



ZCAS University

DEPARTMENT OF LAW

COMMERCIAL AND BACHELOR OF LAWS PROGRAMME

LLB342 CONFLICT OF LAWS

MID-TERM EXAMINATION

OCTOBER 2023

TIME ALLOWED: THREE (3) HOURS (plus FIVE (5) minutes reading time)

INSTRUCTIONS

1. Part A: this question is compulsory and must be attempted.
2. Part B: Answer any THREE (3) questions from this section.
3. This examination paper carries a total of 20 marks.
4. Candidates must not turn this page until the invigilator tells them to do so.
5. A minimum of five (05) cases as authorities to be cited.

PART A: QUESTION ONE IS COMPULSORY AND MUST BE ATTEMPTED

Question 1

Barbara Neba, and her husband, George Neba, were at all material times ordinarily resident and domiciled in Zambia. The Overseas Projects Corporation Ltd (OPC), a company incorporated in Zambia employed Mr Neba to work in Wuhan, China. After Mr Neba had been employed by OPC, OPC also employed Mrs Neba to work in Wuhan on a part-time basis. The Neba family moved to Wuhan and lived in an apartment there which was provided to Mr Neba by OPC under the terms of his employment. Mrs Neba suffered serious personal injuries when she fell down the stairs in the apartment in Wuhan in October 1916. She sued OPC in the High Court of Zambia in a civil action. These proceedings were commenced in June 2023, almost six years after her injuries were first sustained. OPC joined its public liability insurer, Mercantile Mutual Insurance Ltd (MMI, the second respondent to the High Court appeal), as a third party, claiming that MMI was bound to indemnify OPC if OPC was found to be liable. Barbara Neba did not plead her case by reference to the applicable Chinese law. nor did she lend evidence of Chinese law. OPC argued that Chinese law was the governing law, according to which it was not liable to Barbara Neba. In particular, OPC argued that the Chinese limitation period of one year applied, and that the claim was therefore time-barred at this stage of the proceedings.

Discuss the case above in terms of the doctrine of Renvoi. Also advise your client Barbara Neba what the governing law will be. **(TOTAL: 25 MARKS)**

PART B: ATTEMPT ANY THREE QUESTIONS IN THIS SECTION

Question 2

Answer three questions from this section:

1. Discuss in outline the *Lex fori* theory in conflict of laws **(5 Marks)**
2. Discuss Connecting factors as in, In Re Annesley [1926] Ch 692. **(5 Marks)**
3. What do you understand by the maxim *Lex Loci Celebrationis*? **(5 Marks)**
4. Argue for or against the use of the doctrine of *Renvoi* in conflict of laws. **(5 Marks)**

(TOTAL:15 MARKS)

Question 3

The term domicilium is derived from donum colere, to foster or inhabit the home. domicile is not any place of residence but a place of habitual residence.

[Source: Modern Canonist]

Discuss the veracity of this statement with respect to the domicile of dependence.

(TOTAL:15 MARKS)

Question 4

Tin Tin, a citizen of the country of Waloonia, went on vacation to the country of Mordor, taking his pet dog Snowy (who was born and raised in Waloonia). Tin Tin was enjoying a beverage at a bar in Mordor City when Zargon began to insult his dog. Zargon said all dogs should be killed. Zargon then kicked Snowy who squealed with pain. Zargon was arrested for disorderly conduct. Zargon is also a citizen of Waloonia. After Tin Tin and Zargon return to their homes, Tin Tin sues Zargon in Waloonia courts for intentional infliction of emotional distress and for pain and suffering suffered by Snowy. Under these facts, Waloonia does not recognize a claim for intentional infliction of emotional distress but Mordor does. Waloonia does not permit damages for pain and suffering by animals and limits damages to animals to the fair market value of the animal. Mordor permits recovery of damages for pain suffered by animals. Waloonia follows the First Restatement. Zargon moves for summary judgment arguing that the court should apply Waloonia law. Who wins and why?

(TOTAL:15 MARKS)

Question 5

Henry and Wilma, residents of Zambia, got married in Lusaka, Zambia. They had one child, a daughter Wilmette. Six months after Wilmette's birth, Henry announced he had fallen in love with Maya over the Internet. He packed his bags and headed for Harare Zimbabwe. After Henry departed for Zimbabwe, Wilma and Wilmette went to stay with Wilma's mother in Botswana. There Wilma filed for a divorce in Botswana, and she got a court order awarding her custody of Wilmette. She then returned to Zambia. Six months later Henry also returned to Zambia. He had gotten a divorce. When he asked to take Wilmette, Wilma explained that she had custody as provided under the Botswana Courts decree issued to her. Henry flew into a rage, seized Wilmette and drove to Zimbabwe. Wilma located Henry and Wilmette in Karoi Zimbabwe and commenced a civil action in the high court of Karoi Zimbabwe, attaching a certified copy of the custody decree from Botswana. You are clerking for the Prominent Firm Gray-Rolls and Partners in Zambia. Wilma comes to you for advice and what her chances of winning are and whether Zimbabwe must enforce the custody decree from Botswana. Please advise her using the rules that you have used in conflict of laws.

(TOTAL:15 MARKS)

END OF EXAMINATION