



South Asian University

Faculty of Legal Studies

LLM

Monsoon Semester 3 in 2017

Course Information

Part I

Course Title:	Conflict of Laws
Course Code:	LW031
Course instructor:	Dr Stellina Jolly, stellinajolly@sau.ac.in
Course Duration:	One Semester
Credit Units:	4 (MSE/TPW/ESE)
Medium of Instruction:	English
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	N/A

Part II

Course Aims

The body of principles and rules known as private international law or alternatively the conflict of laws comes into play whenever a court or tribunal is faced with a case that contains a “foreign” element. This course deals with the principles and rules that a court applies in this context to determine primarily (i) whether it has jurisdiction to decide the case and, if so, (ii) what law it should apply.

This course covers three major topics. The first topic is jurisdiction, which in this course will primarily involve international and foreign relations issues relating to personal jurisdiction and pre-scriptive jurisdiction. The second and most extensive topic is choice of law: for cases with connections to more than one state or country whose law will be applied to resolve the case? The third topic is the enforceability of judgments rendered in another state’s or nation’s courts. One of the running theme of the entire course will be the south Asian perspective with a special importance to matrimonial issues, transport, property and torts. Students may be asked to do assignments of these issues which require them to identify the problems consisting of jurisdiction, choice of law rules and execution of judgments. Course will attempt a comparative approach while dealing with the approach of south Asian judiciary.

Course Objectives

The course on the “Principles of conflict of laws” has been designed and developed with a view to meet the following objectives

1. Understand and explain the concepts of jurisdiction, choice of law and the recognition and enforcement of judgments and their role in the reconciling conflict of laws
2. Demonstrate basic knowledge and understanding of the law relating to jurisdiction and choice of law in various areas including contract, tort, in divorce and parental responsibility, and international child abduction.
3. Develop a critique of the policy choices informing the conflict of laws, particularly identifying the different approach in family law and commercial cases, and the difference in the approaches adopted by various jurisdictions.

Week 1 and 2 Conflicts of Laws: Fundamental Concepts.

The module proposes to cover topics like origin, and development of conflict of laws: Module will examine basic theoretical issues in private international law, including the connecting factors, classification, incidental questions, and function of foreign law in domestic courts. Concepts like Renvoi, Domicile and Nationality will be deliberated.

Readings

Books

John , O Brien, Conflict of Laws, Cavendish Press, (Part 1)

Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Pres, (3rd ed 2007)

Briggs, A., *The conflict of laws*, Oxford: Oxford University Press, (2nd ed 2008)

Articles

1.Martin Davies, “Renvoi and Presumptions about Foreign Law”, 30 *Melb. U. L. Rev.* 244, (2006)

2.Rudolf B. Schlesinger, “Recurrent Problem in Transnational Litigation: The Effect of Failure to Invoke or Prove the Applicable Foreign Law”, 59 *Cornell L. Rev.* 1 (1973) available at: <http://scholarship.law.cornell.edu/clr/vol59/iss1/1>

3. Derek Fincham, “Rejecting *Renvoi* for Movable Cultural Property: *The Islamic Republic of Iran v. Denyse Berend*”, *International Journal of Cultural Property*,14:111–120, (2007)

4.Hausmann, Rainer, “Pleading and Proof of Foreign Law - a Comparative Analysis”, *The European Legal Forum (E)* 1 – 14,(2008)

5.Stanley B. Stein, “Choice of Law and Doctrine of Renvoi”, 17 *Mc Gill Law Journal*, 582 (1971)

6.Jeffrey M. Shaman, “The Choice of Law Process: Territorialism and Functionalism”, 22 *Wm. & Mary L. Rev.* 227 (1980), <http://scholarship.law.wm.edu/wmlr/vol22/iss2/4>

Cases

National Thermal Power ... v. Singer Company And Ors, 1992 SCR (3) 106

Swastik Gases Private Limited v. Indian Oil Corporation Limited , (2013) 9 SCC 32

Kuwait Airways Corporation v. Iraqi Airways Company (Appelants and Others) Kuwait Airways Corporation, (1995) 1 Lloyd's Rep 25

Week 3 Jurisdiction Issues

Module deals with bases of jurisdiction, traditional and modern Approaches to jurisdictions, problems with both the approach. Emphasis will be given to Brussels and Lugano convention on Jurisdiction and codification attempt by the Hague Conference. Case Study :IPR Jurisdiction

