

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L594 - CONFLICT OF LAWS

DECEMBER 2019

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS

Answer **FOUR (4)** questions

Choose at least **ONE (1)** question from each section

SECTION A

QUESTION 1

In *Ramahata v Ramahata C. of A.* (Civ) No.8 of 1986, Schutz P. observed that:

The judge rejected the Appellant's contention that she was entitled to the M6,000 not by virtue of her marriage, but by virtue of her nomination as death beneficiary. The learned judge a quo opined that any claim would be governed by the Republican Insurance Act 27 of 1943, that there was no similar statute in Lesotho, and that the death benefits would pass to the son's deceased estate. I do not agree with this reasoning at all. In passing I would point out that foreign law cannot be disregarded where it is the proper law in a case. If it be such it will ordinarily be given effect to. *lex fori and Government interest*

In light of the remarks above, discuss the conflict of law theories on proof of foreign law.

[25 MARKS]

QUESTION 2

- a) Discuss the main issues involved in choice of law involving formation, effects and termination of marriage (divorce). **10 Marks**
- b) Describe the doctrine of *lex loci celebrationis* as a major rule used to determine formal validity of marriage. **5 Marks**
- c) Discuss the different tests developed over the years to determine substantive validity of marriage. **10 Marks**

[25 MARKS]

QUESTION 3

Do you think that the Lesotho Law of Foreign Judgment Execution is sufficient?

[25 MARKS]

SECTION B

QUESTION 4

- Hubby and father
Critically discuss the Sesotho Law and Roman Dutch Law on seduction. *- girl*

[25 MARKS]

QUESTION 5

Assume that you are a Justice of Appeal in the Court of Appeal of Lesotho and, you are to prepare reasons for judgment in an appeal in which, Mr DE, successfully sued Mr RH, in the High Court of Lesotho for damages arising from adultery that occurred between Mr RH and Mr DE's erstwhile wife, on the *actio iniuriarum*. The claim was for loss of consortium and *contumelia*. Assume further that, Mr and Mrs DE were first married under Sesotho Law and later 'strengthened' their marriage in church. On appeal to it, the Court of Appeal raises – *mero motu* (of its own accord) – the question whether the claim should continue being part of our law. How would you decide this case?

[25 MARKS]

QUESTION 6

sv. Salituro
→ longer social basis
Berkhausen v Napier
public policy constitution.
Discuss the law on dual marriages in Lesotho.

[25 MARKS]

roge v valentine
common wealth country but there is no longer
immorality in adultery