



LAWS557

Conflict of Laws

S2 Day 2017

Dept of Law

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Disclaimer

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General Information

Unit convenor and teaching staff

Unit Convenor

Dr. Harry Melkonian

harry.melkonian@mq.edu.au

Contact via harry.melkonian@mq.edu.au

Tutor Consult Room W3A

Friday 1:00 - 1:30 PM

Credit points

3

Prerequisites

24cp in LAW or LAWS units

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

Understand the mechanics and controversy regarding anti-suit injunctions with respect to

foreign legal proceedings

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

Examine the doctrine of international comity as it relates to protection of local judicial process

Understand implications of enforcement of foreign judgments within Australia and Australian judgments in other countries

Understand advantages of enforcement of international arbitration awards under the New York Convention

General Assessment Information

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via ask.mq.edu.au and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies Policy for complete details of the policy and a description of the supporting documentation required.

Word limits will be strictly applied and work above the word limit will not be marked. Citations should conform to the AGLC3

All assessments in the unit are to be submitted electronically. Plagiarism software is used in this unit.

With respect to Moderation, detailed marking rubrics will be made available on iLearn. All Fail papers are double-marked by the Unit Convenor

Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Formative Quiz - 1</u>	0%	No	Week of 14 August
<u>Formative Quiz 2</u>	0%	No	Week of 4 September
<u>Mid-term Examination</u>	30%	No	16/09/2017
<u>Written Assessment</u>	30%	No	8 October
<u>Formative Quiz 3</u>	0%	No	Week of 9 October
<u>Formative Quiz 4</u>	0%	No	Week of 30 October

Name	Weighting	Hurdle	Due
Final examination	40%	No	17 November

Formative Quiz - 1

Due: **Week of 14 August**

Weighting: **0%**

This will be a 30 minute open book multiple choice quiz dealing with matters covered in Weeks 1 and 2 of the course. The quiz will be made available for submission on iLearn during the week preceding the Week 3 tutorial.

Your results do not count toward the final grade but completion of the quiz is strongly encouraged as it is an important guide in measuring your own progress.

On successful completion you will be able to:

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

Formative Quiz 2

Due: **Week of 4 September**

Weighting: **0%**

This Quiz will be multiple choice and will include subjects covered within Weeks 1 - 5 of the course. The quiz is multiple choice or short answer and will have a 30 minute time limit and will be made available for submission on iLearn during the week preceding the Week 6 tutorial.

Your results do not count toward the final grade but completion of the quiz is strongly encouraged as it is an important guide in measuring your own progress.

On successful completion you will be able to:

- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings

Mid-term Examination

Due: **16/09/2017**

Weighting: **30%**

This will be a mid-term examination in which you will have a total of 2 hours including reading time. However, to equalise typing skills, two additional hours are given to everyone. That is, while the exam is designed to be completed within 2 hours; you will be given 4 hours.

Each question will have a word limit which, in no case, will exceed 500 words. As this is an examination, bibliographies are not required and footnotes are optional.

The exam will cover lecture materials in Weeks 1-7. The exam will be posted on iLearn at a set time and you will be required to submit your responses via TurnItIn within the prescribed time.

Date and time: Friday, 16 September. Release Time: 12:30 PM. Submission by 4:30PM

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
- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings

Written Assessment

Due: **8 October**

Weighting: **30%**

All students must write a 2500 word paper in response to a set question or problem that will be based on a current issue encompassed within conflict of laws and within the matters covered in Weeks 1 - 7. The question and the requirements will be provided on the iLearn course website. Word limits refer to text only and do not include footnotes. A separate bibliography is not required.

The submission should be properly referenced according to AGLC3. Your responses must be submitted via TurnItIn.

Due date: 8 October, 11:59 PM or earlier

On successful completion you will be able to:

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

Formative Quiz 3

Due: **Week of 9 October**

Weighting: **0%**

30 minute multiple choice or short answer quiz that will emphasise material from Week 6 - 8 lectures. The quiz is multiple choice or short answer and will have a 30 minute time limit and will be made available for submission on iLearn during the week preceding the Week 9 tutorial

Your results do not count toward the final grade but completion of the quiz is strongly encouraged as it is an important guide in measuring your own progress.

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

Formative Quiz 4

Due: **Week of 30 October**

Weighting: **0%**

Multiple choice or short answer quiz that will emphasise material from Week 9 - 11 lectures. The quiz is multiple choice or short answer and will have a 30 minute time limit and will be made available for submission on iLearn during the week preceding the Week 12 tutorial.

Your results do not count toward the final grade but completion of the quiz is strongly encouraged as it is an important guide in measuring your own progress.

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

Final examination

Due: **17 November**

Weighting: **40%**

This will be a final examination in which you will have a total of 3 1/2 hours including reading time. However, to equalise typing skills, two additional hours are given to everyone. That is, while the exam is designed to be completed within 3 1/2 hours; you will be given 5 1/2 hours.

