



NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

PROGRAMME:

B.A., LL.B. (Hons.) FYIC

DETAILS OF COURSE OFFERED

ODD SEMESTER (IX)– ACADEMIC YEAR

SL. No	COURSE CODE	COURSE TITLE	L	T/P	CR	CH
1	BL902.9	PRIVATE INTERNATIONAL LAW	4 PER WEEK	1 PER WORK	4	

A. CODE AND TITLE OF THE COURSE: BL902.9 PRIVATE

INTERNATIONAL LAW

B. COURSE CREDIT: 4 (TOTAL MARKS: 200)

C. MEDIUM OF INSTRUCTION: ENGLISH

D. COURSE COMPILED BY: DR. THANGZAKHUP TOMBING

E. COURSE INSTRUCTOR: DR. THANGZAKHUP TOMBING

1. DETAILS OF THE COURSE OFFERED

The study of Private International Law, hereafter PIL, pertaining to domicile, property, proper law of contract, marriages, divorce and succession etc. is a peculiar branch of law. The principles and rules governing PIL had developed through judicial opinion, decisions, legislations, treaties and conventions. Disputes involving foreign elements therefore require ascertainment of nationality, domicile, and antecedents of the parties, the nature of the contract, the nature of the property etc.

Students of PIL are required to learn classification and definition of the relevant jurisdiction, understanding, interpretation and application of relevant local and international law(s). International character of legal issues and dispute poses many challenges, the contents of the law of the various countries may differ thus lead to different outcomes. In such scenario it is prudent that the applied law is closely connected to the remedy sought

In the contemporary world, many of the disputes have foreign element and the law relating to conflict of laws have become quintessential for an aspiring lawyer as more and more disputes involve foreign elements. This branch of law is ever-changing and upcoming area which focuses on jurisdiction, choice of law, and enforcement of foreign judgments rendered in another state's or nation's courts. The main objective is to understand these concepts, deal with law relating to jurisdiction and choice of law in various areas including contract, tort, in divorce and parental responsibility, and international child abduction. Study of PIL is a combination of civil laws which are dealt under statutes, acts and other legislations which accord civil rights to the claimants. A thorough knowledge of these areas along with special laws on certain civil laws is imperative in order to better appreciate the course. PIL students need to be constantly update with the evolving jurisprudence through judicial pronouncements rendered by various courts, legislation, treaties and conventions.

2. OBJECTIVE OF THE STUDY

The course objectives of the course offered are as follow:

1. To familiarise students with the diversity, plurality and challenges in the study of Private International Law.
2. To examine and identify emerging trends in the study of Private International Law. .
3. To explore and study the historical evolution of sources of law of private International Law and its jurisprudence, ancient as well as contemporary.
4. To identify and get acquainted with current controversial issues, also articulate on issues in matters pertaining to subject matter, jurisdiction and the relevant forums involvement foreign in marriage and divorce matters, issues pertaining to property, and issues pertaining to proper law of contract.
5. To invigorate learners and prospective young lawyers to the best practices in litigation and research in matters pertaining to Private International Law.

3. COURSE LEARNING OUTCOME

1. On completion of the Course it is expected that students would have learnt the intricacies of study Private International Law.
2. It is also expected that students would learnt contemporary world view of Private International Law which shall enable them to foray into litigation, research and adjudication in the courts and also in the field of academia.

4. DETAILED STRUCTURE OF THE COURSE (SPECIFYING COURSE MODULES AND SUB-MODULES)

1. Module I

Definition of Private International Law/Conflict of Laws - Historical Development and Theories of Conflict of Laws in Common Law and Civil Law systems - Classification of Cause of Action and Classification of Rule of Law - Incidental Question - Proof of Foreign Law and Exclusion of Foreign Law; sources of conflict of laws- statutes- Brussels, Lugana, Rome Conventions; Applicable laws- England, France and Italy; Law of Sovereign Immunity.

