

# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, APRIL, 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW 507

TITLE OF PAPER: PRIVATE INTERNATIONAL LAW

TIME ALLOWED: 3 HOURS

---

## Instructions

1. This paper consists of Five (5) Questions.
2. Answer Question One which is compulsory, and
3. Any three (3) questions of your choice.
4. The questions may be attempted in any order of your choice.

Nb: \* Copyright over any image herein is settled.

## Special Requirements

None

## Additional Material (s)

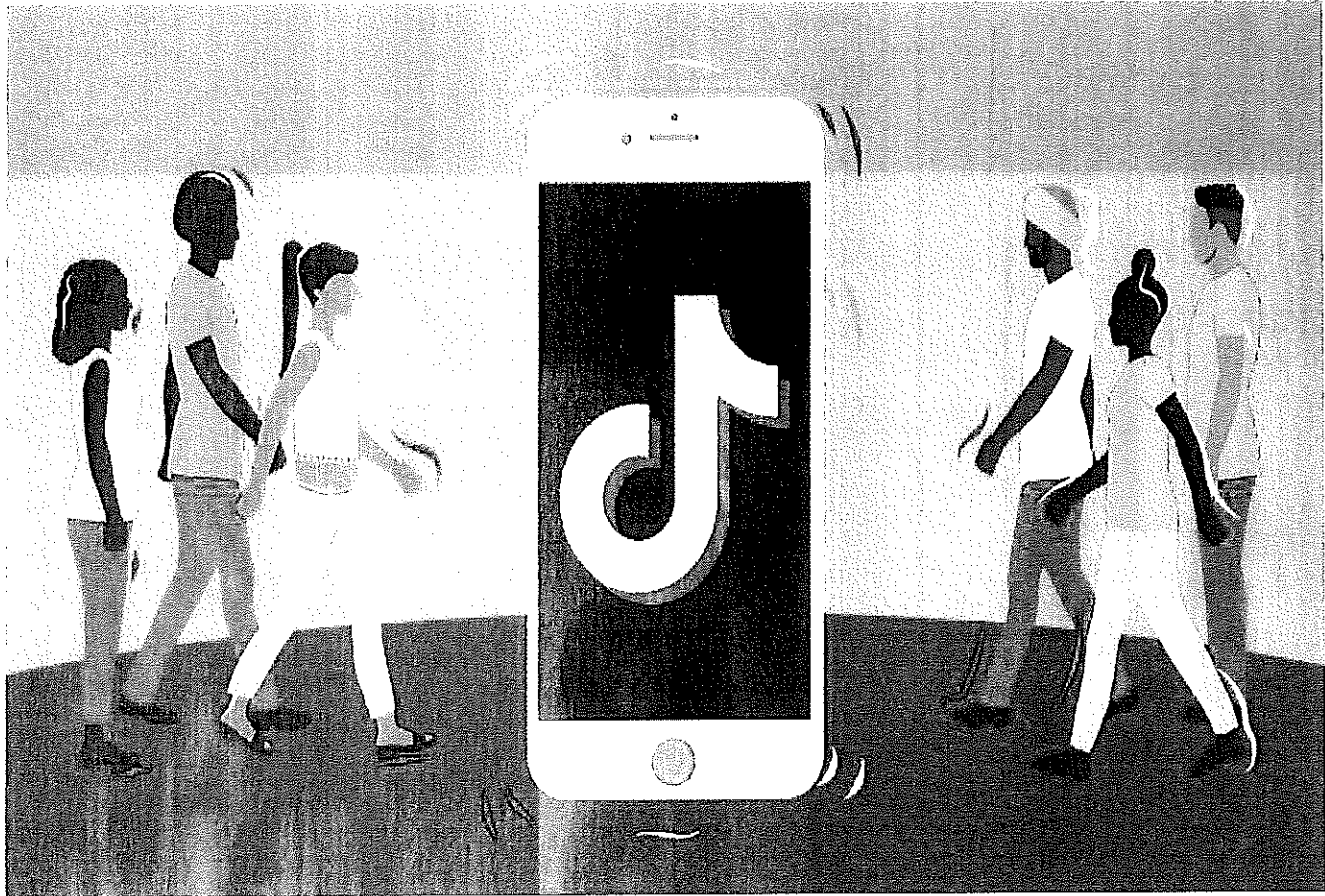
None

*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



The above image\* depicts the very Chinese-originated popular video sharing social networking application called "TikTok." It is a new global phenomenon that has taken the social media world by storm. Social media boffins are able to make and share a miscellany of short-form videos (mostly of themselves and typically lasting no more than a minute) from genres such as comedy/parody, biography, dance and education. Users may register and log in from anywhere in the world quite anonymously and may add positive and also negative commentary to what a creator has posted.

No one knows the down side of TikTok than Romanus Simelane, a 5<sup>th</sup> year completing law student who tikToks from her dormitory room at the Uniswa Kwaluseni campus. Other than being a regular poster of fairly non-offensive humorous content of herself and socio-political situations, Romanus has

used the platform to inspire and motivate ostracised plus-size females to gain self-confidence as well as advertising her chic plus-size clothing range. TikTokers can order these chic clothes from Brazil and have them shipped to their desired locations. However, eight months ago she became the subject of an unprovoked vitriolic attack. Sputnik, a Russian user and avid follower of her TikTok page had bought her summer range but was not too impressed with the quality upon receipt of same when the clothes were delivered to her sister residing in Nigeria (after her sister's try-on). A disappointed Sputnik immediately posted on the Romanus page that she was sold a lemon, that the clothes were made of poor quality and that not even her "obese cat would want to be seen in these." Later, more users joined the fray, largely from the United States who attacked Romanus with a plethora of expletives straddling body shaming and outright bullying. The result was that she lost income and had to shut down her clothing business.

Romanus, has sought to file a defamation suit in the High Court of Eswatini against Sputnik and the rest of her cyber attackers claiming compensation for injury to her reputation and dignity as well as loss of income. She adverts to the fact that Russian law recently regards vitriolic words and accusations as falling within the no-holds-barred nature of social media and that these are merely opinions and not factual assertions; Eswatini law regards a person's reputation and dignity as extending into the virtual arena and imposes strict liability; Due to the ephemeral nature of social media statements, Brazilian law imposes a proceedings limitation period of 6 months from date of alleged offensive statements; the other legal systems implicated do not have a crisp position either way.

With all these facts in mind, draw up a critically objective memorandum advising Romanus of the pertinent issues involved in modern virtual suits of this nature and determine which court has competent jurisdiction as well as what, in your opinion, may be the *lex loci delicti commissi*.

**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**

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 situate in Mbabane who issued a receipt to Nomvula 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 Four**

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 Five**

- a) 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.

**10 Marks**

- b) 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*.

**15 Marks**

**Total 25 Marks**

#### **Question Six**

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**