

**LJU405J**

October/November 2009

**CONFLICT OF LAWS**

Duration : 2 Hours

100 Marks

**EXAMINERS :**

FIRST : MRS M WETHMAR-LEMMER

SECOND : MS F ABIOYE

---

This paper consists of 3 pages.

**INSTRUCTIONS**

- 1 READ the questions CAREFULLY before answering them.
- 2 Answer ALL the questions.

**QUESTION 1**

Discuss the three elements that each conflict- or choice of law rule contains. [5]

**QUESTION 2**

Distinguish between the recognition and enforcement of foreign judgments and provide the requirements for recognition and enforcement. [5]

**QUESTION 3**

Which legal system governs the **intrinsic / essential** validity of a marriage according to South African conflict of laws? Discuss the general rule in this regard as well as the exceptions to the rule. Refer in your answer to relevant case law. [15]

**QUESTION 4**

Provide case discussions of *Frankel's Estate & Another v The Master & Another* 1950 (1) SA 220 (A) and *Sperling v Sperling* 1975 (3) SA 707 (A) in the context of conflict of laws principles relating to proprietary consequences of marriage. [10]

[TURN OVER]

**QUESTION 5**

Provide a comprehensive case discussion of the following case:

*Society of Loyds v Romahn* 2006 (4) SA 23 (CPD)

[10]

**QUESTION 6**

A executed two wills during her lifetime. She died in Argentina and left movable property in South Africa. She was a citizen of Spain and she was domiciled and habitually resident in South Africa at all relevant times. The first will bequeaths all her assets to B. The will was executed in Botswana. The second will bequeaths all her assets to C. It also expressly revokes the first will. The second will was executed in Argentina.

- 6.1 Which legal systems govern the formal validity of the first will according to the provisions of s 3bis of the Wills Act of 1953? Provide a list of the three relevant countries (eg "Botswana"). (3)
- 6.2 Which legal systems govern the formal validity of the second will according to the provisions of s 3bis of the Wills Act of 1953? Provide a list of the three relevant countries (eg "Botswana"). (3)
- 6.3 What was decided in the case of *Tomlinson v Zwirchmayer* 1998 (2) SA 840 (T) with regard to the formal validity of wills? (4)
- 6.4 Which legal system governs the intestate succession of **movables** according to South African conflict of laws? Provide a case that serves as authority for this rule. (2)
- 6.5 Which legal system governs the intestate succession of **immovables** according to the principles of South African conflict of laws? (1)
- 6.6 What does section 3bis (1)(d) provide with regard to the formal validity of the revocation of a will? (2)

[15]

**QUESTION 7**

A German company (A) and a South African company (B) concluded a contract in terms of which A sold computers to B. The contract was concluded by A and B's managing directors whilst attending a conference in Paris (France). Payment had to take place into A's account in Berlin (Germany) and the equipment was to be delivered to B's head office in Johannesburg. The equipment was delivered as per agreement but B failed to pay the purchase price. Company A instituted a claim for payment against B in a South African court. The international sales contract contained no choice of law clause. How would the South African court determine the proper law of the contract? [20]

[TURN OVER]

**QUESTION 8**

Discuss the following approaches to classification with reference to relevant case law:

- Classification by the *lex fori*
- Classification by the *lex causae*
- The enlightened *lex fori* approach to classification
- The *via media* approach to classification

[20]

**TOTAAL: [100]**