

Private International Law in Brazil: Overview and Recent Developments

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How to cite this paper: Tiburcio, C., & Xavier Junior, E. C. (2026). Private International Law in Brazil: Overview and Recent Developments. *Beijing Law Review*, 17, 1106-1143.

<https://doi.org/10.4236/blr.2026.174055>

Received: August 5, 2026

Accepted: October 6, 2026

Published: October 9, 2026

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Abstract

Private International Law governs legal relationships connected with more than one legal system, and the Brazilian tradition assigns to it four independent subject matters: nationality, the legal status of aliens, the determination of the applicable law, and jurisdiction in international litigation. This article offers an overview of the discipline as it currently stands in Brazil, organized around those four subject matters and addressed to readers trained in other legal systems. It first examines the attribution and loss of Brazilian nationality, from the international framework governing the matter to the constitutional rules on nationality by birth and by naturalization. It then turns to the legal status of aliens, covering entry into and departure from the territory, the rights of migrants once admitted, and the measures of compulsory removal. The third part addresses the determination of the applicable law, examining the classes of norms the discipline employs, the Brazilian connecting rules for persons, family, property, obligations, succession, and legal entities, and the principles that control their operation. The fourth part deals with jurisdiction, setting out the heads of Brazilian jurisdiction under the Code of Civil Procedure and the grounds on which jurisdiction may be expanded or restricted. The article argues that command of this body of rules and principles is strategic rather than merely technical, since cross-border relationships are settled at an intersection of legal systems, courts, and applicable laws, and the choices made at that intersection frequently determine substantive outcomes long before any dispute arises. It further shows that the four subject matters have been modernized at markedly different rates over the last decades: nationality, migration, and jurisdiction have all been considerably reformed, whereas conflict of laws remains governed by a statute of 1942, which a Draft General Law concluded in 2025 now proposes to replace.

Keywords

Private International Law, Brazil, Nationality, Legal Status of Aliens, Applicable Law, International Jurisdiction, Legislative Reforms

1. Introduction

Private International Law in Brazil is devoted to the study of legal relationships connected with more than one jurisdiction. Whenever a situation has contacts with more than one national legal system, because one or both parties are foreign nationals or domiciled abroad, because the contract was entered into or is to be performed in another country, or for any number of comparable reasons, the relationship will be governed by Private International Law.

In the Brazilian tradition, Private International Law comprises four independent subject matters: 1) nationality, under both domestic and international law; 2) the legal status of aliens, again under both domestic and international law (Tiburcio, 1992; Tiburcio, 2001); 3) the determination of the law applicable to legal relationships connected with foreign countries; and 4) questions of jurisdiction in international litigation. Brazilian textbooks on the discipline accordingly address all four subjects (Dolinger et al., 2025; Valladão, 1978; Tenório, 1976). The same approach is followed in several other countries, among them France, Belgium, Spain, and Italy (Batiffol & Lagarde, 1970; Loussouarn & Bourel, 1980; Rigaux, 1985; Morelli, 1986).

The first two subject matters, i.e. nationality and the legal status of aliens, are also studied by Constitutional Law and by Public International Law, in their domestic and international dimensions¹. The third subject matter, i.e. the determination of the applicable law, belongs to Private International Law alone, whereas the fourth subject matter, i.e. jurisdiction, is shared with Procedural Law.

It is broadly undisputed that the determination of the applicable law and questions of jurisdiction in international litigation are the most important subject matters of the discipline. These two are independent of one another and must not be confused. Chronologically, the court must first determine whether it has jurisdiction to adjudicate at the international level; only once the local judiciary's jurisdiction has been established does the question of the law applicable to the foreign-connected relationship arise.

In other words, if a transnational case is brought before a Brazilian court, the Brazilian judge will apply Brazilian connecting factors to identify the law applicable to the merits of the case, whereas if the same case is brought before the French courts, the French judge will apply French connecting factors to it. Because connecting factors are mostly domestic in origin, enacted by the local legislature, like

¹Some authors, therefore, exclude these matters from their textbooks both in Brazil (Mazzuoli, 2026) and abroad (Bureau & Muir Watt, 2021).

any other statute, they vary from one country to another. As a result, the same case may be decided differently depending on where the suit is filed.

To illustrate the point, take a dispute involving a company incorporated in Belgium and having its seat in France, brought before the Brazilian and the French courts alike. Before the Brazilian courts, the company will be governed by the law of the place of its incorporation, since Article 11 of the Introductory Law to the Norms of Brazilian Law provides that corporations are governed by the law of the State in which they are constituted. As the company was incorporated in Belgium, it will be governed by Belgian law, which the Brazilian judge will therefore have to apply.

Were the same situation submitted to the French courts, the outcome would be quite different. The French judge would apply the French connecting factor governing the matter, which points to the law of the company's seat (Audit, 2006; D'Ornano, 2021). Since the seat of our hypothetical company is in France, the French judge would apply his or her own law to the case. A single situation may thus have two different solutions, depending on where suit is brought, which in turn gives rise to the possibility of "forum shopping"². The problem is not merely theoretical: where the applicable laws diverge, the choice of forum may effectively determine the outcome of the dispute, and it is ordinarily the party who files first who makes that choice.

The example is deliberately simple, but it captures why Private International Law is a strategic body of knowledge rather than a merely technical one. Cross-border relationships are settled at an intersection of legal systems, courts, and applicable laws, and the choices made at that intersection are frequently made long before any dispute arises: where a company is incorporated and where it places its seat, which forum and which law the parties designate in their contract, where assets are held, where a family establishes its domicile. Each of those choices activates a different set of connecting factors and heads of jurisdiction, and therefore a different substantive outcome. Understanding of the discipline's rules is thus inseparable from knowledge of its principles. The connecting factor supplies a first answer, but characterization, *renvoi*, *fraude à la loi*, public policy, proximity, and effectivity may confirm it, correct it, or reverse it, so that the operation is rarely mechanical.

This article offers an overview of Brazilian Private International Law organized around the four subject matters identified above. Section 2 examines nationality, from the international framework governing its attribution and loss to the constitutional rules on original and derived Brazilian nationality. Section 3 turns to the legal status of aliens, covering entry into the territory, the rights of migrants once admitted, and the measures of compulsory removal. Section 4 addresses the determination of the applicable law, examining the classes of norms the discipline

²Forum shopping occurs when there are two or more possible jurisdictions where a legal case can be adjudicated. The plaintiff or the defendant choose which jurisdiction is going to view their case more favorably and is more likely to decide in their favor and that is where they file suit (Weintraub, 1994).

employs, the structure and species of the Brazilian connecting rules, and the principles that control their operation. Section 5 deals with jurisdiction in international litigation, including the heads of Brazilian jurisdiction, the grounds on which it may be expanded or restricted. The purpose is not to exhaust any of these subjects, but to present the present state and recent developments of the discipline in Brazil to a reader trained in another system, with particular attention to the extensive changes of the last decades.

Those changes have been substantial, and they are unevenly distributed across the four subject matters. In the field of nationality, Constitutional Amendment No. 131/2023 abolished the loss of nationality upon the voluntary acquisition of a foreign one, replacing it with loss by express renunciation and expressly barring any loss that would result in statelessness. In the field of the status of aliens, the Migration Law of 2017 repealed the Aliens Act of 1980, substituting a logic of migrant protection grounded in human rights for one of migratory control grounded in national security, and narrowing the discretion the State had previously enjoyed over entry, expulsion, and naturalization. In matters of jurisdiction, the Code of Civil Procedure of 2015 restructured the field, separating the limits of national jurisdiction from internal competence, adding heads of jurisdiction founded on the protection of the weaker party, and giving express effect for the first time to exclusive foreign choice-of-forum agreements, although the amendment of 2024, which requires the chosen forum to bear a relation to the parties or to the obligation, shows that the movement is not a linear one. Conflict of laws, by contrast, remains governed by the Introductory Law to the Norms of Brazilian Law of 1942, in substance untouched, although a Draft General Law on Private International Law, approved by a commission of jurists in 2025, now proposes to replace it. The overview that follows therefore describes a system that has been modernized in many of its aspects, i.e. nationality, migration and jurisdiction, while its core still awaits reform.

2. Nationality

In legal scholarship, nationality is generally defined as the legal and political bond that links a person to a State (Dolinger et al., 2025; Pontes de Miranda, 1974). This bond has a legal dimension, in that it arises from rules laid down unilaterally by the State and generates a set of reciprocal rights and duties. The acquisition and loss of Brazilian nationality have been governed by the constitutional text since the 1824 Constitution.

Brazilian nationality may be acquired at birth or subsequently. Nationality acquired at birth is termed original nationality and rests, as a rule, either on *ius soli*, the criterion under which a person acquires the nationality of the territory in which he or she is born, or on *ius sanguinis*, under which a person acquires the nationality of his or her parents, irrespective of the place of birth. The former is more common in countries of immigration, since it integrates those born on the territory into the national community, while the latter predominates in countries

of emigration, since it preserves nationality for the descendants of nationals. Nonetheless, contemporary legislation of most countries works with more sophisticated combination of both criteria. Nationality acquired later in life is obtained through naturalization, whereby Brazilian nationality is granted to an individual who satisfies certain requirements.

A terminological clarification is necessary, since nationality must be distinguished from citizenship. Some legal systems use “national” and “citizen” interchangeably; others recognize several classes of nationals, one of which corresponds to citizenship, as with British nationals and British citizens; and in the European Union the nationality of a member State is distinct from the supranational notion of European citizenship. Brazilian law keeps the two notions apart: nationality is the legal and political bond linking the individual to the State, whereas citizenship denotes an additional set of rights of an essentially political character. The 1988 Constitution deals with them separately: nationality in Article 12, within the chapter on nationality; and citizenship in Articles 14 and 15, within the chapter on political rights. As a rule, citizenship presupposes nationality: under Article 14, Brazilian nationality is a condition both for registering as a voter and for standing for election, and under Article 15 loss of nationality entails loss of political rights. The rule admits of one exception of Portuguese nationals granted equality of rights as discussed later.

2.1. Brazilian Nationality by Birth

The main criterion for the acquisition of the Brazilian nationality at birth, laid down under Article 12, I, “a”, of the 1988 Constitution, is *ius soli*. Everyone born in Brazil holds Brazilian nationality, the sole exception being children born to foreign parents who are in the country in the service of the foreign State. Brazilian territory is understood to comprise the land mass, the territorial sea, and the superjacent airspace; birth on board a Brazilian-flagged vessel or aircraft is likewise treated as occurring in Brazilian territory, a rule also laid down in Article 3 of the 1961 Convention on the Reduction of Statelessness. Scholars disagree as to the scope of the exception, and it is useful to separate two questions that the constitutional text leaves entangled: whether both parents must be foreign nationals, and whether both must be in the service of their State.

