



# LAWS5057

## International Private Law

Session 2, Online-scheduled-weekday 2024

*Macquarie Law School*

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## General Information

Unit convenor and teaching staff

Unit Convenor

Dr. Harry Melkonian

Contact via iLearn

Online

see iLearn

Credit points

10

Prerequisites

80cp in LAW or LAWS units incl LAWS2000

Corequisites

Co-badged status

Unit description

Laws are enacted by individual nations, but the reality is that data, goods and services freely transfer across national borders. The internet continues to change how the world does business. How are rights and obligations to be determined when activities routinely take place across nations with widely disparate laws and legal traditions? In this unit, we examine how domestic courts manage disputes that bring into play the laws of different nations or states. Without benefit of treaties, Australian courts must grapple with these questions and legal practitioners must draft agreements that avoid unnecessary confusion. We look at contemporary problems to learn the ways and means for using Australian law to unravel international legal problems.

## 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:

**ULO1:** Critically analyse the common law and statutory rules governing conflict of laws.

**ULO2:** Critically analyse key international agreements and jurisdictional concepts that may apply to conflict situations.

**ULO3:** Evaluate the mechanics and controversy regarding anti-suit injunctions with

respect to foreign legal proceedings.

**ULO4:** Explain how choice of law and choice of forum apply in commercial, contractual, or tort disputes.

**ULO5:** Examine the doctrine of international comity as it relates to protection of local judicial process and the implications of enforcement of foreign judgments within Australia and Australian judgments in other countries.

**ULO6:** Critically analyse challenges posed by the internet in general and social media in particular in situations involving contract and tort disputes, including commercial transactions, privacy, defamation, and local suppression orders.

## General Assessment Information

All written assessments submitted electronically must be submitted through the link provided in iLearn. This unit will utilise Turnitin plagiarism detection software. Students should carefully check that they submit the correct file for an assessment, as re-submissions will not be accepted after the due date and time, including instances where students upload an incorrect file in error. The design, moderation and feedback of all assessments is in accordance with the Macquarie University Assessment Procedure (link provided under 'Policies and Procedures' below). Late Submission Policy A maximum penalty of five (5) percentage points of the total possible marks will be applied per day to late submissions, for up to a maximum of seven calendar days. Tasks that have not been submitted within the maximum number of additional late days will receive a mark of zero. This provision does not apply to online exams or other assessment with a time limit of less than 24 hours. Penalties for late submission will be applied consistently and equitably to all students enrolled in the unit. Where short-term, serious and unavoidable circumstances have affected their ability to submit an assessment task, a student must submit a formal application for Special Consideration as per the Special Consideration Policy. Students should not request an informal arrangement from their tutor, lecturer or Unit Convenor. Where an application for Special Consideration is approved, and the outcome is an extension to the due date of a task, submissions that are received after the new due date will be subject to late penalties that are calculated from the new due date. This only applies where the outcome is an extension to the due date – see the Special Consideration Policy for a schedule of all possible outcomes. Special Consideration Students should submit applications for Special

Consideration electronically via [ask.mq.edu.au](https://ask.mq.edu.au), along with the supporting documentation. Before submitting their applications, students should refer to the Special Consideration Policy (link provided under 'Policies and Procedures' below).

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>VIVA Voce</u>	40%	No	5-10/11/2024
<u>Mid-Semester Test</u>	30%	No	2024-10-06
<u>Essay</u>	30%	No	2024-10-13
<u>Formative Quizzes</u>	0%	No	2024-08-11

### VIVA Voce

Assessment Type <sup>1</sup>: Viva/oral examination

Indicative Time on Task <sup>2</sup>: 25 hours

Due: **5-10/11/2024**

Weighting: **40%**

Individual VIVA Voce Questioning relating to Essay submission.

On successful completion you will be able to:

- Critically analyse the common law and statutory rules governing conflict of laws.
- Critically analyse key international agreements and jurisdictional concepts that may apply to conflict situations.
- Evaluate the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings.
- Explain how choice of law and choice of forum apply in commercial, contractual, or tort disputes.
- Examine the doctrine of international comity as it relates to protection of local judicial process and the implications of enforcement of foreign judgments within Australia and Australian judgments in other countries.

- Critically analyse challenges posed by the internet in general and social media in particular in situations involving contract and tort disputes, including commercial transactions, privacy, defamation, and local suppression orders.

## Mid-Semester Test

Assessment Type <sup>1</sup>: Quiz/Test

Indicative Time on Task <sup>2</sup>: 25 hours

Due: **2024-10-06**

Weighting: **30%**

This will be a mid-semester test.

On successful completion you will be able to:

- Critically analyse the common law and statutory rules governing conflict of laws.
- Critically analyse key international agreements and jurisdictional concepts that may apply to conflict situations.
- Evaluate the mechanics and controversy regarding anti-suit injunctions with respect to foreign legal proceedings.

## Essay

Assessment Type <sup>1</sup>: Essay

Indicative Time on Task <sup>2</sup>: 30 hours

Due: **2024-10-13**

Weighting: **30%**

All students must write an essay in response to a set question or problem that will be based on a current issue encompassed within conflict of laws.

