

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

232

EXAMINATION PAPER, JULY 2011
(SUPPLEMENTARY)

TITLE OF PAPER	:	CONFLICT OF LAWS
COURSE CODE	:	L404
DURATION	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER FOUR QUESTIONS OF YOUR CHOICE.

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

Question 1

233

*The following report appeared in The Times of Swaziland, 22 December 2009: **Tourist hurt***

A Swazi woman touring in Spain was flown to RFM Hospital in that country last night with severe head injuries after being hit by a car there. -NZPA

Suppose the driver of the car referred to in this report is a Spanish resident, who is a frequent visitor to Happy Valley Hotel in Ezulwini, where this person owns substantial assets.

Explain the conflict of laws principles, including proof of foreign law, relevant to a common law negligence action which the injured woman might bring against the driver in the High Court of Swaziland. In this regard, you are aware that a statutory accident compensation scheme in Spain has abolished civil liability for accidental personal injury.

Would your explanation of the relevant conflict of laws principles be different if the rule in *Phillips v Eyre* (1870) LR 6 QB 1 continued to form part of modern Swazi law?

Question 2

Menzi Simelane, 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 ultimi domicilii* of the *propositus*. According to the French conflict rule, the matter was to be governed by the *lex patriae*.

- (a) Assuming the Swazi courts adopt the total *renvoi* approach, how will the matter be resolved by the High Court of Swaziland?
(20 Marks)
- (b) How would your answer to (a) change, if at all, in terms of the selected legal system, a convicted prostitute mistress could succeed to the movable property in place of the wife.
(5 Marks)
- (25 Marks)**

Question 3

Give a reasoned account of the current status of the law with regard to the recognition and enforcement of foreign judgments in our jurisdiction.

(25 Marks)

Question 4

- (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 5

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 High Court be excluded?

(25 Marks)