

**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 : 12-MAY-06**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## CONFLICT OF LAWS

Answer **FOUR** questions.

1. Deepblue Co is an Australian company specialising in scuba diving in remote locations on the Great Barrier Reef. All divers are required to sign a form by which they agree that any claims against Deepblue must be brought to the Australian courts.

Mr Jones (an English resident) institutes proceedings against Deepblue in Texas for injuries he was alleged to have suffered during a diving expedition with Deepblue in Australia. Deepblue has no record of Mr Jones taking part in one of its scheduled diving expeditions but has learnt that Mr Jones did go diving privately with one of his friends who was employed by Deepblue at the time. There is no question of Deepblue being liable for the private activities of its employees, and thus Deepblue suspects that Mr Jones has fabricated the claim to get damages from the company. The Texan court upholds its jurisdiction on the basis that Deepblue organizes diving expeditions off the coast of Texas from time to time with a local affiliate. Deepblue applies to an Australian court for an anti-suit injunction against Mr Jones. The Australian court refuses the injunction on the basis that there was no proper consent to the jurisdiction clause. Deepblue then applies to the Texan court for a stay of the proceedings and also files a witness statement by the general manager of Deepblue attesting that Mr Jones had never taken a dive with her company. The Texan court refuses the application and also finds that, by reason of filing the witness statement, Deepblue has submitted to the proceedings.

Advise Deepblue on each of the following points:

- (a) Can Deepblue obtain an injunction from the English courts to restrain Mr Jones from continuing with the Texan proceedings?
- (b) Judgment in the Texan proceedings is entered against Deepblue for \$500,000 in compensation and \$1,000,000 in punitive damages.

Does Deepblue have any defences against the enforcement of the Texan judgment in England? (Deepblue has assets in England.)

**TURN OVER**

2. In 2005, Casper Inc (a New York company) entered into a joint venture agreement with Dansor Plc (an English company) and SA Mines (a South African company) for the operation of a uranium mine in South Africa. The joint venture agreement contains the following terms:

‘The parties agree to submit all disputes arising out of the interpretation or performance of the contract to the South African courts.’

‘This contract shall be governed by English law.’

The mining operation was not as successful as originally envisaged. In accordance with the joint venture agreement, each party was to make equal contributions to the operating costs of the mine every six months. Just after Casper made its contribution, Dansor and SA Mines communicated their refusal to make their contributions until some profits from uranium sales were realised.

Casper notifies Dansor and SA Mines that it intends to sue them both for breach of contract in England.

Advise Dansor and SA Mines on each of the following points:

- (a) Will the English Court exercise jurisdiction over Dansor and/or SA Mines?
- (b) In the event that the English Court does uphold its jurisdiction in relation to one or both of Dansor and SA Mines, can they rely upon a South African statute making any agreement about the operation of a uranium mine void unless it is registered with *both* the Minister of Resources and the Minister of the Environment of South Africa? (Only the former had been done in this case.)

**CONTINUED**

3. Digitaline is a French software company which has developed new encryption software to protect the confidentiality of emails. At a software trade fair in Paris in 2005, the IT manager of an English law firm, Stalefields, witnessed a demonstration of the software by representatives of Digitaline. The IT manager of Stalefields expressed a strong interest in the software and subsequently met with representatives of Digitaline in Paris to conclude a contract for the use of the software. Pursuant to the contract, technicians from Digitaline then undertook a study of Stalefields' requirements during a two-week field trip and then returned to Paris to make certain modifications to the standard encryption software. Upon the advice of Digitaline, Stalefields agreed to test the software at its small office in Paris first, and, following a successful trial period, the software was installed at Stalefields' head office in London.

Some months later, an email attaching a confidential memorandum about the financial state of a client of Stalefields (Mayfield) was accidentally sent by a trainee of Stalefields to the address of the client's competitor (Greenfield). If the encryption software had been working properly, the mistaken addressee of the email would not have been able to open it because the addressee would not have been listed as one of the authorized recipients for correspondence on that file. It transpired that Digitaline had failed to install one of the components of the software package, which meant that it had never worked properly. The memorandum was subsequently leaked to the press and the share price of Mayfield plummeted.

Facing a professional negligence action by Mayfield, Stalefields decides to sue Digitaline for breach of contract. Under French law, Stalefields would not be able to recover damages for losses caused to third parties, whereas under English law this would be permissible.

Advise Stalefields on each of the following points:

- (a) Can Stalefields bring proceedings against Digitaline in the English courts?
- (b) Can Digitaline rely upon the absence of liability under French law?

**TURN OVER**

4. Slick Oil plc is an English mining company operating an oil field in Ruritania. Following the publication of cartoons satirizing the President of Ruritania as a tin-pot dictator in the English papers, the President of Ruritania issued a decree confiscating a stockpile of oil owned by Slick Oil plc and stored at a port in Ruritania. The President then sold the oil to Nepotic plc (an English company). Nepotic plc obtained title to the oil after it was loaded on board a ship at the port in Ruritania. Nepotic plc then shipped the oil to its warehouse in Liverpool (England).

Slick Oil plc brings proceedings in the English Court to recover the oil from Nepotic plc.

Answer **each** of the following points:

- (a) What arguments in relation to the applicable law would assist Slick Oil plc to recover the oil from Nepotic plc and what such arguments would assist Nepotic plc to retain the oil?
- (b) Would your answer to (a) be different if Slick Oil plc's stockpile of oil that was the subject of the confiscatory Presidential Decree was, at the time the Decree was issued, situated at a port of the neighbouring country Arcadia?

**CONTINUED**

5. How would *Boys v Chaplin* now be decided under the Private International Law (Miscellaneous Provisions) Act 1995?
6. Discuss whether the rule against the enforcement of foreign revenue laws should be abolished.
7. Discuss whether there is any scope for the English courts to apply the *Spiliada* principles following the ECJ's decision in *Owusu v Jackson*.

**END OF PAPER**