



LAW 557

Conflict of Laws

S2 Day 2014

Dept of Law

Contents

<u>General Information</u>	2
<u>Learning Outcomes</u>	2
<u>General Assessment Information</u>	3
<u>Assessment Tasks</u>	3
<u>Delivery and Resources</u>	5
<u>Unit Schedule</u>	6
<u>Policies and Procedures</u>	8
<u>Graduate Capabilities</u>	10
<u>Changes since First Published</u>	14

Disclaimer

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

General Information

Unit convenor and teaching staff

Unit Convenor

Harry Melkonian

harry.melkonian@mq.edu.au

Contact via harry.melkonian@mq.edu.au

W3A341

Tuesday 1 - 2 PM

Credit points

3

Prerequisites

6cp in LAW units at 300 level(P)

Corequisites

Co-badged status

Unit description

This unit deals with rules for resolving difficulties when a private legal problem has an international element. Such difficulties fall into three categories: first, do our courts have jurisdiction to decide a matter that has connections with another country; second, which law should our courts use to decide the dispute, our law or the law of some other country; and third, if a matter has been decided by a foreign court, should our courts recognise and enforce the foreign judgment? Therefore this unit spans many others, including tort, contract, succession and family law.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.

Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations

Recognise and understand how choice of law and choice of forum apply in commercial

or contractual disputes

Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

General Assessment Information

When a student suffers a disruption to study which is 'serious and unavoidable' they may apply for special consideration. In order to do so the student must meet the criteria under the Macquarie University "Disruption to Studies" policy and be approved by the Unit Convenor. Applications are made online at ask.mq.edu.au. Outcomes for recognized serious and unavoidable disruptions to studies are as set out in the University schedule - http://www.mq.edu.au/policy/docs/disruption_studies/schedule_outcomes.html

When a disruption to study is not serious or unavoidable, the approach to special consideration and the impact on your assessment will be as follows:

1. **In Class Quiz Assessment:** (absence) no special consideration; a grade of zero
2. **Final Examination** (absence) no special consideration; a grade of zero
3. **Final Examination** (performance affected) no special consideration; a grade of zero
4. **Final Examination** (preparation affected) no special consideration; a grade of zero
5. **Written Assessment** (preparation affected) no special consideration; a grade of zero
6. **Assessment** (other than final exam) (late submission) students will receive a grade of zero.
7. **When ongoing performance for an assessment** (other than final exam) has been affected, consideration will be given to the following: extension of time to complete an assessment task; provision of an additional assessment task; and or a recommendation to withdraw.

Assessment Tasks

Name	Weighting	Due
Graded Quiz - 1	5%	Week of 26 August
Graded Quiz 2	5%	Week of 9 Sept.
Written Assessment	25%	7 Oct. 2014
Graded Quiz 3	5%	week of 28 October

Name	Weighting	Due
<u>Final examination</u>	60%	Exam Period

Graded Quiz - 1

Due: **Week of 26 August**

Weighting: **5%**

This will be a 30 minute open book multiple choice quiz dealing with matters covered in the first three weeks of the course.

On successful completion you will be able to:

- Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.

Graded Quiz 2

Due: **Week of 9 Sept.**

Weighting: **5%**

This Quiz will be multiple choice and will include subjects covered within the first five weeks of the course.

On successful completion you will be able to:

- Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.
- Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations

Written Assessment

Due: **7 Oct. 2014**

Weighting: **25%**

All students must respond to a set question that will be based on conflict of laws. The question and the requirements will be provided on the course website.

The submission should be properly referenced according to the current edition of the AGLC

On successful completion you will be able to:

- Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations
- Recognise and understand how choice of law and choice of forum apply in commercial

or contractual disputes

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Graded Quiz 3

Due: **week of 28 October**

Weighting: **5%**

30 minute multiple choice or short answer quiz that will cover material from the prior 3 lectures

On successful completion you will be able to:

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort
- Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

Final examination

Due: **Exam Period**

Weighting: **60%**

This will be a final examination in which you will have a total of 3 1/2 hours including reading time. The exam will cover the entire course. The exam will be posted on iLearn at a set time and you will be required to email back your responses within the prescribed time.

Date and time: TBA

On successful completion you will be able to:

- Recognise and understand how choice of law and choice of forum apply in commercial or contractual disputes
- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort
- Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

Delivery and Resources

This course will be delivered via live lectures (also available on iLearn) and through tutorials.

Our primary and prescribed text will be the 9th edition of Nygh's Conflict of Laws (2014). As a supplementary text, Private International Law 2nd edition by Reid Mortensen et al. is suggested if you want access to material in other than casebook format. However, we will be working from

the Casebook in lectures and assignments. There will also be supplementary materials posted on iLearn

The tutorials will consist of workshops where we will try to solve practical real-world conflicts situations that arise among the Australian States or as between domestic law and the law of a foreign state.

Unit Schedule

Conflict of laws is central to the actual practice of law. Essentially conflicts, as it is commonly known, enables the lawyer to advise the court as to the body of law that is to be applied to a dispute. The subject also deals with jurisdiction and enforcement of judgments. Conflicts is perhaps unique among law courses because it is perhaps the only subject in which non-lawyers do not have any knowledge or even awareness of the concept's existence. It is not unfair to say the conflict of laws is a subject known only to the legal profession.

