



UNIVERSITY OF ESWATINI

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

BACHELOR OF LAWS (NON-CREDIT SYSTEM)

FINAL EXAMINATION PAPER, NOVEMBER 2019

PAPER TITLE: CONFLICT OF LAWS

COURSE CODE: L404

TIME ALLOWED: THREE (3) HOURS ONLY

INSTRUCTIONS:

1. Answer any four questions of your choice. all questions carry equal marks.
2. A good answer is not necessarily a long one. Wayward responses will be penalised.

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INVIGILATOR, DO NOT OPEN THIS PAPER.**

Question 1

Plumplum (domiciled in Brazil, but resident in Mbabane) and his son, Sputnik (domiciled in Lesotho) are visiting an amusement park in Randburg, South Africa when an electric circuit breaks exploding on their roller-coaster ride and they both die intestate. At the time of his death Plumplum has only two assets: land in Swaziland and a bank account in Brazil. After his death, Plumplum's land is sold and the proceeds are added to the bank account in Brazil. Administrative proceedings concerning Plumplum's estate are then brought in the High Court of Swaziland. There are only two claimants Mother (the wife of Plumplum), who is domiciled in Brazil, and Grandson (the son of Sputnik), who is domiciled in Lesotho.

Under the law of intestate succession of all relevant countries (Brazil, Lesotho, Swaziland and South Africa), if Sputnik died before Plumplum or if Plumplum and Sputnik died at the same time, Plumplum's assets go to Mother. On the other hand, under the law of all relevant countries, if Sputnik outlived Plumplum (if only for a second), then Mother and Grandson share Plumplum's assets equally.

There is no evidence concerning who died first, Plumplum or Sputnik. Under the law of Brazil and South Africa, when a parent and a child both die in the same event, the rebuttable presumption is that they both died at the same time. Under the law of Swaziland and Lesotho, when a parent and a child both die in the same event, the rebuttable presumption is that the child died after the parent. You are the Chief Justice presiding over this matter. Justiciously referring to the relevant rules for choice of law, critically determine which legal system to apply as well as the legal entitlements, if at all, of Mother and Grandson. **[25 Marks]**

Question 2

Sibulelo, a successful Swazi businessman of Nkalashane in the Lubombo district of Swaziland, fell in love with Zama 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 Sibulelo got employed by Amnesty International and on secondment by the Amnesty International the couple relocated to the Republic of Kuvukiland. Two children were born out of the marriage, Geina (born in 2003) and Lucyann (born in 2005). Around 2007 the marriage between the parties went sour due to irreconcilable

differences between the parties. Zama instituted divorce proceedings before the High Court of Kuvukiland.

In November 2007 the High Court of Kuvukiland issued a final decree of divorce and a custody order for the minor children in favour of Zama. The Court further ordered Sibulelo to pay the sum \$30,000 (Thirty Thousand United States Dollars) for attorneys' fees. In January 2008 Sibulelo returned to Swaziland, his all time home, with the minor children and Zama followed him to Swaziland. Zama has since filed an application before the High Court of Swaziland wherein she seeks an order that the judgment of the High Court of Kuvukiland be registered and enforced as a judgment of the High Court of Swaziland. Parallel to this application is an action for divorce between the parties wherein Sibulelo is the Plaintiff. Zama has raised a special plea of res judicata in the divorce action on the basis that the matter was finalised by the High Court of Kuvukiland.

With Reference to relevant case law and legislation, discuss the issues arising from the case at and the applicable conflict rules. [25 Marks]

QUESTION 3

"This appeal illustrates the problem of a conflict of laws in this country, a conflict which, unless properly managed in a responsible manner and with due respect to both systems of our law, may soon throw our justice system into disarray. This conflict as will be seen shortly is between Roman-Dutch common law on the one hand and Swazi customary law (Swazi law and custom) on the other hand.

