South Asian University
Faculty of Law

LLM

2025

Winter Semester (Second Semester)

Course Information

1. Faculty: Legal Studies
2. Course Code: LW0
3. Course Title: Conflicts of Laws
4. Number of Credit: 4
5. Course objectives:

   The course on the "conflict of laws" is one of the optional courses for LL.M. It has been designed and developed with a view to meet the following objectives 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. 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.

6. Minimum prerequisites for taking this course: Nil

7. Course Structure and Reading Suggestions : Structured course programme with units: 12 units, arranged into 12 weeks of teaching and two weeks of assessment

Course Aims

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, contract 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.

Week 1 and 2 Conflicts of Laws: Fundamental Concepts.

The module cover topics like origin, and development of conflict of laws. It 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.

Book

1. Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Pres, (3rd ed 2007)
2. J.G. Collier, *The Conflict of Laws*, Canbridge Univeristy Press (3rd ed 2004)
3. Stellina Jolly and Saloni Khanderia, Indian Private International Law (Hart 2021)

Articles

1.Martin Davies, "Renvoi and Presumptions about Foreign Law", (2006) 30 *Melbourne University Law Review* 244.

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

Cases

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

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

Neilson v Overseas Projects Corporation of Victoria Ltd [2005] HCA 54

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 on Private International law .

Articles

1. Abdul Razak, "Judicial Interpretation of "Foreign Jurisdiction Clause" in Contract-Calls for Review: A Study in the Context of Bangladesh", (2009) 2(2) *India Law Journal*, http://indialawjournal.com/volume2/issue_2/article_by_abdur_razzak.html

2. Ved P. Nanda, "The Landmark 2005 Hague Convention on Choice of Court Agreements" (2007) 42 (3) *Texas International Law Journal* 773-788

4. Daniel J. Dorward, "Forum Non Conveniens Doctrine and the Judicial Protection of Multinational Corporations from Forum Shopping Plaintiffs", (2014) 19 *Journal of International Law* 141

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 2003(1)SCR 480]
Indian Performing Rights Society ... v Sanjay Dalia & Anr on 2015
Zippo Mfr. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997)

Conventions

The Convention of 30 June 2005 on Choice of Court Agreements.

Week 4 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

1. J.G Collier, The Conflict of Laws, Cambridge Press, 2004
2.Clarkson and Hill, The Conflict of Laws, Oxford: Oxford University Pres, (3rd ed 2007)
3.Stellina Jolly and Saloni Khanderia, Indian Private International Law (Hart 2021)

Articles

1.Prakash Shah "Inconvenient Marriages or What Happens When Ethnic Minorities Marry Trans Jurisdictionally According to Their Self-Chosen Norms" (2010) *Utrecht Law Review*, 6(2)17-32.
2.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) (Springer 2017) 3-18.
3.Stellina Jolly, Ritima Vohra "Recognition of Foreign same Sex Marriage in India: A Exploratory Analysis" (2017) 59(3) *Journal of Indian Law Institute* 302-327.

Convention

Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages

Week 5 Matrimonial Issues Continues: 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

1.Cheshire & Norths, Private International Law, Oxford University Press, 13th Ed, 2006.
2. Stellina Jolly and Saloni Khanderia, Indian Private International Law (Hart 2021)

Articles

1.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) (Springer 2017) 111-132.
2.PA Stone, "Recognition in England of Talaq Divorces" (1985) 4 *Anglo-American Law Rev*iew 363.
3.Sanwar Hussain, "Cross-border Divorce Regime in Bangladesh", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) (Springer 2017) 89-107.
4.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) (Springer 2017) 133-151.
5.*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) 1 (Springer 2017) 153-17.

Case:

Sabina Pandey v Pushkarraj Pandey (2011) 3 NKP 387 (SC)
Y Narasimha Rao v Venkata Lakshmi 1991 SCR (2) 821

Conventions

Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
Brussels II Regulation (EC) No 2201/2003

Week 6 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. Recognition of foreign custody order rule in South Asia and conflicts of laws issues concerning cross border surrogacy will also be discussed.

Book

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

Articles

1.Stellina Jolly, "Inter-Country Child Abduction: An Explorative Analysis of Legal Standards and Judicial Construal's of India", *International Journal of Law Policy and the Family*, Oxford University Press, 31(1) 23-40, (2017)
2. Rhona Schuz, 'The Hague Child Abduction Convention and Children's Rights' (2002) 12 *Transnational Law and Contemporary Problems* 393
3.Rose Wijeyesekera, "Cross Border Child Abduction Srilankan Stae Practice", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) (Springer 2017) 243-261.
4.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) (Springer 2017) 221-241
5.Stellina Jolly, "Cross-Border Surrogacy: Indian State Practice", in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) (Springer 2017) 175-197.

Conventions

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Cases

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

Mid Term examination

Week 7 and 8 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. 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 e commerce and the weaker party protection; restrictions on the applicable law and public policy etc.

