

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

**EXAMINATION PAPER, December, 2012**  
**(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.**

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**[TURN OVER]**

### Question 1

- a) In 2012, Turkcell, Turkey's largest mobile phone operator (based in Istanbul, Turkey), instituted delictual legal proceedings against the South African based, MTN Group LTD in Washington DC, United States. It alleged that it had initially competitively won a lucrative tender to supply mobile telephone services in Iran, but due to MTN's bribery of officials, made against certain embargo-lifting promises, lost out to the latter.

Critically state the conflicts basis for the lawsuit by Turkcell in the United States, as well as any counter-arguments that could be proffered by MTN. **[10 marks]**

- b) Plumplum (domiciled in Brazil, but resident in Mbabane) and his son, Sputnik (domiciled in Lesotho) are visiting an amusement park in Randburg, South Africa when an electric circuit breaks exploding on their roller-coaster ride and they both die intestate. At the time of his death Plumplum has only two assets: land in Swaziland and a bank account in Brazil. After his death, Plumplum's land is sold and the proceeds are added to the bank account in Brazil. Administrative proceedings concerning Plumplum's estate are then brought in the High Court of Swaziland. There are only two claimants – Mother (the wife of Plumplum), who is domiciled in Brazil, and Grandson (the son of Sputnik), who is domiciled in Lesotho.

Under the law of intestate succession of all relevant countries (Brazil, Lesotho, Swaziland and South Africa), if Sputnik died

before Plumplum or if Plumplum and Sputnik died at the same time, Plumplum's assets go to Mother. On the other hand, under the law of all relevant countries, if Sputnik outlived Plumplum (if only for a second), then Mother and Grandson share Plumplum's assets equally.

There is no evidence concerning who died first, Plumplum or Sputnik. Under the law of Brazil and South Africa, when a parent and a child both die in the same event, the rebuttable presumption is that they both died at the same time. Under the law of Swaziland and Lesotho, when a parent and a child both die in the same event, the rebuttable presumption is that the child died after the parent.

You are the Chief Justice presiding over this matter. Justiciouly referring to the relevant rules for choice of law, critically determine which legal system to apply as well as the legal entitlements, if at all, of Mother and Grandson. **[20 marks]**

**Total [25 Marks]**

## **Question 2**

In 2010, two cousins, a Swazi man and Nigerian woman domiciled in Sharia law-controlled Yobe, Nigeria came to Mbabane and went through a ceremony of marriage, returning to Lagos a day later. The wife subsequently petitioned the High Court of Swaziland for a decree of nullity on the ground of want/lack of Nigerian parental consent. By Sharia law (which applied in Lagos), the parties were not capable of inter-marriage, and they were required to ask the 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 would not take place if the parents disapproved.

- A] As the presiding learned Chief Justice, critically resolve the two legal issues that arise *ex facie* the case. (15)
- B] If the High Court presumably adopts the approach to *renvoi* followed in old England, and the Sharia Code implicitly adopts the no-*renvoi* theory, what would be the result of the petition for annulment? (10)

**[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. The High Court of Swaziland is seized of this matter including the distribution of the estate 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, Vezi Mashaba, 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.

Mashaba 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 partners' meeting indicating how the case should be argued.

**[25 Marks]**

### **Question 6**

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

**[25 Marks]**