Books

John, O Brien, Conflict of Laws, Cavendish Press,(Chapters on Jurisdiction)

James J. Fawcett and Paul Torremans, *Intellectual Property and Private International Law*(Oxford University Press, 2011)

Articles

Abdul Razak, "Judicial Interpretation of "Foreign Jurisdiction Clause" in Contract-Calls for Review: A Study in the Context of Bangladesh", *India Law Journal*, http://indialawjournal.com/volume2/issue_2/article_by_abdur_razzak.html

Annie Macaffrey, "Internet Contracting and E-Commerce Disputes: International and U. S. Personal Jurisdiction", 2 *Global Bus. L. Rev.* 95 (2011)

Holger P. Hestermeyer, "Personal Jurisdiction for Internet Torts: Towards an International Solution", 26 *Nw. J. Int'l L. & Bus.* 267 (2005-2006)

Peter Muchlinski, "Corporations in International Litigation: Problems of Jurisdiction and The United Kingdom Asbestos Case", *International and Comparative Law Quarterly* 50,(2001)

Daniel J. Dorward, "Forum Non Conveniens Doctrine and the Judicial Protection of Multinational Corporations from Forum Shopping Plaintiffs", 19 *J. Int'l L.* 141 (2014). available at: <http://scholarship.law.upenn.edu/jil/vol19/iss1/5>

Kono Toshiyuki, "Intellectual Property Rights, Conflict of Laws and International Jurisdiction: Applicability of ALI Principles in Japan?" *Brooklyn Journal of International Law*, 30 (3) 865-883 (2005). available at SSRN: <http://ssrn.com/abstract=1976070>

Vandana Singh, "Private International Law Issues In Intellectual Property Law In India" in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) (Springer 2017) ISBN 978-981-10-4357-2 <http://www.springer.com/in/book/9789811034572>

Cases

Yahoo!, Inc. v. La Ligue Contre le Racisme et L 'Antisemitisme, 169 F. Supp. 2d 1182 (N.D. Cal. 2001)

Modi Entertainment Network & Anr v W.S.G.Cricket Pte. Ltd on 21 January, 2003

Indian Performing Rights Society v Sanjay Dalia & Anr on 1 July, 2015

Week 3 Matrimonial Issues

Module deals with questions of formal and essential validity by touching upon lex loci and Lex fori concept. Module further deals with essential/material/intrinsic validity aspects like capacity to marriage, consent, prohibited degrees, polygamous marriages, and problem in choice of laws and issue of same sex marriage.

Book

John ,O Brien, Conflict of Laws, Cavendish Press,(Part 1)

Clarkson and Hill, The Conflict of Laws, Oxford: Oxford University Pres, (3rd ed 2007)

Briggs, A., The conflict of laws, 2nd ed. (Oxford: Oxford University Press, 2008)

Articles

Linda Siberman, "Same –Sex Marriage: Refining the Conflict of laws Analysis", *Pennsylvania Law Review*, 153, 2195-2214,(2005).

Farshad Ghodoosi, "The Concept of Public Policy in Law: Revisiting the Role of the Public Policy Doctrine in the Enforcement of Private Legal Arrangements", 94 *Neb. L. Rev.* 685 (2015) available at: <http://digitalcommons.unl.edu/nlr/vol94/iss3/5>

Prakash Shah "Inconvenient Marriages or What Happens When Ethnic Minorities Marry Trans Jurisdictionally According to Their Self-Chosen Norms" *Utrecht Law Review*, 6(2) 2010 available at SSRN: <http://ssrn.com/abstract+1575002>

N Vasanti, Cross-Border Divorce Decrees - Recognition in India and Public Policy Considerations in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 111-132 (Springer2017) <http://www.springer.com/in/book/9789811034572>
Prakash Shah, South Asian Legal Systems and Families in Foreign Courts: The British Case, in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 3-18 (Springer2017)

Week4 Matrimonial Issues Contd.:

Module covers choice of law and jurisdiction of courts in matrimonial causes: dissolution of marriage, grounds of divorce, recognition of foreign judgment, and current developments in the area of matrimonial property. Hague convention on Recognition of foreign divorce and matrimonial property will form the basis of jurisdiction.

Book

Cheshire & Norths, *Private International Law*, Oxford University Press, 13th Ed, 2006.

