

Subject/lesson plan
Private international law/Conflict of laws
IX Semester (2020-2021)

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For convenience sake, of this technical subject, Private International Law/Conflict of laws, it is planned to teach the same in six primary units. Each unit contains a detailed chapter plan comprising of various sub-topics. In this course it is also focussed to put stress on Indian Private International Law while comparing with English private international law. As our law in this regard is still young we are following mostly English principles only in number of conflict cases. Now our courts have occasions to evolve our own private international law principles. Accordingly those are referred contextually. For better understanding of the subject study material was also prepared and the same will be given to students.

It is planned to complete the course in 50 to 60 classes during August, September, October and November 2020. Each primary unit will be covered in 10 periods. Approximately there will be 60 classes in this semester after leaving Sundays and public holidays.

In the month of August approximately in fifteen classes it is planned to complete the introduction chapter i.e., Nature and scope and basis of private international law which includes the distinction between Public international law and private international law, unification of private international law, functions and bases of private international law and also some portion of the second unit comprising of classification area i.e., characterisation of cause of action and rule of law, incidental questions, depechage, doctrine of renvoi and substance and procedure.

In the month of September, in fifteen periods, rest of the preliminary topics of second unit will be covered. In these classes it is planned to complete the topics viz., proof of foreign law, exclusion of foreign law and domicile, nationality and residence.

In the month of October, in fifteen periods, primary unit III, Jurisdiction of courts and Judgements will be discussed by dividing it into three major sub topics-

- a) Jurisdiction of courts-English law
- b) Jurisdiction of courts –Indian law
- c) Recognition and enforcement of foreign judgements (Indian and English law)

It is also designed that in the month of October and November, Choice of law function will be discussed in which Law of obligations are to be covered by focussing on choice of law in contract and choice of law in tort. (Primary unit IV) And units V and VI which are relating to family law particularly referring to the choice of law rules in marriage disputes and matrimonial relieves and conflict of laws rules relating to children etc., and law of property duly focussing on the choice of law rules of movable and immovable property disputes.

Unit-I

Introduction

1. Nature and Scope of Private International Law
 - a) Title of the subject
2. Public law and Private law
3. Public International law and Private International law
4. Range and Difficulty of the subject
5. Technical Terms
6. Bases of conflict of laws
7. Functions of Private International law
8. Unification of Private International law
9. Indian Private International law

Unit-II

Preliminary Topics

1. Classification or Characterisation of cause of action and rule of law
2. Incidental Question and Depeçage
3. Renvoi/Foreign Court Theory
4. Substance and Procedure
 - a) Limitation b) Parties etc.
5. Proof of Foreign law
6. Exclusion of Foreign law
7. Domicile, Nationality and Residency(English and Indian law)

Unit-III

- A. Jurisdiction of Courts and Foreign Judgements
 1. Jurisdiction of English Courts under Traditional rules
 2. Jurisdiction under the New rules
 3. Prevention of Forum Shopping
 - a) Stays and Injunctions
 4. Jurisdiction of Courts-Indian law
- B. Recognition and Enforcement of Foreign Judgements
 1. Recognition and enforcement at Common Law
 2. EC and EFTA Judgements
 3. Recognition and enforcement with in UK
 4. Enforcement , Execution and Effect of Foreign Judgements-Indian law (statutory provisions and judicial response)
 - a) Foreign awards

Unit –IV

Law of Obligations

(Contracts and Torts)

1. Choice of law in Contract
 - a) Proper law Doctrine
 - b) Hague principles
 - c) Rome convention
 - d) Exclusion of Renvoi
 - e) Applicable law chosen by parties
 - f) Applicable law in the absence of choice
 - g) Consumer and individual contracts of employment
 - h) Particular aspects of the contract: Material validity and Formal validity
 - i) Remedies and Damages
2. Indian law
 - a) General contracts
 - b) Specific contracts
3. Choice of law in Torts
 - a) Rules under common law
 - b) Statutory Reform
 - c) Reliefs
4. Indian law: choice of law rules
 - a) IPRs
 - b) Maritime and Aerial Torts

Unit-V

Family Law

1. Marriage and Matrimonial Relieves (English and Indian law)
 - a) Concept of Marriage
 - b) Formal and essential validity
 - c) Presumption of Marriage
 - d) Divorce and matrimonial reliefs
 - e) Statutory provisions (India)
 - f) Jurisdiction
 - g) Maintenance under Indian law
2. Conflict of laws Rules relating to Children (English and Indian law)
 - a) Legitimacy and Legitimation
 - b) Adoption
 - c) Guardianship

Unit- VI

Law of Property

1. Movables and Immovable and Intangible properties
2. Lex situs rule
3. Matrimonial property applicable law
4. Validity of assignment-contractual questions

Reference Books

- 1 Cheshire, Private International law

- 2 J.H.C. Morris, The Conflict of Laws
- 3 Ablaj Mayss, (Lecture notes) Conflict of Laws
- 4 Dicey, Conflict of laws
- 5 Atul Setalwad, Conflict of Laws
- 6 Paras Diwan, Private International Law