

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, NOVEMBER 2016

PAPER TITLE: CONFLICT OF LAWS

COURSE CODE: L404 (LLB PROGRAMME)

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

With reference to *Ogden v Ogden [1904-07] All ER Rep. 86*, illustrate the deficiencies of the *lex fori* approach to classification. What alternative approach would you advocate to arrest the recurring problems which plague this area of the law? (25)

Question 2

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 *animo non-revertendi* until her death 12 years later in 2012.

The hearing of succession to her intestate movable property as a spinster, is pending before the High Court of Swaziland. Mamba J. has correctly categorised the dispute as one of intestate succession to movables and has accordingly held that under our Roman-Dutch common law, the applicable conflict rule is the *lex ultimi domicilii*.

- (a) Determine Woinshet's domicile at the time of her death. (10)
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- (b) Assuming Swaziland adopts the total *renvoi* approach, and the country of Woinshet's last domicile in you answer to (a) above

(Country "X") is a civil law country which uses the *lex patriae*, provide a legal analysis of how you would determine the *lex causae* if:

- (i) Country "X" adopts the no-renvoi approach. **(5)**
- (ii) Country "X" adopts the partial-renvoi approach. **(5)**
- (iii) Country "X" adopts the total-renvoi approach. **(5)**

Question 3

Ernest, a successful Swazi businessman of Nkalashane in the Lubombo district of Swaziland, fell in love with Sikhulile, 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 Ernest got employed by Amnesty International and on secondment by Amnesty International the couple relocated to the Republic of Kuvukiland with the intention to remain there until Ernest's contract of employment expires after 10 years. Two children were born out of the marriage, Fanelo (born in 2003) and Zenani (born in 2005). Around 2007 the marriage between the parties went sour due to irreconcilable differences between the parties.

Sikhulile has instructed you as her lawyer to institute divorce proceedings in the High Court of Kuvukiland. With reference to authorities, advise her on the following:

- (a) Which court has jurisdiction over the matter? **(5)**

- (b) If the High Court of Kuvukiland proceeds to hear and determine the matter, will a plea of *res judicata* be sustained in a subsequent divorce action between the same parties on the same facts should Ernest institute such action when he returns to Swaziland? **(10)**

(c) If the High Court of Kuvukiland proceeds to hear and determine the matter, and a divorce decree is granted in favour of Sikhulile, will the Judgment Creditor be able to register the judgment of the High Court of Kuvukiland for recognition and enforcement in Swaziland? **(10)**

Question 4

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)**

Question 5

The English writer, Professor Cheshire, has formulated the four-staged scheme which more fully describes the mechanics of the application of the multilateral conflict rules by the courts. Fully discuss these stages as propounded by Professor Cheshire. **(25)**