Padova, 2004, p. 87; PAOLO PICONE, "Diritto Internazionale Privato Comunitario e Pluralità dei Metodi di Coorinamento tra Ordinamenti", *Diritto Internazionale Privato e Diritto Comunitario,* CEDAM, Padova, 2004, p. 496) uses rules on the conflict of laws: the PIL system does not give the applicable rule but points out the national legal system which will do so. Cf. ANTÓNIO FERRER CORREIA, *Direito Internacional Privado — Alguns Problemas*, Almedina, Coimbra, 1997, p. 22; YVON LOUSSOUARN, "Cours Général de Droit International Privé", *Recueil des Cours de l'Académie de Droit International*, 1973-II, Tomo 139, 1973, p. 280.
However, national legal systems created substantial rules which unilaterally determine their own scope of application, with regard to political interests of the State which enacted them – *Lois d'Application Immédiate.* The identification of such norms is usually attributed to PH. FRANCESCAKIS, *La théorie du renvoi et les conflits de systèmes en droit international privé*, Sirey, Paris, 1958, pp. 11ss; PH. FRANCESCAKIS, "Conflits de Lois (principes généraux)", *Répertoire de droit international,* Vol. I, Dalloz, Paris, 1968, p. 480.

immédiate, which means European Union predicted some European legal systems would have such rules. In our opinion, Portuguese law (as well as Member States with similar provisions), when determines the conveyancer to control the substantial validity of the contract, is settling that rule not only for contracts ruled by Portuguese law but to the contracts on plots in Portugal.

Let's take a better look at this conclusion.

As it is widely known, *lois d'application immédiate* may be *explicit* (determining directly their scope of application to certain situations, even outside the dominium from the law they belong to) or *implicit.* Implicit *lois d'application immédiate* are the ones where its specific and unilateral scope of application is deduced by the lawyer by its *ratio,* because its purpose does not depend on the same factors that determined the application of other norms of the law of that State. In other words, it is the particular axiological intensity of the norm that establishes its scope of application[33].

Accordingly, *lois d'application immédiate* are an exception to the general rules on the conflict of laws, since they prevail over them (even with regard to

---

[33] PH. FRANCESCAKIS, "Quelques précisions sur les «lois d'application immédiate» et leurs rapports avec les règles de conflits de lois", *Revue Critique de Droit International Privé*, Vol. 55, n.º 1, 1966, p. 14; PH. FRANCESCAKIS, "Conflits de Lois...", p. 480; YVON LOUSSOUARN, "Cours Général...", pp. 321ss; YVON LOUSSOUARN, et al., *Droit International...* pp. 140ss; PIERRE MAYER e VINCENT HEUZÉ, *Droit international...* p. 91 ("*En général ce caractère d'application nécessaire est déduit logiquement, soit par la jurisprudence, soit plus rarement par le législateur, du but de la règle"*); RUI MOURA RAMOS, *Da lei aplicável…,* p. 672; LUÍS DE LIMA PINHEIRO, "Apontamento sobre as normas de aplicação necessária perante o direito internacional privado português e o artigo 21.º do Código Civil de Macau", *Revista da Ordem dos Advogados*, Ano 60, Vol. I (Janeiro de 2000), 2000, p. 26; ANTÓNIO MARQUES DOS SANTOS, "Alguns Princípios de Direito Internacional Privado e de Direito Internacional Público do Trabalho", *Estudos de Direito Internacional Privado e de Direito Público,* Almedina, Coimbra, 2004, p. 105; ANTÓNIO MARQUES DOS SANTOS, *As normas de aplicação…,* Vol. II, p. 940 (*"o âmbito de aplicação espacial autónomo – e específico – de cada norma de aplicação imediata se explica pelo seu conteúdo e pelos seus fins, pelos objectivos por ela perseguidos e só por eles pode ser explicado", dada a "relação incindível entre o fim e o conteúdo das regras e o seu âmbito de aplicação no espaço")*; ANTÓNIO FERRER CORREIA, *Lições de Direito Internacional Privado*, Almedina, Coimbra, 2000, p. 161; ANTÓNIO FERRER CORREIA, "Considerações sobre o método do Direito Internacional Privado", *Estudos em Homenagem ao Prof. Doutor J. J. Teixeira Ribeiro,* Vol. III, Coimbra, 1983, p. 60 (*"é do próprio fim visado pela norma que derivam os limites impostos à sua aplicação espacial"*); JOÃO BAPTISTA MACHADO, *Âmbito…,* p. 279; ALFONSO LUIS CALVO CARAVACA e JAVIER CARRASCOSA GONZÁLEZ, "El Convenio...", p. 117.

