



国际私法

# PRIVATE INTERNATIONAL LAW (II)

Law School of Fuzhou University

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# Part II: Subject of private International law

**Chapter 3** Natural person

**Chapter 4** Legal person

**Chapter 5** State and international organization

**Chapter 6** Civil legal status for foreigners



# Chapter 3 Natural person

**Section 1** Nationality of  
natural person

**Section 2** Domicile of  
natural person

**Section 3** Natural person's capacity  
for rights and capacity to act



# Section 1 Nationality of natural person



- 1、 Definition of nationality  
allegiance, obedience,  
contract, identity
- 2、 Conflict of nationality  
positive conflict;  
negative conflict.
- 3、 Settlement of conflict



**Question :**

What is the difference between  
“domicile” and “residence”?

# Section 2 Domicile of natural person

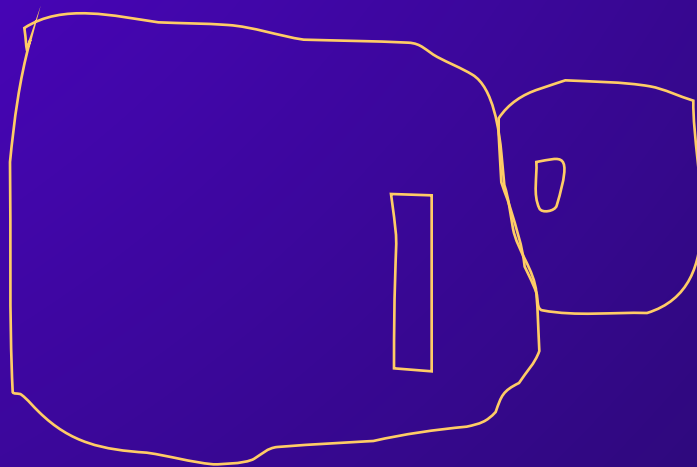
- 1、 Definition of domicile / residence
- 2、 Conflict and settlement of domicile



# 怀特 Vs. 坦奈特

迈戈尔·怀特与其兄弟姐妹们从其父亲处继承下来的农场地跨两州，其中200英亩在西弗吉尼亚，40英亩在宾夕法尼亚州。迈戈尔·怀特出生及长大后的住所地都在西弗吉尼亚。

后来，迈戈尔·怀特与其兄弟姐妹们将农场分割，其拥有宾夕法尼亚的40英亩土地及上面一幢简易房的所有权。



# 怀特 Vs. 坦奈特

1885年4月2日，迈戈尔·怀特搬迁到宾夕法尼亚的一幢简易房，只住一晚上，因房屋过于简陋，太冷无法居住，第二天就回到西弗吉尼亚的老屋子。

结果迈戈尔·怀特的妻子露西达得了伤寒症，迈戈尔·怀特就只能住在西弗吉尼亚的老屋子里。不久，迈戈尔·怀特也染上伤寒，十天后再西弗吉尼亚的老屋子亡故，其妻康复。

农场主迈戈尔·怀特死亡，无遗嘱。坦奈特是死者的岳父和遗产管理人。坦奈特根据西弗吉尼亚的法律对迈戈尔·怀特的遗产进行清算，在清偿债务后，余下全部财产由死者之妻露西达继承。死者的兄弟姐妹认为，根据死者死亡时的住所地宾夕法尼亚州法律，死者遗孀只能得到遗产的一半，另一半应归死者的兄弟姐妹继承。







**Question :**

**What is meaning of “capacity” in law?**

**What is the difference between  
“capacity for rights ” and “capacity to  
act ”?**

# Section 3 Natural person's capacity for rights and capacity to act

- 1、 Conflict and Settlement of Natural person's capacity for rights
- 2、 Jurisdiction and application of law for foreign-related declaration of absence and death
- 3、 Conflict and Settlement of Natural person's capacity to act
- 4、 Jurisdiction and application of law for interdiction





# Section 3 Natural person's capacity for rights and capacity to act

## 1、 Conflict and Settlement of Natural person's capacity for rights

1) Natural person's capacity for rights

2) Conflict of Natural person's capacity for rights

Beginning and Termination

Natural death: different grounds

Presumption of life

3) Application of law for natural person's capacity for  
rights

# Section 3 Natural person's capacity for rights and capacity to act

## 2、 Jurisdiction and application of law for foreign-related declaration of absence and death

1) Conflict of declaration of absence and death

2) Application of law for declaration of absence and death





# Section 3、 Natural person's capacity for rights and capacity to act

## 3、 Conflict and Settlement of natural person's capacity to act

1) Natural person's capacity to act

2) Conflict of natural person's capacity to act

Age of adult and minor

Different legal system (Interdiction)

