

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

LL.B.

LL.B. Part II: Conflict of Laws

COURSE CODE : LAWSII02
DATE : 21-MAY-02
TIME : 10.00
TIME ALLOWED : 3 hours 15 minutes

02-N0174-3-40

© 2002 *University of London*

TURN OVER

CONFLICT OF LAWS

Answer **FOUR** questions.

1. Do we need to rethink jurisdiction and judgments?
2. Does an English court have jurisdiction to hear the following cases?
 - (a) An action brought by an English farmer in Kent whose crops are blighted by noxious fumes emitted from a factory in northern France. He feels that this is likely to be a recurring problem.
 - (b) An action brought by a Spanish woman living in England for maintenance from her German husband who has deserted her and is now living in Belgium.
 - (c) An action which an English actor seeks to bring against an Italian film company. He was seriously injured when driving a defective car on the set of the film in Italy. A claim form has been issued against the American director who is based in England, and who engaged the actor, but it has not been served because he is now in California. This alleges breach of contract in not providing a safe system of work.
3. Advise Mrs Smith, who is domiciled in England, as to where she may sue
 - (a) The Wagners. She let her villa near Rome to them last summer. The contract provided for a maximum occupancy of six persons. The Wagners' children brought a large party of their friends to stay. The contract provided for additional rent to be paid when maximum occupancy was exceeded. The Wagners have refused to pay this additional rent. There was considerable damage to the villa, so much so that when Mrs Smith arrived for a fortnight's break last autumn she had to stay in a nearby hotel. The contract provided that any dispute arising out of the contract lay within the exclusive jurisdiction of the courts of England. The Wagners are domiciled in Germany.
 - (b) Autos de Seine. On her way down to Italy last autumn she had a burst tyre. She stopped at a garage south of Paris (Autos de Seine) where she purchased a new tyre which a mechanic (an English student doing a holiday job) fitted for her. Autos de Seine is owned by Luxembourg Cars S.A., a company incorporated in Luxembourg, but with its head office in Brussels. Mrs Smith was handed a receipt on the back of which was a statement (in French) that "All disputes are subject to the jurisdiction of the Luxembourg courts." The tyre was manufactured in Portugal by Porttyres SA, a wholly-owned subsidiary of Italia Tyres SpA, an Italian incorporated company. The tyre was not suitable for Mrs Smith's sports car. There was no warning to this effect on the tyre. On the way back to England, whilst driving through Austria, the car veered off the road and Mrs Smith was seriously injured and had to spend time and money in hospital in Vienna. As a result of the time away from England she lost lucrative business contracts in the Netherlands and Germany.

TURN OVER

4. Discuss critically the Rome Convention rules for the ascertainment of the applicable law of the contract in the absence of choice by the parties.
5. How would an English court decide the applicable law of the following contracts, all of which were made in 2000?
 - (a) A contract between Cheapgoods plc, an English supermarket chain, and Polska Jams, a Polish jam producer, to supply jams. The contract provides that the parties will choose the law to govern their contract “in the unlikely event of a dispute arising”.
 - (b) A contract between a German car manufacturer and a Taiwanese ship owner to charter ships to transport cars from Germany to West Africa. The contract provides for arbitration in London. The contract, which was negotiated by a Taiwanese shipbroker, provided for delivery of the ships in Taiwan and their redelivery there. Previous contracts between these parties were expressly governed by Taiwanese law.
 - (c) A contract between a Virginian tobacco grower and a Spanish cigarette corporation to manufacture cigarettes with high tar content for sale in the United States and the United Arab Emirates. The contract provides that the law of Dubai governs the contract. Sale of such cigarettes is not permitted in the USA but it is in the UAE, and the contract is lawful by the law of Dubai. The cigarettes are being shipped via the United Kingdom and the USA government has sought an injunction to prevent the cigarettes being imported into the USA.
6. What is the choice of law rule in restitution?

