

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER
YEAR 2006**

TITLE OF PAPER	:	CONFLICT OF LAWS
COURSE CODE	:	L 404/L 503
TIME ALLOWED	:	THREE (3) HOURS
INSTRUCTIONS	:	ANSWER ANY FOUR (4) QUESTIONS. ALL QUESTIONS CARRY EQUAL MARKS.

**THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1

In 1972 Gule, who has been born and has spent all his life in Mbabane, Swaziland, married Bellina who has also been born and bred in Siteki. The marriage took place in Mbabane. In 1977 Bellina became pregnant at a time when Gule had fallen in love with a rich South African woman. Even before the child was born, Gule resigned from his job and eloped with his lover. Bellina found out later that Gule was staying with his new lover in Durban but did not do anything about it. Gule has taken all his belongings and has withdrawn all his savings from the bank in Swaziland and taken everything with him to South Africa and left nothing for Bellina or the unborn child. He used the money to buy immovable properties in Durban. As soon as he arrived in Durban, he started processing an application for citizenship. Meanwhile in Swaziland, Bellina gave birth and named the child Mfokoloji.

It is common cause that the marriage between Gule and Bellina was never formally dissolved. Gule later joined the A. N. C., a political movement in South Africa. When the A.N.C. was outlawed in South Africa, the government started looking for Gule and his colleagues with the aim of arresting them. Gule, whose application for citizenship was still pending, went into hiding and later fled into Swaziland from where he organized guerrilla activities against the apartheid regime. He died in 1993 when he was shot by the South African Defence Force while attempting to cross into South Africa with a huge consignment of arms. With the aid of relevant decided cases discuss the ff.

- (a) Where was Mfolozi domiciled at the time of his birth to date and,**
- (b) Where Bellina was resident at the time of the death of Gule.**

[Total marks 25]

QUESTION 2

The South African Water Supply Company, S.A.W.S.C. is a public company in which the South African government owns 50% of the shares. The rest of the shares are owned by private individuals and companies. Recent droughts caused by the global phenomenon, EL NINO, has severely undermined the capacity of the Swaziland Royal Hydro-electricity Supply Company, S.R.H.S.C., a company owned by the King in trust for the Swazi Nation, to meet the electric power needs of Swaziland. The S.R.H.S.C. approached the South African government for a possible solution. The two governments entered into a treaty of understanding in terms of which the S.A.W.S.C. would release some water into a stream supplying the S.R.H.S.C. with the necessary

volume of water. In terms of the treaty, the two companies were to enter into a contract facilitating this arrangement. The contract was eventually signed in Mbabane. After supplying the water for three months, the S.A.W.S.C. abruptly stopped the supply. The S.R.H.S.C. brought a suit in the High Court of Swaziland against the S.A.W.S.C. The S.A.W.S.C. appeared the court and pleaded sovereign immunity. Would this defence succeed? Which law, Swazi or South African, should be applied to the resolution of this matter? (25 marks)

QUESTION 3

“Pre – Savigny theory is generally concerned with the limits of individual rules, post-Savigny thought seeks the appropriate legal system to govern the relationship under dispute”.

Do you agree with this sentiment? To what extent can the Savigny era be regarded as a watershed in private international law? (25 marks)

QUESTION 4

Discuss the principles as well as the jurisdictional connecting factors governing the jurisdiction of the High Court of Swaziland in matters involving a foreign element. Under what circumstances, may the jurisdiction of the High Court be excluded? (25 marks)

QUESTION 5

Maziya and Siphon are very close friends. One day, the two decide travel to Maputo from Mbabane for the weekend. Siphon was injured in Maputo in Maziya’s car as a result of negligent driving by Maziya. Siphon wishes to sue Maziya in Swaziland for personal injuries.

Assuming that under Mozambican law Maziya is liable to criminal prosecution in respect of such negligent driving but not to a civil action for damages: Will Siphon succeed?

Will your answer be different if a Mozambican statute provides that no civil and no criminal proceeding may be instituted against such a negligent driver that compensation will be awarded to injured persons under a state insurance scheme? (25 marks)

QUESTION 6

(a) What do you understand by the “incidental question” in the context of the doctrine of renvoi? What are the requisites of a true “incidental question”? (9 marks)

(b) John Matsebula, a Swazi national domiciled in France, died intestate in Mbabane leaving movable property in Paris. According to a Swaziland choice of law rule, intestate succession to movables is governed by the *lex ultimi domicilii* of the propositus. According to a French conflict rule however, the matter is governed by the *lex patriae*. Assuming that the Swazi courts operate the “total renvoi” theory, how will the matter be resolved by the High Court of Swaziland? (9 marks)

(c) If it is resolved that French law governs the distribution of Matsebula’s property, advise the Master of the High Court of Mbabane as to how French law on the matter is to be ascertained. (7 marks)

[Total: 25 marks]

QUESTION 7

Hexagon Investments Limited is a Swazi company based in Mbabane involved in the manufacture of candles. It entered into a contract with Van Wyk’s Candles of Pretoria. In terms of the contract, Hexagon supplied candles worth over E50, 000.00 (fifty thousand Emalangeni) to Van Wyk’s candles on credit. The contract was entered into in Mbabane. Van Wyk’s Candles does not have any property in Swaziland. Van Wyk’s Candles has failed to pay Hexagon Investments for the candles supplied, and has ignored repeated demands to honour its contractual obligation. Hexagon Investments has learned that then Swaziland government owed Van Wyk’s Candles an amount of E20, 000.00 (twenty thousand Emalangeni) which the government intended to pay by cheque in two weeks time. Hexagon Investments has also been informed by confidential sources that two Van Wyk’s trucks were in Swaziland to collect some supplies from a factory in Matsapha. The trucks are worth E30, 000.00 (thirty thousand Emalangeni). The trucks had been purchased from a South African car dealer on hire purchase. In terms of the agreement, ownership was to pass to the purchaser on delivery even though payment was to be in installments. Van Wyk’s Candles has paid only ten of the twenty total installments. Hexagon Investments wishes to sue Van Wyk’s Candles in the High Court of Swaziland. It has come to you for advice. What will your advice be? What possible defences can Van Wyk’s Candles interpose? (25 marks)