

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER
YEAR 2007**

TITLE OF PAPER	:	CONFLICT OF LAWS
COURSE CODE	:	L 404/L503
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

“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 2

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 3

(a) 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? (18 marks)

(b) 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 4

Hexagon Investments Limited, a Swazi company based in Mbabane, is 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 Emalangen) 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 the Swaziland government owed Van Wyk’s Candles an amount of E20, 000.00 (twenty thousand Emalangen) 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)

Question 5

Discuss the contributions of Ulric Huber to the theoretical development of private international law. You are specifically required to articulate his answers to the two questions, how may foreign be applied by the forum without committing treason against the local sovereign and what law to apply.
(25 marks)

Question 6

The applicant, Overseas Trading (Pty) Ltd, is a company registered according to the laws of Swaziland and carries on business in Mbabane. The respondent is Agricola Corporation which is described by the applicant as an autonomous Institute of the Republic of Venezuela created in accordance with the laws of Venezuela and having its head office and place of business in Caracas, Venezuela.

Agricola Corporation does not carry on business in Swaziland and, other than the maize hereinafter referred to, it has no assets in Swaziland. The applicant is the cessionary under a deed of session dated 3 June 1989 in terms of which Maize International Corp. (Pty) ceded all its rights, title and interest in and to certain claims which Maize International has against Agricola Corporation for breach of contract to the applicant. In order to prosecute this claim for damages, the applicant seeks to attach a cargo of maize aboard a truck parked at a warehouse in Matsapha, Swaziland. From the affidavits it appears that the respondent is a corporation subject in every respect to the control of the government of Venezuela and its sole function is to acquire agricultural products and implements on behalf of the state of Venezuela and it was in pursuance of that function that the cargo of maize in question was acquired.

The issue has been referred to the Legal Division of the Ministry of Foreign Affairs of Swaziland. You are a Senior Legal Counsel in the Ministry. Write a comprehensive Memorandum to the Minister indicating how the matter should be resolved.

[25 marks]

Question 7

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 ANC, a political movement in South Africa. When the ANC was outlawed in South Africa, the South African authorities 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 following issues:

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

[Total marks 25]