This disagreement runs through the leading Brazilian treatise itself, whose two main authors take opposite views (Dolinger et al., 2025). For Dolinger, the plural reference to “parents” does not require that both be in the service of their State. It suffices that one of them, the father or the mother, be a foreign national in the service of the foreign State, and the exception operates even where the other parent is Brazilian. For Tiburcio, by contrast, the exception presupposes that both parents be foreign nationals and that both be in the service of their State, since what is at issue is an exception leading to the denial of nationality and such an issue should be resolved by the construction more favorable to the individual. Under the current administrative practice, Article 15 of Resolution No. 155/2012 of

the National Council of Justice, which binds the civil registries, provides that the birth of a child born in the national territory is to be entered in the special register, with an express annotation that the child does not hold Brazilian nationality, only where *both* parents are foreign nationals and *at least one* of them is in the service of his or her State in Brazil. The Resolution thus occupies an intermediate position that neither author defends, since it requires both parents to be foreign, as Tiburcio does, but is satisfied by the service of one of them, as Dolinger is³.

Nationality may also be acquired on the basis of *ius sanguinis*, in three situations: 1) children born abroad to either a Brazilian father or a Brazilian mother who is in the service of Brazil (Article 12, I, “b” of the Constitution); 2) children born abroad to either a Brazilian father or a Brazilian mother and registered with the competent Brazilian authority, ordinarily the Brazilian consulate (Article 12, I, “c” of the Constitution); and 3) children born abroad to either a Brazilian father or a Brazilian mother, not so registered, who come to reside in Brazil and opt for Brazilian nationality at any time after attaining the age of majority (Article 12, I, “c”, in fine, of the Constitution). Brazil therefore applies both the *ius soli* and the *ius sanguinis* criteria, an approach dictated by the need, and the desirability, of avoiding statelessness. Taken together, the two criteria leave very few children born on Brazilian territory, or born abroad to Brazilian parents, without a nationality.

Two aspects deserve further elucidation. Regarding Article 12, I, “b” of the Constitution, “service of Brazil” covers any mission on behalf of the federal, state, or municipal governments, as well as of mixed-capital companies, whose activities, being controlled by the government as shareholder, involve a public interest. As to Article 12, I, “c” of the Constitution, the provision has been subject to successive changes of wording. Under the original text the two situations were likewise alternatives, but the second required the person to take up residence in Brazil before attaining majority. Revision Amendment No. 3/1994 removed the possibility of registration altogether, leaving only the option, exercisable at any time and without any requirement of residence before majority. The present wording was introduced by Constitutional Amendment No. 54/2007, which also inserted Article 95 into the Transitional Constitutional Provisions Act so as to allow nationality to be conferred on those born between 1994 and 2007 who had had no opportunity to be registered. Under the rule now in force, registration abroad suffices; where no registration was made, the person must take up residence in Brazil and bring an action of option before the federal courts, at any time. Because original nationality is established at the moment of birth, the judgment in such an action is declaratory of the status of Brazilian by birth. Pending the exercise of the option, that status is suspended. In extradition proceedings in which the question was raised, the Supreme Federal Court held that it could not deny extradition, since the status of Brazilian was suspended, but that it could stay the extradition pro-

³The solution of Article 15 of Resolution No. 155/2012 of the National Council of Justice is endorsed by Mazzuoli (2024).

ceedings pending the outcome of the action of option⁴.

2.2. Naturalization under Brazilian Law

Article 12, II, of the Constitution sets out the rules on naturalization, providing for two routes. Under the ordinary route, Brazilian nationality is granted to those who apply for it on the conditions laid down by statute, with a more favorable regime for nationals of Portuguese-speaking countries, for whom the only requirements are one uninterrupted year of residence and good moral repute. Under the extraordinary route, nationality is open to foreign nationals of any nationality who have resided in Brazil for more than fifteen uninterrupted years, have no criminal conviction, and apply for it. The naturalization procedure depends on an application by the person concerned and is conducted within the Executive branch, under Articles 71 to 73 of the Migration Law. The act of naturalization is constitutive of the status of Brazilian and therefore takes effect only upon publication in the Official Gazette. The Migration Law provides for four modalities of naturalization: ordinary, extraordinary, special, and provisional.

Ordinary naturalization is the general rule of Brazilian law and corresponds to acquisition of nationality “as set forth by law”, in the words of Article 12, II, “a”, of the Constitution. It is subject to the requirements of Article 65 of the Migration Law: civil capacity, residence in Brazil for a minimum of four years, ability to communicate in Portuguese, and absence of criminal conviction or criminal rehabilitation. The residence period may be reduced to one year where, for instance, the applicant has a Brazilian child or a Brazilian spouse or partner from whom he or she is not legally separated.

Extraordinary naturalization derives directly from Article 12, II, “b”, of the Constitution, reproduced *ipsis litteris* in Article 67 of the Migration Law, and applies to those who have resided in Brazil for more than fifteen uninterrupted years without criminal conviction. The thirty-year period of the original constitutional text was reduced to the present fifteen by Revision Amendment No. 3/1994. Scholars have generally regarded extraordinary naturalization as a right of the applicant once the conditions are met (Silva, 1984), leaving the State no margin of discretion, a margin that did exist for ordinary naturalization under Article 121 of the now repealed Aliens Act, whereby satisfaction of the statutory requirements did not guarantee naturalization. That discretion seems to have been abolished by the Migration Law, so that little now separates the two modalities.

Special naturalization, an innovation of the Migration Law, dispenses with residence in Brazil and is available, under Article 68 of the Migration Law, 1) to an applicant who has been the spouse or partner, for more than five years, of a member of the Brazilian Foreign Service on active duty or of a person serving the Brazilian State abroad; and 2) to an applicant who has been employed at a Brazilian diplomatic mission or consular post for more than ten uninterrupted years.

⁴Supremo Tribunal Federal [STF] (2003), AC No. 70-QO, RTJ, 118(3).

Provisional naturalization, governed by Article 70, may be granted to a migrant child or adolescent who established residence in the national territory before the age of ten, on application through his or her legal representative; it may be converted into definitive naturalization on application made within two years of the attainment of majority.

The nationality of adopted children calls for separate mention. In the context of international adoption, Article 52-C of the Statute of the Child and Adolescent (Law No. 8069/1990) provides for the issuance of a certificate of provisional naturalization for children and adolescents adopted abroad. The question of the provisional naturalization of adopted children was brought before the Supreme Federal Court on the ground that any such distinction is unconstitutional, since Article 227, para. 6 of the Constitution prohibits drawing distinctions between children. The Supreme Federal Court held that the right to Brazilian nationality by birth is guaranteed to a person born abroad who is adopted by a Brazilian and registered with the competent consular authority⁵.

In line with treaties on statelessness, the Migration Law further establishes a simplified naturalization in the context of the procedure for recognition of statelessness established under Article 26. Once statelessness is recognized by the Government, the person is asked whether he or she wishes to acquire derived Brazilian nationality under a simplified procedure and, failing that election, is granted permanent residence.

2.3. Other Constitutional Aspects of the Brazilian Nationality

Under the first paragraph of Article 12 of the Constitution, Portuguese citizens with permanent residence in Brazil are to enjoy the rights inherent to Brazilians, provided there is reciprocity in favor of Brazilians, and subject to the exceptions laid down in the Constitution itself. This assimilation operates in the field of the exercise of rights, including political rights, provided equality of rights is applied for on the conditions laid down in the Treaty of Friendship, Cooperation and Consultation between Brazil and Portugal (the Porto Seguro Treaty). It has no effect whatever on nationality: a Portuguese national who applies for equality of rights retains Portuguese nationality while acquiring the rights typical of a Brazilian citizen, within the limits set by the Constitution. It may be noted that the original wording of the provision assimilated Portuguese nationals to Brazilians by birth, which went beyond the scope of the treaty concluded between the two countries; the error was corrected by Revision Amendment No. 3/1994.

As a general rule, stated in the second paragraph of Article 12 of the Constitution, the law may draw no distinction between Brazilians by birth and naturalized Brazilians; only the Constitution may do so. It does so, in particular, by reserving, according to the third paragraph of Article 12, certain offices to Brazilians by birth: those of President and Vice-President of the Republic, President of the

⁵Supremo Tribunal Federal [STF] (2026), RE No. 1,163,774, *DJe*, 78.

Chamber of Deputies, President of the Federal Senate, Justice of the Supreme Federal Court, the offices of the diplomatic career, officer of the Armed Forces, and Minister of State for Defense. The remaining constitutional distinctions are the requirement that the six citizens sitting on the Council of the Republic be Brazilians by birth (Article 89, VII); the possibility of extraditing naturalized Brazilians in certain circumstances (Article 5, LI); the restrictions on the ownership of journalistic companies (Article 222); and the possibility of loss of nationality through cancellation of naturalization (Article 12, para. 4, I).

The fourth paragraph of Article 12 of the Constitution governs the loss of nationality. Brazilian law traditionally recognized two modalities: loss by change and loss by punishment. In its original wording, the provision covered loss by change where a Brazilian acquired another nationality, subject to two exceptions, namely the recognition of the nationality by birth by the foreign law, and the imposition of naturalization under foreign rules on a Brazilian resident abroad as a condition of remaining in the territory or of exercising civil rights. In the second case, loss by punishment applied where a naturalized Brazilian had his or her naturalization cancelled by judicial decision on account of activity harmful to the national interest.

Loss by change was profoundly altered after a decision of the Supreme Federal Court authorizing the extradition of a person who held original Brazilian nationality, but whose nationality had been declared lost by ministerial order following her voluntary acquisition of United States nationality. The Court held that she did not fall within either exception, since she held permanent residence in the United States and her naturalization had not been imposed by the foreign State⁶. Reacting to that interpretation, the National Congress enacted Constitutional Amendment No. 131/2023, which abolished loss by change and replaced it with loss by declaration. Under the present Article 12, para. 4, item II, loss of nationality is to be declared where a Brazilian makes an express request to that effect before the competent Brazilian authority, save where this would result in statelessness. The controversy over the exceptions to loss by change is thereby superseded, since loss of Brazilian nationality because of the voluntary acquisition of a foreign nationality has itself ceased to exist.