At the outset, I consider that there is a fundamental need for the courts in this country to make a proper choice of law in matters coming before them. Put differently, it is wrong, if not downright insensitive for any court in this country to apply Roman-Dutch law in a case which cries out for Swazi law and custom. It is particularly more so, as in the present case, where the King and Ingwenyama's rights under Swazi law and custom are concerned..." (Per Ramodibedi CJ in **THE COMMISSIONER OF POLICE AND ANOTHER V MKHONDVO AARON MASEKO**, Civil Appeal No. 3/2011 – SZSC)

Critically analyse the validity of the above dictum in light of your understanding of the phrase “conflict of laws”, jurisdiction and the *lex causae*. [25 Marks]

QUESTION 4

Give an account of the history of our private international law focusing on any three contributors and their legacies in conflict of laws. [25 Marks]

QUESTION 5

In March 2007 Stokvel (Pty) Ltd, a mining company based in Matsulu in the Republic of South Africa, entered into a verbal agreement with Ibhudango-2022 (Pty) Ltd, a wine distillery carrying on business in the busy city of Sinyamantulwa in the Kingdom of Eswatini. In terms of the verbal contract the former agreed to supply and the latter agreed to purchase coal in such tonnages as may from time to time be requested by the purchaser. The contract was concluded in Matsulu in the Republic of South Africa and the goods were to be supplied and consumed in Swaziland at the purchaser's place of business.

Between May 2007 and November 2011 Stokvel (Pty) Ltd supplied various tons of coal to Ibhudango-2022 (Pty) Ltd. The purchaser, Ibhudango-2022 (Pty) Ltd was issued with invoices for goods sold and delivered. The invoices were paid in part and at the end of 2012 Ibhudango-2022 (Pty) Ltd had an unpaid balance of R8 472 331.00 (Eight Million Four Hundred and Seventy Two Thousand Three Hundred and Thirty One Rands). In April 2014 Stokvel (Pty) Ltd sued out summons against Ibhudango-2022 (Pty) Ltd before the High Court of Eswatini. The Defendant raised two special pleas, each plea being in the alternative of the other.

First special plea. On a proper interpretation of the 1907 Proclamation importing section 16 of the *Placaat* of 5th October, 1540 regulating prescription merchandise ‘*ter slete gelever*’ plaintiff's claim for payment of

the purchase price of the coal has prescribed and cannot found an action at law in the courts of the Kingdom of eSwatini. According to section 16 of the *Placaat* of Emperor Charles V, 4th October 1540, the price for merchandise '*ter slete gelever*' (that is, goods which are sold in small quantities and for consumption) should be claimed by court process within two years in order to found an action in the courts of Eswatini.

Second special plea. On the basis that the proper law of the contract is South African law (the *lex loci contractus*) the South African Prescription Act 68 of 1969 applies and the debt has been extinguished in terms of section 11(d) of that Act it not having been claimed timeously. The 1969 Act forms part of the substantive law of South Africa. For the proposition that the proper law of the contract is South African law, the Defendant relies on facts, inter alia, that the contract was concluded in South Africa, payment was to be made in South Africa, invoices were issued in South African Rands and payment was to be made in South African currency.

The Plaintiff denies that the *lex causae* should be South African law, but maintains that the law of Eswatini should be applied. Plaintiff argues that the *Placaat* is not part of the Roman Dutch common law applicable to eSwatini.

Citing relevant case law, draft an opinion on the proper law of the contract between Stokvel (Pty) Ltd and Ibhudango-2022 (Pty) Ltd. Proceed on the assumption that the *Placaat* has been found to be part of the law of Eswatini.

[25 Marks]

UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
FACULTY OF COMMERCE
IDE-L304 MAIN EXAM PAPER

Programme of Study : Bachelor of Commerce IDE

Title of Paper : Labour Law

Time Allowed : 3 Hours

INSTRUCTIONS:

1. Answer ALL Four (4) Questions.
2. Begin each question on a new page.

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