Articles

Friedrich, Juenger, "Recognition of Foreign Divorces, British and American Perspectives", 20 *Am. J. Comp. L.* 1 1972

Lakshmi Jhambolakr, "Recognition of Foreign Divorce Decrees in India", *Journal of Indian Law Institute* 33 (3), 433-438 (1991)

PA Stone, "Recognition in England of Talaq Divorces" 4 *Anglo-Am. L. Rev.* 363 (1985)

Sanwar Hussain, "Cross-border Divorce Regime in Bangladesh", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 89-107 (Springer2017) ISBN 978-981-10-4357-2 <http://www.springer.com/in/book/9789811034572>

Srijana Regmi, "Foreign judgments in Matrimonial disputes – Recognition in Nepal and Public Policy Considerations" in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 133-151 (Springer2017) <http://www.springer.com/in/book/9789811034572>

M.P.S. Kaushani Pathirana, "Cross-Border Divorce - Sri Lankan State Practice" in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 153-171 (Springer2017) ISBN 978-981-10-4357-2 <http://www.springer.com/in/book/9789811034572>

Case:

Sabina Pandey v Pushkarraj Pandey (2011) 3 NKP 387 (SC)

Conventions

Hague Convention on Recognition of Divorces, 1970

Brussels 11Bis regulation

Week 5 Children and family

Module covers conflicts of jurisdiction in making custody order for cross-border children
Module analyses the work of the Hague Conference on Private International Law on Family Law, and Child Abduction Convention. It also addresses the developments in the EU on PIL of family law contained in the Brussels II Regulation. Issues like Recognition of foreign custody order rule in India will also be deliberated. Significant conflict of laws issues concerning cross border surrogacy will be deliberated.

Books

Katarina Trimmings, Paul Beaumont, *International Surrogacy Arrangements: Legal Regulation at the International Level (Studies in Private International Law)*, Oxford University Press, 2012.

Articles

Stellina Jolly, "Inter-Country Child Abduction: An Explorative Analysis of Legal Standards and Judicial Construction of India", *International Journal of Law Policy and the Family*, Oxford University Press, 31(1) 23-40, (2017)

Linda Sibernaman, "Hague International Child Abduction Convention, A progress Report, Law and Contemporary Problems", *International Comparative Law Quarterly*, 57, (3), 201, (1994)

Rose Wijeyesekera, "Cross Border Child Abduction Sri Lankan State Practice", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 243-261 (Springer 2017) <http://www.springer.com/in/book/9789811034572>

Sarmad Ali, "Inter-Country Child Abduction - Pakistan's Legal Response", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 221-241 (Springer 2017) <http://www.springer.com/in/book/9789811034572>

Koen Lenaerts, "The Best Interests of the Child always Come first: The Brussels Ibis Regulation and the European Court of Justice", *Jurisprudence*, 20(4): 1302-1328, 2013,

Stellina Jolly, "Cross-Border Surrogacy: Indian State Practice", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 175-197 (Springer 2017) ISBN <http://www.springer.com/in/book/9789811034572>

Conventions

Civil Abduction Aspects of Child abduction Bill 2016, India

Surya Vadanam v State of Tamil Nadu, (2015) 5 SCC 450

Week 6 Commercial Transactions

This module addresses the choice of law problems arising out of international business transactions, primarily in the fields of contracts. Issues like formal and essential validity and proper law of contract will be discussed. It will focus on the current developments including the Rome Convention. Topics include: general choice of law in contracts, party autonomy and the default rules in the absence of parties' choice of law; choice of law in special contracts and the weaker party protection; restrictions on the applicable law and public policy; Determining applicable law and jurisdiction in contractual disputes regarding virtual enterprises etc.

Books

John O'Brien, *Conflict of Laws*, Cavendish Press, (Part 3 Chapter Contracts)

Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Press, (3rd ed 2007)

Briggs, A., *The conflict of laws*, 2nd ed. (Oxford: Oxford University Press, 2008)

Articles

Geoffrey Fisher, *Sharia Law and Choice of Law in Clause in International Commercial Contracts*

Symeon C. Symeonides, "The Hague Principles on Choice of Law for International Contracts: Some Preliminary Comments" *American Journal of Comparative Law*, 61(3) (2013) 873-899.