On successful completion you will be able to:

- Critically analyse key international agreements and jurisdictional concepts that may apply to conflict situations.
- Critically analyse challenges posed by the internet in general and social media in particular in situations involving contract and tort disputes, including commercial transactions, privacy, defamation, and local suppression orders.

## Formative Quizzes

Assessment Type <sup>1</sup>: Quiz/Test

Indicative Time on Task <sup>2</sup>: 6 hours

Due: **2024-08-11**

Weighting: **0%**

These are open book multiple choice quizzes. These will not count for final grade, but used to assess understanding across semester.

On successful completion you will be able to:

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

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<sup>1</sup> If you need help with your assignment, please contact:

- the academic teaching staff in your unit for guidance in understanding or completing this type of assessment
- the [Writing Centre](#) for academic skills support.

<sup>2</sup> Indicative time-on-task is an estimate of the time required for completion of the assessment task and is subject to individual variation

## Delivery and Resources

Delivery Lectures: 13 lectures, recorded on ECHO Tutorials: 13 tutorials - offered in both face to face and online sections. As part of the art of lawyering, international private law issues are best addressed through problem solving. Tutorial work 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, EU and US case decisions. It is also anticipated that our class will engage in drafting a public submission and this will be a group activity organised through tutorials. Engagement in this project will equip you for completing the assessments.

This unit is worth 10 credit points, which equates to 150 hours of work. Therefore, students should expect to commit an average of 10 hours per week to this unit, including all scheduled and unscheduled activities and preparing and executing the assessment tasks.

Resources The required textbook is Nygh's Conflict of Laws 10th Ed (2020). If students feel that they would also benefit from a textbook, Private International Law in Australia by Reid Mortensen et al 5th Edition (2023) may be helpful but will not otherwise be referred to in the course and is not required. Students can purchase these textbooks online from online resellers such as

Booktopia, Amazon and Zookal. Additional readings will be accessible through iLearn.

Students require access to a computer, internet with decent speed, camera and a secure/reliable server. The iLearn page contains all Unit requirements and a weekly schedule for teaching, readings and tutorials. Information about all assessment tasks is also available on iLearn. Note for the Viva Voce assessment, a working camera is mandatory

## Unit Schedule

The following is a general and somewhat idealised version of what we will cover. The current version will be available on iLearn and will be subject to modification.

The study of International Private Law, more traditionally known as conflict of laws or private international law, has never been more essential than it is now. As Australian lawmakers struggle to deal with international internet-related problems, the key issues of enforcement of laws, jurisdiction, forum non conveniens, anti-suit injunctions, choice of law, and enforcement of judgments in foreign tribunals are essential tools of the lawyer and lawmaker. These subjects constitute International Private Law. Further, our subject also deals with jurisdictional issues in nations that have both indigenous legal systems as well as state/federal legal systems.

In recent years, the subject known as conflict of laws has become more commonly called private international law. However, in Australia, Canada and the United States, conflict of laws is arguably a more apt title because the conflict situations are typically domestic as opposed to international. This, however, is changing, as Australia attempts to enforce its domestic laws against multi-national corporations. Going with the times, we have changed our name to International Private Law - which is more comprehensive than conflict of laws and more accurate than private international law. As you will see, this is not international law but international application of private laws.

International private law 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 state or national 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 rarely 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. While frequently addressed in terms of disputes (litigation), international private law is also an essential body of law for legal practitioners who draft agreements because many issues are subject to party agreement.

International Private Law is not just a matter of following rules. Rather, knowledge of the principles guides skilled practitioners in obtaining better outcomes for their clients. While based on legal theory, in practice, international private law permits lawyers to attempt to utilise the most desirable venues and bodies of law to benefit their clients' interests.

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

A client believes that she has been defamed by a posting on a social media website. The individual who made the posting is unknown (but known to the website operator). The corporation that owns the social media website is located in the United States and does not have any offices in Australia but does have a local subsidiary.

The client wants you to file suit against the American social media company in NSW. Does the court have (1) in personam jurisdiction (jurisdiction over the person of the defendant), (2) which state's (nation's) laws of defamation would apply, and (3) how could any judgment in your client's favour be enforced?

Or, in a more mundane situation -

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. 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 and is not in issue.

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 against Bosco Specialties. 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. While this seems like a rather mundane personal injury matter, it presents classic conflict of laws issues that will likely decide whether the matter may proceed or will be time-barred.

