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EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



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The EU Regulation 1103/16

The case for US couples

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Brief Intro

US is a federal country comprised of 50 autonomous States.
Each state has its own matrimonial regime law.

State are divided in 2 categories:

- common law states or separation of property states (es. Florida)
- communion of property states (es. California)



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EU Regulation No. 1103/2016

Art. 69: The conflict of law rules apply to **spouses who marry or who specify the law applicable** to the matrimonial property regime after **29 January 2019**.



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EU Regulation No. 1103/2016

Art. 26

1. In the absence of an agreement, the law applicable to the matrimonial regime is:
- (a) the law where the spouse have their **first common habitual residence**
 - (b) the spouses' **common nationality** at the time of the conclusion of the marriage;
 - (c) the state where they have the **closest connection** at the time of the conclusion of the marriage.

The articles sets an **immutability rule**: any subsequent move of residence SHOULD not affect the applicable law.



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Hypo 1

A and B marries in California on the 1st of February 2019 and set there their residence.

In January 2020 they move to Ireland.

Which is the law applicable to their marriage?



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Solution 1

The law applicable to their marriage is the law of California, as it was their first common habitual residence.



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Hypo 2

A and B marries in California on the 1st of February 2019 and set there their residence.

On the 1st of February 2020 they move to Florida.

Which is the law applicable to their marriage?



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Solution 2

California is NOT the law applicable to the matrimonial regime of the spouses.
After their move to Florida, Florida matrimonial regime applies.

But why?



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Art. 33 EU Reg.

States with more than one legal system — territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which comprises **several territorial units** each of which **has its own rules of law** in respect of matrimonial property regimes, the **internal conflict-of-laws rules** of that State shall determine the **relevant territorial unit whose rules of law are to apply**.



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US Conflict of laws

MOVABLES:

- the law of the State having a **connection** with the parties or with the object,
- so in this context **Matrimonial domicile at the time of acquisition of the movable.**

IMMOVABLES:

- the lex rei sitate (where the real estate is located).



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But!!!

Art. 27 EU Regulation:

1. The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State **other than its rules of private international law.**

So it excludes the **lex rei sitae** in case the USA law is the applicable law.



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So what?

The most cautious solution to this situation, is to use the conflict of law rules provided for movables even for immovable.

Therefore, the law of the **matrimonial domicile at the time of acquisition of the movable** should apply.



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Hypo 2 (again)

A and B marries in California on the 1st of February 2019 and set there their residence.

On the 1st of February 2020 they move to Florida.

Which is the law applicable to their purchase?



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Solution 2

If the couple acquires a property before the 1st February of 2020, the law of California should apply. So they would own the property in communion of property.

If they acquire the property after the 1st February of 2020, the law of Florida should apply. So they will acquire in separation of property.



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Hypo 3

A and B marries in California on the 1st of February 2019 and set there their residence.

On the 1st of February 2020 they move permanently to Florida.

On the 1st of August 2020 they decide to move again permanently back to California.

A alone buys a piece of property in Italy on the 5th of March 2020. Who owns the property acquired on the 5th of March 2020?



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Solution 3

Since on the 5th of March 2020, A and B were residing in Florida, a separation of property state, A is the sole owner of the property, even if the couple moved back to California subsequently.



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