

Developing a Large Language Model for Swiss Cases on Choice of Law

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Slides and data available on Github [🔗](#)

github.com/Choice-of-Law-Dataverse/cold-case-analysis

1. Dataset: 3 optimal examples for evaluation study

1. BGE 130 III 620

Consideration of third-country overriding mandatory provisions under Art. 19 PILA; requirements for the facts and the exceptional nature of Art. 19 PILA. Requirements that must be met under Art. 19 para. 1 PILA for a third-country overriding mandatory rule to apply (E. 3.3-3.5). The consideration of such norms must remain the exception and is particularly out of the question if the PILA itself provides for a special regulation. The provisions of Art. 166 et seq. PILA for the purpose of recognizing a foreign bankruptcy decree constitutes such a special provision (E. 3.5.1).

2. BGE 132 III 285

Validity of choice of law clauses (Art. 116 PILA). According to Art. 116 of the Swiss Private International Law Act, the regulations of a private association cannot be included in a choice of law clause. They can only be incorporated into the contract in accordance with the applicable law, observing the limits of mandatory provisions (Sec. 1). A provision requiring claims to be brought to court within a certain period of time is inapplicable because it is contrary to Art. 129 of the Swiss Civil Code (mandatory rule on statute of limitations) (Sec. 2).

3. BGE 133 III 90

Change in the circumstances of attachment in continuing obligations; applicable law; change of status (Art. 117 PILA). Conditions under which a change in the circumstances of attachment in continuing obligations gives rise to a change of status (rec. 2). If a contractual relationship is organized functionally in such a way that the person providing the characteristic service performs the obligation he has entered into independently of the place where he is staying, his change of domicile during the contract does not result in a change of status (rec. 3).

See all 33 cases on Github [🔗](#)

2. Ground Truth: Examples taken from 2. BGE 132 III 285

Abstract: Provide a concise and formal overview of the case. Often sourced *verbatim* from the court's official summary ("Regeste," "Ementa," etc.) an equivalently accurate translation.

Original

Regeste

Art. 116 IPRG; Zulässigkeit der Rechtswahl.
Reglemente privatrechtlicher Vereine können nicht Gegenstand einer Rechtswahl im Sinne von Art. 116 IPRG sein. Sie können nur im Rahmen einer materiellrechtlichen Verweisung unter Berücksichtigung der zwingenden Bestimmungen des anwendbaren Sachrechts Vertragsinhalt werden (E. 1).
Die Vorschrift, wonach Forderungen binnen einer bestimmten Frist gerichtlich einzuklagen sind, verstösst gegen Art. 129 OR und ist daher unbeachtlich (E. 2).

Ground Truth

Validity of choice of law clauses (Art. 116 PILA).

According to Art. 116 of the Swiss Private International Law Act, the regulations of a private association cannot be included in a choice of law clause. They can only be incorporated into the contract in accordance with the applicable law, observing the limits of mandatory provisions (Sec. 1).
A provision requiring claims to be brought to court within a certain period of time is inapplicable because it is contrary to Art. 129 of the Swiss Civil Code (mandatory rule on statute of limitations) (Sec. 2).

Themes: Manually assigned from a predefined list composed of the following categories:

- Party autonomy
- Freedom of choice
- Rules of law
- Express and tacit choice
- Mandatory rules
- Public policy
- Absence of choice

See the entire ground truth on Github [↗](#)

3. Prompt Examples

Choice of Law Issue

Your task is to identify the main Private International Law issue from a court decision. Your response will be a concise yes or no question. The issue you extract will have to do with Choice of Law and the output has to be phrased in a general fashion. The issue is not about the specific details of the case, but rather the overall choice of law issue behind the case. If there are any legal provisions mentioned, use their English name/abbreviation.

Themes

Your task is to classify a court decision into one specific theme. Your response is one of the values from the "Keywords" column in the format \"keyword\". You assign the theme by finding the choice of law issue from the court decision and figuring out which Definition fits most. THE OUTPUT HAS TO BE ONE OF THE VALUES FROM THE TABLE.

