

LL4454V / LL5454V / LL6454V Commercial Conflict of Laws

Commercial conflict of laws is a significant area of legal scholarship and practice. The chief aim of the course is to examine the foundational principles of commercial conflict of laws in Singapore. First, it identifies and assesses the set of rules based on which Singapore courts decide whether to entertain international commercial disputes. Second, the unit outlines the rules according to which courts in Singapore give effect to foreign judgments. Finally, the unit outlines the provisions based on which Singapore courts determine the law governing the parties' cross-border disputes.

At the end of the course, students should be able to:

- demonstrate a thorough understanding of the conceptual framework which shapes the court-based resolution of international commercial disputes;
- show a strong appreciation of the principles based on which Singapore courts respond to some of the fundamental questions in the field of conflict of laws;
- apply their knowledge of the relevant legal principles gained in the course of their studies to complex and potentially uncertain situations; and,
- critique the law in its current form, and think of ways in which the different problematical aspects of it could be refined through legislation, or judicial doctrinal development.

Seminar 1: Introduction

The first seminar sets out (at a very general level) to introduce students to the following issues: (i) the types of factors which may justify (or not justify) the exercise of jurisdiction by courts in Singapore; (ii) the elements which may help to determine whether Singapore courts should apply the law of Singapore or the law of a foreign country in resolving the dispute in question; (iii) the types of factor which may (or may not) justify the recognition or enforcement of foreign judgments in Singapore.

Seminar 2: Jurisdiction of Singapore Courts: Bases for Asserting Jurisdiction (Excluding Jurisdiction Agreements)

In this seminar, various grounds based on which a court in Singapore may be competent to entertain a dispute that has foreign elements are examined. The material considered in this seminar is only part of the jurisdictional equation. Most notably, jurisdiction agreements as the basis for affording jurisdiction are examined in Seminar 4. Although the Singapore court may (prima facie) have competence to hear the dispute, it is quite possible for there to be some further element or countervailing reason which means that it should nonetheless relinquish its jurisdiction. Some of these issues are considered in Seminar 3.

Seminar 3: Jurisdiction of Singapore Courts: Staying of Proceedings

In this seminar, we continue looking at jurisdictional questions. Whereas, in Seminar 2, the question was whether the plaintiff could satisfy the court that there was a basis of jurisdiction, in this seminar the main question is whether, notwithstanding the existence of a jurisdictional basis, the court in Singapore should nonetheless grant a stay of proceedings (for example, because of statutory obligations, the subject-matter of the dispute, or the fact that another court is shown to be a more appropriate forum for hearing the case than the court in Singapore).

Seminar 4: Jurisdiction of Singapore Courts: Jurisdiction Agreements

Many international contracts include a dispute-resolution clause which refers any dispute between the parties to the courts of a particular country. Such agreements may be exclusive or non-exclusive – according to the parties' wishes. The principle of party autonomy – which underlies the whole of the law of contract – suggests that, wherever possible, national courts should seek to give effect to contractual jurisdiction clauses. The importance of jurisdiction agreements is recognised under the law in Singapore and the Hague Choice of Court Convention. Nevertheless, jurisdiction clauses are not enforced by all courts in all circumstances. In this seminar, we examine the way in which the law in Singapore treats jurisdiction clauses.

Seminar 5: Provisional Measures

This seminar considers the courts' jurisdiction to grant provisional measures (and is related to the material considered in Seminar 2). One of the significant developments in the last third of the 20th century has been the evolution of certain types of provisional measure designed to maintain the status quo pending the outcome of the dispute between the parties. There are various questions to consider in class:

- (i) what are provisional measures, what are their characteristics, and in what circumstances will they be granted;
- (ii) in cases with a foreign element, when do Singapore courts have jurisdiction to grant provisional measures; in particular, when can provisional measures be granted if the substantive dispute between the parties either cannot or will not be determined in Singapore; and,
- (iii) when might the court grant provisional measures which are designed to have an extraterritorial effect.

While the court's power to grant provisional measures is clear, there are aspects of the law (particularly, in relation to extraterritorial measures) which are controversial.

Seminar 6: Anti-Suit Injunctions

This seminar explores the courts' jurisdiction to grant anti-suit injunctions (that is, injunctions ordering a litigant not to commence or proceed with litigation in a foreign forum). This topic can be seen as an extension of the material considered in Seminars 3 and 4; if the court considers that it is the most appropriate forum for the resolution of the parties' dispute, it may consider that foreign proceedings on the same or related matters should be discontinued. However, the mere fact that the court in Singapore considers that it is the most appropriate forum is not enough to justify the grant of an anti-suit injunction. The anti-suit injunction is (meant to be) an exceptional remedy, which is not often found in legal systems outside the common law tradition. It is, therefore, regarded as an extremely controversial measure.

Seminar 7: Recognition and Enforcement of Foreign Judgments in Singapore

Where a dispute has been determined by a foreign court, a question may arise concerning the effect of the foreign judgment in Singapore. A successful litigant may wish to enforce the foreign judgment in Singapore; alternatively, one of the litigants may seek the recognition of a foreign judgment as conclusively determining the parties' dispute (such as, say, in a tort case, where the foreign court has ruled that the defendant's conduct did not give rise to any liability).

There are, in broad terms, two questions which have to be addressed in any case involving the recognition or enforcement of a foreign judgment. The first is whether the basic conditions for recognition or enforcement (as the case may be) under the relevant regime in operation in Singapore have been satisfied. Obviously, if these conditions are not satisfied, there can be no question of the foreign judgment having any legal effect in Singapore. Secondly, if the basic conditions are satisfied, the question arises whether the party seeking to resist recognition or enforcement has a valid defence under the applicable regime. In this unit, we will be considering these two questions in relation to judgments *in personam* (but not judgments *in rem*).

Seminar 8: Choice of Law in Contractual Obligations

Although it is quite common for the applicable law to be the law of the forum, there is no necessary link between jurisdiction and choice of law. It is perfectly possible for the Singapore court to have jurisdiction but for the law of another country to be the applicable law. In this seminar, students will examine the principles based on which courts in Singapore ascertain the law governing a contractual dispute. In this context, we shall be looking at:

- (i) how to identify the 'applicable law' under the relevant rules; and
- (ii) the limits of the 'applicable law', particularly, the relationship between the 'applicable law' and mandatory rules/public policy.

At appropriate stages, and for greater context, comparisons will be made between the choice-of-law rules under the law in Singapore, and the regime in operation for the determination of applicable law in contracts within the EU.

Seminar 9: Choice of Law in Non-Contractual Obligations

In this seminar, students will examine the principles based on which courts in Singapore ascertain the law governing non-contractual obligations (especially tortious ones). In this context, we shall be looking at:

- (i) how to identify the 'applicable law' under the relevant rules; and
- (ii) the limits of the 'applicable law', particularly, the relationship between the 'applicable law' and mandatory rules/public policy.

At appropriate stages, and for greater context, comparisons will be made between the choice-of-law rules under the law in Singapore, and the regime in operation for the determination of applicable law in non-contractual obligations within the EU.

Seminar 10: Proof of Foreign Law

This seminar examines the issues surrounding the proof of foreign law.

Seminar 11: Revision

This seminar looks back at the material covered in the earlier seminars. Students will be provided with a number of questions (essays and problem scenarios) which we will discuss in class.