international convention's rules)[34], because of the nature of the political purposes they aim, which cannot be postponed because of the mere fact that the competent law (according to the general conflict of laws rule) is a foreign one. In consequence, it is safe to conclude these rules present a *different method* of ruling international situations, because they take into account the content of the rules and not only the closest connection[35].

This special axiological intensity, from which it can be deduced a wider scope of application, is precisely what we find in national rules that assign the conveyancer a responsibility to control the substantial validity of the contract. In fact, it is our opinion that a State which enacts those norms is deciding it for the immovable property within its boundaries.

On one hand, when the State determines a validity control by the conveyancer as a formality *ad substantiam,* the legislator is not only concerned about particular interests of the parties (prudence in celebrating such contracts; regularity of consent; absence of accidental incapacity) but takes into account public concerns related to immovable property certainty. In fact, an invalid deed, even if it could never access Land Registry, would generate unsureness with regard to the legal status of the plot. This is one of the purposes of determining

---

[34] In fact, not only the most part of PIL conventions expressly reserve the application of such norms (cf. art. 7.º of Rome Convention of 1980 on the law applicable to contractual obligations; art. 16.º of the Hague Convention of 1985 on law applicable to trusts and their recognition; art. 17.º of the Hague Convention of 1986 on the on the Law Applicable to Contracts for the International Sale of Goods), but also the International Court of Justice, in its ruling Boll Boll (Affaire relative à l'application de la Convention de 1902 pour régler la tutelle des mineurs [Pays-Bas c. Suède], Arrêt du 28 novembre 1958, C.I.J. Recueil 1958, p. 55), ruled the primacy of *Lois de Police* over an international convention. FRANK VISCHER, "General course on private international law", *Recueil des Cours de l'Académie de Droit International*, 1992-I, Tomo 232, 1992, p. 151.

[35] BERNARD AUDIT, "Le droit international privé à la fin du XXe siècle: progrès ou recul", *Revue internationale de droit comparé*, Vol. 50, n.º 2 (Abril-Junho), 1998, p. 442, explains that, in spite of giving importance to the political purposes of the norms and although they materialise a different method, these norms do not coincide with the *governmental interest analysis* of CURRIE: they do not substitute the *general* conflict of laws rules and operates only exceptionally. Cf. also PAUL GRAULICH, "Règles de Conflit et Règles d'Application Immédiate", *Mélanges en l'honneur de Jean Dabin,* Vol. II, Émile Bruylant / Sirey, Bruxelas / Paris, 1963, p. 633; ANTÓNIO MARQUES DOS SANTOS, *As normas de aplicação…,* Vol. II, pp. 956 and 962. This theory is not uncontroversial: some legal authors take *lois d'application immédiate* as simple substantial rules connected to a unilateral PIL rule. According to this thesis, it is impossible for the scope of application to be deduced from the purpose of the norms: GERHARD KEGEL, "Die selbstgerechte Sachnorm", p. 69; FRANK VISCHER, "General course...", p. 156; LUÍS DE LIMA PINHEIRO, "Apontamento sobre as normas...", pp. 28 and 29.

an obligation for the conveyancer to verify the contract's legality, avoiding future conflicts[36].

Secondly, the option for a notarial system which includes the certification of contract's validity - a *latin* notarial system - gives the parties the security inherent to a special probative value of the deed. This legal option is intended to promote economical development. In fact, if the *substantial secureness* is the most impressive part - because the conveyancer guaranties the substantial validity of the deed - the public document has a *formal, documental secureness,* in consequence of the special probative value given by law. In fact, economical development (mainly in its dimension of attracting foreign investments) is more efficiently pursued if the acquisition title of immoveable property is granted with full probative value, (a factor even more relevant in *consensual systems*, which do not need any other facto in order to transfer rights *in rem)*[37]*.* Evidently, the concern of attracting investment is fulfilled if those rules apply to contracts on plots located *in that state*, regardless of the law governing the contract.

