

CONFLICT OF LAWS NOTES

WEEK 1

Chapter 1: Introduction

- Party may raise prima facie case of conflict by asking the court to apply a foreign law.
- This subject is concerned with resolving the conflicts that arise because of the interaction between different legal systems. Jurisdictional questions are also important but does not necessarily arise out of conflicts between laws.
- *Perrett v Robinson* (1986)
 - P was injured in car accident in NT, offending vehicle was registered and insured under QLD law. NT had introduced no-fault compensation scheme for these claims, abolishing common law right, therefore he sued in QLD to maximise negligence claim. D (and insurers) preferred to wanted law of NT to apply. Main issue was conflict between laws of QLD and NT.
 - First issue of jurisdiction: Must be a degree of connection between subject matter and QLD or between the parties involved and QLD before the court can hear the matter.
 - After issue of jurisdiction is resolved can a court consider question of applicable law i.e. the choice-of-law question.
- Under traditional choice of law rules the determination of which law shall prevail is according to geographical connection i.e. personal status is where the person lives or lived at relevant time; effect of transaction is where transaction occurred.
- A law area is a territory that has a unitary system of law e.g. Australia, NSW, NZ, Wisconsin (US).
 - Despite each state/territory having own legislation, to the extent that rights/obligations derive from common law, Australia is a single law area.
 - HCA is final arbiter of any differences in interpretation between state courts of the common law.
- *Service and Execution of Process Act 1992* (Cth) ('SEPA') has created one unit for service of process and enforcement of judgments of state and territorial courts.

Chapter 2: Conflicts within Australia

- Provided there is a real connection between the subject matter of the law and the state in which the law is enacted, conflicts may arise between the laws of various states and territories because each state can legislate laws having legal consequences for persons or conduct in another state.
- Some matters are governed by federal law and therefore Australia is considered a single 'law area' e.g. marriage, bankruptcy.
- When a court exercises federal jurisdiction, state laws apply as federal laws and there can't be a direct choice between laws of competing states.
- Section 118 of the Constitution: The effect is that in Australia, state laws, legal entities created under state legislation, and state court judgments, all have nationwide validity. Current view of HCA is that s 118 has no effect on the choice of law or role to play in resolving inconsistencies between laws of different state legislatures.

Chapter 3: Jurisdiction in Personam

- Jurisdiction i.e. the authority to decide.