

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, NOVEMBER 2017

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 decided cases, briefly discuss any three approaches to the problem of classification pointing out the deficiencies of each approach and, where possible, making your own suggestions on how to address those deficiencies. [25 Marks]

Question 2

Give an account of the development of our Roman-Dutch private international law, paying particular focus on any three contributors and their legacies in this field. [25 Marks]

Question 3

- (a) Critically comment on the case of *Anderson v The Master 1949 (4) SA 660 (E)* and express your views on how it addresses the problem of classification. (10)
- (b) Discuss the conflict rule applied in determining the proprietary consequences of a marriage. Refer to applicable case law. (10)
- (c) Which court has jurisdiction to determine the status of a person. Cite relevant case law. (5)

Question 4

It is generally accepted that the law sits in the bosom of judges, expressed in the maxim *jura novit curia* (judges know the law). However, Van Wyk JA in *Schlessinger V Commissioner for Inland Revenue*

1964 (3) SA 389 declared that “our courts cannot take judicial notice (of foreign law)...” Discuss this latter statement in the context of Professor Cheshire’s four-staged approach to the application of the multilateral choice of law rules. **[25 Marks]**

Question 5

Citing relevant case law and legislation, give a detailed account of the law governing the recognition and enforcement of foreign judgments in Swaziland. **[25 Marks]**

Question 6

Write short notes on the following:

- (a) *Forum (non) conveniens*. (5)
- (b) Jurisdiction of the High Court of Swaziland over foreign sovereigns. (5)
- (c) *Res judicata*. (5)
- (d) *Functus officio*. (5)
- (e) Jurisdiction over actions affecting status. (5)

[25 Marks]