Each question will have a word limit which, in no case, will exceed 1000 words. Word limits do not include footnotes or bibliographies.

The exam will cover the entire course. The exam will be posted on iLearn at a set time and you will be required to submit your responses via TurnItIn within the prescribed time.

Date and time: Friday, 17 November. Release Time: 1:00 PM. Submission by 6:30 PM

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

- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings
- 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
- Examine the doctrine of international comity as it relates to protection of local judicial process
- Understand implications of enforcement of foreign judgments within Australia and Australian judgments in other countries
- Understand advantages of enforcement of international arbitration awards under the New York Convention

Delivery and Resources

This unit is taught through a combination of lectures and tutorials. The lectures are offered live and via iLearn.

The prescribed casebook is Nygh's Conflict of Laws 9th Ed (2014). If students feel that they would benefit from a textbook, Private International Law in Australia by Reid Mortensen et al 3d Edition (2015) may be helpful but will not be referred to in the course.

Attendance at tutorials is an essential element of this course because exercises are conducted during tutorials. As part of the art of lawyering, conflict of laws issues are best addressed through problem solving. Success in the examinations is invariably associated with active participation in the tutorials. During the tutorials, we will review current cases that are not in the casebook and students will attempt to solve conflict of laws problems. While participation is mandatory, tutorial work is not graded - it is an opportunity to see how the doctrines actually work to solve problems. It is a time for students to support each other as we work through challenging real-life situations based on recent Australian, UK, Canadian and US case decisions. Students who are not prepared to attend and participate in tutorials should not enroll in this course.

Unit Schedule

Conflict of laws is sometimes called private international law. However, in Australia, Canada and the United States, conflict of laws is a more apt title because the situations are typically domestic as opposed to international.

Conflict of laws issues are central to the actual practice of law. Essentially conflicts, as it is commonly known, deals with many aspects of procedural law - some of which may be outcome determinative. The most well-known aspect of this subject is the subject of choice of law. This is the doctrine that enables a 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, injunctions in aid of jurisdiction, restraints on local proceedings and enforcement of judgments. Conflicts may be 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 and is essential to the lawyer's art.

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 laws 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:

An independent contractor called Alan resides in Victoria. He is assigned projects by Apex Corporation. Apex trained him in Victoria and required him to purchase various specified equipment including a stepladder manufactured by Bosco Specialties in Brisbane, Queensland. Most of the work performed by Alan for Apex is in Victoria. Apex trained Alan in Victoria. While working on a project for Apex just across the border in New South Wales, Alan fell from the stepladder and sustained extremely serious injuries. Alan believes that he fell because the ladder was defectively designed and manufactured. Alan's claim against Apex has been resolved through Workers' Compensation.

Alan presents himself to you at your law office in Victoria. A decision is made to proceed by way of litigation in the Supreme Court of Victoria. The plaintiff was tardy coming to you for advice but you ascertain that the statute of limitations for pursuing an action in tort is not time barred under Victorian law. But, you also note that under both NSW and Queensland laws, the action appears to be time-barred. If the action is commenced in Victoria, will it likely be time-barred?

While the common law of tort is uniform across Australia; statutes of limitation vary among the States. Here, the correct statute of limitation may be outcome determinative.

Weekly Schedule

Week 1	<p>Introduction to the Unit – Why conflict of laws is central to the practice of law? Implications of the Internet. In Personam Jurisdiction</p> <p>Casebook Ch. 1, 2, 3</p> <p>Casebook refers to Nygh's Conflict of Laws 9th edition (2014)</p>
Week 2	<p>Interlocutory injunctions and Freezing Orders</p> <p>Casebook: Ch. 4</p>
Week 3	<p>Cross- Vesting and Forum Selection Agreements</p> <p>Casebook: Ch. 6, 7</p> <p>Quiz 1 should be completed prior to the Week 3 Tutorial as results may be discussed this week</p>
Week 4	<p>Forum Non Conveniens - restraining local and foreign proceedings</p> <p>Casebook: Ch. 8</p>
Week 5	<p>Anti-Suit Injunctions</p> <p>Casebook: Ch. 9</p>
Week 6	<p>Choice of Law Theory (Part 1)</p> <p>Casebook: Ch. 12, 13, 14: Intro to theory, Domicile, Characterisation</p> <p>Quiz 2 should be completed this week prior to the Tutorial as we will be discussing answers</p>
Week 7	<p>Choice of Law Theory (Part 2): Renvoi, Substance/Procedure, Proof of Foreign Law</p> <p>Casebook Ch. 15, 16, 17</p> <p>Mid-Term Exam is on Saturday 16 September</p> <p>Paper Assignments will be distributed on iLearn. Papers are due on 6 October.</p>

