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

**EXAMINATION PAPER, DECEMBER 2013**  
**(MAIN)**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>CONFLICT OF LAWS</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L404</b>
<b>DURATION</b>	<b>:</b>	<b>3 HOURS</b>
<b>MARKS ALLOCATED</b>	<b>:</b>	<b>100 MARKS</b>
<b>INSTRUCTIONS</b>	<b>:</b>	<b>ANSWER QUESTION <u>ONE</u></b> <b>WHICH IS COMPULSORY, &amp;</b> <b>THREE (3) QUESTIONS</b> <b>OF YOUR CHOICE.</b>

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## Question 1

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(A)

Peter Gozolo, a reputed business tycoon, domiciled in Thailand and resident in Swaziland has been sent by his company for a computer design workshop in New York, United States, for 3 months. *En route* there, his plane has a day's stop-over in London Heathrow airport. While waiting in the VIP Lounge to transit to the US, he converses with a friendly woman who, *inter alia*, reveals that she is the famous body augmentation surgeon and Thai Consular representative in Swaziland, Dr Mary Wonder who states that she has fallen in love with Swaziland and *would have* loved to make it her home.

She is an unmarried resident of Swaziland who resides in the country for the duration of her appointment as Consular representative for Thailand. The conversation soon leads to a special agreement for Gozolo to undergo a new skin lightening procedure in the US under the scalpel of Dr Wonder before he leaves back for Swaziland. These were the only terms of engagement.

After two months, an eager Gozolo travels to California to have Dr Wonder perform the operation on him together with a team of specialist Thailand surgeons. Before they can operate, and while under anaesthesia, the team of doctors led by Dr Wonder discover a possible complication if they continue, and decide to airlift Gozolo to a better medical facility in Mexico. In the course of the operation in Ontario, Gozolo dies. Mrs Gozolo decides to institute action against Dr Wonder and her clinician company for wrongful death and loss of dependency in the High Court of Swaziland claiming her husband's action survived to her.

Swaziland has a wrongful death statute that limits recompense to E50,000 provided also that all the substantial facts occurred and were felt in one country. Mexico has a guest statute that denies recompense to patients for

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injuries sustained due to medical negligence. California has a wrongful death statute that awards a minimum \$2million.

At the hearing of the matter at the High Court, the parties are aware that the Swazi court would only be seized of jurisdiction on the basis of the defendant's domicile only. Defendant however denies the court's jurisdiction, raising arguments about her legal disability in connection therewith.

As Chief Justice in this case, firstly, decide the issue of domicile. Thereafter, render a balanced judicial opinion on the two central issues (as well as associated issues of each) on choice of law involving legal obligations that are dispositive in the matter. 20

**(B)**

Explain the Alien Tort Claims Act (1789) including how it is related with human rights law. 5

**[25 Marks]**

## **Question 2**

a) Count Von Savigny's contribution to the theory and development of our choice of law rules has been aptly termed "the Copernicus revolution." Give a balanced account of this revolution and contrast it with the period 5 to 10<sup>th</sup> A.D. 15

b) How may an ascertained *lex causae* be excluded by the *forum*? 5

**[25 Marks]**

### Question 3

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- a) Sipho obtained a divorce decree against Sibongile in respect of a marriage that was contracted and solemnized in Kampala, Uganda. Before the judgment could be served on Sibongile, she fled the country to live permanently in Siteki, Swaziland. Sipho located her there (no doubt through the infamous and relentless efforts of his private investigator, Hunter Shongwe!) and wishes to have the decree recognized and enforced in this country against Sibongile.

Expressly referring to the relevant Act and sections, firstly, give an account of all the statutory rules of conflict of laws on recognition and enforcement in Swaziland, and decide whether this judgment would be enforceable in Swaziland. **20**

- b) Suppose Sipho has in addition, obtained a Ugandan judgment against Sibongile which is in respect of commission fees owed by the latter in a prostitution deal. Referring to the relevant statutory section, explain whether this judgment would be recognized and enforceable. **5**

**[25 Marks]**

### Question 4

Closely referring to the poignant dissent in the case of **Johnson v Johnson**, critically discuss the domicile of choice and origin.

**[25 Marks]**

### Question 5

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Spaza Simelane, a Swazi and wealthy businessman, was born in in 1940 in Lavumisa, Swaziland. At the age of 25 he went to seek fame and fortune in Ethiopia where he married his ravishing wife, Katherine. Except for various stays in North Africa and South America, he lived in Addis Ababa, Ethiopia throughout his life until he passed on in 2010. Catherine died two years later in Mbabane. Woinshet was born in Addis Ababa in 1975 acquiring her father's nationality, and from 1985 to 1995 lived in various places in South Africa, Lesotho and Namibia. She never lost her Swazi nationality.

Around 1990, she went with her father on a short tour of Swaziland. In 1996, she settled down in Cairo, Egypt and resided there until her death 12 years later in 2012.

At the hearing of succession to her intestate movable property as a spinster, the High Court of Swaziland has held that she had acquired a domicile in Egypt. But there remained the question of what law would be used to govern these succession rights.

Assuming Swaziland adopts the total *renvoi* approach, and Egypt is a civil law country which uses the *lex patriae*, provide a comprehensive opinion, as *amicus curiae* (friend of the court) on how the court should resolve the question.

**[25 Marks]**