As for loss by punishment, Article 12, para. 4, item I continues to allow the cancellation of naturalization by judicial decision, but the ground of “activity harmful to the national interest” was replaced by Amendment No. 131/2023 with two specific situations: fraud in connection with the naturalization proceedings, and an attack on the constitutional order and the democratic State. This modality can affect only naturalized Brazilians and may be subject to criticism, particularly as regards the second situation. Where the State considers itself threatened by the conduct of one of its nationals, it should resort to the punitive mechanisms that criminal law makes available against nationals generally (Marinho, 1957), and loss

⁶Supremo Tribunal Federal [STF] (2017), Extradicação No. 1462, *DJe*, 142.

of nationality in such cases reflects a persistent distrust of the naturalized citizen. It may be noted that naturalization is granted by an act of the Executive but may be cancelled only by a judgment falling within the exclusive competence of the Judiciary.

Reacquisition of Brazilian nationality has always been admitted, the person concerned recovering the same status previously held. The Migration Law provides for reacquisition in Article 76, in the cases of loss by change. Amendment No. 131/2023, however, added the fifth paragraph to Article 12 of the Constitution, under which renunciation of nationality does not prevent the person concerned from reacquiring original Brazilian nationality. The provision is clear as regards a Brazilian by birth who renounces, in which case reacquisition will be of nationality by birth (Pires & Tiburcio, 2025). Where the renunciation is made by a naturalized Brazilian, by contrast, there is no sense in allowing reacquisition of nationality by birth, so that reacquisition must occur on a derived basis or the person must apply for naturalization again.

3. The Legal Status of Aliens

The study of the status of aliens comprises the analysis of 1) the conditions laid down for entry into and departure from a State, 2) the rights granted and the duties imposed by that State on admitted aliens, and 3) the measures providing for compulsory removal of aliens from its territory, an “alien” being understood as any person who does not hold the nationality of the State concerned. The treatment a State accords to aliens resident in its territory ranks among the most telling indicators of its degree of civilization (Dolinger et al., 2025). Given the current state of development of the subject and the legislative changes described hereafter, one could argue that this subject matter should be treated more broadly as legal status of migrants, or as migration law.

The basic rules on the status of aliens are laid down primarily in the Constitution and, at the statutory level, in the Migration Law (Law No. 13,445/2017), which repealed and replaced the Aliens Act (Law No. 6815/1980). That replacement was a structural one. The Aliens Act embodied a conception of the subject firmly anchored in migratory control and in the doctrine of national security; in many respects it had not been received by the 1988 Constitution, and its application had become anachronistic in the light of the evolution of Brazilian law and of the way the wider phenomenon of migration came to be understood. The Migration Law adopts instead a conception anchored in the protection of migrants and in human rights standards (Ramos, 2017). The shift is evident in the scope of the regime, which is no longer concerned exclusively with the alien but with the migrant: the Migration Law deals with the foreign national who settles in Brazil temporarily or permanently (immigrant), the Brazilian who settles abroad temporarily or permanently (emigrant), the foreign national residing in a neighboring country (border resident), the foreign national who enters Brazil with no intention of remaining (visitor), and the person without a nationality (stateless person).

Similarly, the principles and guidelines of Brazilian migration policy, set out in the more than twenty items of Article 3 of the Migration Law, are organized around four axes: general human rights principles, including the prohibition of discrimination and the universality of human rights; principles specific to migration, including the non-criminalization of migration and equal access to services; guidelines for State action domestically, including public policies of social inclusion and the promotion of academic and professional recognition; and guidelines for State action internationally, including international cooperation and the development of border regions. The rules governing entry into and departure from the country are examined first, followed by the substantive rights aliens enjoy once admitted and, finally, by the measures of compulsory removal.

3.1. Entry into and Departure from the Territory

Brazilian and foreign scholarship alike holds that authorization to enter the territory of a State is a matter for that State alone, the alien having, as a rule, no right to be admitted (Brownlie, 1973; Kelsen, 1967). Whereas the position may be thought unduly sovereigntist, discretion in border control is a feature of the practice of most States. From a human rights standpoint, Article 13 of the Universal Declaration of Human Rights provides that everyone has the right to leave any country, including his own, and to return to his country, thus securing a right of entry only to a State's own nationals; entry into another State is stated as a right only in the special case of persecution, under Article 14 of the Universal Declaration of Human Rights, whereby everyone has the right to seek and to enjoy asylum in other countries. In short, what is internationally established is a right to leave and a right to seek asylum, not a right to enter.

The right to leave the country has been guaranteed to nationals since the Imperial Constitution of 1824⁷. The 1891 Constitution, enacted at a time when immigration was being actively encouraged, allowed nationals and aliens alike to enter the country at any time and without a passport⁸. The 1934 Constitution likewise permitted aliens to enter and leave the country, provided they met the requirements laid down by law⁹. That same Constitution introduced a quota system, under which entry was capped at 2% of each nationality group that had come to Brazil over the preceding fifty years¹⁰. The 1937 Constitution retained these rules¹¹. The 1946 Constitution, in turn, preserved the same treatment of entry into and departure from the country while abandoning the quota system¹². The 1967 and 1969 Constitutions adopted similar rules on entry into, departure from, and movement within Brazilian territory, subject in each case to the requirements laid

⁷1824 Constitution (Brazil), Article 179, VI.

⁸1891 Constitution (Brazil), Article 72, para. 10.

⁹1934 Constitution (Brazil), Article 113, para. 14. The 1934 Constitution suppressed the expression "independently of a passport".

¹⁰1934 Constitution (Brazil), Article 121.

¹¹1937 Constitution (Brazil), Article 122.

¹²1946 Constitution (Brazil), Article 142.

down by ordinary legislation¹³.

Consistently with the scheme of the earlier constitutional orders, the current 1988 Constitution guarantees the fundamental right of free movement within the national territory in time of peace, providing that any person may enter, remain in, or leave it with his or her property, on the terms laid down by law¹⁴. Entry into the territory and, strictly speaking, the whole of migration policy is thus essentially a matter for ordinary legislation, competence to legislate on emigration and immigration, entry, extradition, and expulsion of aliens being vested in the Union.

The change of conception brought about by the Migration Law in no way displaces the widely accepted principle of international law that a State may control the entry of aliens. One instrument of that control is the requirement of a visa, a document originating in the international practice of States. Under the Migration Law, a visa confers on its holder no more than an expectation of entry into the national territory; as a rule, it must be applied for and is granted at Brazilian diplomatic missions and consular posts abroad, before actual entry. Article 12 of the Migration Law establishes five types of visa: visit, temporary, diplomatic, official, and courtesy. The visit visa is intended for foreign nationals wishing to enter Brazil for a short period without establishing residence. The temporary visa applies to immigrants wishing to settle in Brazil for a fixed period in order, for instance, to study, to work, or to be reunited with their families. Diplomatic and official visas are intended, respectively, for foreign diplomatic authorities and for other foreign authorities without diplomatic status entering Brazil on official mission. The courtesy visa is intended for foreign authorities not on official mission, for participants in international events and competitions, and for certain dependents and private employees of holders of diplomatic or official visas. The permanent visa has been abolished. Therefore, an immigrant wishing to remain in Brazil indefinitely must apply for a residence authorization on the conditions laid down in Article 30 of the Migration Law.

It should be emphasized that the grant of a visa creates no right of entry, but only an expectation, which may be defeated by the decision taken at the point of actual migratory control by the Federal Police. Brazilian practice has long dispensed with the visa requirement on a reciprocal basis, generally established by treaty. Where the visa requirement is waived, the conditions of entry are assessed exclusively at the moment of migratory control.

A visa may be refused in a number of circumstances: failure to meet the specific requirements of the type of visa applied for; concealment of a condition barring the grant of a visa; absence of travel authorization or of accompaniment by those responsible, in the case of persons under eighteen; a previous expulsion, for so long as its effects subsist; conviction or pending proceedings for international crimes within the jurisdiction of the International Criminal Court; conviction or pending proceedings for an intentional crime giving rise to extradition; inclusion

¹³1967 Constitution (Brazil), Article 150, para. 26. 1969 Constitution (Brazil), Article 153, para. 26.

¹⁴1988 Constitution (Brazil), Article 5, para. XV.

of the applicant's name on a restrictions list; and the commission of an act contrary to the principles and objectives laid down in the Federal Constitution.

These circumstances also constitute grounds for refusal of entry into Brazil. Whether the person obtained a visa abroad or benefits from a visa waiver, entry may be refused on arrival at the control point, after an individual interview and by reasoned act of the migration authority. Alongside the circumstances just listed, entry may also be refused where the traveler presents an invalid, expired, altered, or forged travel document; presents no travel document at all; travels for reasons incompatible with the type of visa held or with the visa waiver; or has committed forgery or made false statements in the visa application. Where entry is refused, the legal consequence is repatriation. The Migration Law thus sought to establish more objective grounds for refusal of entry: even the reference to acts contrary to the principles and objectives of the Constitution lends itself to a far more objective construction than the "inconvenience of the person's presence in the national territory, at the discretion of the Ministry of Justice" that figured in the repealed Aliens Act.

3.2. Rights of Admitted Aliens

As regards the rights of aliens, resident aliens in Brazil enjoy the same rights to life, liberty, security, and property as nationals¹⁵. All fundamental rights conferred by the Constitution are likewise guaranteed to resident aliens: equality of treatment, freedom from torture, freedom of expression, privacy, the free exercise of any occupation, freedom of association, ownership of property, access to justice, social assistance, and education, among many others. That the Constitution guarantees these rights only to resident aliens does not, however, leave non-resident aliens unprotected under Brazilian law (Bastos, 2010)¹⁶. The Supreme Federal Court has repeatedly extended rights set out in the Constitution to all aliens, including tourists and aliens who are not even present in the country, among them the right of access to justice, the right to own property, and the right to protection of intellectual property¹⁷.

The international background is consistent with this view. Article 2 of the Universal Declaration of Human Rights states that human rights belong to every person without distinction as to national origin, and many human rights treaties in force in Brazil lay down equality between nationals and aliens. The current state of constitutional and international development in the protection of human rights

¹⁵1988 Constitution (Brazil), Article 5: "All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to freedom, to equality, to security and to property [...]".

¹⁶Bastos (2010) points out that the Constitution extends all fundamental rights to anyone in the country, reasoning that the drafters of the Constitution, when mentioning resident aliens, did not employ the term in its technical sense of being legally domiciled in Brazil, but intended to extend rights to all those physically present in the country.