3) Application of law for natural person's capacity to act

# 李查蒂缔约案(Lizardi Case)

一名22岁墨西哥人李查蒂在法国向巴黎珠宝商用期票购买价值100万法郎的珠宝，到付款之日，墨西哥人李查蒂说，依照墨西哥法，23岁成年，具有完全民事行为能力，自己还未成年，所签订的购买合同无效，没有约束力。但依法国法，18岁即成年。



# Section 3 Natural person's capacity for rights and capacity to act

## 4、Jurisdiction and application of law for interdiction

1) Jurisdiction for interdiction

2) Application of law for interdiction



# Chapter 4 Legal person

- 1、Nationality and domicile of legal person
- 2、Recognition of foreign legal person
- 3、Legal person's capacity for rights and capacity to act
- 4、International bankruptcy







**Question :**

**What is the definition of  
“legal person”?**

# 1、Nationality and domicile of legal person

- 1) Nationality of legal person
  - a) Place of registration
  - b) Legal address
  - c) Actual control
  - d) Mixed standards



# 1 Nationality and domicile of legal person

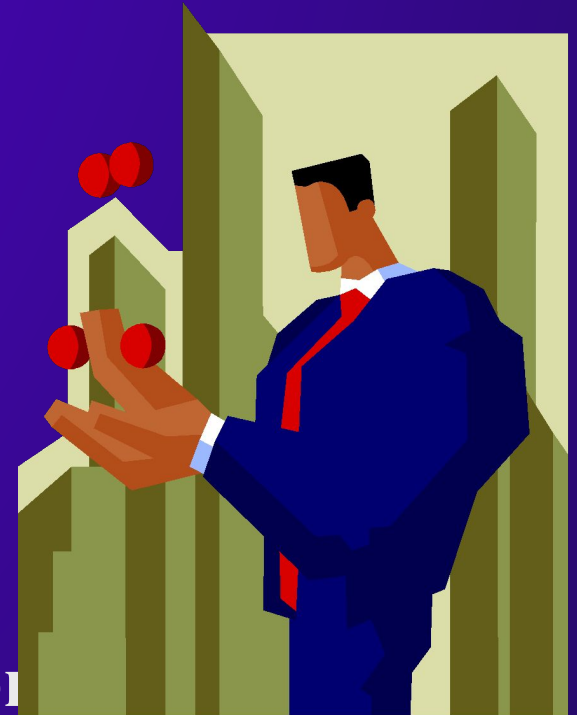
## 2) Domicile of legal person

- a) Management center
- b) Business center
- c) According to articles of association
- d) Place of registration



## 2 Recognition of foreign legal person

- 1) Concept of recognition
- 2) Forms of recognition
  - a) International way
  - b) Domestic way
    - Special procedure
    - General recognition
    - Ordinary recognition
- 3) Regulation of PRC





**Question :**

**What is the difference on “capacity for rights ” and “capacity to act ” between natural person and legal person?**

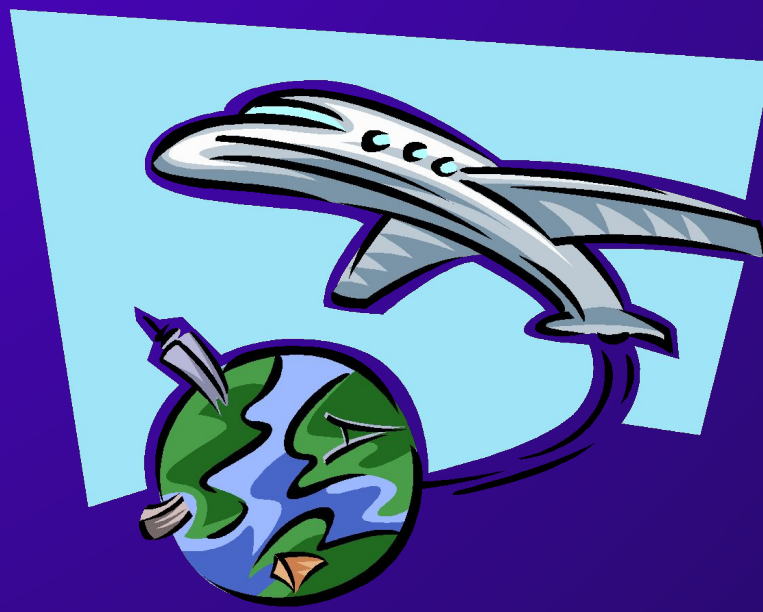
# 3 Legal person's capacity for rights and capacity to act

- 1) Conflict of legal person's capacity for rights and capacity to act
- 2) Application of law for legal person's capacity for rights and capacity to act



