

Course Code: L404 (S) 2008

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

SUPPLEMENTARY EXAMINATION PAPER, JULY 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

It has been argued that if foreign law is allowed to have a say in what circumstances it is to be applied, the *lex fori* would lose control over the application of its own rules for the conflict of laws, and would no longer be “master in its own house.”

With the aid of decided cases and/or illustrations, identify the shortcomings of the pure *lex fori* approach to classification.

What palliatives would you recommend which would arrest the shortcomings inherent in the *lex fori* approach to classification, and at the same time promote the desirability of gradually moving towards a set of common internationally accepted concepts in the field of private international law?

(25 Marks)

Question 2

Critically discuss the contributions of;

- (a) Count Von Savigny,
- (b) The Statutists, and,
- (c) Ulrich Huber

to the development of Private International Law. You are specifically required to articulate the abiding legacies of these several sources to the development of this subject.

(25 Marks)

Question 3

Explain the theory of *Renvoi*. With the aid of decided cases, indicate what, in your opinion, should be the attitude of the Swazi Courts to it. Highlight also what you

understand to be the “incidental question” which arises in connection with the problem of Renvoi?

(25 Marks)

Question 4

- (a) Mr Zwane, a Swazi national and political activist, left Swaziland in 1999 and settled in California, USA with the intention of staying there “until the Monarchy is abolished in Swaziland.” In 2003, he died of a massive cerebral tumour. At the time of his death, his estate consisted in the main of movables in Swaziland and thus the High Court of Swaziland is seized of the task of directing how his estate is to be distributed among his heirs. The Swazi conflict rule on the matter points to the *lex ultimi domicilii*, while US law relies on the *lex patriae*.

Discuss the legal problem(s) involved and how it (they) could be resolved.

(15 Marks)

- (b) Mrs Munro, a woman with an English domicile of origin acquired a Swazi domicile by virtue of her marriage to a Swazi diplomat. She settled in Manzini but when her husband died, she decided to return to England. On her way to the England having boarded a plane, she suffers a heart attack and dies en route.

What law should govern the distribution of her estate?

(10 Marks)

Total (25 Marks)

Question 5

- (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)

Question 6

Discuss the principles and the jurisdictional connecting factors governing the jurisdiction of the High Court of Swaziland. Under what circumstances may the jurisdiction of the Court be excluded?

(25 Marks)