

Conflict of Laws

Introduction & Key Concepts

Key concepts:

- Forum = the court in which the matter is brought.
- Lex fori = law of the forum.
- Lex causae = law governing the dispute.
- Lex loci delicti = law of the place where tort was committed (typical rule in tort claims).
- Law area = relevant geographical area of applicable law.

Constitutional framework:

Chapter III, The Judicature:

- S 71 – vests judicial power in HCA, federal courts, and state courts invested with federal jurisdiction.
- S 73 – HCA has appellate jurisdiction over the State Supreme Court decisions.
- S 75 – HCA has original jurisdiction over inter-state disputes, including residents of different states.

Chapter V, The States

- S 118 – full faith and credit must be given to laws, public acts, records, and judicial proceedings of every state.

Service of process:

Domestic service outside jurisdiction (Australia):

- S 51 (xxiv) – allows Cth to legislate for national service.
- *Service and Execution of Process Act 1992* (Cth):
 - No leave or confirmation needed.
 - Treats inter-state service like intra-state.

International service:

- Rules of court permit international service.
- Some categories allow service without leave (e.g., tort with element in forum).
- Others require leave – real/substantial connection, appropriateness of forum etc.
- Hague Convention (*Volkswagen v Schlunk*).

General notes:

- Crime is local: governed by law of the forum always.
 - Foreign criminal/penal laws not enforced.
 - No trial in absentia – extradition crucial.

- Foreign elements can be part of crime.
- *Lipohar*: SA court had jurisdiction where fraud's implementation occurred in SA; court applies forum's criminal law if jurisdiction exists; court has flexibility re sufficient connection; forum court must manage criminal trials to ensure fairness.

<i>Compagnie Financiere et Commerciale du Pacifique v The Peruvian Guano Co (1882) 11 QBD 55</i>	
Facts	The plaintiffs sought specific performance and damages for delay in the delivery of Guano under a contract with the defendants. During the proceedings, the plaintiffs requested discovery of documents from the defendants, which was initially refused.
Issue	Whether the defendants were obliged to disclose documents that might not be directly relevant but could lead to a line of inquiry beneficial to the plaintiffs' case.
Decision	The Court of Appeal held that the defendants were required to disclose all documents that could reasonably lead to a line of inquiry which may either advance the plaintiffs' case or damage the defendant's case.
Held	The case broadened the scope of discovery in litigation.