Subject Matter of Private International Law

Basic Rules; Traditional Common Law; Principles Modern Approaches; Rules relating to Jurisdiction; rules relating to choice of law; rules relating to enforcement of foreign judgments; Doctrines of Immunity: Absolute and Restrictive Immunity; Forum Shopping; doctrine of renvoi; bases of Jurisdiction ; General Jurisdiction; Special Jurisdiction; Exclusive Jurisdiction; Lis Pendens and Forum Non-Conveniens; Jurisdiction under Lugano Convention.

2. Module II

Law of Domicile

Meaning and General Rules of Domicile Acquisition of Domicile of Choice Evidence of Residence Domicile of Choice and Origin Contrasted Domicile of Dependents, Married Women Domicile and Nationality under Indian Law with cases.

Law of Obligations:

Contracts Recognition and Enforcement; The Rome Convention; Non-Contractual Obligations: The Rome II Regulation: Maritime Non-Contractual Obligations; Mixed Issues relating to Non-Contractual Obligations and Contract

3. Module III

Matrimonial Remedies

Marriage

Formalities of Marriage; Capacity to Marriage; Polygamous Marriage; Re-marriage Civil Partnership and Cohabitation .

Choice of Law in Matrimonial Causes, Children, Contracts, Property and Torts

Jurisdiction in Matrimonial Causes Divorce, Nullity and Judicial Separation Presumption of Death and Dissolution of Marriage

Jurisdiction in matters relating to Parental Responsibility

Choice of Law; Legitimacy and Legitimation; Adoption; Mental Incapacity

Law of Property:

Classification between Movables and Immovable properties, Concept of *Lex Situs*

Law relating to Immovable properties:

Jurisdiction and Choice of Law Transfer of Tangible Properties; Various Theories and Modern Law Succession and Matrimonial Property

4. Module IV

Enforcement and Recognition of Foreign Judgements

Enforcement and Recognition of Foreign Judgements; Traditional Rules Recognition and Enforcement of Jurisdiction under Brussels Regulation and Lugano Convention

Conflict of law relating to International Commercial Arbitration; Enforcement of Foreign Arbitral Awards; Conduct of international litigation

Technical problems in terms of characterization and Renvoi

5. PRESCRIBED READINGS/ SUGGESTED READINGS

- Cheshire, North & Fawcett Private International Law, 2008.
- Cheshire, G. C. "Private International Law" The Law Quarterly Review, Jan. 1935, pp. 76-90
- Collier, J.G, Conflict of Laws, 2001.
- Croff, Carlo "The Applicable Law in an International Commercial Arbitration: Is It Still a Conflict of Laws Problem?" The International Lawyer, Vol. 16, No. 4 (Fall 1982), pp. 613-645. 11
- Dicey, Morris and Collins Conflict of Laws, 2006.
- Diwan, Paras &PeeyushiDiwan, Private International Law: Indian and English, 1998.
- Gottschalk Cms, Eckart, Ralf Michaels, Jan Von Hein (ed.,) Conflict of Laws in a Globalized World, 2007.
- Govindaraj, V.C, The Conflict of Laws in India: Inter-Territorial and InterPersonal Conflict, 2011.