¹⁷Supremo Tribunal Federal [STF] (1957), RE No. 33,319, *RTJ*, 3 (1). Supremo Tribunal Federal [STF] (1960), RE No. 44,621, *Ementário*, 432 (2). Supremo Tribunal Federal [STF] (1962), RMS No. 8,844/SP, *RTJ*, 22 (1). Supremo Tribunal Federal [STF] (2001), RE No. 215,267, *RTJ*, 177 (2).

admits of no position other than that, as a rule, nationals and aliens are equal, particularly as regards fundamental rights. That understanding informed the legislature in Article 4 of the Migration Law, which sets out a catalogue of migrants' rights expressly guaranteed "on an equal footing with nationals" and "irrespective of migratory status". The Supreme Federal Court has held for instance that the fact that a foreign defendant has no domicile in Brazil does not warrant any arbitrary or discriminatory treatment¹⁸.

The extension of fundamental rights to all non-resident aliens has not always been the rule. One of the first cases to come before the Brazilian courts under the 1891 Constitution was a petition for *habeas corpus* on behalf of the Imperial Family, banished from Brazil after the proclamation of the Republic. In 1903, the Supreme Federal Court held that only resident aliens were beneficiaries of the rights set out in Article 72 of the 1891 Constitution¹⁹. Because the Imperial Family was not resident in the country, and because *habeas corpus* was among the fundamental rights listed in that provision, the family was held to have no right to the writ²⁰.

Some commentators argue that the constitutional provision conferring fundamental rights was a general one, and that the provisions following it could either extend those rights to non-resident aliens or withhold them even from resident aliens; on this view, certain of the rights so listed must be accorded to every human being (Pontes de Miranda, 1974; Dolinger et al., 2025). Other commentators reach the same result for a different reason. They read the constitutional text literally, as conferring rights on resident aliens alone, but conclude that non-resident aliens enjoy those fundamental rights nonetheless, as a consequence of the international human rights conventions duly ratified by Brazil, which affirm them on a universal basis, that is, for every person (Baptista, 1987). Recognition of equality between nationals and aliens does not preclude exceptional differences in certain circumstances and as regards certain categories of rights.

As regards political rights, Article 21 of the Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country and to have access to public service in his country, while Article 38 of the American Declaration of the Rights and Duties of Man states more clearly that every alien has the duty to refrain from taking part in political activities reserved to the citizens of the State in which he finds himself. Restrictions on the political rights of aliens are therefore admissible under international human rights standards, and Brazilian law imposes them: Article 14 of the Constitution provides in plain terms that aliens may not register as voters. The rule admits of the exception, itself of constitutional foundation, of Portuguese nationals granted equality of civil and political rights under the first paragraph of Article 12. This restriction naturally does not affect the broader political exercise of the freedoms of expres-

¹⁸Supremo Tribunal Federal [STF] (2009), HC No. 94,016, *DJe*, 38.

¹⁹1891 Constitution (Brazil), Article 72: "The Constitution assures to Brazilians and to aliens resident in the Country the inviolability of the rights concerning liberty, individual security and property".

²⁰Supremo Tribunal Federal [STF] (1903), HC No. 1974, *Revista O Direito*, 91, 424-434.

sion, association, and peaceful assembly; the restrictions formerly imposed by the Aliens Act have been abolished, and the Migration Law expressly recognizes the rights of peaceful assembly and of association for lawful purposes.

Restrictions on access to public office are likewise admissible. The constitutional text reserves some offices to Brazilians by birth. The general rule, in Article 37, I, is that public offices, positions, and functions are open to Brazilians meeting the requirements laid down by law, and to aliens as provided by law. Therefore, access by aliens depends on enabling legislation, as enacted, for instance, by the Municipality of São Paulo in Municipal Law No. 13,404/2002, but so far inexistent in the federal level. One exception is the express constitutional authorization, in Article 207, for the admission of foreign professors and scientists to universities and research institutions. In 2023, the Supreme Federal Court held that a foreign candidate has a clear and certain right to appointment to a professorship and that any nationality restriction in such competitive examinations must be justified by the public interest²¹.

Other restrictions exist regarding economic rights, even though the scope of some of these restrictions has narrowed considerably. The opening of the Brazilian economy from the 1990s onward led to the repeal of some of the restrictions contained in the original text of the Constitution. Every restriction still contained in ordinary legislation must be reexamined in the light of the equality guaranteed by the Constitution. Restrictions in the waterborne transport sector are established by Law No. 9432/1997 on the basis of Article 178 of the Constitution²². Restrictions also exist in the sector of press and broadcasting, since companies operating in these sectors are required by Article 222 of the Constitution to be controlled by Brazilians by birth or naturalized for more than ten years²³. The conditions for the acquisition of rural land by aliens laid down in Law No. 5709/1971 subsist because Article 190 of the Constitution mandates regulation of the matter by ordinary legislation²⁴.

There is a debate among Brazilian scholars as to whether ordinary legislation may draw further distinctions between resident aliens and nationals. Some believe that, apart from the distinctions the constitutional text itself draws or authorizes implementing legislation to draw, no further distinctions are permissible (Tiburcio, 2001). Others take the opposite position (Tenório, 1976; Batalha, 1977). Those who maintain that ordinary legislation may not discriminate against resident aliens absent express constitutional authorization rely on the principle, and also one

²¹Supremo Tribunal Federal [STF] (2023), RE No. 1,177,699, *DJe*, 173.

²²1988 Constitution (Brazil), Article 178, sole para.: “In regulating water transportation, the law shall set forth the conditions in which the transportation of goods in coastal and internal navigation will be permitted to foreign vessels”.

²³1988 Constitution (Brazil), Article 222: “The ownership of journalism firms and radio and television broadcasting firms is restricted to native-born Brazilians or those naturalized more than ten years ago, or to legal entities constituted under Brazilian laws and that is headquartered in the Country”.

²⁴1988 Constitution (Brazil), Article 190: “The law shall regulate and limit the acquisition or lease of rural property by foreign individuals or legal entities and shall establish the cases requiring authorization by the National Congress”.

of the objectives of the Federative Republic of Brazil under the constitutional text, that expressly prohibits discrimination on grounds of origin²⁵. Article 5 of Constitution likewise guarantees, in general terms, to Brazilians and resident aliens the rights to life, liberty, equality, security, and property, which underpin all fundamental rights. Since aliens are constitutionally entitled to equal treatment, ordinary legislation establishing discriminatory treatment without express constitutional authorization must be regarded as unconstitutional. The same argument applies to the right to work, conferred on Brazilians and resident aliens alike²⁶. Therefore, any legislation imposing discriminatory limitations on admitted aliens' right to work is to be considered unconstitutional (Valladão, 1980; Soares, 1987; Tiburcio, 2001). Many of the previously existing limitations have been repealed in Brazilian law²⁷.

3.3. Compulsory Removal from the Territory

A third specific aspect of the study of the legal status of aliens in Private International Law is the possibility of compulsory removal of aliens from the territory. Under the scheme of the Migration Law, the compulsory removal of an alien may result either from an administrative measure, i.e. repatriation, deportation, and expulsion, or from a request for international legal cooperation. Such measures may not be applied collectively, nor carried out where they would endanger the life or physical integrity of the person concerned; nor may they be used to disguise an extradition.

Repatriation is the administrative measure by which a person subject to refusal of entry is sent back. Where entry is refused following migratory control, the Federal Police orders the person's return to the country of embarkation or of nationality, notifying the carrier, the consular authority of the country of nationality, and the Federal Public Defender's Office.

Deportation applies where a migrant enters Brazil irregularly or where, having entered regularly, his or her migratory status has become irregular, and requires an administrative procedure. The Federal Police must serve personal notice on the person concerned, specifying the irregularities and setting a period of not less than sixty days for regularization, during which the person may exercise the right to a full defense with the assistance of the Federal Public Defender's Office and regularize his or her situation. Failing regularization, deportation is carried out, but it

²⁵1988 Constitution (Brazil), Article 3, IV: "The fundamental objectives of the Federal Republic of Brazil are: [...] IV—to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination".

²⁶1988 Constitution (Brazil), Article 5, XIII: "All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to freedom, to equality, to security and to property, on the following terms: [...] XIII—the practice of any work, trade or profession is free, observing the professional qualifications which the law shall establish".

²⁷For instance, Article 22, III, of Law No. 14,195/2021 authorizes aliens to become public translators and interpreters and repeals the previous restriction under Decree No. 13,609/1943. Likewise, Article 8, para. 2 of Law No. 8906/1994 authorizes aliens to become lawyers without the reciprocity requirement previously existing under the sole paragraph of Article 48 of Law No. 4215/1963.

does not bar the migrant's subsequent entry into Brazil.

Expulsion, reserved for more serious cases, is an administrative measure of compulsory removal combined with a bar on reentry for a fixed period. The power to expel an alien was once understood as a discretionary faculty of the State: under the repealed Aliens Act, for example, expulsion was available where the State considered the alien harmful, among other grounds, to national convenience and interests. That margin of discretion has disappeared under the Migration Law, because expulsion is now available only where there is a final criminal conviction for an international crime under the Rome Statute of the International Criminal Court or for an intentional common crime punishable by deprivation of liberty. Under the implementing regulations, expulsion is preceded by an expulsion inquiry conducted by the Federal Police, in which the person may exercise the right to a full defense, where appropriate with the assistance of the Federal Public Defender's Office. The procedure determines the gravity of the crime for the purpose of fixing the maximum period of the reentry bar, which may never exceed twice the length of the sentence, an important change from the Aliens Act, which allowed reentry to be barred indefinitely. The procedure also establishes whether any condition precluding expulsion is present: under the Migration Law, a person may not be expelled who has a Brazilian child, whenever born, in his or her custody or economic or socio-affective dependence; has a Brazilian person under his or her guardianship; has a spouse or partner residing in Brazil; entered and has resided in Brazil since before the age of twelve; or is over seventy and has resided in Brazil for more than ten years.

The Migration Law also regulates three mechanisms of international legal cooperation in criminal matters. Under the transfer of enforcement of a sentence, the person does not leave the country; what is transferred is the conviction (Xavier Junior, 2024). Under the transfer of sentenced persons, departure from the territory depends on the person's expressed wish. Only extradition, therefore, can strictly result in compulsory removal.

An extradition request seeks the surrender by the requested State of a person so that he or she may stand trial or serve a sentence in respect of a crime committed in the territory of the requesting State or to which the laws of that State apply. Extradition to a foreign State is not to be confused with surrender to the International Criminal Court, which rests on Article 5, para. 4, of the Constitution. In Brazil, only aliens may be surrendered pursuant to an extradition request: under the Constitution, Brazilians by birth may not be extradited, and naturalized Brazilians only for a common crime committed before naturalization or, on a basis still awaiting regulation by ordinary law, where they are shown to have been involved in the unlawful trafficking of narcotic drugs.