Week 8	<p>Written Assessments Due on 6 October</p> <p>Exclusion of Foreign Law</p> <p>Contracts Choice of Law</p> <p>Casebook: Ch. 18, 19</p>
Week 9	<p>Choice of Law – Torts</p> <p>Casebook: Ch. 20</p> <p>Quiz 3 should be completed prior to the tutorial as we will be discussing results</p>
Week 10	<p>Choice of Law - Restitution</p> <p>Depeçage</p> <p>Casebook Ch. 21</p>
Week 11	<p>Enforcement of Foreign Judgments at Common Law and by Statute</p> <p>Casebook Ch. 40, 41</p>
Week 12	<p>Quiz 4 will be discussed this week in the tutorial</p> <p>Enforcement of international arbitration awards under the New York Convention</p> <p>Casebook Ch. 43</p> <p>Quiz 4 should be completed prior to the Tutorial as we will be discussing results</p>
Week 13	<p>Conflict of Laws and Comity - a potentially over-riding issue that has yet to be fully developed</p> <p>During the Tutorial we will be putting it all together:</p> <p>jurisdiction - Forum Non Conveniens - Cross Vesting - Injunctions - Choice of Law - Enforcement of Judgments</p> <p>Wrap-Up: Reflection, Confusion, Exam Readiness</p>

Learning and Teaching Activities

Problem Solving Exercises

Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class involvement. These Exercises are not to be confused with the online Quizzes.

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_2016.html

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

Complaint Management Procedure for Students and Members of the Public http://www.mq.edu.au/policy/docs/complaint_management/procedure.html

Disruption to Studies Policy (in effect until Dec 4th, 2017): http://www.mq.edu.au/policy/docs/disruption_studies/policy.html

Special Consideration Policy (in effect from Dec 4th, 2017): <https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration>

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/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit ask.mq.edu.au.

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://www.mq.edu.au/about_us/offices_and_units/information_technology/help/.

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

Graduate Capabilities

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 outcomes

- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort
- Understand implications of enforcement of foreign judgments within Australia and Australian judgments in other countries

Assessment tasks

- Written Assessment
- Formative Quiz 3
- Final examination

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 outcomes

- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings
- Understand implications of enforcement of foreign judgments within Australia and Australian judgments in other countries

Assessment tasks

- Formative Quiz 3
- Formative Quiz 4
- Final examination

Learning and teaching activities

- Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class involvement. These Exercises are not to be confused with the online Quizzes.

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 outcomes

- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings
- Demonstrate familiarity with conflict of laws in multi-party, multi-claim disputes based in tort
- Examine the doctrine of international comity as it relates to protection of local judicial process

Assessment tasks

- Written Assessment
- Formative Quiz 3

- Final examination

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
- Understand implications of enforcement of foreign judgments within Australia and Australian judgments in other countries
- Understand advantages of enforcement of international arbitration awards under the New York Convention

Assessment tasks

- Formative Quiz - 1
- Formative Quiz 2
- Written Assessment
- Final examination

Learning and teaching activities

- Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class involvement. These Exercises are not to be confused with the online Quizzes.

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

- Formative Quiz - 1
- Formative Quiz 2
- Mid-term Examination
- Written Assessment
- Formative Quiz 4
- Final examination

Learning and teaching activities

- Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class involvement. These Exercises are not to be confused with the online Quizzes.

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
- Examine the doctrine of international comity as it relates to protection of local judicial process

Assessment tasks

- Formative Quiz - 1
- Formative Quiz 2
- Mid-term Examination
- Written Assessment
- Formative Quiz 3
- Final examination

Learning and teaching activities

- Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class involvement. These Exercises are not to be confused with the online Quizzes.

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 tasks

- Mid-term Examination
- Written Assessment
- Formative Quiz 3
- Final examination

Learning and teaching activities

- Exercises will be posted on iLearn for student presentation during tutorials. The presentations will not be graded but are an opportunity to share skills and promote class

involvement. These Exercises are not to be confused with the online Quizzes.

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 outcomes

- Understand the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings
- Examine the doctrine of international comity as it relates to protection of local judicial process
- Understand advantages of enforcement of international arbitration awards under the New York Convention

Assessment tasks

- Mid-term Examination
- Formative Quiz 3
- Formative Quiz 4
- Final examination

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 outcomes

- Examine the doctrine of international comity as it relates to protection of local judicial process
- Understand advantages of enforcement of international arbitration awards under the New York Convention

Assessment tasks

- Mid-term Examination

- Formative Quiz 3
- Final examination

Changes from Previous Offering

There are several changes. From an assessment standpoint, all of the Quizzes are now formative and do not count toward the final grade. There has been added a mid-term exam. Content-wise, based on student feedback, family law matters have been excluded as they are dealt with in family law courses. More time is now spent on interlocutory and anti-suit injunctions which have emerged as controversial topics. Comity has been added to the discussion.