Thirdly, the prescription of a ceremony involving the intervention of a public official (or other authorised conveyancer) is partly directed to satisfy the fiscal interests of the state of the situation of the property. In fact, in some States the conveyancer is responsible for notifying tax authorities of the transaction and in others the notary collects taxes on transactions of real

---

[36] Cf. J. A. MOUTEIRA GUERREIRO, "O título e o registo: âmbito das respectivas qualificações e funções", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade,* Ordem dos Notários, Lisboa, 2007, p. 98; MÓNICA JARDIM, "A segurança jurídica preventiva como corolário da actividade notarial", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da modernidade,* Ordem dos Notários, Lisboa, 2007, p. 112; FRANCISCO JAVIER GARCÍA MÁS, "O controlo da legalidade — seu significado", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da modernidade,* Ordem dos Notários, Lisboa, 2007, p. 76; PILAR BLANCO-MORALES LIMONES, "Forma…", p. 4 (who mentions *"función depuradora o de encauzamiento",* a public interest purpose in *"posibilitar que los negocios jurídicos nazcan sin vicios o irregularidades"*).
Furthermore, legality control may be justified in order to detect criminal activities. That's noticeable in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. In fact, national provisions on this European act establish an obligation for the conveyancer to refuse to draw a deed when suspecting of the existence of a money laundering crime. Cfr. national provisions in http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72005L0060:EN:NOT.

[37] MÓNICA JARDIM, "A importância do documento autêntico na transmissão e constituição dos direitos reais — controlo da legalidade", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade,* Ordem dos Notários, Lisboa, 2007, p. 195: *"a chave fundamental para o desenvolvimento económico consiste em atribuir aos cidadãos títulos de direitos reais seguros"*.

property - as a collaborator of State. To that extent, there is a public interest of the creditor country in prescribing a formality which comprises a conveyancer's control of the contract[38].

Finally, and this is the decisive argument, the *preventive justice* interest which is the basis of latin notarial systems, is intended to reduce Court intervention: the binding of the deed's substantial validity with its special probative value reduces the need for judicial intervention. If the notary, at the very birth of the legal relationship, prevents the birth of issues affecting the validity of the contract (and ensures compliance with existing public and private law) he or she is preventing the need for future judicial actions, contributing to social peace and reducing the costs of the judiciary system. Basically, notaries play a complementary role to that of the judges, avoiding the emergence of conflicts. Diminishing access to courts, with undeniable advantages for traders, can only be considered a public interest[39].

As known, the prevention of judicial conflicts is an interest of a State in the areas where the courts of that State would be competent. The jurisdiction of the courts on buildings is guided by the criteria of the situation of the plot: as such, the preventive effect is possible only if all immovable property situated in that State is transmitted and burdened by intervention of conveyancers with legality certification duties.

With these four arguments, the conclusion is that the public interests of the Portuguese State regarding the establishment of a duty to certify the

---

[38] This is followed by LUDWIG VON BAR, *The Theory…,* p. 281: the Professor thought, concerning formal validity of contracts, the *locus regit actum* rule would not apply whenever there are fiscal interests of the country of situation of the plot.

[39] Cf. the European Parliament *Comparative Study on Authentic Instruments,* p. 4. This is the reason why, on one hand, *"preventive justice functions must not be entrusted to mere private service companies"* (determining the public endowment as a notary public) and, on the other hand, that the deed is drawn by *"a trustworthy, state-appointed person with sufficient experience and a clearly defined jurisdiction who is — although independent — subject to an effective disciplinary control like a judge".*
Accordingly, MÓNICA JARDIM, "A importância do documento...", p. 194,(*"através da redacção e autorização de documentos válidos e conformes à lei, pelo seu conteúdo, e eficazes e executórios pela sua forma, os notários facilitam, encurtam ou tornam desnecessária a intervenção dos tribunais")*; JOÃO FERNANDO FERNANDES MAGALHÃES, "O notariado como sistema de segurança e de prevenção de conflitos", *O Notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade,* Ordem dos Notários, Lisboa, 2007, p. 59 (*"Quanto mais notário, tanto menos juiz")*; PILAR BLANCO-MORALES LIMONES, "Forma...", p. 4, (*"función de economía jurisdiccional")*; MÉLINA DOUCHY-OUDOT e EMMANUEL GUINCHARD, "Espace judiciaire civil européen", *Revue Trimestrielle de Droit Européen*, Vol. 47, n.º 4 (Outubro-Dezembro), 2011, p. 881; CARLO ANTONIO TROJANI, "Il principio comunitatio di sussidiarietà nell'ottica della funzione notarile", *Notarius International*, Vol. 3, n.º 1, 1998, pp. 64ss.