Where Brazil is the requested State, the foreign State's request is submitted to the Supreme Federal Court, which examines whether the statutory requirements for authorizing extradition are met. Besides the question of nationality, these include double criminality; the absence of limitation; the absence of *bis in idem*; that

the person will not be brought before an exceptional tribunal; that Brazilian law does not apply to the crime; a minimum custodial sentence of two years; and that the offense is neither a political crime nor a crime of opinion. If extradition is not authorized, the request is dismissed; if it is authorized, it falls to the President of the Republic to carry it out, in the exercise of his or her assessment of expediency and opportunity. Extradition is thus a complex procedure comprising a judicial and an administrative phase, the Supreme Federal Court's finding that the request is lawful not obliging the President to execute it.

4. Determination of the Applicable Law

Recognized as an autonomous discipline with its own methods and techniques, Private International Law employs specific rules and methods to manage the normative diversity that exists in transnational situations. Considering their nature, the norms of Private International Law may be 1) direct, substantive, or material; 2) indirect, conflictual, or instrumental; and 3) conceptual or qualifying (Dolinger et al., 2025). Direct norms resolve the *quaestio juris* itself, prescribing the expected behavior and the substantive legal consequence of the norm's application to the facts (Lima Pinheiro, 2014). Once regarded as exceptional, direct norms have gained ground in contemporary Private International Law because of the twentieth-century theoretical movements which culminated in what Jayme (2003) describes as a materialization (*Materialisierung*) of the discipline. Indirect or conflictual norms, by contrast, select, among the legal systems connected in some way to the transnational situation, the one that is to apply. That they operate as a law above the law (*Überrecht*) does not deprive them of normative force. Indirect norms are representative of the indirect, conflictual method that has dominated and still dominates, the discipline since the nineteenth century. The connecting rules hereafter discussed are their main example. The system is completed by conceptual or qualifying norms, which Dolinger et al. (2025) describe as necessary to the sound application of conflict norms.

4.1. Connecting Rules

For the determination of the law applicable to a transnational legal situation, each country adopts connecting rules. These rules are the norms laid down by Private International Law that indicate the law applicable to the various legal situations connected with more than one legal system (Dolinger et al., 2025; Rodas, 1992). Under the conflictual method, they are the central pillars on which the discipline rests: in order to resolve a conflict of laws, a connecting rule identifies a broader or narrower set of legally typical situations and, through one element singled out from the situation, designates one of the competing laws to govern it (de Araujo, 2023). Furthermore, Private International Law rules are traditionally domestic²⁸.

²⁸There are also many private international rules established in international sources, such as conventions and treaties. This is the case of all Hague Conventions on Private International Law and the Inter-American Conventions on Private International Law, ratified by several countries.

In Brazil, the connecting rules are mainly contained in Decree-Law No. 4657/1942²⁹, usually designated Introductory Law to the Norms of Brazilian Law.

The picture just described may be about to change. In 2024, the Sustainable Economic and Social Development Council (*Conselho de Desenvolvimento Econômico Social Sustentável*), an advisory body attached to the Presidency of the Republic, established a commission of jurists to prepare a General Law on Private International Law. The commission was chaired by the Vice-President of the Superior Court of Justice and comprised judges, academics, practitioners, and representatives of the government. The commission worked throughout 2025 and held public hearings open to the academic community and to the economic sectors concerned. It approved the final text in October 2025, at a session held at the Superior Court of Justice, and the proposal was formally delivered to the President of the Republic in December 2025. The Draft is not law and has no normative force whatsoever. It is a proposal of legal text (*anteprojeto*), which must first be refined within the Executive and then submitted to the National Congress, where it will be subject to amendment and may of course fail³⁰.

The Draft of a General Law on Private International Law proposes to repeal Articles 7 to 19 of the Introductory Law and to replace them with a systematic statute of over forty articles. Some lines of modernization run through the text. The first is the codification of the general part of the discipline: characterization, the preliminary question, *renvoi*, *fraude à la loi*, vested rights, plurilegislative systems and a general exception clause, among other principles, receive express treatment. The second is the prominence of party autonomy, which the Draft admits in contracts, in the choice of jurisdiction, in succession, and in family relations. The third is the substantive orientation of the connecting factors: in some provisions, the Draft instructs the interpreter to apply whichever of several designated laws is more favorable to the worker, the consumer, the maintenance creditor, the child, or the vulnerable party, in a clear expression of what was described above as the materialization of the discipline. The fourth is flexibility, introduced through subsidiary chains of connecting factors, the use of habitual residence as a fallback, the criterion of the closest connection, and the exception clause of Article 15 of the Draft, which allows the designated law to be set aside where the question is manifestly more closely connected with another.

A. Natural Persons and Family Rights

The first rule concerns natural persons. Article 7 of the Introductory Law states that the law of the country in which a person is domiciled (*lex domicilii*) governs the beginning and end of legal personality, the person's name, capacity, and family rights. Therefore, if in Brazil it must be determined whether someone has legal

²⁹These rules have been translated into English by Garland (1959).

³⁰References throughout this article are to the text as approved in October 2025, and the proposal is designated "the Draft" to distinguish it at every point from the enacted provisions of the Introductory Law currently in force. The text of the Draft has not yet been officially published, but the first author acted as *rapporteur* of the commission of jurists and members of the academic community have had access to the final text.

capacity to enter into a contract, to marry, or to sell realty, the law of the State where the person is domiciled applies. Thus, if the marriage is to take place in Brazil and the bride is domiciled in Argentina, Argentine law will govern her capacity to marry. The provision is a textbook bilateral rule: its application may result indifferently in the application of any law, domestic or foreign, once the person's domicile is established.

In the Draft, Article 16 confines the personal statute to capacity and personality rights, retaining domicile as the connecting factor but adding a subsidiary chain absent from the current text: where no domicile is established or it cannot be located, habitual residence applies and, failing that, current residence; where there are several domiciles, the applicable law is that of the domicile most closely connected with the question in dispute. Children, adolescents, and others lacking capacity are governed by the law of the domicile of their parents or guardians and, where those domiciles differ, by whichever law best serves the interests of the person protected.

Family relations are dealt with separately in Article 17 of the Draft, which designates the law of the family members' common domicile and, in its absence, admits a law previously chosen by the parties in writing. This solution is a striking extension of party autonomy into a field from which Brazilian law has traditionally excluded it. Where no choice exists, the Draft relies upon the last common domicile and, ultimately, on Brazilian law. Two special rules complete the picture, both substantive in orientation: under Article 21 of the Draft, actions concerning the establishment or termination of parent-child relationships are governed by whichever of the laws of the domiciles of those involved is more favorable to the vulnerable party, having regard to the purposes of Brazilian law on socio-affective parenthood; and under Article 22 of the Draft, maintenance obligations and the status of creditor and debtor are governed by the law more favorable to the creditor.

B. Marriage

Regarding the validity of marriage, article 7, para. 1 of the Introductory Law applies. According to the provision, where a marriage is celebrated in Brazil, Brazilian law governs impediments and the formalities of the ceremony. Even though the provision mentions only marriages celebrated in Brazil, legal commentators have extended the rule so as to adopt the general rule of the law of the place of celebration (*lex loci celebrationis*) of marriage (Dolinger et al., 2025; Monaco & Jubilut, 2012). Thus, the validity of a marriage is always to be determined by the law of the place where it was celebrated: a marriage celebrated in Havana is valid if it conforms to Cuban law, even where that law differs from Brazilian law.

Article 7, para. 2 of the Introductory Law admits an exception to the territorial reach of the rule just described. It provides that the marriage of foreign nationals may be celebrated before the diplomatic or consular authorities of the country of both spouses. The requirement of a common nationality is essential: the provision is available only where both parties are nationals of the same foreign State, so that

spouses of different nationalities who wish to marry in Brazil must do so before the Brazilian authorities. Where it applies, a marriage celebrated on Brazilian soil is governed by the law of the sending State, the consular authority acting under its own law. This arrangement is mirrored by Article 18 of the Introductory Law, which empowers Brazilian diplomatic and consular authorities to celebrate marriages between Brazilians abroad.

The effects of marriage on property are determined by Article 7, para. 4 of the Introductory Law, according to which the matrimonial property regime, whether legal or contractual, is governed by the law of the country in which the future spouses are domiciled before the marriage. Where their domiciles differ, the property regime is governed by the law of their first matrimonial domicile.

In the Draft, Article 18 states as a general rule, and in bilateral terms, that the form, existence, and validity of marriage are governed by the law of the place of celebration, thereby enacting the *lex loci celebrationis* that Brazilian scholarship has had to extract from the unilateral wording of the provision still in force. It then separates matrimonial capacity, which is referred to each spouse's personal law under Article 16 of the Draft. The matrimonial property regime is recast by Article 19 of the Draft as an ordered sequence: first, the regime expressly indicated in the marriage certificate issued by the authority of the place of celebration; second, the regime agreed in a valid prenuptial agreement, whose form and substance are governed by the law of the place where it was concluded; and only in the absence of any indication or agreement, the law of the spouses' domicile at the time of celebration or, where their domiciles differ, the law of their first matrimonial domicile. The provision admits party autonomy as the primary criterion. Finally, Article 20 of the Draft extends its Articles 17 to 19, with the necessary adaptations, to stable unions and equivalent institutions of foreign law, a matter on which the Introductory Law is wholly silent.

C. Property and Other Rights on Goods

Property is to be regulated by the law of its *situs*, in accordance with Article 8 of the Introductory Law: to characterize property and govern the relations concerning it, the law of the country in which it is situated applies. The *lex rei sitae* is a rare example of uniformity among connecting rules, being of universal acceptance and adopted in the great majority of countries. It provides that immovable and movable property is governed by the law of the place where it is located; all property located in Brazil, even if owned by foreigners, is therefore governed by Brazilian law. Questions such as the manner of acquisition of real estate and the limitations that may be imposed on ownership are determined by Brazilian legislation where the property is situated in the country. The *caput* of Article 8 is the clearest Brazilian example of a simple connecting rule, employing a single connecting factor with no further considerations.

In addition, Article 8, para 1, provides that movable property which the owner carries with him, or which is destined for transport to other places, is governed by the law of the country in which the owner is domiciled. The exception is founded

on the transitory character of the situs in these cases: property in transit, or accompanying its owner, has no stable location, and the place where it happens to be at any given moment is largely fortuitous, so that the *lex rei sitae* would designate a law bearing no meaningful relation to the situation. The rule therefore returns such property to the personal statute, in the old formula *mobilia sequuntur personam*, and does so through domicile.

