

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

LL.B.

LL.B. Part II: Conflict of Laws

COURSE CODE : LAWSII02

DATE : 10-MAY-04

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

CONFLICT OF LAWS

Answer **FOUR** questions.

1. In what circumstance may an English Court restrain the pursuit of foreign legal proceedings? Can the exercise of this power be justified?
2. How, if at all, has the Council Regulation 44/2001 Article 5 (1) effected an improvement in the provision, as it was formulated previously in the Brussels and Lugano Conventions?
3. Mr and Mrs Jones who live in Manchester have had a number of problems during this past year. As a result they are considering litigation and want to know in each case whom they can sue and where.
 - (i) In January they took a package holiday to Portugal. They booked this with First Travel plc, an English-registered company, in Manchester. Mrs Jones was badly burned when a defective hair dryer she was using in the hotel exploded. The hair dryer was an Italian make designed by Milano S.A. but has been manufactured under licence in Greece by Athena Works. As a result Mrs Jones was off work for two weeks.
 - (ii) In August they rented an apartment in the South of France from Mr O'Connell, who is an Irish business associate of Mr Jones. When they arrived in Cannes they found the apartment uninhabitable because there were tiles missing from the roof and the whole living area was under water. Mr O'Connell insists that over the phone he told the Joneses that 'if there are any problems you can take me to court in Dublin' and the receipt for the rent was scrawled in pen on it 'Disputes go to the Irish courts'. The Joneses were forced to book into a hotel but could not afford to stay for more than a weekend and wish to claim for the lost enjoyment of a holiday, as well as for recovery of the rent.
4. 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?

TURN OVER

5. Does an English court have jurisdiction in the following cases? In each case, if the English court does have jurisdiction, would the defendant be able to obtain a stay of the English proceedings?
- (i) A claim by a New York businessman that his reputation has been damaged by the sale in England of 100 or so copies of a Japanese daily newspaper published in Japanese in Japan, which alleges that he is a party to a major fraud. The paper sells 1 million copies in Japan and 25,000 copies in the U.S.A. every day.
 - (ii) A claim by a Thai corporation that the subsidiary of an Illinois corporation has failed to pay the agreed sum upon delivery in London of a consignment of silk. The subsidiary has a registered office in London. There is a standard form contract which contains a clause giving exclusive jurisdiction to the 'District Court of Chicago'.
 - (iii) A claim for negligence by an English worker against an Iraqi corporation who was severely injured when working on a construction site in Iraq. He was recruited in England by an English domiciled and resident agent working for the Iraqi company. He does not want to sue in Iraq because legal representation is very expensive there, and because he believes that Iraqi judges may be biased against him so soon after the war.
6. (i) By what law is capacity to enter into a commercial contract governed?
- AND**
- (ii) Explain the concept and scope of 'mandatory rules' in the Rome Convention.

CONTINUED

7. What is the applicable law of the following contracts, all of which were entered into in 2002?
- (i) A contract between an English car manufacturer in Birmingham and an Italian tyre manufacturer for the supply of tyres to its assembly plant in Birmingham. There is no express choice of law, though in contracts between these two companies in the past English law has always governed. The contract provides for payment in sterling at an Italian bank in London.
 - (ii) A contract between an English supermarket and an exporter of bananas from Cuba to supply bananas to its store in London. There is no express choice of law. The contract stipulates that payment is to be in U.S. Dollars in Miami and any disputes arising out of the contract are to be taken to the 'Banana Arbitration Board' in the City of London.
 - (iii) A contract between an English shipbuilder and a Russian iron exporter whereby the Russian company will ship 10,000 tonnes of iron ore to the English company in England with payment to be made in Euros to its bank in England. The contract provides that the *lex mercatoria* will govern rights and obligations under the contract. The ore is not up to the quality expected and the shipbuilder has rejected the delivery and is refusing to pay.
 - (iv) A contract between an English record manufacturer in Liverpool and a Spanish rock singer who lives in Vienna to record, produce and distribute a CD of his songs. The contract provides for payment of royalties in sterling and for copyright to remain in the singer. There is also a clause stating 'The parties will choose the governing law should a dispute arise between them'. A dispute has now arisen because the record manufacturer is refusing to distribute the CD. The parties' lawyers have now agreed that the contract is to be governed by the law of Hong Kong.

TURN OVER

8. Chas and Pippa, both of whom come from the North of England, graduated from UCL last summer. They decided to spend a gap year together touring South America.

They went first to Venezuela. In Caracas Pippa, who had had far too much to drink, was knocked off her bicycle by a car, driven by Mr Smith a British businessman on a 3 month assignment to Venezuela. Mr Smith, who is covered by an English insurance policy, does not contest that he is negligent. You may assume that, by the law of Venezuela, contributory negligence is a complete defence. Pippa lost several fingers in the accident.

They moved on to Colombia. They decided to hitch towards the mountains. They were given a lift by a Colombian footballer Carlos, who plays in the English premier league. He insisted upon driving with his arm around Pippa. The car crashed and Chas was injured. He was operated upon by Jim, who qualified as a doctor at University College Hospital last summer. Jim had never performed this operation before and Chas died. You may assume that by the law of Colombia hitchhiking is illegal and hitchhikers have no cause of action, should they suffer injury. You may also assume that causes of action die with their victims.

Saddened but undeterred Pippa moved on to Ecuador. In Quito she met Louis, a young French lawyer working for a year in the Quito offices of a firm of French lawyers. He took her for a meal, spiked her drink and raped her in his apartment. He claims that she dressed provocatively. You may assume that by the law of Ecuador this is a complete defence to the crime of sexual assault, and that no tort has been committed according to the law of Ecuador.

Pippa is now back in England, as are Mr Smith and Jim. Carlos will be back in Birmingham for the beginning of the football season and Louis is about to take up a job with an English firm of solicitors. Chas's elderly parents and Pippa wish to sue. Advise them.

9. The law of domicile 'remains rooted in its Victorian origins when the establishment of a home was an affair of a lifetime' (Clarkson and Hill).

Discuss. How would you reform the law to reflect contemporary society?

END OF PAPER