substantial validity of a contract on Portuguese Land Property, regardless of the law governing the substance of the contract, are only fulfilled if that duty is necessarily observed. Basically, this is a *loi d'application immédiate,* whose application is explicitly allowed under Art. 11/5 ofRome I Regulation[40].

Interestingly, this conclusion is absolutely clear to Common Law countries. In fact, when transposing the Directive on electronic commerce, UK and Ireland legislators established the possibility of electronic transmission of real rights on property; however, as an exception, contracts on propertiy located in latin notary system countries were excluded, since the formal validity of those depends on a mandatory solemnity in which the conveyancer certifies the legality of the contract[41].

Since most of European States have *latin notarial systems,* there will be generally no problem in recognising a foreign deed, because notaries in most countries within the European Union do certify the legality of the contract and

---

[40] Since the nineteenth century the Legal Authors have been advocating this solution: LUDWIG VON BAR, *The Theory…,* pp. 500-502; WILHEM WENGLER, "The General Principles...", p. 370, n. 32; HENRI BATIFFOL, *Aspects philosophiques…,* p. 233; JOSÉ DIAS MARQUES, *Direito Internacional Privado — Apontamentos das Lições ao 5.º Ano do Instituto Superior de Ciências Económicas e Financeiras de 1954-1955*, (policopiado), 1955, p. 63; JAVIER CARRASCOSA GONZÁLEZ, "Derechos...", pp. 904-906; ALFONSO LUIS CALVO CARAVACA e JAVIER CARRASCOSA GONZÁLEZ, "El Convenio...", p. 125; PIERRE CALLÉ, *L'acte public…,* p. 78; WILHEM WENGLER, "Les conflits de lois et le principe d'égalité", *Revue Critique de Droit International Privé*, Vol. LII, 1963, p. 225. Converging, PIERRE MAYER e VINCENT HEUZÉ, *Droit international...* p. 495, hold that formalities imposed in the interest of third parties shall always be decided by *lex rei sitae.*
In fact, in some countries this is more explicit. For example, art. 119.º/3 of Swiss Law on Private International Law states: *"Toutefois, la forme du contrat este régie par le droit de l'État dans lequel l'immeuble est situé, à moins que celui-ci n'admette l'application d'une autre droit. Pour l'immeuble sis en Suisse, la forme este régie par le droit suisse"*.
In other countries, Land Registry rules demand that the support of Land Registry is a *public authentic document*, since it is not possible to establish an equivalence with a deed not substantially verified by an impartial conveyancer: In France, cf. art. 4.º do *Décret n.º 55-22 du 4 janvier 1955 portant réforme de la publicité foncière* (altered by Ordonnance n.º 2006-346 du 23 mars 2006) *"Tout acte sujet à publicité dans un bureau des hypothèques doit être dressé en la forme authentique";* in Germany, § 29 GBO states *"Eine Eintragung soll nur vorgenommen werden, wenn die Eintragungsbewilligung oder die sonstigen zu der Eintragung erforderlichen Erklärungen durch öffentliche oder öffentlich beglaubigte Urkunden nachgewiesen werden. Andere Voraussetzungen der Eintragung bedürfen, soweit sie nicht bei dem Grundbuchamt offenkundig sind, des Nachweises durch öffentliche Urkunden";* in Belgium, FRANÇOIS RIGAUX e MARC FALLON, *Droit…,* p. 675, state that *locus regit actum* rule shall be derogated, because of the *"nécessité de satisfaire aux exigences de fonctionnement des services de publicité foncière énerve l'efficacité de cette maxime".*

[41] In Ireland, Statutory Instrument 68/2003 states electronic conveyancing does not apply a *"contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the Member State where the real estate is situated"*; in the England, Electronic Commerce (EC Directive) Regulations Act 2002 states *"formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the member State where the real estate is situated"*.

perform deed. However, some deeds (drawn according to the law of scandinavian countries or common law notaries) may not be recognised in Portugal, as the substantial validity certification by an impartial conveyancer is a requirement imposed to any contract on immovable property in Portugal.