Article 24 of the Draft retains the *lex rei sitae* and clarifies its reach, expressly covering immovables, corporeal movables, the real rights relating to them, and possession. Article 25 of the Draft provides that vessels and aircraft located in waters or airspace outside any jurisdiction are deemed situated at the place of their registration, while cargo on board is deemed situated at the effective place of destination of the goods, unless the parties choose otherwise. Finally, Article 26 of the Draft addresses intellectual property, submitting the economic rights of authors to the law of the place of publication or dissemination, industrial property registered in Brazil or for which registration has been sought before Brazilian authorities to Brazilian law, and obligations arising from unfair competition or breach of trade secrets to the law of the place where the damage occurs.

D. Contracts and Torts

Article 9 of the Introductory Law governs the determination of the applicable law in the fields of both contract and tort: to characterize and regulate obligations, the law of the country in which they are constituted applies. With regard to contracts, the applicable law in Brazil is the law of the place where the contract was executed (*lex loci contractus*). Article 9, para. 2 of the Introductory Law supplies the criterion for contracts between absent parties, e.g. when parties are in different jurisdictions, deeming the obligation constituted at the place where the offeror resides. The rule operates as a legislative localization of the contract. Rather than asking where the last act necessary to formation took place, Brazilian law fixes the *situs* by reference to a single party, the one whose offer was accepted. Brazilian legislation has not yet adopted the modern tendencies of Private International Law toward flexible rules, decided on a case-by-case basis in accordance with the principle of proximity (Dolinger, 2000).

Party autonomy, i.e. the possibility for the parties to choose the applicable law, is a matter traditionally open to scholarly debate. Most Brazilian commentators consider that, despite the silence of Article 9, the principle exists in Brazilian Private International Law, since “fundamental principles cannot disappear through the simple omission of the law” (Valladão, 1983: p. 185). Some authors hold that party autonomy does not exist in Brazil (de Castro, 1996; Tenório, 1967; Franceschini, 2002). The debate has nonetheless lost some of its edge in practice, party autonomy being expressly recognized in arbitration³¹, and more broadly, figuring among the positive principles of the discipline later discussed.

With respect to torts, the rule applying the law of the place where the wrongful act was committed (*lex loci delicti*) has always been widely accepted. The theory

³¹Article 2, para. 1 of Law No. 9307/1996 (Arbitration Act).

that a tort should be governed by the law of the place of its commission is as old as Private International Law itself, going back to the Italian statist schools, even before Bartolus of Sassoferrato (Valladão, 1983; Gutzwiller, 1929).

Article 28 of the Draft would end a debate more than a century old by providing, in its opening words, that obligations arising from international contracts are governed by the law chosen by the parties, with some limitations provided for in the proposed text. The choice may be express or tacit provided it is unequivocal, and may be modified at any time, subject to the rights of third parties; the parties may designate different laws for different parts of the contract, expressly authorizing *dépeçage*, and the choice of a forum does not of itself imply a corresponding choice of law. Employment and consumer contracts are removed from the general regime and given specific rules.

Non-contractual obligations are addressed in Article 31 of the Draft, which shifts the connecting factor from the place of the wrongful act to the place where the damage occurs, aligning Brazilian law with the prevailing contemporary solution; where the damage occurs in several countries, the Brazilian court may assess the harm suffered abroad and order full reparation, applying the law of each country to quantify the amount due. Finally, Article 34 of the Draft codifies what scholarship and case law had already settled, submitting prescription and limitation to the law applicable to the substance of the dispute.

E. Succession

Regarding succession, Article 10 of the Introductory Law provides that succession by death or through absence is governed by the law of the country in which the deceased or absentee was domiciled, whatever the nature and location of the property involved. Accordingly, if the deceased was domiciled in Canada at the time of death, Canadian law will determine who the heirs are and their respective shares, even as regards immovable property located in Brazil. That rule is qualified, however, by Article 10, para. 1, of the Introductory Law, read together with Article 5, XXXI, of the Constitution: in the succession to property of foreigners situated in the country, where there is a Brazilian spouse or Brazilian children, the applicable law is whichever of the law of the domicile of the deceased and Brazilian law is more favorable to them. The provision is thus a multiple connecting rule of the alternative type, in which the interpreter must choose between two designated laws according to a substantive criterion.

Article 23 of the Draft preserves the law of the deceased's domicile as the general rule, specifying, as the current legal text does not, that the relevant moment is the date of death, or of the absence in cases of presumed death. It then introduces the most significant innovation in the field: under Article 23, para. 1 of the Draft, the deceased may choose the law governing his or her succession, whether by will or by a declaratory instrument signed before the Civil Registry, selecting the law of any of his or her domiciles or of any of his or her nationalities.

F. Legal Entities

Finally, in relation to legal entities, Brazilian legislation distinguishes between

their existence and capacity, and the conduct of business in Brazil. As to their existence and capacity, Article 11 of the Introductory Law provides that organizations destined to goals of collective interest, such as corporations and foundations, are governed by the law of the State in which they are constituted; their capacity and structure are therefore governed by the law under which the company was constituted.

Article 11, para. 1 of the Introductory Law is best read as a complement to the *caput* rather than as an exception to it, since the two provisions answer different questions. The *caput* lays down the *lex societatis*: the law of the State in which the entity was constituted governs what the entity is, its existence, its legal personality, its capacity, its internal organization, and the powers of its organs. The paragraph is not concerned with what the entity is, but with what it may do in Brazilian territory. It provides that such entities may not have branches, agencies, or establishments in Brazil before their constitutive acts have been approved by the Brazilian Government, whereupon they become subject to Brazilian law³². The approval is thus not a re-constitution: the Brazilian authority does not examine whether the entity validly exists, a question already settled by the law of its incorporation and which Brazilian law simply takes as given, but whether it may carry on business here and on what conditions.

Article 32 of the Draft restates that legal entities are governed by the law of the country in which they were constituted. Foreign legal entities wishing to operate in Brazil through any establishment must obtain such authorization as may be necessary and become subject to Brazilian law and to Brazilian jurisdiction. The Draft clarifies that this requirement does not apply to sporadic acts or to acts performed without any intention of habituality.

G. Dépeçage

In Brazil, the same legal relationship may be submitted to different connecting factors, according to the aspect under analysis. When different aspects or issues of a complex legal relationship are governed by different legal systems, we have the phenomenon of *dépeçage*: the technique of applying the rules of different States to determine different issues. Where a case presents more than one legal issue and each is analyzed separately, situations arise in which each issue is said to be governed by a different choice-of-law rule (Cramton et al., 1981; Hoffheimer, 2010).

Accordingly, the law of the forum may govern procedure while other laws govern the substance of the relationship. The capacity of the parties will be governed by the law of the domicile (Article 7 of the Introductory Law); the formal aspects of the transaction by the law of the place where it took place (*locus regit actum*); the contractual aspects by the *lex contractus* (Article 9 of the Introductory Law); and rights *in rem* over immovable property by the *lex rei sitae* (Article 8 of the Introductory Law). To this respect, Article 9 of the Interamerican Convention on the General Norms of Private International Law states that the various laws that

³²The submission to Brazilian Law is also provided for in Article 1137 of the Civil Code.

may govern different aspects of the same legal relationship shall be applied harmoniously, seeking to achieve the objectives pursued by each of the legal systems.

4.2. The Principles of Private International Law

If connecting rules are the central pillars on which Private International Law rests, its principles are the foundations that hold the structure together. Where the rules prove insufficient, inadequate, or incongruent to resolve a conflict of laws, the interpreter must turn to the principles of the discipline. The final determination of the law applicable to a foreign-connected relationship is therefore a complex operation: it begins with the connecting factors and continues with the principles, which may affect the final solution.

Dolinger (2000) explains that the system evolved toward a two-stage “checks and balances” methodology. At the first stage, where a situation could be governed by one or another system of law containing different substantive rules, the conflict rules of the forum are applied to designate the applicable system. At the second stage, problems may arise because the solution reached through the conflict rule would be unacceptable to the forum, because the forum’s conflict rule collides with that of the other jurisdiction concerned, or because the two systems characterize the relationship differently. In these cases, the conflict rule is not given full effect, and a different solution must be found.

These principles, which affect the applicability of the foreign law designated by the connecting rule, normally perform a negative function. As a rule, they limit the operation of the connecting rules, hindering or correcting their application or altering the result those rules would ordinarily produce. They have also been described as “escape devices”³³, “escape mechanisms” (Symeonides, 1994), or “disguised exception clauses”. The most important are *renvoi*, *fraude à la loi*, characterization, the preliminary question, vested rights, and public policy.

Dolinger et al. (2025) further distinguish these negative principles, which prevent or modify the application of connecting rules, from positive principles, which accompany them. These positive principles include proximity, the protection of vulnerable parties, party autonomy, and the law more favorable to the preservation of certain legal situations (*favor negotii*).

Renvoi results from the fact that not only substantive provisions but also the connecting rules of two different States may conflict. Where the local connecting factor designates foreign law, the judge may either disregard the foreign State’s connecting rule and apply only its substantive law, or apply the foreign connecting rule, which is what *renvoi* means. Brazil does not accept *renvoi*. Under Article 16 of the Introductory Law, where a foreign law is to be applied, only its content is to be considered, without regard to any reference it makes to another law.

³³Symeonides (1994) writes: “The only time American conflicts law came close to having a rule system was during the dominance of the first Restatement of Conflicts. Unfortunately, the rules of the first Restatement were too rigid and mechanical and left no room for evolution. This rigidity made necessary the utilization of the few available escape devices: characterization, *ordre public*, the substance versus procedure dichotomy, and, occasionally, *renvoi*”.

Fraude à la loi means that the application of the law designated by the forum's conflict rules should be refused where that designation results from the efforts of a party who deliberately shifts the normal center of gravity of a legal relationship from its natural seat to another, with the aim of evading the law that would ordinarily apply and obtaining the advantages afforded by the law thus chosen. Although not expressly provided for in Brazilian legislation, all acts performed in fraud of the law are void and of no effect (Dolinger et al., 2025). Furthermore, Article 6 of the Inter-American Convention on General Norms of Private International Law, in force in Brazil, establishes that the law of a State shall not be applied as foreign law when the fundamental principles of the law of the other Party have been artificially circumvented.

Characterization is a principle common to various areas of law: every aspect of a legal relationship must be defined, classified, and characterized in order that the corresponding rules may be applied. The question is not confined to the legal category of the connecting rule; some connecting factors themselves, such as the domicile, require characterization. The main theoretical problem regarding characterization is which legal system one should turn to in order to identify the category to which a legal issue belongs: the *lex fori*, that is, the law of the forum, or the *lex causae*, that is, the foreign law considered applicable. Brazilian legislation contains no rule resolving the question, but most commentators and court decisions have adopted characterization according to the *lex fori*. In the absence of any provision of domestic law, Article 6 of the Bustamante Code may also be invoked in support of that solution.