In both of these situations, international private law or conflict of laws provides the tools necessary to reach the correct results

**Tentative Weekly Schedule - Readings will also include materials listed on iLearn and available through Leganto. recent court decisions will be made available through iLearn. The schedule is subject to change in the event of new developments.**



<b>Week 1</b>	<p><b>Introduction to the Unit – Why international private law is central to the practice of law? In Personam Jurisdiction</b></p> <p>Casebook Ch. 1 and 3</p> <p>Casebook refers to <i>Nygh's Conflict of Laws</i> 10th edition (2020)</p> <p>Mark Leeming, <i>Authority to Decide - The Law of Jurisdiction in Australia</i> 2d ed (2020), Chapter 1 [available on Leganto]</p>
<b>Week 2</b>	<p><b>Stare Decisis and Enforcement of Judgments at Common Law</b></p> <p>Casebook Chapter 40</p>
<b>Week 3</b>	<p><b>Enforcement of Judgments by Statute</b></p> <p>Casebook Chapter 41</p> <p><b>Formative Quiz is available at the end of this week on iLearn</b></p>
<b>Week 4</b>	<p><b>North American Tribal Law and Courts</b></p> <p><b>Mid-Term Test on Saturday 7 October 12PM - 2:00 PM (includes reading time)</b></p> <p><b>Research Essay Assignment Distributed</b></p>
<b>Week 5</b>	<p><b>Choice of Law Theory 1</b></p> <p>Casebook: Chapters 12, 13 (13 - not emphasised) &amp; 14</p>
<b>Week 6</b>	<p><b>Choice of Law Theory (Part 2) - Including Renvoi</b></p> <p>Casebook Chapters 15, 16 &amp; 17 (17 not emphasised)</p>
<b>Week 7</b>	<p><b>Contracts Choice of Law</b></p> <p>Casebook: Ch.19</p>
<b>Week 8</b>	<p><b>Torts Choice of Law</b></p> <p>Casebook: Ch. 20</p> <p><b>Mid-Term Test on Sunday 6 October 12PM - 2:00 PM (includes reading time)</b></p>
<b>Week 9</b>	<p><b>Exclusion of Foreign Law and Doctrine of Depeçage</b></p> <p>Casebook Ch. 18</p>

Week 10	<b>Cross-Vesting and Forum Non Conveniens</b>  Casebook: Ch 6 and 8  <b>Papers Due on Sunday 13 October</b>
Week 11	<b>Forum Selection Agreements - Internet Contracts (Party Autonomy)</b>  Casebook: Ch. 7
Week 12	<b>Anti-Suit Injunctions and Comity - doctrines at odds with each other</b>  Casebook: Ch. 9
Week 13	<b>Federal Jurisdiction,</b>  Casebook: Ch. 5 §§ 5.1 - 5.6, 5.16 - 5.23  Please note that during the Week 13 Tutorial we will be focusing on the Group Submission  <b>VIVA Sessions at conclusion of Week 13 - Final Assessment</b>

## Policies and Procedures

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

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Assessment Procedure](#)
- [Complaints Resolution Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#)

Students seeking more policy resources can visit [Student Policies \(https://students.mq.edu.au/support/study/policies\)](https://students.mq.edu.au/support/study/policies). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

To find other policies relating to Teaching and Learning, visit [Policy Central \(https://policies.mq.edu.au\)](https://policies.mq.edu.au) and use the [search tool](#).

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: <https://students.mq.edu.au/admin/other-resources/student-conduct>

## Results

Results published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) 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 [connect.mq.edu.au](https://connect.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## Academic Integrity

At Macquarie, we believe [academic integrity](#) – honesty, respect, trust, responsibility, fairness and courage – is at the core of learning, teaching and research. We recognise that meeting the expectations required to complete your assessments can be challenging. So, we offer you a range of resources and services to help you reach your potential, including free [online writing and maths support](#), [academic skills development](#) and [wellbeing consultations](#).

## Student Support

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

## The Writing Centre

[The Writing Centre](#) provides resources to develop your English language proficiency, academic writing, and communication skills.

- [Workshops](#)
- [Chat with a WriteWISE peer writing leader](#)
- [Access StudyWISE](#)
- [Upload an assignment to Studiosity](#)
- [Complete the Academic Integrity Module](#)

The Library provides online and face to face support to help you find and use relevant information resources.

- [Subject and Research Guides](#)
- [Ask a Librarian](#)

## Student Services and Support

Macquarie University offers a range of [Student Support Services](#) including:

- [IT Support](#)
- [Accessibility and disability support](#) with study

- Mental health [support](#)
- [Safety support](#) to respond to bullying, harassment, sexual harassment and sexual assault
- [Social support including information about finances, tenancy and legal issues](#)
- [Student Advocacy](#) provides independent advice on MQ policies, procedures, and processes

## Student Enquiries

Got a question? Ask us via the [Service Connect Portal](#), or contact [Service Connect](#).

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](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.

## Changes from Previous Offering

This year, the focus of the course will be on a single problem - Australian regulation of social media. The Assessments will be focused on this issue with the goal of creating a class submission to the Attorney General or E-Privacy Commissioner.

Based on student feedback in 2023, the order of subjects has been revised and the discussion of Indigenous law (North American Native American Law and Courts) is addressed earlier in the course

In the Viva Voce assessment, students will schedule individual sessions on Zoom in the period 5 November through 10 November and will be questioned with respect to the Research Essay, the Group Submission and how they relate to each other and to subjects covered in this course. Further guidance and instructions will be provided in iLearn

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Unit information based on version 2024.02 of the [Handbook](#)