

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B FINAL EXAMINATION

L5318 – CONFLICT OF LAWS

JANUARY 2024

100 MARKS

TIME: 3 HOURS

INSTRUCTIONS:

1. Students are required to answer any **FOUR** of the SIX (6) questions – TWO questions from Section A and TWO from Section B.
2. Section A consists of three essay and problem-type questions. Answers to the questions in this section should not exceed three (3) pages.
3. Section B consists of three short answer questions.
4. Number all answers correspondingly to the questions.
5. Any form of cheating will be penalised.

SECTION A

QUESTION 1

The general rule in Conflict of Laws as it applies to contract is that every international contract that contains one or more foreign elements, has a governing law called the proper law of the contract, by reference to which disputes arising from the contract are mainly, though not exclusively decided. With suitable hypothetical and/or case law examples, make a logical analyse of this statement.

[25 MARKS]

QUESTION 2

As more than one country may have jurisdiction in accordance with its own laws, to grant a divorce or other matrimonial decree with respect to the same marriage, it may happen that matrimonial proceedings between the same parties are pending in the court of another jurisdiction at the same time. Discuss with reference to the common law case of *De Dampierre v De Dampierre* [1987] UKHL 20 (02 April 1987), the concept of stay of matrimonial proceedings.

[25 MARKS]

QUESTION 3

A contract was made in Cape Town between S.A. Freight Marine (a South Africa shipping company), and Nam Fisheries Pro (a Namibian fishing company), for the carriage of twenty consignments of fish from Namibian ports over a period of nine (09) months. Payment for the shipment was to be made in South Africa. A clause of the contract provided that any dispute arising from the contract would be settled by a designated Arbitration Firm in Botswana. After six shipments had been completed, S.A. Freight Marine repudiated the contract. Nam Fisheries Pro brought a claim for anticipatory breach before the Arbitration Firm in Botswana. The preliminary issues required determining whether Botswana or South African law governed, for the

reason that the conflict of law rules with regard to a claim for anticipatory breach differed for both countries. Apart from the arbitration clause, the contract had no connection at all with Botswana. All the connecting factors of the contract were with South Africa and Namibia.

- a. As legal counsel to Nam Fisheries Pro, make an argument whether an implied choice of Botswana law could be inferred from the arbitration clause, requiring any dispute relating to the contract to be settled in Botswana. 15 Marks
- b. Advice Nam Fisheries Pro on the law that will necessarily apply in adjudicating on the anticipatory breach of the contract by S.A. Freight Marine. Using relevant case law, provide justification for the choice of proper/governing law. 10 Marks

[25 MARKS]

SECTION B

QUESTION 4

- a. Explain the concept of foreign element in Conflict of Laws and briefly explain its three defining factors. 5 Marks
- b. In a litigation wherein conflict of law rules may need to apply, outline the four preliminary issues a court would have to deal with. 4 Marks
- c. Conflict of laws is not concerned with the substantive issues of a case before a domestic court but rather with the rules involved in determining the applicable or governing law. How is the rule in determining the applicable law called? (Give the English and Latin names). 3 Marks
- d. When a domestic court is confronted with a case that has a foreign element involved, and finds justification to have recourse to conflict of law rules, the court is basically required to make three determinations. Name the three determinations the court is required to make. 3 Marks

- e. List five factors that may connect a case before a domestic court to a foreign jurisdiction or require the application of a foreign law. 5 Marks
- f. Briefly explain the two rules that apply in determining essential validity in marriage in the context of Conflict of Laws 5 Marks

[25 MARKS]

QUESTION 5

Briefly explain with examples, the following Latin terminologies as they are used in the context of Conflict of Laws:

- a. *Lex causae* 5 Marks
- b. *Renvoi* 5 Marks
- c. *Lex Loci Celebrationis* 5 Marks
- d. *Forum Non Conveniens* 5 Marks
- e. *Locus Regit Actum* 5 Marks

[25 MARKS]

QUESTION 6

Discuss with reference to relevant case law, the rules that will apply in determining the governing law in the following instances:

- a. Matrimonial Property
 - i. Movable property
 - ii. Immovable property 10 Marks
- b. Succession (Wills)
 - i. Movable property
 - ii. Immovable property 10 Marks
- c. Succession (Intestate Succession)
 - i. Movable property
 - ii. Immovable property 5 Marks

[25 MARKS]