



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2015/2016

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LIL 303: CONFLICT OF LAWS

DATE: Monday, 18<sup>th</sup> April, 2016

TIME: 12.00 p.m. - 2.00 p.m.

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**INSTRUCTIONS:**

1. Answer Question ONE and any other TWO questions. Penalties accrue for failure to answer question ONE.
  2. Support your answers with relevant illustrations from case law, statutory provisions and any other references.
  3. Your writing must be NEAT and LEGIBLE.
  4. Your answer booklet must bear your assigned REGISTRATION NUMBER, both on the cover and every written page therein.
  5. Do not scribble or draft answers on the inner or outer cover pages of your answer booklet.
  6. Do not write anything except your REGISTRATION NUMBER on this question paper.
  7. ALL Kenyatta University Examinations Rules apply as if they were contained herein.
1. Bwaya, a Kenyan resident, travelled to South Africa for a holiday. While in South Africa he hired a Mercedes Benz limousine from the local office of UberDrive, a company incorporated in the United States carrying on business worldwide including both South Africa and Kenya. The Benz hired by Bwaya had been made in Germany by the Daimler Benz Company, which owns property in Kenya but does not carry on business in Kenya.

While Bwana was cruising in the Benz in Johannesburg the braking system failed causing the Benz to crash. He suffers serious personal injury and mental anguish and receives intensive care in South Africa for three months. He is later flown to Kenya for further specialized medical treatment. It's Bwaya's contention that the cause of the failure of the braking system was negligence in the manufacture of the car and/or negligence on the part of UberDrive in carrying out regular maintenance on the Benz.

Advice Bwaya on the conflict of laws issues which might arise in proceedings by him in the Kenyan High court to recover damages for personal injury: (a) in tort against Daimler Benz, and (b) in contract against UberDrive.

In give your advice bear in mind the following additional information:

- a) The contract between Bwaya and UberDrive contained a term which conferred exclusive jurisdiction on the South African courts in the event of any claim by one party against the other.
- b) Under South African law there is a limitation period of one year for bringing proceedings to recover damages for personal injury. Although this period has expired, the relevant limitation period under the law of Kenya is three years, which has not expired.
- c) Under German law, but not Kenyan law, a successful plaintiff in proceedings against the manufacturer of a product (Such as the car in the present case) is entitled to recover treble damages where negligence in manufacture has caused personal injury.

(30 marks)

2. In Gosper v Sawyer (1985) 160 CLR 548, Gibbs CJ, Wilson and Dawson JJ stated at p.557: "in an action in personam, the rules as to the legal service of the writ define the limits of the jurisdiction of the court".

Discuss this statement in relation to the Kenyan law on jurisdiction of courts in cases with a conflict of laws element.

(20 marks)

3. James Mlewa sued Jackline Musa in the Republic of Samia. Jackline used to stay in that country and left five years before James initiated the suit. She never visited that country and actually has no intention of ever going back there. James filed the suit and tried to serve her personality, but was unsuccessful in his efforts. He went to court and pleaded with it that he should be allowed to serve her by substituted service since he does not know in what country she resides. The court granted him his prayers but on the following conditions:

- a) That he will nail the summons on the door of the house she last resided.
- b) That he will nail a copy of the summons in the local market she used to do her shopping.

After doing the above, the court gave him judgment in his favor. Later he discovered that she resides in the neighboring state of Busia. He was delighted and instructed a lawyer to enforce judgment. Jackline has instructed you to defend her. With the help of decided cases, advise her on her chance of avoiding liability by impeaching the jurisdiction of the foreign court. (20 marks)

4. "Parties to an international contract select both the law applicable to their relationship and the forum that could exclusively adjudicate over any dispute between them through a choice of forum and arbitration clauses." - Anon.

Discuss this statement in light of the choice of law rules governing international contracts.

(20 marks)

5. Discuss any two of the following principles that govern determination of jurisdiction of courts in cases with a foreign element in relation to Kenya law:

a) Submission (10 marks)

b) Presence (10 marks)

c) Statute (10 marks)