

**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 : 17-MAY-05**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## CONFLICT OF LAWS

Answer **FOUR** questions.

1. What is the doctrine of characterisation? Explain its significance for the choice of law process.
2. Assess critically current English law and practice on the granting of an anti-suit injunction. In what circumstances, if any, do you consider that the anti-suit injunction will be granted in the future?
3. In 1997 Mr. White (a British national domiciled in England) was knocked down and seriously injured in Paris as a result of the negligence of M. Brun (a French citizen domiciled in France). In 1998 he was awarded damages by a French court. In the years since, Mr. White's medical condition has significantly deteriorated, and this is attributable to the accident. Under French law, damages for personal injuries are based on the court's assessment of the victim's disability as at the date of the award and constitute a final award in relation to that disability. However, a claimant has the option of returning to the court to seek a further award of damages should his medical condition deteriorate. This would constitute a fresh cause of action, designated 'en cas d'aggravation'.

Mr. White wishes to bring proceedings in England now for compensation for the deterioration in his condition caused by the negligence of M. Brun. He has been advised to do this in England because he is likely to be awarded a higher sum of damages if he succeeds. M. Brun remains domiciled in France.

- (i) Does an English court have jurisdiction?
- (ii) What law would it apply to Mr. White's claim?

If the accident had been in 1995 what difference would this have made?

- (iii) If the English court does award a much larger sum of damages than a French court would have done, can a French court refuse to enforce the judgment against M. Brun, all of whose assets are in France?

**TURN OVER**

4. Answer **EITHER a) OR b)**:

- a) What scope is there for the use of laws other than the applicable law of the contract where questions of choice of law arise in contractual obligations?
- b) Critically assess the concept of 'characteristic performance' of a contract.

5. Does an English court have jurisdiction to hear the following cases?

- (i) An action for damages for breach of contract brought by A plc, an English registered company, against B S.A. (a French company). The contract was for the sale of electrical instruments to be delivered to A plc's factory in Birmingham and was negotiated in England by a manufacturer's agent who works for a number of French and German companies in England, including B S.A. B S.A. has already commenced proceedings in Lille against A plc, where its French subsidiary has its central administration, for rescission of the contract for non-disclosure.
- (ii) A dispute about the ownership of a villa in Portugal which George, a solicitor based in the City of London, purchased in his German girlfriend's name two years ago. The relationship has ended, and she insists it is hers. She is a lawyer working in Milan.
- (iii) An action for breach of contract brought by an English opera house against an Argentinian soprano domiciled in New York. She refused to sing when she discovered that she had been engaged for Leoncavallo's *La Boheme*, not Puccini's. The contract provides that disputes arising out of the contract shall be submitted to the 'Royal Courts of Justice, The Strand, London WC2'. The soprano's engagements for the next three years will preclude her being in England.

**CONTINUED**

6. Jerzy was born in Yugoslavia in 1986. His mother was domiciled in Turkey, his father in Hungary (in both cases this was also their domicile of origin). They had lived together for a number of years but were not married to each other. In 1990, when the father heard his wife had died, Jerzy's father and mother married each other in Yugoslavia. By all relevant laws this legitimated Jerzy.

Neither parent was happy living in Yugoslavia: the mother felt discriminated against because she was a Muslim and the father could not get suitable work. In 1992, after war broke out in Yugoslavia, both parents fled to England. Because the father had a substantial criminal record he was not admitted, but Jerzy and his mother entered the United Kingdom as asylum seekers and in 1993 were granted permission to stay.

Jerzy settled quickly and soon began to speak fluent English and do well at school. The mother did not settle: she did not know where her husband was, and even whether he was alive. She could not get a job and became a prostitute. She could not cope with Jerzy and he was received into the care of the local authority and placed with English foster parents.

With the end of the war, the mother returned to Bosnia (as her part of Yugoslavia was now designated). She stayed only for one year and then went to live in Madrid, where she has remained. She is an illegal immigrant and is liable to deportation at any time. It is however her intention to remain in Spain. She recently married a Spanish national.

In 2001 Jerzy ran away from his foster parents and went to Bosnia to find his mother. In fact he found his father, who had just returned to Bosnia, having lived as an illegal immigrant in Germany since being refused admission to the United Kingdom. The father spent nine years in Germany. During this time he assumed a German identity, got a job working in a brewery and acquired many German friends. He had saved a lot of money and had returned to Bosnia to set up his own business.

Jerzy and his father were reunited and Jerzy was given a job in the father's bar which he set up in Sarajevo. Jerzy didn't like the work and in 2002 he left his father telling him he was going to see his mother in Madrid. He spent only a few months with his mother before deciding he would backpack round the world.

In early 2004 he reached Thailand. He was attracted to its way of life, decided to become a Buddhist and enrolled as a novice monk in a Buddhist monastery. He died in the Tsunami on Boxing Day 2004. He had confided to friends the previous day that he missed Christmas celebrations and was having second thoughts about becoming a Buddhist monk.

On his 18<sup>th</sup> birthday he became entitled to a substantial sum of money which is deposited in a bank in England.

It is imperative that we know Jerzy's domicile at the time of his death. What is it?

**TURN OVER**

7. Every year the German Orchestra of the Classics (DOC) is brought to England for a number of concerts by the concert impresario, Harold Grant, who works from an office in Brighton. They give performances of major classics in English towns, and attract large audiences and substantial profits for Mr. Grant.

Last year the orchestra, after agreeing to perform symphonies by Mahler, made a last minute substitution at their concert in Leicester and played works by Hans Werner Henze instead. Most of the audience demanded and got the return of their money, and the concert was performed to a 10% capacity.

Mr. Grant has refused to pay DOC for this concert alleging DOC was in fundamental breach of contract.

For the last eight years the contract between DOC and Mr. Grant has stipulated that German law governs the rights and obligations of the parties. The contract for the 2004 series did not do so.

The 2004 contract was in English style, the English language, and provided for payment at the conclusion of the series in Euros at DOC's bank in Munich. Over the phone DOC's managing director and Mr. Grant agreed that 'should any dispute arise between us we'll settle it according to the general principles governing concert promotion'.

DOC wishes to sue Mr. Grant in the German courts. It denies it is in breach of contract.

Advise DOC (i) whether it can;  
(ii) what is the applicable law of this contract; and  
(iii) on the law or laws which will govern the damages issues.

8. The United Bank of Liverpool plc (UBL) entered into an agreement with a local authority in the Netherlands (LAN) in 2000 to provide the finance to enable it to build a municipal brothel. The contract stipulated that Dutch law was to govern (UBL having been advised to do this because, it was thought, such a contract would be illegal according to English law). LAN is now refusing to repay the money. It has invested it, and is making 100,000 Euros a month from it.

- (i) Can UBL sue LAN in England?
- (ii) By what law would an English Court determine whether the money, the interest, and the proceeds of the investment could be recovered?
- (iii) LAN has £5 million on deposit with the City Bank of Coventry. Can UBL prevent LAN remitting this sum to the account it has in Paraguay?

9. Discuss critically the grounds open to an English court for refusing to recognise or enforce a judgment from a court in New York. To what extent can any of these grounds be justified?

**END OF PAPER**