

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

LL.B.

LL.B. Part II: Conflict of Laws

COURSE CODE : LAWSII02

DATE : 22-MAY-03

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

CONFLICT OF LAWS

Answer **FOUR** questions

1. How, if at all, has the Council Regulation 44/2001 Article 5(1) effected an improvement in the provision as it was formulated in the Brussels and Lugano Conventions?
2. Discuss the implications of a jurisdiction agreement in relation to
 - (a) bringing proceedings elsewhere;
AND
 - (b) the applicable law of a contract in the absence of express choice by the parties;
AND
 - (c) the choice of place of performance of obligation for jurisdictional purposes.
3. Write the judgment of the European Court of Justice in *Turner v Grovit*.
4. In what circumstances will an English court refuse to enforce a judgment of a Russian court?
5. Does the English court have jurisdiction in the following cases?
 - i) Jim was knocked over crossing the road in Munich. The car which hit him was driven negligently by Pierre, a French businessman on a short business visit. He was seriously injured. When his wife Kate in England was told what had happened, the shock caused her to become ill, as a result of which she is unable to work. The Frenchman has considerable assets in England and comes to England regularly on business trips. Jim and Kate wish to sue him in England. Advise Pierre.
 - ii) Nigel, who lives in London, three years ago purchased a villa the title of which for tax purposes he put into the name of his mistress, Fiona, who lives in Bristol. The villa is in Tuscany. The relationship has broken up and Nigel has recently become bankrupt. Fiona claims the villa is a gift and has agreed to sell it to an English couple, Mr and Mrs White. The trustee in bankruptcy claims that the villa is an asset of Nigel's upon which he can call. Advise the trustee in bankruptcy.

PLEASE TURN OVER

6. The following contracts were all entered into last year. What is the applicable law of each of them?
- i). A contract between Building Block plc, an English company with a registered office in Northampton and Biere Hercule, a Belgian brewery in Brussels, to build a warehouse in France. The contract contains the following clause: 'In the event of a dispute the parties will choose the law to govern their rights and obligations.'
 - ii). A contract between the Norwich Symphony Orchestra (NSO) and Bayern Concert Productions, a German corporation, whereby the NSO under its world famous conductor Sir Reginald Major agree to perform three concerts of British music in Germany. For personal reasons Major does not appear and the orchestra, playing under an unknown conductor and performing works by Mozart, attracts sparse audiences as a result of which Bayern Concert Productions sustains a substantial loss. The contract provides for payment in sterling at a bank in the City of London but there is no express choice of an applicable law.
 - iii). A contract between Drilling Wells plc, a company registered in England, and a number of English and Scottish domiciled workers to work on oil rigs off the coast of Norway which contains the following clauses:
 - (a) 'this contract shall be governed by the law of Panama' and
 - (b) 'any protection afforded employees under any U.K. employment legislation is hereby excluded'.Jim McNeil, a Scottish worker, injured on one of the oil rigs, wishes to sue in contract and has discovered Panamanian law is less favourable to him than either English or Scots law.
7. Mr and Mrs Walker and their friend Ms Young, all of whom live in Manchester, went on holiday last year to Greece. It was the Walkers' way of thanking Ms Young for coaching their daughter through her GCSE's. Upon arrival at Athens airport they hired a car from a Greek hire firm and were persuaded to take out insurance with a Greek company which covered travel with the car in Greece only. They decided to explore Northern Greece. Whilst in Thessaloniki they met Professor Stewart, a Professor of English at Thessaloniki University whom the Walkers knew from his time in Manchester. He agreed to accompany them for a few days to point out sites they might not otherwise see. They crossed into Bulgaria. As a result of Mr Walker's negligence the car crashed. Ms Young and Mrs Walker were seriously injured, and Professor Stewart died in Greece as a result of his injuries. Popov, a Bulgarian police officer was also injured. Mrs Walker, Popov, Ms Young and Professor Stewart's widow wish to sue Mr Walker in England.

CONTINUED

You may assume the law of negligence in Greece and Bulgaria are the same as in England with the following differences

- i). In Bulgaria only small periodical payments are available and these compensate only for financial loss.
- ii). In Bulgaria wives cannot sue their husbands in tort.
- iii). In Bulgaria there is a statutory compensation scheme for the police, and recourse to the law of tort is not permitted.
- iv). In both Bulgaria and Greece no action lies after the death of the victim.
- v). Bulgaria has a 'gratuitous passengers' law.

Advise all four claimants.

8. Anne and Brian were killed in air crashes six months ago. They both left substantial bank accounts in a bank in London, and it will be necessary to establish where they died domiciled before these moneys can be distributed.

Anne, who was born in 1943, had a domicile of origin in Mexico. She came to England to study at UCL in 1962 and married Carlos, who was domiciled in Argentina. The marriage took place in London in 1966. He left her in 1970 and returned to Argentina. He died in 1985, but Anne did not know this. In 1972 Anne began to cohabit with Gyorgy, a Hungarian poet, who had come to England in 1956. Anne became aware of Carlos's death only last year and she and Gyorgy were intending to marry and to relocate from London to Budapest.

Brian was born in London in 1979. His mother was an au pair from Norway; his father an accountant from Scotland who spent four days a week working in London. His parents married in 1983 and this legitimated Brian in the eyes of all relevant laws. His parents separated in 1990, and Brian remained with his mother, who returned to live in Norway. In 1992 she was offered an attractive job in Sweden and took Brian with her. But he had become a difficult teenager and was sent to live with his maternal grandparents who had settled in the U.S. state of Wisconsin. In 1994 he ran away from his grandparents and found his father in Scotland. He sent him to a boarding school in England. When Brian left school in 1997 he took a 'gap year' and roamed Asia. He found a good job in Tokyo, learnt Japanese and was about to marry a Japanese woman when he was arrested for fraud. He had just jumped bail and was returning to England when the plane crashed.

Where did Anne and Brian die domiciled?

PLEASE TURN OVER

9. Where there has been an unjust enrichment:

i). In what circumstances will an English court have jurisdiction to enable the victim to bring an action for recovery?

AND

ii). What law will an English court apply?

Is the law satisfactory in either of these respects?

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