Conflicts is not just a matter of following rules. Rather, knowledge of conflicts guides skilled practitioners in obtaining better outcomes for their clients. While based on legal theory, in practice, conflicts permits lawyers to attempt to utilise the most desirable venues and bodies of law to benefit their clients' interests. Conflict of law is somewhat of a misnomer; the real concept is choice of law or forum and this unit will examine essential concepts of jurisdiction and theoretical grounds for selection of substantive and procedural laws.

Using a problem-based approach, this course will examine a variety of circumstances to see how conflicts theory can be strategically applied to influence the ultimate outcome of a dispute. Perhaps the centrality of a working knowledge of conflict of laws is exemplified by the following example:

A person called Bill resides in Gosford. While riding on a scooter, manufactured in Gosford, down a city street in Gosford, he collides with Mary who is also a resident of Gosford. Mary is taken to Gosford Hospital where she is treated for a broken left leg. In fact, it is her right leg that is broken. Mary files suit against Bill and Gosford Hospital in Gosford District Court. Bill files a claim against the Gosford-based scooter manufacturer in the same proceeding.

In this example, conflict of laws is quite irrelevant. But just change one of the references to Gosford to somewhere else and conflict of laws is in play. If the scooter were manufactured in Ballarat or Mary was a tourist from New York, conflicts of law need to be argued and resolved

Weekly Schedule

Week 1	<p>Introduction to the Unit – Why conflict of laws is central to the practice of law? Implications of the Internet</p> <p>Casebook Ch. 1, 2</p> <p>Casebook refers to Nygh's Conflict of Laws 9th edition (2014)</p>
Week 2	<p>Jurisdictional issues, both traditional and internet related</p> <p>Casebook: Ch. 3, 5, 6</p>
Week 3	<p>Forum selection agreements and taking evidence from other countries</p> <p>Casebook: Ch. 7, 11</p>
Week 4	<p>In Class written Quiz!</p> <p>Restraining local and foreign proceedings</p> <p>Casebook: Ch. 8, 9</p>
Week 5	<p>Choice of Law Theory (Part 1)</p> <p>Casebook: Ch. 12, 13, 14</p>
Week 6	<p>Choice of Law Theory (Part 2)</p> <p>Casebook: Ch. 15, 16, 17, 18</p>
Week 7	<p>Conflict of Laws in Action – Contracts</p> <p>Casebook: Ch. 19</p>

Week 8	Written Assessments Due! Conflict of Laws in Action – Torts Casebook: Ch. 20
Week 9	Conflict of Laws in Action – Torts (continued) and Corporations and Bankruptcy Casebook: Ch. 35, 36
Week 10	Conflict of Laws in Action – Family Law Casebook Ch. 25, 26, 27
Week 11	Conflict of Laws in Action - The Rights of Children Casebook Ch. 28, 29 and 30
Week 12	Enforcement of Foreign Judgments – Doctrine of Comity and Statutes Casebook Ch. 40, 41, 42, 43
Week 13	Enforcement of Foreign Judgments – Defamation and the Internet Text: materials to be furnished Wrap-Up: Reflection, Confusion, Exam Readiness

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

Learning outcome

- Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

Assessment tasks

- Graded Quiz 2
- Graded Quiz 3
- Final examination

Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

Learning outcome

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Assessment task

- Written Assessment

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able

to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

- Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.
- Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations
- Recognise and understand how choice of law and choice of forum apply in commercial or contractual disputes

Assessment tasks

- Graded Quiz - 1
- Graded Quiz 2
- Final examination

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.
- Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations
- Recognise and understand how choice of law and choice of forum apply in commercial or contractual disputes

Assessment tasks

- Graded Quiz - 1
- Graded Quiz 2

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- Demonstrate a sound and comprehensive knowledge of the common law and statutory rules governing conflict of laws.
- Display sound knowledge of key international agreements and jurisdictional concepts that may apply to conflicts situations
- Recognise and understand how choice of law and choice of forum apply in commercial or contractual disputes
- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Assessment task

- Final examination

Creative and Innovative

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

Learning outcome

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Assessment task

- Final examination

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcome

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort

Assessment task

- Written Assessment

Engaged and Ethical Local and Global citizens

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

Learning outcome

- Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

Assessment tasks

- Graded Quiz 2
- Written Assessment
- Graded Quiz 3

Socially and Environmentally Active and Responsible

We want our graduates to be aware of and have respect for self and others; to be able to work with others as a leader and a team player; to have a sense of connectedness with others and country; and to have a sense of mutual obligation. Our graduates should be informed and active participants in moving society towards sustainability.

This graduate capability is supported by:

Learning outcome

- Apply theory and doctrine of conflict of laws in matters concerning the well-being of children

Assessment tasks

- Written Assessment
- Graded Quiz 3

Changes since First Published

Date	Description
16/07/2014	Section added on disruptions to study that are not found to be serious and unavoidable A few assessment dates were extended to allow additional preparation time