IV. CONCLUSION

The main impression regarding the Portuguese legal system is actually very positive, concerning cross border conveyancing concerning plots in Portugal. There is an important set of rules that favour international conveyancing: Portuguese Registry accepts foreign deeds (generally without legalisation or *apostille*) and a translation is not always necessary; Land Registry is a governmental service which contains an electronic database, with no territorial competence; there are special tax rules regarding the transaction of plots abroad; the transfer of rights in rem depends solely on consensus of the parties, which is useful for a clear separation between the lex contractus and the lex rei sitae for the real effects of the deed, promoting choice of law.

There are, however, some difficulties: First of all, regarding the form of the contract, Portuguese law demands a solemnity by which a conveyancer certifies the legality of the deed, as a formality *ad substantiam.* This request is regarded as an *ordre public* exigency, which means that a notarial deed will be claimed wherever the contract is celebrated and independently of the *lex contractus.* Additionally, there are requirements for the validity of the contract difficult to follow by foreign notaries, especially if they don't read Portuguese. This last issue would easily be solved if some sort of cooperation between Land Registry Authorities and foreign conveyancers was established.

BIBLIOGRAPHY

Comparative Study on Authentic Instruments, National Provisions of Private Law, Circulation, Mutual Recognition and Enforcement, Possible Legislative Initiative by the European Union, Study of the European Parliament n.º IP/C/JURI/IC/2008-019, (PE/408329), elaborado pelo Council of the Notariats of the European Union, disponível na internet via http://www.cnue.be/cnue-2010/fr/005/docs/aae-etude-acte-authentique-final-25-11-2008-en.pdf, consultado em 25 de Maio de 2011;

ALDEN, ROBBY, "Modernizing the Situs Rule for Real Property Conflicts", *Texas Law Review*, Vol. 65, 1986-1987, pp. 585-633;

AUDIT, BERNARD, "Le droit international privé à la fin du XXe siècle: progrès ou recul", *Revue internationale de droit comparé*, Vol. 50, n.º 2 (Abril-Junho), 1998, pp. 421-488;

—, *Droit International Privé*, 6.ª Edição, Economica, Paris, 2010;

BATIFFOL, HENRI, *Aspects philosophiques du droit international privé*, Dalloz, Paris, 1956;

BATIFFOL, HENRI / LAGARDE, PAUL, *Traité de Droit International Privé*, Tomo I, 8.ª Edição, LGDJ, Paris, 1993;

BLANCO-MORALES LIMONES, PILAR, "Forma de los Actos Jurídicos (Capítulo XIV)", *Derecho Internacional Privado*, Vol. II, 12.ª Edição, Alfonso Luis Calvo Caracava e Javier Carrascosa González, Ed. Comares, Granada, 2011, pp. 3-14;

BONOMI, ANDREA, "La nécessité d'harmonisation du droit des garanties réeles mobilières", *L'Européanisation du droit privé: Vers un Code civil eurápeen?*, Franz Werro, Editions Universitaires Fribourg Suisse, Fribourg, 1998, pp. 481-496;

BRITO, MARIA HELENA, *A Representação nos Contratos Internacionais - Um contributo para o estudo do princípio da coerência do direito internacional privado*, Almedina, Coimbra, 1999;

CALLÉ, PIERRE, *L'acte public en droit international privé*, Economica, Paris, 2004;

CALVO CARAVACA, ALFONSO LUIS / CARRASCOSA GONZÁLEZ, JAVIER, "El Convenio de Roma sobre la Ley Aplicabe a las Obligaciones Contractuales de 19 de Junio de 1980", *Contratos Internacionales*, Alfonso Luis Calvo Caracava, Luis Fernández de la Gándara e Pilar Blanco-Morales Limones, Editorial Tecnos, Madrid, 1997, pp. 41-137;

CAMPOS, JOÃO MOTA DE, "Um instrumento jurídico de integração europeia - A Convenção de Bruxelas de 27 de Setembro de 1968 sobre Competência Judiciária, Reconhecimento e Execução das Sentenças", *Documentação e Direito Comparado*, n.º 22, 1985, pp. 75-235;