Here is the table with all keywords and their definitions:

See all prompts on Github [↗](#)

4. Evaluation Criteria per Category

Abstract

- Accuracy
- Conciseness

Relevant Facts

- Accuracy
- Focus on PIL
- Conciseness

PIL Provisions

- Adherence to format
- Accuracy
- Choice of law prioritization

Choice of Law Issue Classification

- Accuracy

Choice of Law Issue

- Correct identification of the issue
- Precision of phrasing
- Conciseness

Court's Position

- Does it answer the choice of law issue?
- Conciseness

5. Results: 1. BGE 130 III 620. More results on Github

Abstract

Consideration of third-country intervention norms under Art. 19 of the Swiss Private International Law Act (PILA); prerequisites and exceptional nature of Art. 19 PILA. Conditions that must be met under Art. 19(1) PILA for a third-country intervention norm to apply (Sections 3.3-3.5). The consideration of such norms must remain exceptional and is particularly not applicable when the PILA itself provides a special regulation. The legal assistance provided in Art. 166 et seq. PILA for the recognition of a foreign bankruptcy decree constitutes such a special regulation (Section 3.5.1).

Relevant Facts

A.B., residing in California, USA, filed a lawsuit against D. SA, a company based in Geneva with a branch in Zurich, seeking CHF 703,310 plus interest from account X, which she opened at the defendant's Zurich branch on April 5, 1993. Both A.B. and her husband, A.C., were economically entitled to the account, with A.C. having authority to operate it. On February 15, 1994, A.B. and A.C. entered into a Post Nuptial Agreement, assigning all assets outside the USA to A.B. and those within the USA to A.C. A.C. declared bankruptcy in California on June 14, 1996, and a trustee was appointed. The trustee requested information from D. SA regarding A.C.'s accounts, citing U.S. Bankruptcy Code provisions. D. SA refused, citing Swiss banking secrecy laws. A.B. sued in the Zurich Commercial Court, which dismissed the claim on October 24, 2003, citing Art. 19 of the Swiss Private International Law Act (PILA), which allows consideration of foreign mandatory rules under specific conditions. The court found that the contract should be adjusted to prevent double payment and potential criminal liability for D. SA, deferring the payment obligation while maintaining interest accrual. A.B. appealed, seeking to overturn the decision, while D. SA filed a cross-appeal for a definitive dismissal. The Swiss Federal Court found that the lower court misapplied Art. 19 PILA, as Swiss law already

provides mechanisms for international cooperation in bankruptcy cases, and remanded the case for further proceedings.

PIL Provisions

Art. 19 PILA, Art. 166 ff. PILA

Choice of Law Issue Classification

Mandatory rules

Choice of Law Issue

Should the court apply the overriding mandatory rules of a third country under Article 19 of the Swiss Private International Law Act (IPRG) when there is a significant connection to the third country's legal system and the interests involved are deemed worthy of protection under Swiss legal principles?

Court's Position

In addressing the choice of law issue under Article 19 of the Swiss Private International Law Act (IPRG), the court's position is that the application of overriding mandatory rules from a third country is permissible only under specific conditions. These conditions include: (1) the third country's rule must be intended to apply internationally and mandatorily; (2) there must be a significant connection between the facts of the case and the legal system of the third country; and (3) the interests involved must be deemed worthy of protection and clearly predominant according to Swiss legal principles. Additionally, the consideration of such third-country norms should be an exception rather than the rule and is not applicable if the IPRG itself provides a special regulation for the matter at hand. The court emphasizes that the purpose and consequences of applying the third-country norm must align with a decision that is appropriate under Swiss legal views. In this case, the court found that the Swiss legal framework already provided mechanisms to address the interests protected by the third-country norm, thus negating the need to apply the foreign mandatory rule.