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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

EXAMINATION PAPER, MAY 2011
(MAIN)

TITLE OF PAPER : **CONFLICT OF LAWS**
COURSE CODE : **L404**
DURATION : **3 HOURS**
MARKS ALLOCATED : **100 MARKS**
INSTRUCTIONS : **ANSWER QUESTION ONE**
WHICH IS COMPULSORY, &
THREE (3) QUESTIONS
OF YOUR CHOICE.

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

Albert, a Swazi citizen who lived in Portugal, decided to take a cruise down the west coast of Norway on a ship operated by a Norwegian company, Norsk Steamship. Albert booked and paid for the cruise through Norsk Steamship's agent in Mbabane who issued a receipt to Albert and provided him with detailed information about the cruise. One piece of this information was that Albert would be issued with a ticket for the cruise when he boarded the ship at its Norwegian port of departure.

During the cruise, and while the ship was in Norwegian territorial waters, Albert suffered personal injury in an accident when he fell down a set of slippery stairs.

- A) Advise Albert of the conflict of laws issues which might arise in proceedings by him in the Supreme Court of Swaziland against Norsk Steamship to recover damages for personal injury.

In advising Albert, you are aware of the following additional information:

- (i) Norsk Steamship owns assets in Mbabane.
- (ii) The ticket for the cruise which was issued to Albert when he boarded the ship included a provision (of which Albert was unaware) that any legal claim by a passenger against Norsk Steamship arising out of an accident during the cruise was subject to the jurisdiction of the Oslo City Court, Norway.
- (iii) The law of Norway imposes strict liability (i.e. liability without proof of fault) on the operator of a ship for personal injury suffered by a passenger in a shipboard accident. However, in respect of an accident of this kind, the law of Swaziland requires proof of fault on the part of the operator of the ship.

- (iv) The law of Swaziland provides for a limitation period of three years for commencing proceedings to recover damages for personal injury. Although this period has just expired, the limitation period under the law of Norway is four years.
- (v) The amount of damages recoverable under the law of Norway for personal injury is substantially less than the amount of damages recoverable under the law of Swaziland.

15 Marks

- B) Would your advice be different if the rule in *Phillips v. Eyre* continued to operate in modern Swazi law? Would your advice be different if the accident had occurred while the ship was passing through Swedish territorial waters?

10 Marks

Total (25 Marks)

Question 2

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 3

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Suppose the property of a Namibian citizen, resident in Mbabane Swaziland, has been the subject of seizure (expropriation) by revolutionaries in the course of a civil war in Libya.

Give an account of the principles of conflict of laws relevant to whether this seizure (expropriation) will be recognised in Swaziland.

(25 Marks)

Question 4

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 5

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 6

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- (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 domicilini*, 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)

(25 Marks)