With regard to the preliminary question, the answer to a legal problem sometimes depends on the resolution of a prior matter, such as the validity of a marriage (preliminary question) in an inheritance case (principal question). Since Brazilian law applies the law of the last domicile of the deceased, and if that foreign law treats the spouse as an heir, which law should determine whether the deceased was validly married? One theory holds that the foreign law designated by the connecting rule must be complied with entirely, so that the preliminary question is governed by the same legal system that governs the principal question, that is, by the conflict rules of the foreign jurisdiction rather than those of the forum. Another theory, more widely accepted, holds that the preliminary question must be governed by the conflict rules of the forum, because it could arise as a principal question in another case before the same courts and the two decisions could not be allowed to diverge. Brazilian legislation contains no express provision on the matter. Article 8 of the Inter-American Convention on General Norms of Private International Law deals with preliminary questions, but the solution is of little use in practice, because it merely provides that preliminary questions “need not necessarily be resolved in accordance with the law governing the latter”.

Vested rights, as a principle of Private International Law, is a corollary of the theoretical contributions of Antoine Pillet. The author argued that a right validly acquired in one jurisdiction, in accordance with the law in force there, should be universally respected (Pillet, 1903). Even where the forum's connecting rules

would dictate a different solution, rights acquired under a foreign law are therefore to be respected. In Brazil, respect for vested rights is guaranteed by Article 5, XXXVI, of the Constitution, under which no law may impair a vested right, a perfected juridical act, or *res judicata*; the principle thus applies not only domestically but also to Private International Law questions (Dolinger et al., 2025).

Ordre public or public policy is the major principle of the discipline. Its function is to ensure that foreign laws are not applied in the forum wherever and whenever they violate basic local moral, economic, and philosophical-legal standards. Its application is decided by the judge on a case-by-case basis. Article 17 of the Introductory Law provides that the laws, acts, and judgments of another country, as well as any declaration of private intention, are not effective in Brazil when they offend national sovereignty, public policy, or good morals. Thus, where Article 7 of the Introductory Law designates the law of the person's domicile and that law fixes the minimum age for marriage at twelve, the Brazilian judge will refuse to apply it, since giving effect to such a marriage would violate basic local standards.

The general part of the Draft of a General Law on Private International Law addresses many of these principles and phenomena, e.g. characterization (Article 5), the preliminary question (Article 6), *fraude à la loi* (Article 8) and vested rights (Article 11). Almost none of these questions is regulated by the current Introductory Law, which addresses only *renvoi* and public policy, so that Brazilian practice has had to resolve them by inference from a handful of provisions, from scholarship, and from scattered precedent. Positive rules on the point would bring a measure of legal certainty that the current system cannot offer.

5. Jurisdiction

The legislation of each country determines when the local courts have the power to adjudicate transnational cases. This topic is dealt with by the fourth subject matter of Private International Law: questions of jurisdiction in international litigation (Dolinger, 1992).

The exercise of jurisdiction is closely bound up with sovereignty. Tiburcio (2016) argues that sovereignty manifests itself in two different ways regarding jurisdiction. First, jurisdiction is a State activity flowing directly from sovereignty, consisting in the power and duty to apply the law in order to resolve conflicts of interest (*juris dicere*), even though at the present stage of legal theory it may be acknowledged that jurisdiction is no longer an activity exclusive to the sovereign, since it may be exercised, by concession of the sovereign, in arbitration and other appropriate means of dispute resolution. Second, it is sovereignty that defines the situations in which jurisdiction is concretely exercised, so that the rules enacted by the legislature represent an assessment of those cases whose link to the forum is strong enough to warrant setting the judicial apparatus in motion, or to warrant preventing the pronouncements of foreign courts from producing effects in the forum.

The close link between sovereignty and jurisdiction shapes the nature of the rules of international civil procedure. Like the rules on nationality and the status of aliens, jurisdiction rules are unilateral: in laying down the situations in which jurisdiction is exercised, the legislature defines unilaterally when Brazilian courts are to act, without that definition having any influence on the equally unilateral definitions made by foreign States. Therefore, classifying a matter as one of exclusive jurisdiction does not prevent a foreign authority from exercising jurisdiction over it; the practical effect of the classification is that foreign judgments on such matters cannot be recognized and enforced in Brazil, under Article 964 of the Code of Civil Procedure. Furthermore, rules on jurisdiction cannot be bilateralized. The local judge may solely determine unilaterally whether he or she has jurisdiction but may not use local rules to decide on the jurisdiction of a foreign judge, which is defined unilaterally by foreign rules.

As jurisdiction is an onerous activity, each State sets forth the situations in which it has an interest in exercising its jurisdictional activity, whereby not every situation will lead to the exercise of local jurisdiction³⁴. The costs of exercising jurisdiction also require judges to take into account the principle of effectivity.

This principle, elucidated by **Carnelutti (1931)**, originates from the idea that the exercise of jurisdiction theoretically encounters no limitation. Each country may intend to adjudicate over all suits filed in its courts, without taking into account the nationality or the domicile of the parties involved, the nature of the subject-matter under dispute, the location of the subject-matter being disputed, the place where the facts which gave rise to the dispute took place or the place where the obligation is to be performed.

As there are other States, each with its own jurisdictional power, in the event the case decided in one country has to be executed in another, the judge who originally examines the issue must consider whether his or her future decision will be recognized abroad. If the judge reaches the conclusion that the decision will not be recognized abroad, based on the principle of effectivity, the judge must refrain from deciding over the issue at stake. It makes no sense to admit the loss of time and money when there is no possibility of recognition in the State where the judgment would have to be enforced. As the purpose of every judicial decision is to be effective, a decision which will not be executed should not be rendered.

5.1. The Heads of Jurisdiction under the Brazilian Code of Civil Procedure

In Brazil, the exercise of jurisdiction is now governed by Articles 21 to 23 of the 2015 Code of Civil Procedure (Law No. 13,105/2015). Articles 21 and 22 set out the cases of concurrent jurisdiction, that is, cases in which Brazil has jurisdiction at the international level, but another State may also have it, so that a foreign judgement on the matter may be recognized in Brazil. Article 23 sets out the cases

³⁴Most countries list in their domestic legislation the situations in which the local courts have jurisdiction at the international level, but there are also cases in which this is decided on a case-by-case basis.

of exclusive jurisdiction, which Brazilian law considers may be decided only by Brazilian authorities.

First, jurisdiction is established where the defendant is domiciled in Brazil (Article 21, I of Code of Civil Procedure). The relevant concept of domicile is to be defined in accordance with Brazilian law. This is the paradigmatic reasonable forum, as requiring the defendant to be sued at his or her domicile minimizes the burden of defending, while service and any subsequent enforcement are facilitated for the claimant, the defendant's assets ordinarily being located there. The head is a general one, because jurisdiction is established even where the dispute arises from a situation constituted abroad. Transient jurisdiction is not admitted, because the defendant must be domiciled in the country, i.e. reside in the country on a permanent basis, for the jurisdiction to be established (Pontes de Miranda, 1996; Barbosa Moreira, 1994; Barbi, 2010). Where there are several defendants, it suffices that one of them be domiciled in Brazil. Furthermore, the relevant moment for assessing domicile is the filing of the claim (Tiburcio, 2016).

Under the sole paragraph of Article 21 of Code of Civil Procedure, a foreign legal entity having an agency, branch, or establishment in Brazil is deemed domiciled in the country, a rule consistent with the requirement of authorization for such establishments under Article 1134 of the Civil Code (Law No. 10,406/2002) and Article 11, para. 1 of the Introductory Law. Some commentators make clear that this rule applies only to suits arising out of transactions carried out through those branches or agencies, since only those are of interest to the Brazilian legal system. Were it otherwise, as Barbi (2010) puts it, a Canadian domiciled in Canada could sue an American corporation in Brazil on facts occurring in the United States and unrelated to Brazil, merely because that company had a branch here, which is wholly unacceptable. There are at least two situations covered by the sole paragraph: acts performed by the foreign company's head office in its own interest but with effects on, or performance through, the establishment in Brazil, and acts performed by the foreign company through that establishment in the establishment's interest (Tiburcio, 2016).

The second head of jurisdiction is that the obligation is to be performed in Brazil (Article 21, II of the Code of Civil Procedure). This is a special head, applicable in matters of obligations, the place where the obligation was constituted being irrelevant. Jurisdiction is fixed in accordance with the claimant's allegations, under the theory of assertion, and is unaffected by a defense contesting the existence or validity of the contract or by a subsequent finding on the merits. Where several obligations are involved, it suffices that one of them be performable in Brazil and that the cause of action bear some relation to it.

The third head of jurisdiction covers claims founded on a fact that occurred or an act performed in Brazil (Article 21, III of the Code of Civil Procedure), a special head applicable to legal acts of every kind, contractual or not, and to legal facts. Commentators read the provision as requiring that the reason of the suit (*causa petendi*), i.e. its factual basis, has arisen in Brazil (Tornaghi, 1974; Barbosa

Moreira, 2012). The provision also applies to non-contractual liability, it being enough that the generating event or the damage occurred in Brazil, in whole or in part (Tiburcio, 2016).

Article 22 of the Code of Civil Procedure added three further heads of concurrent jurisdiction, unknown to the previous legislation. The first concerns maintenance claims (Article 22, I of the Code of Civil Procedure). In this case, jurisdiction lies where the creditor is domiciled or resident in Brazil (*forum actoris*) or where the debtor maintains links with the country, such as possession or ownership of assets, receipt of income, or the obtaining of economic benefits (*forum patrimonii*). In the second case jurisdiction is established even where neither party has any personal link with Brazil, as the criterion is the presence of assets against which the maintenance obligation may readily be enforced. The second head concerns consumer claims (Article 22, II of the Code of Civil Procedure), where the consumer is domiciled or resident in Brazil, another exception to the traditional rule of the defendant's domicile, founded on the protection of the weaker party and on the constitutional mandate of consumer protection. The third head is express or tacit submission (Article 22, III of the Code of Civil Procedure), a concrete expression of party autonomy. In this case, express submission requires an unequivocal manifestation by both parties, as through a clause choosing the Brazilian forum, while tacit submission operates where the claim is filed in Brazil and the defendant fails to raise the objection on jurisdiction at the proper procedural stage.