CONTINUED

7. Mr and Mrs Adams, who are UK nationals domiciled in England, have for many years corresponded with Mr and Mrs Sharma, Indians who live in Delhi. Last year the Sharmas persuaded the Adamses to go on a climbing holiday with them in the Himalayas. On the plane going to Delhi the Adamses met two French students (Claude and Marie) and agreed that they could accompany them without payment on the climbing trip. When the six of them got to the Himalayas in Nepal Mr Adams hired the services of two local sherpas who were to act as their guides and transport their luggage. Almost immediately after the climb began, an accident occurred. The rope carrying the party broke and Claude plunged to his death. Mrs Adams fractured her skull and one of the sherpas was so severely injured that he will spend the rest of his life in a wheelchair. The rope had not been properly tied because Mr Adams had been too busy chatting and drinking with Mr Sharma and the two of them were inebriated.

On the assumption that by the law of Nepal:

- (a) there is a gratuitous passenger statute;
- (b) wives are not permitted to sue their husbands;
- (c) there is a state compensation fund to provide for injured sherpas. The maximum sum payable is the equivalent of £5000;
- (d) damages awarded against an inebriated defendant are punitive;

you are asked to advise Marie (who is Claude's executor), Mrs Adams, and the sherpa, all of whom wish to sue Mr Adams in England.

8. By reference **EITHER** to stays of jurisdiction on *forum non conveniens* grounds **OR** to the use of anti-suit injunctions, consider whether "judicial chauvinism has been replaced by judicial comity".

TURN OVER

9. Sam was born in Greece in 1942 to parents who were domiciled in Greece. Shortly after his birth his father, Ben, went to France to join the French resistance forces. A year later his mother, Ruth, received news that Ben had been killed and she married Josh, whose domicile of origin was in Hungary. He was a Jew on the run from the Nazis and had found his way to Greece. In 1944 Sam, Ruth and Josh were deported by the Nazis to Auschwitz in German-occupied Poland. Josh was gassed shortly after arrival, but Sam and Ruth miraculously survived. In 1946 they took a ship to Palestine (as Israel was formerly known) but this was turned back by the British. Sam was, however, smuggled in. The ship sank on the high seas and Ruth drowned.

Ben had not in fact been killed and was still in France. After the war he qualified as a lawyer in France and prospered. He had no idea that his son had survived the war. He became a committed Zionist, was involved in charitable activities for Israel, and frequently talked about emigrating to Israel. In 1954 his law firm set up an office in Cairo, and he was offered a lucrative appointment. He enjoyed the lifestyle of wealthy Europeans in Egypt and began to think that his future lay there. He was however forced to leave in 1957. He returned to France but could not settle and in 1958 decided to see if he liked living in Israel.

He was reunited with his son and the two of them lived together in Israel until 1959. Ben retained links with his law firm in France. This was about to set up a branch in Sydney and Ben and Sam moved to Australia. In 1960 Sam went to university in Sydney. In 1963, just before his twenty-first birthday, he got a postgraduate scholarship to Harvard. He did not like living in the United States but, when he obtained his PhD in 1966, he was offered a very good job in Minnesota. He found the climate too cold and was looking for another post (he had applied for jobs in Australia) when war broke out in Israel in 1967 and he returned to Israel.

Sam stayed in Israel for ten years. He married, obtained a university appointment, integrated into Israeli society and rediscovered his Jewish roots. But he was unhappy about the Israeli treatment of Palestinians and in 1977 went to South Africa to take up a university appointment in Cape Town. He could not settle in South Africa. He despised the apartheid regime, became an outspoken critic and joined the African National Congress. He was arrested and sentenced to a lengthy term of imprisonment in 1982. He was released in 1992. He came to England, got a job as a schoolteacher and took out UK citizenship. He always talked of returning to Israel if "there was ever true peace". In 2001 he heard that his elderly father was unable to look after himself any longer in Sydney. He thought of bringing him over to England but was advised that Australia would be better for the health of both of them.

Sam set out for Australia last week. The taxi taking him to Heathrow crashed and he was killed.

Where did Sam die domiciled?

END OF PAPER