# 4 Foreign bankruptcy

- 1) Concept of foreign bankruptcy
- 2) Extraterritorial effect of declaration of bankruptcy
- 3) Application of law for foreign bankruptcy



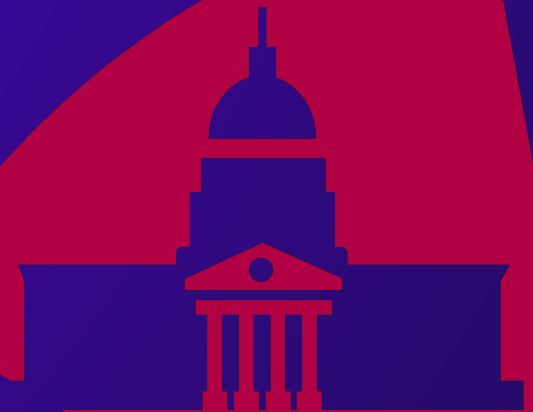
# Chapter 5 State and international organization

## Section 1 State

- 1 Characteristics of State as the subject of Private International Law
- 2 Theories on State Immunity

## Section 2 International organization

- 1 Characteristics of international organization as the subject of Private International Law
- 2 The privilege and immunity international organization





# Section 1 State

- 1 Characteristics of state as the subject of private international law
- 2 Theories on state immunity
  - (1) Content of state immunity
  - (2) Issues on state immunity
  - (3) Theories on state immunity
  - (4) Position of China





**Question :**

**How to settle the conflict between capacity for rights and capacity to act of international organizations?**



**Question :**

**Why do international organizations  
have the privilege and immunity ?**

# Section 2 International organization

- 1 Characteristics of international organization as the subject of private international law
- 2 The privilege and immunity of international organizations
  - (1) Creation and development of the privilege and immunity of international organizations
  - (2) Reason of the privilege and immunity of international organizations
  - (3) Content of the privilege and immunity of international organizations



# Chapter 6 Civil legal status for foreigners

- 1、Concept
- 2、Civil legal status for foreigners in different periods
- 3、Several systems of civil legal status for foreigners
- 4、Civil legal status for foreigners in PRC



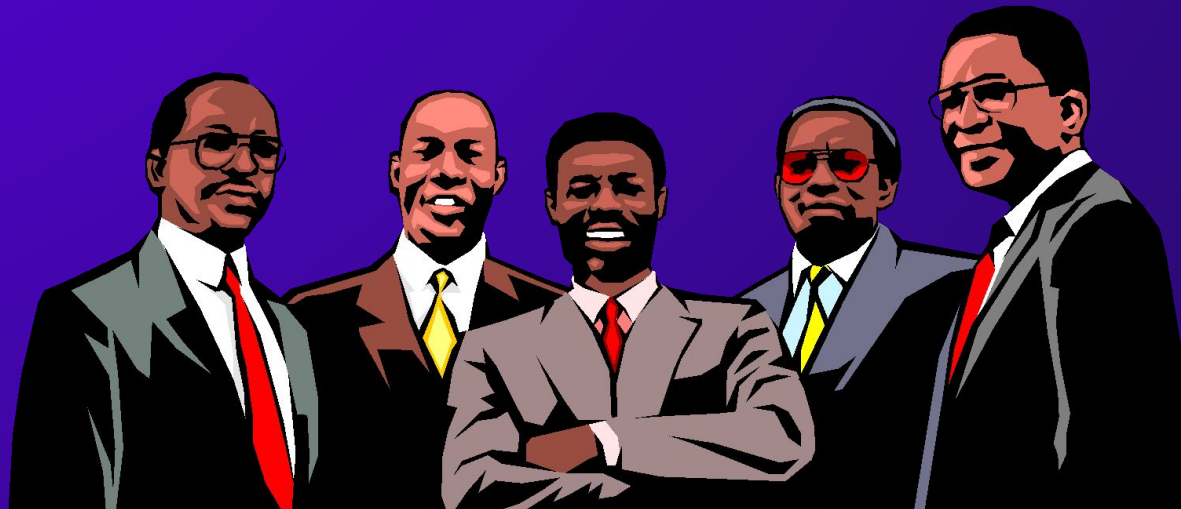
## 2 Civil legal status for foreigners in different periods



- ◆ Slavery society
- ◆ Feudal society
- ◆ Capitalist society

# 3、 Several systems of civil legal status for foreigners

- ◆ National treatment
- ◆ Most-favored-nation treatment
- ◆ Treatment of generalized system of preference
- ◆ Preferential treatment



## 4、Civil legal status for foreigners in PRC

Before PRC:

- ◆ Reasonable treatment period
- ◆ Antiforeign period
- ◆ Privilege period

