

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

EXAMINATION PAPER, MAY 2010
(MAIN)

TITLE OF PAPER : **CONFLICT OF LAWS**

COURSE CODE : **L404**

TIME ALLOWED : **3 HOURS**

MARKS ALLOCATED : **100 MARKS**

INSTRUCTIONS : **ANSWER QUESTION ONE WHICH IS COMPULSORY, AND ANY THREE (3) QUESTIONS OF YOUR CHOICE.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE PROCTOR.

[TURN OVER]

Question 1

The Roman-Dutch scholar and philosopher Ulric Huber postulated three (3) maxims in an attempt to answer the two critical questions concerned with the development of principles of conflict of laws. Referring to the appropriate maxim for choice of law, critically describe the development of our conflict of law rules.

25 Marks

Question 2

In *SIMONIN V MALLAC*, two domiciled French persons came to England and went through ceremony of marriage in the English form, returning to Paris 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 of any minor children.

Referring to any relevant decisional law on point, resolve the issues presented by the factual matrix.

25 Marks

Question 3

- (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)

- (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)

Total (25 Marks)

Question 4

(a) Render a functional and exhaustive account of the statutory recognition and enforcement of foreign judgments.

(15)

(b) Explain "international competence" in terms of the common law.

(10)

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

Critically describe the ameliorative endeavors by the courts to the so-called “double actionability” vice in choice of law involving delictual obligations.

(25 Marks)