



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER  
2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW 507

TITLE OF PAPER: PRIVATE INTERNATIONAL LAW

TIME ALLOWED: 3 HOURS

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**Instructions:**

1. This paper consists of Six (6) Questions.
2. Question One (1) is compulsory.
3. Answer any other Three (3) questions of your choice.

**Special Requirements**

None

**Additional Material (s)**

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

### **Question One**

Nomvula, a Swati who lived in Brazil, decided to take a cruise down the beautiful west coast of Mozambique on a ship operated by a Portuguese company, Port-Ocean Cruiser. Nomvula booked and paid for the cruise through one of Port-Ocean Cruiser's agents situated in Mbabane who issued a receipt to Labert and provided her with detailed information about the cruise. One piece of this information was that Nomvula would be issued with a ticket for the cruise when she boarded the ship at its Mozambican port of departure.

During the cruise, and while the ship was on Mozambican territorial waters, Nomvula suffered injury when she fell down a flight of slippery stairs from the in-ship cinema on the third floor.

A) Advise Nomvula of the conflict of law issues which might arise in proceedings by her in the Supreme Court of eSwatini against Port-Ocean Cruiser to recover damages for personal injury.

In advising Nomvula, you are aware of the following information:

- i) Port-Ocean Cruiser owns assets located in Mbabane
- ii) The ticket for the cruise which was issued to Nomvula when she boarded the ship included a provision (of which she was unaware) that any legal claim by a passenger against Port-Ocean Cruiser arising out of an accident during the cruise was subject to the jurisdiction of the High Court in Lisbon, Portugal.
- iii) The law of Portugal imposes strict liability (ie, liability without proof of fault) on the operator of a ship for personal injury suffered by a passenger in a shipboard accident. Notably, in respect of an accident of this kind, eSwatini law requires proof of fault on the operator of the ship.
- iv) The law of eSwatini provides for a limitation period of three years for commencing proceedings to recover damages for personal injury. Although this period has recently expired, the limitation period according to Portuguese law is four years.

- v) The quantum of damages recoverable under the law of Portugal is substantially less than the quantum of damages recoverable under the law of eSwatini.

**15 Marks**

**B)** Would your advice be different if:

- a) the rule in *Phillips v Eyre* continued to operate under modern eSwatini law?

**5 Marks**

- b) the accident had occurred when the ship was passing through South African waters?

**5 Marks**

**Total 25 Marks**

### **Question Two**

Critically discuss the contributions of:

- a) The Statutists,
- b) PS Mancini, and
- c) Count Von Savigny

to the development of private international law. You are specifically required to articulate the abiding legacies of these several sources to the development of this subject.

**25 Marks**

### **Question Three**

Maxwell Magezi who is a domiciliary of Angola, left Angola in his car for a trip to Botswana. At a rest stop in Zambia he picked up a hitchhiker, Kheta a domiciliary of eSwatini. While traveling south in Zambia a deer jumped in front of the car. Maxwell swerved to get out of the way and hit a tree. In the accident, Kheta, who was not wearing a seatbelt, was ejected from the car and sustained serious injuries. Kheta sued Maxwell in state court in Angola. Maxwell introduced the defense that P was contributorily negligent by failing to wear a seatbelt. Under the law of Angola, eSwatini, and Zambia, Kheta was obligated to wear a seatbelt. But under the law of Zambia, in a negligence suit the defendant may not argue that the plaintiff was contributorily negligent by virtue of not wearing a seatbelt. Angola and

eSwatini allow such a defense. Arguing that Zambian law applies, Kheta moved to strike Maxwell's defense. Should the application be granted and why or why not?

**25 Marks**

**Question Four**

Suppose the property of a South African citizen, resident in Mbabane, eSwatini, has been the subject of seizure (expropriation) by revolutionaries in the course of a civil war in the Gambia.

Give a full account of the principles and rules of conflict of laws relevant to whether this expropriation will be recognized and enforced in the ESwatini courts.

**25 Marks**

**Question Five**

Write short notes on the following (5 Marks each):

- a) Partial *renvoi*
- b) Doctrine of *faus legis*
- c) The pleas of *lis alibi pendens* and *res judicata*
- d) 'enemy alien'
- e) Party autonomy

**25 Marks**

**Question Six**

Critically discuss what is meant by the 'proper law of the contract' in relation to the case of *USA Distillers (Pty) Ltd v Umcebo Mining (Pty) Ltd*.

**25 Marks**