Article 23 lists three heads of exclusive jurisdiction. The first concerns actions relating to immovable property situated in Brazil (Article 23, I of the Code of Civil Procedure), a rule almost universally accepted, founded on sovereignty and on the sound administration of justice, including the reliability and publicity of land registers. The second deals with the confirmation of a private will and the probate and division of assets situated in Brazil (Article 23, II of the Code of Civil Procedure). The third covers the division of assets situated in Brazil in the context of divorce, judicial separation, or dissolution of a stable union (Article 23, III of the Code of Civil Procedure). The inclusion of this third head settled the controversy under the previous legislation as to whether the exclusivity rule extended to *inter vivos* division of assets or was confined to succession.

Important heads of jurisdiction are also found in other statutes and in treaties. In cross-border insolvency, for instance, Article 3 of the Bankruptcy and Reorganization Act (Law No. 11,101/2005) confers jurisdiction on the court of the debtor's principal establishment or of the branch of a company seated abroad. Furthermore, Article 167-D of this Act confers on the same court jurisdiction to recognize foreign insolvency proceedings and to cooperate with foreign authorities.

Among the treaties in force in Brazil, jurisdictional rules appear in the Inter-American Convention on Support Obligations (Article 8), the Inter-American Convention on the International Return of Children (Article 9), the Inter-Amer-

ican Convention on International Traffic in Minors (Article 13), the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors (Articles 15 and 17), the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Article 33), the International Convention on Civil Liability for Oil Pollution Damage (Article 9), the Vienna Convention on Civil Liability for Nuclear Damage (Article 11), the Mercosur's São Luis Protocol on Civil Liability for Road Traffic Accidents (Article 7) and the Mercosur's Buenos Aires Protocol on International Jurisdiction in Contractual Matters (Articles 5 and 7).

5.2. Expansion and Limitation of the Exercise of Jurisdiction

All States that list the situations in which their courts have jurisdiction over foreign-connected cases must ask whether the listed cases are the only ones admitted or whether jurisdiction may validly be exercised in others. [Morelli \(1953\)](#) argued, examining Italian law, that rules on jurisdiction expressly provided for in the law represented the only cases in which the Italian courts could exercise jurisdiction over cases with foreign connections.

In Brazil, several commentators long adopted the same interpretation. [Barbi \(2010\)](#) argued that the Code lists the only cases in which Brazil has jurisdiction at the international level, and that any case not among them cannot be examined by a Brazilian court. [Barbosa Moreira \(1994\)](#) shared this view, describing these as “limits to the exercise of jurisdiction in Brazil”, while admitting exceptional circumstances in which the Brazilian courts could accept jurisdiction even where the situation is not expressly listed. These exceptions would be founded on principles of law. Due to the principle of party autonomy, jurisdiction would be exercisable where both parties submitted an agreement to the Brazilian courts for ratification or where the parties had chosen the Brazilian forum. Due to the principle of access to justice, Brazilian courts could hear a case where no country had jurisdiction to examine the case, so that the Brazilian courts should adjudicate to avoid a denial of justice³⁵. [Botelho de Mesquita \(1988\)](#) likewise considers that where there is an interest the Brazilian authority may hear the case even if it is not expressly listed.

The question turns on what effect the rules on jurisdiction are taken to have. On one view they create jurisdiction, marking out the narrow limits within which the legislature was willing to allow the courts to operate. On another they merely enumerate possible exercises of a jurisdiction that pre-exists as an emanation of sovereignty and may be exercised whenever there is reason to do so. [Tiburcio \(2016\)](#) argues that further heads may be admitted based on sovereignty, party autonomy, or the prohibition of denial of justice. For instance, jurisdiction could be exercised, where a relevant national interest is at stake, as in actions concerning

³⁵To illustrate the last hypothesis, [Barbosa Moreira \(1994\)](#) gives the example of a divorce brought by a husband domiciled in Brazil against a wife domiciled in Portugal: since Portuguese law would give Portugal no jurisdiction, the Brazilian courts should hear the case, unlisted though it is, since otherwise no court would be competent to decide it.

nuclear material in the country or the validity of public registries³⁶.

Turning to the precedents, the Superior Court of Justice earlier reached the same conclusion as the then majority of Brazilian scholarship, holding that the jurisdiction of the Brazilian judiciary could be established only in the cases listed in the Code of Civil Procedure, and that Brazilian law did not adopt connection between claims as a criterion for establishing international jurisdiction³⁷. Nonetheless, the same Superior Court of Justice later held that the Code of Civil Procedure does not establish an exhaustive list. In that case a French Jew naturalized Brazilian sought compensation from the German Government for damage suffered by him and his family during the Second World War, while French territory was occupied. According to the Court, even where a case is not expressly listed, what matters is whether Brazil has an interest in deciding it and whether the decision can be enforced in Brazil. Finding both conditions met, the Court held that Brazil had jurisdiction, which seems to be the sounder approach. The claim was nonetheless dismissed on grounds of sovereign immunity³⁸. No clear tendency can therefore be identified in the case law. The decisions show however that the exhaustive reading once dominant is no longer unchallenged. Scholarship, by contrast, has defended the possibility of expansion, and not only as regards concurrent jurisdiction (Tiburcio, 2016; Botelho de Mesquita, 1988).

Some grounds may limit the exercise of jurisdiction that would otherwise exist: an exclusive foreign choice-of-forum agreement, the principle of effectivity, *forum non conveniens*, and immunity from jurisdiction.

The negative effect of displacing jurisdiction that would otherwise exist is dealt with in Article 25 of the Code of Civil Procedure, subject to some conditions. The chosen forum must be an exclusive foreign forum, excluding every other, however privileged. The agreement must appear in an international contract, the apparent intention being to prevent the fictitious internationalization of a purely domestic contract, although the Code offers no definition of international contracts. The clause must be raised by the defendant in the defense. Failure to object where the claimant sues in Brazil in disregard of the clause amounts to tacit acceptance of Brazilian jurisdiction, consistently with Article 22, III of the Code of Civil Procedure. Neither may it displace exclusive jurisdiction. Nonetheless, following a 2024 amendment to Article 63, para. 1 of the Code of Civil Procedure, referred to by Article 25, para. 2 of the Code of Civil Procedure, the chosen forum must bear some relation to the domicile or residence of one of the parties or to the place of the obligation. This amendment is to be considered a regrettable step backwards, incompatible with the reality of international business, where the choice-of-forum may legitimately reflect economic considerations or the expertise of the chosen

³⁶The Supreme Federal Court refused exequatur to a letter rogatory seeking to serve the Federative Republic of Brazil in proceedings in the United States concerning Brazilian public debt securities, accepting the argument that the matter fell within Brazil's exclusive jurisdiction. Supremo Tribunal Federal [STF] (2001), CR No. 9697, DJ (24 Apr.).

³⁷Superior Tribunal de Justiça [STJ] (1990), REsp No. 2170, RSTJ, 12.

³⁸Superior Tribunal de Justiça [STJ] (2008), RO No. 64, DJe (23 June).

forum.

The principle of effectivity, as earlier discussed, restricts jurisdiction where the concrete impossibility of the decision producing effects renders it useless from the outset. The doctrine of *forum non conveniens*, by contrast, allows a court that does have international jurisdiction to decline it because the connection between the claim and the forum is absent or too tenuous. In Brazil this doctrine was rejected by the Superior Court of Justice in the Hering case, where it was argued that the dispute was closer to Argentina despite a clause choosing the Brazilian forum. The Court held that, quite apart from the absence of any specific rule permitting the practice, declining jurisdiction in favor of another country would be highly questionable, particularly given the choice of the Brazilian forum and the constitutional guarantee of access to justice³⁹.

Immunity from jurisdiction, finally, derives from public international law and limits the possibility of subjecting a sovereign entity to foreign adjudication. Foreign States and their representatives, international organizations and, in special cases, public vessels and aircraft and foreign troops present in the national territory enjoy immunity to a greater or lesser extent, based on international custom or treaty.

6. Conclusion

The four subject matters surveyed in this article share a single premise. The legal relationship connected with more than one legal system cannot be resolved by the unreflective application of local law. What Private International Law supplies is the method for identifying, in each case, which system governs, before which court, and on what conditions the result may be given effect elsewhere. In the Brazilian tradition that method is deployed across nationality, the legal status of aliens, the determination of the applicable law, and jurisdiction in international litigation.

The four are not governed by sources of the same rank. Nationality is almost entirely constitutional with Article 12 of the Constitution being supplemented by the Migration Law only as regards the procedure for naturalization. The legal status of aliens rests on a constitutional core with the equality guaranteed by Article 5 of the Constitution but is mainly implemented by the Migration Law. The determination of the applicable law and jurisdiction, by contrast, are matters for ordinary legislation, the Introductory Law on the Norms of Brazilian Law and the Code of Civil Procedure respectively, subject in both cases to the treaties in force in Brazil. This difference in rank may explain much about the pace of change in each subject matter.

Of the four, the determination of the applicable law remains both the most important and the only one that belongs to Private International Law alone. It is also the field in which the distance between Brazilian law and contemporary compar-

³⁹Superior Tribunal de Justiça [STJ] (2016), REsp No. 1,633,275, *RSTJ*, 245.

ative solutions is widest. The Brazilian connecting rules remain rigid, formal, and largely closed to the parties' will, in contrast with the flexible, result-oriented techniques that have prevailed in the United States and, more recently, in European instruments.

The last decades have nonetheless produced substantial change, unevenly distributed. Constitutional Amendment No. 131/2023 abolished the loss of Brazilian nationality upon the voluntary acquisition of a foreign one. The Migration Law of 2017 replaced a statute built on national security with one built on the protection of migrants, narrowing administrative discretion over entry, expulsion, and naturalization. The Code of Civil Procedure of 2015 restructured jurisdiction, adding heads founded on the protection of the weaker party and giving effect, for the first time, to exclusive foreign choice-of-forum agreements, although the amendment of 2024 shows that the movement is not linear. Only conflict of laws has stood still, and it may not do so much longer, since the Draft General Law on Private International Law concluded in 2025 would codify the general part of the discipline, generalize party autonomy, and introduce both substantively oriented connecting factors and a general exception clause based on the closest connection.

Taken together, these developments describe a discipline in transition, and they make the case for treating it as strategic knowledge rather than a specialist technicality. The choices that determine the outcome of a cross-border dispute are ordinarily made years before the dispute arises, and they are made well or badly according to whether the parties and their advisers understood Private International Law.

Acknowledgements

C. Tiburcio wishes to acknowledge the research assistance of Gabriel Almeida and Vitoria Alvarez in the preparation of an earlier version of this paper for a conference given to visiting students from Loyola University at the Law School of the Rio de Janeiro State University.

Author Contributions

Conceptualization and research, C. Tiburcio and E. C. Xavier Junior; original draft preparation, C. Tiburcio and E. C. Xavier Junior; review and editing, C. Tiburcio. All authors have read and agreed to the published version of the manuscript.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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