

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2016

PAPER TITLE: CONFLICT OF LAWS

COURSE CODE: L404

TIME ALLOWED: THREE (3) HOURS ONLY

INSTRUCTIONS:

- 1. ANSWER ANY FOUR QUESTIONS OF YOUR CHOICE. ALL QUESTIONS CARRY EQUAL MARKS.**

UNLESS PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR, DO NOT OPEN THIS PAPER.

Question 1

Msebenzi, a successful Swazi businessman of Nkalashane in the Lubombo district of Swaziland, fell in love with Mbali a beautiful Nigerian who hails from Ogoniland, Nigeria. The two love birds exchanged marriage vows in a colourful ceremony at “The Hague Cathedral” in Botswana. In 2002 Msebenzi got employed by Amnesty International and on secondment by Amnesty International the couple relocated to the Republic of Kuvukiland. Two children were born out of the marriage, Vuyisile (born in 2003) and Louis (born in 2005). Around 2007 the marriage between the parties went sour due to irreconcilable differences between the parties. Mbali instituted divorce proceedings before the High Court of Kuvukiland.

In November 2007 the High Court of Kuvukiland issued a final decree of divorce and a custody order for the minor children in favour of Mbali. The Court further ordered Msebenzi to pay the sum \$30,000 (Thirty Thousand United States Dollars) for attorneys’ fees. In January 2008 Msebenzi returned to Swaziland, his all-time home, with the minor children and Mbali followed him to Swaziland. Mbali has since filed an application before the High Court of Swaziland wherein she seeks an order that the judgment of the High Court of Kuvukiland be registered and enforced as a judgment of the High Court of Swaziland. Parallel to this application is an action for divorce between the parties wherein Msebenzi is the Plaintiff. Mbali has raised a special plea of *res judicata* in the divorce action on the basis that the matter was finalised by the High Court of Kuvukiland.

With Reference to relevant case law and legislation, discuss the issues arising from the above case.

[25 Marks]

Question 2

Critically discuss the contributions of:

- (a) The Statutists;
- (b) Ulrich Huber; and
- (c) Count Von Savigny

to the development of Private International Law, focussing on the abiding legacies and/or shortcomings of each contributor in the history of the subject. **[25 Marks]**

Question 3

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]**

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)

[25 Marks]

Question 5

Ahmed Latiff, a Pakistani businessman domiciled in Pakistan falls in love with Zandi a Swazi national of Ngabezweni. They get married according to Islamic Law at the Mosque in Manzini, Swaziland. From this marriage, a child named Iqbal is born. Five years later Ahmed catches his wife in the act of adultery with Patel. Her husband pronounces "*talaq*" ("I divorce you") upon her three times in the presence of witnesses in accordance with Islamic Law.

Ahmed has since filed papers before the High Court of Swaziland wherein he seeks an order declaring that the marriage between him and Zandi was lawfully dissolved upon pronouncement of "*talaq*" and in the alternative that the court grants a decree of divorce in his favour on account of defendant's adultery. He further seeks an order for the custody of the minor child, Iqbal.

Drawing a distinction between annulment and divorce proceedings, discuss the legal issue(s) to be determined by the Court specifically commenting on issues of the validity of the marriage and jurisdiction of the Court seized of the matter.

[25 Marks]

Question 6

Comment briefly on the category or connecting factors, as the case may be, in a multilateral conflict rule for each of the following:

(a) *Locus regit actum*.

- (b) *Lex rei sitae*.
- (c) *Lex loci celebrationis*.
- (d) Jurisdiction in divorce proceedings.
- (e) The status of the *propositus*.

[25 Marks]