

## LL4205V/LL5205V/LLD5205V/LL6205V Maritime Conflict of Laws

Maritime law has been aptly referred to as the “mother” of conflict of laws (or private international law as it is also known). The growth of international trade by sea between European nations after the fall of the Roman Empire graphically demonstrated the limitations of relying on local or personal legal systems to resolve what were effectively the first modern transnational legal disputes. Maritime law therefore provided a powerful practical incentive for jurists to think about the relevance of foreign laws and customs, and the concerns of foreign jurisdictions (shipping was not merely of private commercial importance, but also of national significance), and prompted a more universalist perspective towards maritime issues. Maritime law also encouraged the active use of conflicts avoidance techniques to reduce transaction costs for merchants and increase commercial certainty, initially by the adoption of standard maritime law codes across the whole of Europe, and more latterly by the international harmonization and unification of maritime legal rules.

Unfortunately conflict of laws has acquired a (usually undeserved) reputation for being obscure, esoteric and impenetrable. William Prosser once infamously described the subject as “a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it.” Rest assured, however, that this course is free of both swamps and quagmires. It aims to offer a clear, accessible and concrete introduction to conflict of laws issues that arise in the day to day practice of shipping law. Conflicts theory is important, but only in so far as it is relevant, and underpins and informs practical litigation strategies. A practical understanding of maritime conflict of laws issues – an ability to think in three dimensions – is essential for anyone who intends to work in shipping law or international trade. Most, if not all, of your shipping cases will have significant foreign elements and aspects – an understanding of the conflicts dimension provides a distinct advantage.

The syllabus will cover conflict of admiralty jurisdictions, parallel proceedings and forum shopping in admiralty matters; role of foreign law in establishing admiralty jurisdiction; recognition and priority of foreign maritime liens and other claims; choice of law and international maritime Conventions; conflicts of international maritime Conventions; security for foreign maritime proceedings; and recognition and enforcement of foreign maritime judgments. We will also consider whether there is, or ought to be, a particular approach to some or all maritime conflicts issues, as opposed to the general conflicts principles applied in other types of transnational litigation.

**Absolutely no prior knowledge of conflicts theory or practice is required or expected.** However, prior or concurrent enrolment in the **Admiralty Law and Practice** course is essential.

After successfully completing this course you should be able to:

1. *Demonstrate an understanding of conflict of laws principles and how they operate in the maritime law context.*
2. *Analyse and discuss the establishment and exercise of the admiralty jurisdiction in maritime cases involving foreign elements.*
3. *Analyse and discuss choice of law in the context of shipping law contracts, and the laws governing maritime property and tort issues.*
4. *Be familiar with and apply relevant legal rules and maritime conflicts case law to novel fact situations.*
5. *Develop an awareness and understanding of conflict of laws principles that are relevant to maritime issues, and of the impact of these principles on procedure and litigation strategy, as well as on the substantive outcome of maritime cases.*

The expected topics are:

**SEMINAR 1:** INTRODUCTION TO CONFLICTS THINKING AND VOCABULARY; HISTORICAL AND COMPARATIVE BACKGROUND; DIFFERENCE BETWEEN JURISDICTION, CHOICE OF LAW AND ENFORCEMENT OF FOREIGN JUDGMENTS

**SEMINAR 2:** JURISDICTION (1): PRELIMINARY CONFLICTS ISSUES WHEN ESTABLISHING ADMIRALTY JURISDICTION; CHARACTERISATION OF THE ADMIRALTY ACT AS PROCEDURAL OR SUBSTANTIVE

**SEMINAR 3:** JURISDICTION (2): MORE THAN ONE AVAILABLE FORUM; FORUM NON CONVENIENS AND COMPARATIVE MODELS OF FORUM ALLOCATION; PARTICULAR MARITIME ISSUES

**SEMINAR 4:** JURISDICTION (3): SECURITY ARRESTS, PARALLEL MARITIME PROCEEDINGS AND USE OF ANTISUIT INJUNCTIONS IN THE MARITIME CONTEXT

**SEMINAR 5:** JURISDICTION (4): CHOOSING YOUR OWN FORUM OR SEAT OF ARBITRATION; PARTY AUTONOMY AND ITS LIMITS IN MARITIME LAW

**SEMINAR 6:** APPLICABLE LAW (1): CHOICE OF LAW IN MARITIME CONTRACTS

**SEMINAR 7:** APPLICABLE LAW (2): CHOICE OF LAW IN MARITIME CONTRACTS CONTD; PARTY AUTONOMY AND ITS LIMITS IN MARITIME LAW; MANDATORY STATUTES AND CONVENTIONS

**SEMINAR 8:** APPLICABLE LAW (3): MARITIME TORTS

**SEMINAR 9:** APPLICABLE LAW (4): ROLE OF THE LAW OF THE FLAG/PORT OF REGISTRATION IN MARITIME CONFLICT OF LAWS

**SEMINAR 10:** APPLICABLE LAW (5): CLASHES OF MARITIME CONVENTIONS: LIMITATION OF LIABILITY AND CARRIAGE SCENARIOS

**SEMINAR 11:** RECOGNITION AND ENFORCEMENT OF FOREIGN MARITIME JUDGMENTS AND ARBITRAL AWARDS

**SEMINAR 12:** REVISION TUTORIAL