CARRASCOSA GONZÁLEZ, JAVIER, "Derechos Reales (Capítulo XXIX)", *Derecho Internacional Privado*, Vol. II, 12.ª Edição, Alfonso Luis Calvo Caracava e Javier Carrascosa González, Ed. Comares, Granada, 2011, pp. 863-912;

COLLAÇO, ISABEL DE MAGALHÃES, "Prefácio à obra", *A venda com reserva de propriedade em Direito Internacional Privado*, Luís de Lima Pinheiro, McGraw-Hill, Lisboa, 1991,

CORREIA, ANTÓNIO FERRER, "Parecer sobre os pontos de um questionário relativo à transferência da propriedade nas vendas internacionais de objectos mobiliários", *Boletim do Ministério da Justiça*, N.º 28, 1952, pp. 56-82;

—, "Considerações sobre o método do Direito Internacional Privado", *Estudos em Homenagem ao Prof. Doutor J. J. Teixeira Ribeiro*, Vol. III, Coimbra, 1983, pp. 1-92;

—, "Conflitos de leis em matéria de direitos sobre coisas corpóreas", *Revista de Legislação e de Jusrisprudência*, Ano 117 e Ano 118, Números 3728 a 3732, 1985-1986, Vol. 117: 298-302, 325-329, 357-361; Vol. 118: 115-119, 138-142 e 165-169;

—, "A venda internacional de objectos de arte e a protecção do património cultural", *Revista de Legislação e de Jusrisprudência*, Anos 125 e 126, N.º 3823 a 3831, 1993-1994, pp. 289-293, 321-325, 353-357 (Ano 125); pp. 288-212, 234-237, 266-270, 296-103, 162-166 (Ano 126);

—, *Direito Internacional Privado — Alguns Problemas*, Almedina, Coimbra, 1997;

—, *Lições de Direito Internacional Privado*, Almedina, Coimbra, 2000;

D'ABREU, TEIXEIRA, *Estudos sobre o Código Civil Portuguez*, Vol. II, Das relações civis internacionaes, Imprensa Académica, Coimbra, 1894;

DIÉNA, GIULIO, "Les conflits de lois en matière de droits réels à l'Institut de Droit International", *Revue de Droit International Privé et de Droit Pénal International*, Vol. VII, 1911, pp. 561-586;

DOUCHY-OUDOT, MÉLINA / GUINCHARD, EMMANUEL, "Espace judiciaire civil européen", *Revue Trimestrielle de Droit Européen*, Vol. 47, n.º 4 (Outubro-Dezembro), 2011, pp. 871-883;

EHRENZWEIG, ALBERT A., *A Treatise on the Conflict of Laws*, West Publishing Co., St. Paul, 1962;

EUROPEAN LAND REGISTRY ASSOCIATION, *Common Conveyancing Reference Framework,* disponível na internet via http://www.eurogeographics.org/sites/default/files/CommonConveyancingReferenceFramework.pdf, consultado em 30 de Janeiro de 2011;

FALLON, MARC, "Les conflits de lois et de juridictions dans un espace économique intégré - L'expérience de la Communauté Européenne", *Recueil des Cours de l'Académie de Droit International*, Tomo 253, 1995, pp. 9-282;

FRANCESCAKIS, PH., *La théorie du renvoi et les conflits de systèmes en droit international privé*, Sirey, Paris, 1958;

—, "Quelques précisions sur les «lois d'application immédiate» et leurs rapports avec les règles de conflits de lois", *Revue Critique de Droit International Privé*, Vol. 55, n.º 1, 1966, pp. 1-18;

—, "Conflits de Lois (principes généraux)", *Répertoire de droit international*, Vol. I, Dalloz, Paris, 1968, pp. 470-497;

GARCÍA MÁS, FRANCISCO JAVIER, "O controlo da legalidade — seu significado", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da modernidade*, Ordem dos Notários, Lisboa, 2007, pp. 73-80;

GARDELLA, ANNA, *Le garanzie finanziarie nel diritto internazionale privato*, Giuffrè Editore, Milão, 2007;

GRAULICH, PAUL, "Règles de Conflit et Règles d'Application Immédiate", *Mélanges en l'honneur de Jean Dabin*, Vol. II, Émile Bruylant / Sirey, Bruxelas / Paris, 1963, pp. 629-644;