James H Healy, "Consumer Protection Choice of Law: European lessons for the United States" *Duke Journal of Comparative International Law*, 19, 535 (2009)

Julio C Colin, "Choice of Law and Islamic Finance", *TILJ Article* 2011

Delphine Nougayrède, "TNK-BP, Party Autonomy, and Third-Country Mandatory Rules",

Northwestern Journal of International Law & Business 35(2) 3-29 (2015)

Cases

Rhodia Ltd. And Ors. v Neon Laboratories Ltd. on 15 July, 2002, AIR 2002 Bom 502, 2003 (1) BomCR 140, 2003 (1) MhLj 373

Conventions

UNIDROIT Principles of International Commercial Contracts 2010

HAGUE Principles on Choice of law in International Contracts, 2015

Rome II Regulation, 2007

Week 7 Commercial Transactions continues

The application of private international law to electronic consumer contracts raises new, complex, and controversial questions. It is new because especially consumer protection was not a private international law concern until very recently and e-commerce only became an important commercial activity within the last ten years. The module is primarily concerned with existing approaches to jurisdiction and choice of law issues in e-consumer contracts across countries

Articles

Mark F. Kightlinger, "A Solution to the Yahoo! Problem? The EC E-Commerce Directive as a Model for International Cooperation on Internet Choice of Law", 24 Mich. J. Int'l L. 719 (2003).

Dan Jerker B. Svantesson. "An introduction to jurisdictional issues in cyberspace", *Journal of law, information and science*, 15(1), 50-74. (2004)

http://epublications.bond.edu.au/law_pubs/265

Week 7 Mid Term examination

Week 8 Torts (Environment, and IPR)

Module covers traditional and modern approach in torts including Rome regulation. Torts of recent importance in conflict of laws such as matters of environments, Intellectual Property and Maritime torts will form the basis of discussion

Symeonides, Symeon C., Choice of Law in Cross-Border Torts (January 14, 2009) available at SSRN: <https://ssrn.com/abstract=1328191> or <http://dx.doi.org/10.2139/ssrn.1328191>

Week 9 Conflict issues in Property

Module deal with Classifications of property, rules and problems regarding assignment and transfer of property and succession and jurisdiction over movable and immovable property.

Books

John ,O Brien, *Conflict of Laws*, Cavendish Press,(Part 3 Chapter Property)

Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Pres, (3rd ed 2007)

Briggs, A., *The conflict of laws*, 2nd ed. (Oxford: Oxford University Press, 2008)

Articles

Nothing Certain about death and Tax,:European Union Regulation of Croos-Border Successions

,Emory International Law Review, 27, 1146-1174 (2013)
http://law.emory.edu/eilr/_documents/volumes/27/2/comments/bost.pdf

Laurie Frey, “Bakalar v. Vavra and the Art of Conflicts Analysis in New York: Framing a Choice of Law Approach for Movable Property”, *Columbia Law Review*, 112, 1055, (2012)

Derek Fincham, “How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property”, *Columbia Journal of Law and the Arts* 32(1)(2008)

Michael Davie, “Matrimonial property in English and American Conflict of laws”, *Int'l & Comp. L.Q.* 42, 855 1993

Conventions

Rome II Regulation on Cross Border Succession,

Week 10 Choice of Law International Commercial arbitration

A majority of international commercial contracts include an arbitration clause which in the event of a contractual dispute directs the parties to apply arbitral proceeding. One of the central motives for choosing arbitration is the right to choose which law or rules of law shall govern the parties' contractual relationship. The module deals with Party Autonomy and the Choice of Substantive Law in International Commercial Arbitration.

Book

Garry Born, *International Commercial Arbitration* (Wolters Kluwer Law & Business, 2009)

Articles

Elana Levi-Tawil, “East Meets West: Introducing Sharia Into the Rules Governing International Arbitrations the BCDR-AAA”, *Cardozo, J of Conflict Resolution*. 12, 609, (2011)

Sabrina Pearson, “Sulamérica v. Enesa: The Hidden Pro-validation Approach Adopted by the English Courts with Respect to the Proper Law of the Arbitration Agreement”, *Arbitr Int* 29 (1): 115-126 (2013) <http://arbitration.oxfordjournals.org/content/29/1/115>

Whitney Hampton, “Foreigners Beware: Exploring the Tension between Saudi Arabian and Western International Commercial Arbitration Practices: In re Aramco Services Co”, *J. Disp. Resol.* 2, 432-446 (2011) available at: <http://scholarship.law.missouri.edu/jdr/vol2011/iss2/8>

Mohammad Reza Baniassadi, “Do Mandatory Rules of Public Law Limit Choice of Law in International Commercial Arbitration”, *10 Int'l Tax & Bus. Law.* 59 (1992) available at: <http://scholarship.law.berkeley.edu/bjil/vol10/iss1/2>

