

UNIVERSITY OF ESWATINI

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JANUARY 2019

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.**
- 2. THIS QUESTION PAPER CONTAINS FOUR PAGES. PLEASE ENSURE YOU HAVE ALL THE PAGES.**

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

Question 1

Christo Van Heerden is a South African national whose domicile of origin is also South Africa, employed by Steffanutti Stocks (Pty) Ltd in Eswatini. His presence in Eswatini is dependent on the procurement of work permits which he has continued to renew from time to time since 2014 when he first arrived in Eswatini. In 2011 he got married to Melanie Geldenhuys a Liswati by nationality. Prior to the solemnisation of the marriage the parties executed an antenuptial contract which was signed before a notary public in Barberton South Africa. Since 2014 the parties have been living together in Mankayane. In 2015 Christo made an application to acquire a Swati citizenship but he did not pursue that application any further after completing the prescribed application form. The parties are blessed with two lovely boys, Gerhardus and Friederich.

In 2017 Melanie filed for divorce before the High Court of Eswatini. Christo did not defend the divorce and a decree of divorce was issued against him. The Court further ordered that Christo should contribute 20% of the value of his estate to the estate of Melanie by virtue of the accrual system in the marriage as per the antenuptial contract signed by the parties. The Court further ordered that Christo must pay a monthly sum of E15 000.00 as maintenance for the minor children. It was further ordered that Christo should pay cost of suit.

Referring to decided cases advise Christo on the validity of the decree of divorce.

[25 Marks]

Question 2

In ***Schlessinger V Commissioner for Inland Revenue 1964 (3) SA 389*** Van Wyk JA held that our courts cannot take judicial notice of foreign law. Certain stages have to be followed in the application of multilateral choice of law rules in order to determine the *lex causae*. Give an account of Professor Cheshire's four-staged approach to the application of the multilateral choice of law rules.

[25 Marks]

Question 3

The case of ***Ogden v Ogden [1904-07] All ER Rep. 86*** has been criticised for the apparent injustice resulting from the approach adopted by the Court to the problem of classification. Critically comment on this case and make suggestions on how courts should approach the issue of classification.

[25 Marks]

Question 4

Give an account of the law of Eswatini on the recognition and enforcement of foreign judgments.

[25 Marks]

Question 5

Write short notes on the following:

- (a) *Forum (non) conveniens.* (5)
- (b) The distinction between acts *jure imperii* and acts *jure gestionis.* (5)
- (c) *Res judicata.* (5)
- (d) *Functus officio.* (5)
- (e) The distinction between personal laws and territorial laws. (5)

[25 Marks]