

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

**SUPPLEMENTARY EXAMINATION PAPER 2009**

**TITLE OF PAPER : CONFLICT OF LAWS**  
**COURSE CODE : L404**  
**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS : ANSWER ANY FOUR  
QUESTIONS OF YOUR  
CHOICE.  
MARKS FOR EACH  
QUESTION ARE  
INDICATED IN BRACKETS.**

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

### **Question 1**

Professor Kahn Freund is credited with christening a revolutionary change in private international law as the “Copernicus Revolution”. Critically assess this statement.

(25 Marks)

### **Question 2**

Hans Friedman, a soldier with German domicile of origin, arrived in Swaziland in 1986 with intention “to stay in Swaziland and remain in this beautiful Kingdom until “multi-party democracy was established here.” He settled in Mbabane and married a Swazi nurse in 1992. When his wife died in a tragic accident in 1996, he decided to return permanently to German, even though “multi-party democracy had not been established.” On his way to Matsapha International Airport to board the plane to Germany, he was involved in a fatal accident and died. What law should govern the distribution of his estate consisting entirely of movables in Mbabane?

(19 marks)

(b) If it is decided that German Law governs the distribution of his estate how will the contents of the applicable German law be ascertained before the High Court of Swaziland?

(6 marks)

(Total Marks 25)

### **Question 3**

With the aid of the case of *Ogden v Ogden*, illustrate the deficiencies of the lex fori approach to classification. What alternative approach would you advocate to arrest the recurring problems which plague this area of the law?

#### Question 4

In *SIMONIN V. MALLAC (1908)*, two domiciled French persons came to England and went through a ceremony of marriage in the English form, returning to Paris two to three days later. The wife subsequently petitioned the English court for a decree of nullity on the ground of want of parental consent. By French law, the parties were capable of inter-marriage, but they were required to ask advice of their parents, and this request had to be repeated each month for three months if the parents were adverse to the marriage. At the end of the fourth month the marriage might take place despite parental disapproval. The parties had entered into an *ante* nuptial agreement in France ousting the jurisdiction of the court in relation to the payment of alimony and/or maintenance monies in respect any minor children.

Referring to any relevant decisional law on point, resolve the issues presented in the case.

(25 Marks)

#### Question 5

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

b) Simon Mavuso, a Swazi national domiciled in France, died intestate in Mbabane leaving movable property in Paris. According to a Swazi choice of law rule, intestate succession to movables is governed by the *lex ultimi domicilii* of the de cujus. 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 if seized of such dispute. (9 Marks)

c) If it is decided that French Law governs the distribution of Mavuso's property, advise the Master of the High Court as to how French Law is to be ascertained.

(7 Marks)

Total (25 Marks)