GUERREIRO, J. A. MOUTEIRA, "O título e o registo: âmbito das respectivas qualificações e funções", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade*, Ordem dos Notários, Lisboa, 2007, pp. 95-105;

JARDIM, MÓNICA, "A importância do documento autêntico na transmissão e constituição dos direitos reais — controlo da legalidade", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade*, Ordem dos Notários, Lisboa, 2007, pp. 193-202;

—, "A segurança jurídica preventiva como corolário da actividade notarial", *O notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da modernidade*, Ordem dos Notários, Lisboa, 2007, pp. 193-202;

KEGEL, GERHARD, "Die selbstgerechte Sachnorm", *Gedächtnisschrift für Albert A. Ehrenzweig*, Erik Jayme e Gerhard Kegel, C. F. Müller Juristischer, Karlsruhe - Heidelberg, 1976, pp. 51-87;

KOHLER, CHRISTIAN, "Lo spazio giudiziario europeo in materia civile e il diritto internazionale privato comunitario", *Diritto Internazionale Privato e Diritto Comunitario*, Paolo Picone, CEDAM, Padova, 2004, pp. 65-94;

LALIVE, PIERRE, "Tendances et méthodes en droit international privé : cours général de droit international privé", *Recueil des Cours de l'Académie de Droit International*, 1977-II, Tomo 155, 1977, pp. 1-425;

LEWALD, M. HANS, "Droit International Privé de l'Allemagne (Conflits de Lois)", *Répertoire de Droit International*, Tome VII, A. de Lapradelle e J.-P. Niboyet, Sirey, Paris, 1930, pp. 293-387;

LOUSSOUARN, YVON, "Cours Général de Droit International Privé", *Recueil des Cours de l'Académie de Droit International*, 1973-II, Tomo 139, 1973, pp. 271-385;

LOUSSOUARN, YVON / BOUREL, PIERRE / VAREILLES-SOMMIÈRES, PASCAL DE, *Droit International Privé*, 8.ª Edição, Dalloz, Paris, 2004;

LUZZATTO, RICCARDO, *Stati Giuridici e Diritti Assoluti nel Diritto Internazionale Privato*, Giuffrè Editore, Milano, 1965;

MACHADO, JOÃO BAPTISTA, *Âmbito de Eficácia e Âmbito de Competência das Leis*, (reimpressão), Almedina, Coimbra, 1998;

MAGALHÃES, JOÃO FERNANDO FERNANDES, "O notariado como sistema de segurança e de prevenção de conflitos", *O Notariado em Portugal, na Europa e no Mundo — O notariado do século XXI, Desafios da Modernidade*, Ordem dos Notários, Lisboa, 2007, pp. 57-61;

MARQUES, JOSÉ DIAS, *Direito Internacional Privado — Apontamentos das Lições ao 5.º Ano do Instituto Superior de Ciências Económicas e Financeiras de 1954-1955*, (policopiado), 1955;

MAYER, PIERRE / HEUZÉ, VINCENT, *Droit international privé*, 10.ª Edição, Montchrestien, Paris, 2010;

NIBOYET, J.-P., *Traité de Droit Inernational Privé Français*, Tomo IV, La Territorialité, Recueil Sirey, Paris, 1947;

PICONE, PAOLO, "Diritto Internazionale Privato Comunitario e Pluralità dei Metodi di Coorinamento tra Ordinamenti", *Diritto Internazionale Privato e Diritto Comunitario*, Paolo Picone, CEDAM, Padova, 2004, pp. 485-525;

PINHEIRO, LUÍS DE LIMA, *A venda com reserva de propriedade em Direito Internacional Privado*, McGraw-Hill, Lisboa, 1991;

—, "Apontamento sobre as normas de aplicação necessária perante o direito internacional privado português e o artigo 21.º do Código Civil de Macau", *Revista da Ordem dos Advogados*, Ano 60, Vol. I (Janeiro de 2000), 2000, pp. 23-48;

—, *Direito Internacional Privado*, Vol. II, Direito de Conflitos - Parte Especial, 3.ª Edição, Almedina, Coimbra, 2009;

