

Course Code: L404 (M) 2008

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : CONFLICT OF LAWS

COURSE CODE : L404

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS. MARKS FOR EACH QUESTION ARE INDICATED IN BRACKETS.

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

Question 1

- (a) Critically discuss the origins and the content of the so-called "Statute Theory" which lay the foundation for the development of Conflict of Laws as an independent field of study.

(15 Marks)

- (b) Are the terms "Conflict of Laws" and "Private International Law" to be regarded as synonymous? Discuss the point, while simultaneously pointing out what the content of Private International is, as well as its relationship with other branches of law.

(10 Marks)

Total Marks (25 Marks)

Question 2

- (a) Duma Khumalo, a Swazi national domiciled in France, died intestate leaving movable property in Nice, France. According to the swazi conflict rule, succession to movables is governed by the *lex ultimii domicilii* of the *propositus*. According to the French conflict rule, the matter was to be governed by the *lex patriae*.

Assuming the swazi courts adopt the total *renvoi* theory, how will the matter be resolved by the High Court of Swaziland.

(20 Marks)

- (b) How would your answer change (if at all), if in terms of the selected legal system, a convicted prostitute could succeed to the movable property in place of the wife.

(5 Marks)

Total Marks (25 Marks)

Question 3

Give a reasoned account setting out the rationale as well as the functional utility of the characterization process in the Conflict of Laws. What palliatives would you advocate to arrest the recurring problems which plague this area of the law?

(25 Marks)

Question 4

You are the technical advisor to the newly constituted Task Team on reforming the choice of law rules of Private International Law of Swaziland. The chairperson of the Task Force has tasked you to write for the body, a preliminary paper;

- (a) Explaining how foreign law may be applied in the forum of a sovereign state like Swaziland, without infringing local sovereignty. (15 Marks)
- (b) What the guiding principles ought to be in selecting the appropriate foreign law. (10 Marks)

Write a memorandum to the Task Team explaining how other nations in different eras have dealt with and attempted to answer the two interrogatories.

Total (25 Marks)

Question 5

The plaintiff, Sputnik, was a maintenance technician living and domiciled in Mozambique. The defendants are a nationalized company in Rwanda which was registered in Swaziland under the Companies Act. In June 1997, the plaintiff was employed by the defendants through agents in Mbabane to work for the defendants in

Rwanda. The contract of employment was duly made in Mbabane, and the plaintiff worked in Rwanda until November 1998 when he decided to resign due to alleged breach of contract by the defendants.

The Plaintiff has commenced legal proceedings against the defendants in Swaziland for damages flowing from the breach of contract. The defendants in their plea claimed that the law applicable to the contract and/or to any obligation owed to the plaintiff was Rwandan law.

You are Senior Counsel in charge of civil matters in the firm Mahogany & Partners in Mbabane. Write a comprehensive brief for the partner's meeting indicating how the case should argued.

(25 Marks)

Question 6

- (a) Define Domicile. What are its main uses as a basis of jurisdiction? Are there any alternatives? (10 Marks)
- (b) With the aid of decided cases, explain the nature and duration of a domicile of dependence. (15 Marks)

Total (25 Marks)