Khalid Anwer, The Rupali Case and the theory of Concurrent jurisdiction , <http://www.khalidanwer.com/pdf/The%20Rupali%20Case%20and%20the%20Theory%20of%20Concurrent%20Jurisdiction.pdf>

Alastair Henderson, “Lex Arbitri, Procedural Law and the Seat of Arbitration, Unravelling the Laws of the Arbitration Process”, *Singapore Academy of Law Journal* 26 SAcl, 886-910 (2014)

Cases

Sapphire International Petroleum Ltd. v National Iranian Oil Company, 1963

Arsanovia Ltd and others v Cruz City Mauritius Holdings [2012] EWHC 3702 (Comm) 2011

Union Of India v Videocon Industries Ltd., 2012

Week 11 Recognition and Enforcement of Foreign Judgments and arbitration

Module will cover basis of recognition of foreign interim and final judgments, recognition and enforcement of foreign judgments, finality, failure and direct execution of foreign judgments; New York, Brussels and Lugano Convention will form the basis of deliberation. Module will deliberate the Hague Choice of Court Agreements Convention

Books

Cheshire & North, *Private International Law*, Oxford University Press, (13th Ed, 2006)

Articles

Guy S. Lipe, Timothy J. Tyler, “The Hague Convention on Choice of Court Agreements: Creating Room for Choice in International cases”, *Houston Journal of International Law*, 33(1) 1-35,(2010)

Wali Naseh, Conflict of Laws in Afghanistan, in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) 63-87 (Springer2017) ISBN 978-981-10-4357-2 <http://www.springer.com/in/book/9789811034572>

Convention

Brussels I Regulation, 2012

Hague Convention on Foreign Judgments on Civil and Commercial matters 1971.

Week 12 Revisions and Presentations

Recommended Reading (Books)

Cheshire & Norths, *Private International Law*, Oxford University Press, (13th Ed, 2006)

Dicey, Morris and Collins on the Conflict of Laws, (14th Ed, Sweet & Maxwell, 2006)

J. H. C. Morris – *Cases and Materials on Private International Law*, (Butterworth & C, 1984)

Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Press, (3rd ed 2007)

Briggs, A., *The conflict of laws*, Oxford: Oxford University Press,(2nd ed 2008)

Symeon C. Symeonides, *Codifying Choice of Law Around the World: An International Comparative Analysis* (Oxford University Press, 2014)

Ralph U Whitten, *American Conflicts Law: Cases and Materials*, (5th ed, 2013-14)

Supplement,http://www.lexisnexis.com/store/images/Supplements/3007_2013S.pdf

Additional Reading (Books)

Abla Mayss, *Principles of Conflict of Law* Cavendish Publishing London, (3rd ed 1999)

Albert A. Ehrenzweig, *Treatise on the Conflict of Laws* (West Publishing Company , 1982)

Briggs, A., *Agreements on jurisdiction and Choice of Law* (Oxford University Press, 2008)

Gottschalk et al., *Conflict of Laws in a Globalized World* (Cambridge: Cambridge University Press, 2007)

Brilmayer, Goldsmith & O’Connor, *Conflict of Laws - Cases and Materials*, (Aspen Casebook Series, Wolters Kluwer Law & Business 2011)

Hoffheimer, *Conflict of Laws - Examples & Explanations*, (Aspen Publishers - Wolters Kluwer (2010)

Prof Lakshmi Jhambolkar, *Select Essays on Private International Law*, (Universal Law Publishing Co Pvt Ltd., 2011)

V.C. Govindaraj, *The Conflict of Laws in India , Inter-Territorial and Inter-Personal Conflict*, (Oxford University Press, 2011)

Atul M Setalvad, *Conflict of Laws*, Lexis Nexis, Butterworths, New Delhi (1st ed 2007)

Paras & Peeyushi Diwan, *Private International Law*, Deep & Deep Publications(4th Ed, 1998)

Gary B. Born, *International Commercial Arbitration* (Wolters Kluwer Law & Business, 2009)

Websites

Conflict of Laws .net: News and Views in Private International Law www.conflictoflaws.net

U.S. State Department, *Private International Law* <http://www.state.gov/s/l/c3452.htm>

Hague Convention on Private International Law

http://www.hcch.net/index_en.php?act=home.splash