Book,

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

Articles

1.Geoffrey Fisher, Sharia Law and Choice of Law in Clause in International Commercial Contracts, (2005*) Law Asia Journal*, 69-82

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

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

4.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 AIR 2002 Bom 502,

Conventions

HAGUE Principles on choice of law in international contracts, 2015

The Rome II Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)

Week 9 Torts (Environment)

Module covers traditional and modern approach in choice of law in cross boder torts. Torts of recent importance in conflict of laws such as matters of transboundary environment will form the basis of discussion.

Articles

Ahmed, M. (2022). Private international law and substantive liability issues in tort litigation against multinational companies in the English courts: recent UK Supreme Court decisions and post-Brexit implications. Journal of Private International Law, 18(1), 56–82.

Sara L Seck, " Environmental Harm in Developing Countries Caused by Subsidiaries of Canadian Mining Corporations: The Interface of Public and Private International Law' (1999) 37 *Canadian Year Book of International Law* 139.

Martina Mantovani, Private International Law and Climate Change: the "Four Islanders of Pari" Case, https://eapil.org/2023/01/10/private-international-law-and-climate-change-the-four-islanders-of-pari-case/

Case
Kiobel v Royal Dutch Petroleum Litigation, 569 U.S. 108 (2013)

Week 10 Conflict Issues in Property
Module deal with the classifications of property, rules and problems regarding assignment and transfer of property and succession and jurisdiction over movable and immovable property.

Book
1. John,O Brien, *Conflict of Laws*, Cavendish Press,(Part 3 Chapter Property)
2. Clarkson and Hill, The Conflict of Laws, Oxford: Oxford University Pres, (3rd ed 2007)

Articles
1.Symeon C Symeonides, 'A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property' (2005) 38 Vanderbelt Journal of Transnational law 1177

Conventions
Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons

Cases
Autocephalous Greek-Orthodox Church v. Goldberg & Feldman Fine Arts, Inc. - 717 F.Supp.1374 (S.D. Ind. 1989)

Week 11 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. The module deals with party autonomy and the choice of substantive law in international commercial arbitration .

Book
2.Sai Ramani Garimella and Stellina Jolly, *Private International Law: South Asian States Practice*, (Springer 2017)
Articles
1.Sai Ramani Garimella, 'Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: An Indian Perspective' in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds) (Springer 2017) 323-346
2.Jonathan Hill, 'Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements' (2014) 63 Int'l & Comp LQ 517

Cases

Sapphire International Petroleums Ltd. v National Iranian Oil Company, ILR 1963
Arsanovia Ltd and others v Cruz City Mauritius Holdings [2012] EWHC 3702 (Comm) 2011
Union Of India v Videocon Industries Ltd., (2012) 9 SCC 552
Sulamérica CIA. Nacional de Seguros S.A. and others v Enesa Engenharia S.A. and others, [2012] EWCA Civ. 368

Week 12 Recognition and Enforcement of Foreign Judgments

Module will cover basis of recognition and enforcement of foreign interim and final judgments, The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters will form the basis of deliberation.

Articles

1. David, P. Stewart ,"The Hague Conference Adopts a New Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters" (2019)113(4) *American Journal of International Law*, 772-783.
2.Wali Naseh, Conflict of Laws in Afghanistan, in *Private International Law and South Asian States Practice*, Sai Ramani and Stellina Jolly (eds)(Springer 2017) 63-87

Conventions

Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

Reading List

Recommended Reading (Books

1. Briggs, A., *The conflict of laws*, Oxford: Oxford University Press,(2nd ed 2008)
2. Cheshire & Norths, *Private International Law*, Oxford University Press, (13th Ed, 2006)
3. Clarkson and Hill, *The Conflict of Laws*, Oxford: Oxford University Press, (3rd ed 2007)
4. Dicey, Morris and Collins on the Conflict of Laws, (14th Ed, Sweet & Maxwell, 2006)
5. Stellina Jolly and Saloni Khanderia, Indian Private International Law(Hart 2021)

Additional Reading (Books)

1. Abla Mayss, *Principles of Conflict of Law* Cavendish Publishing London, (3rd ed 1999)
2. Atul M Setalvad, *Conflict of Laws*, Lexis Nexis, Butterworths, New Delhi (1st ed 2007)
3. Briggs, A., *Agreements on jurisdiction and Choice of Law* (Oxford University Press, 2008)
4. Lakshmi Jhambolkar, *Select Essays on Private International Law*, (Universal Law Publishing Co Pvt Ltd., 2011)
5. V.C. Govindaraj, *The Conflict of Laws in India , Inter-Territorial and Inter-Personal Conflict*, (Oxford University Press, 2011)
6. Paras & Peeyushi Diwan, *Private International Law*, Deep & Deep Publications(4th Ed, 1998)

Websites

News and Views in Private International Law www.conflictoflaws.net

Hague Convention on Private International Law, http://www.hcch.net/index_en.php?act=home.splash

8. Course Evaluation Pattern: The evaluation is based on mid-term and end-term examinations (40 marks each). The evaluation also includes a research paper writing effort examined for 20 marks.