PISSARRA, NUNO ANDRADE, "Normas de Aplicação Imediata e Direito Comunitário", *Normas de Aplicação Imediata, Ordem Pública Internacional e Direito Comunitário*, Almedina, Coimbra, 2004, pp. 9-140;

RAMOS, RUI MOURA, "Aspectos Recentes do Direito Internacional Privado Português", *Estudos em Homenagem ao Prof. Doutor Afonso Rodrigues Queiró*, Faculdade de Direito da Universidade de Coimbra, Coimbra, 1984, pp. 377-420;

—, *Da Lei Aplicável ao Contrato de Trabalho*, Almedina, Coimbra, 1990;

—, *Direito Internacional Privado e Constituição - Introdução a uma análise das suas relações*, 2.ª Reimpressão, Coimbra Editora, Coimbra, 1991;

REESE, WILLIS L. M., "American Choice of Law", *American Journal of Comparative Law*, Vol. 30, 1982, pp. 135-146;

RIGAUX, FRANÇOIS / FALLON, MARC, *Droit International Privé*, De Boeck & Larcier, Bruxelas, 2005;

SANTOS, ANTÓNIO MARQUES DOS, *As Normas de Aplicação Imediata no Direito Internacional Privado — Esboço de uma Teoria Geral*, Vol. II, Almedina, Coimbra, 1991;

—, "Alguns Princípios de Direito Internacional Privado e de Direito Internacional Público do Trabalho", *Estudos de Direito Internacional Privado e de Direito Público*, Almedina, Coimbra, 2004, pp. 93-130;

SIEHR, KURT, "Internationales Sachenrecht - Rechtsvergleichendes zu seiner Vergangenheit, Gegenwart und Zukunft", *Vergleichende Rechtswissenschaft - Archiv für Internationales Wirtschaftsrecht*, Vol. 104, N.º 2, 2005, pp. 145-162;

SPARKES, PETER, "European Land Law: too narrow for second home owners in Spain", *European Property Rights & Wrongs*, Diana Wallis e Sara Allanson, 2011, disponível na internet via http://dianawallismep.org.uk/en/, consultado em 25 de Janeiro de 2012, pp. 29-34;

STORY, JOSEPH, *Commentaries on the Conflict of Laws*, 3.ª Edição, L. H. Bridgham, Boston, 1912;

TROJANI, CARLO ANTONIO, "Il principio comunitatio di sussidiarietà nell'ottica della funzione notarile", *Notarius International*, Vol. 3, n.º 1, 1998, pp. 59-68;

VALLADÃO, HAROLDO, "O princípio da lei mais favorável no direito internacional privado", *Estudos em Homenagem ao Prof. Doutor A.*

Ferrer-Correia, Vol. I, Faculdade de Direito da Universidade de Coimbra, Coimbra, 1986, pp. 773-785;

VENTURINI, GIAN CARLO, "Chapter 21: Property", *International Encyclopedia of Comparative Law*, Vol. III - Private International Law, Kurt Lipstein, René David, E. Egawa, R. Graveson, V. Knapp, Arthur Taylor Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, Haroldo Valladão, H. Yntema, K. Zweigert e Ulrich Drobnig, Martinus Nijhoff Publishers, Dordrecht, 1974, pp. 3-37;

VICENTE, DÁRIO MOURA, *Da Responsabilidade Pré-Contratual em Direito Internacional Privado*, Almedina, Coimbra, 2001;

VISCHER, FRANK, "General course on private international law", *Recueil des Cours de l'Académie de Droit International*, 1992-I, Tomo 232, 1992, pp. 9-256;

VON BAR, LUDWIG, *International Law - Private and Criminal*, tradução de GILLESPIE, Soule & Bugbee, Boston, 1883;

—, *The Theory and Practice of Private International Law*, tradução de GILLESPIE, 2.ª Edição, William Green & Sons Law Publishers, Edimburgo, 1892;

WEINTRAUB, RUSSEL J., *Commentary on the Conflict of Laws*, 4.ª Edição, Foundation Press, New York, 2001;

WENGLER, WILHEM, "The General Priciples of Private International Law", *Recueil des Cours de l'Académie de Droit International*, 1961-III, Tomo 104, 1961, pp. 279-469;

—, "Les conflits de lois et le principe d'égalité", *Revue Critique de Droit International Privé*, Vol. LII, 1963, pp. 201-231 e 503-527;