- Hartley, Trevor C “The European Union and the Systematic Dismantling of The Common Law of Conflict of Laws” *The International and Comparative Law Quarterly*, Vol. 54, (2005), p. 813.
- Jhambolkar, Lakshmi, *Select Essays on Private International Law*, 2011.
- Kennett, Wendy “The Brussels I Regulation” *The International and Comparative Law Quarterly*, Vol. 50, (2001), p. 725.
- Lorenzen, Ernest G., "Renvoi Doctrine in the Conflict of Laws - Meaning of "The Law of a Country"" (1918). Faculty Scholarship Series. Paper 4564.
- Morris, J. H. C., *Cases and Materials on Private International Law*, 1984.
- Paul, Joel R. “The Isolation of Private International Law” *Wisconsin International Law Journal*, vol.7, No. 1, 1988-1989, pp. 149-178.
- Pilkington, M. P. “Illegal Residence and the Acquisition of a Domicile of Choice” *The International and Comparative Law Quarterly*, Vol. 33, No. 4 (Oct., 1984), pp. 885-912
- Rao, T.S. Rama “Conflict of Laws In India” *Zeitschrift für ausländisches und internationales Privatrecht*, 23. Jahrg., H. 2 10 (1958), pp. 259-279
- Setalvad, Atul M, *Conflict of Laws*, 2007
- Stein, Stanley B. “Choice of Law and the Doctrine of Renvoi” *McGill Law Journal*, vo. 17, 1971, 581
- Stevenson, John R. “The Relationship of Private International Law to Public International Law” *Columbia Law Review*, Vol. 52, No. 5 (May, 1952), pp. 561-588
- Weintraub, Russell J. “An Inquiry into the Utility of "Domicile" as a Concept in Conflicts Analysis” *Michigan Law Review*, Vol. 63, No. 6 (Apr., 1965), pp. 961-986

Statutory and International Conventions Reference:

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968

Civil Procedure Code, 1908

Indian Evidence Act, 1872

Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1988

Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, (Brussels Regulation, 2001)

Constitution of India, 1950

Foreign Sovereign Immunities Act, 1978

Indian Citizenship Act, 1955

ILC Draft Articles on Jurisdictional Immunities of State and their Property, 2004

Convention on the Law Applicable to Contractual Obligations (Rome Convention), 1980

Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (Brussels II Regulation), 1998

Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions, 15 November 1965

Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligation, 1973

Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and COoperation in respect of Parental Responsibility and Children, 1996

Hindu Adoption and Maintenance Act of 1956, Guardians and Wards Act, 1890 Juvenile Justice (Care and Protection) Act of 2000, amended in 2006

Regulation 593/2008 on the Law Applicable to Contractual Obligations (Rome 1 Regulation), 1980

Arbitration and Conciliation Act, 1996

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

Judicial References:

Bier v. Mines de Pottased'Alsace 1976

Eurocontrol case 1976

Maharanee of Baroda v. Wildenstein 1972

Klienwort Bensons Ltd. v. Galsgow City Council 1999

Shevill v. Press Alliance 1995

Van den Boogard v. Laumen 1997

Bell v. Kennedy 1868

Benco De Vizcaya v. Don Alfonso 1935

Cheni v. Cheni 1962

Daimler and Co. v. Continental Tyre and Rubber Co. 1916

Govt. of India v. Taylor 1955

Hyde v. Hyde 1886

Ogden v. Ogden 1904 Maltese Marriage Case 1889

Ramsay v. Liverpool Royal Infirmary 1930

Re Annesley 1926 Huntington v. Attrill 1893

SankaranGovindan v. Lakshmi Bharathy 1964 4

Sottomoyer v. De Barros 1877
Udny v. Udny 1869
Union of India v. DuthNath Prasad 2002 (2) SCC 201
Winans v. AG 1904
Assunzione 1954
Armitage v. Attorney General 1906
Boys. V Chaplin 1897
British South Africa Co. v. Compagnie de Mocambique 1893
Indyka v. Indyka 1967
Macahdo v. Fontes 1897
Penn v. Baltimore 1750
Phillips v. Eyre 1870
Qureshi v. Qureshi 1972
Re Duke of Wellington 1947
Shaw v. Gould 1868
Sarita Sharma v. Sarita Sharma 2000
Travers v. Holley 1955
Vita Food Products Incorporation v. Unus Shipping Co. 1939
Gurdayal Singh v. Rajah of Faridkot (1895) 22 Cal 222
Leroux v. Brown 1852
Maharanee of Baroda v. Wildenstein 1972
MarevaCompaniaNaviera S.A. v. International Bulcarriers S.A. 1975
Satya v. Teja Singh AIR 1975 SC 105
Y. Narasimha Rao v. Y. Venkata Lakshmi 1991 SCR (2) 821

