

UNIVERSITY OF LONDON

267 0014

LLB EXAMINATION
for External Students

PART II EXAMINATION (Scheme A)
THIRD AND FOURTH YEAR EXAMINATIONS (Scheme B)
GRADUATE ENTRY LEVEL II (Route A)
GRADUATE ENTRY THIRD YEAR (Route B)

Conflict of Laws

Thursday 4 June 2009 : 10.00 - 1.15 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **EIGHT** questions.

Candidates should answer all parts of a question unless otherwise stated.

1. Does *renvoi* have a part to play in the conflict of laws decision-making process, or should it be abolished?

2. Mr Adams wants to sue the following three defendants in the English courts. Can he do so? If not, where (if at all) may he sue?
 - (i) Bertrand, a French domiciliary. Mr Adams was injured when a car driven negligently by Bertrand knocked him down when he was crossing the street in Madrid. Mr Adams was off work for three months and lost several thousand pounds salary.

 - (ii) Karim, the governor of a Saudi prison. Mr Adams alleges he was tortured when detained in this prison on a blasphemy charge last year. He believes this was done on the orders of Karim. Karim is currently in London at a prison governors' congress.

 - (iii) Dieter, a German national who lives in Austria. Mr Adams rented a holiday villa in Portugal from Dieter last year. When he arrived at the villa it was in a bad state of repair, and Mr Adams was forced to book a hotel instead. Mr Adams estimates his loss at nearly £2000.

3. Article 5 (1) of Brussels 1 Regulation provides:

‘In matters relating to a contract [the defendant can be sued] in the courts of the place of performance of the obligation in question.’

Discuss critically the concepts involved in this provision, and the interpretational difficulties the courts have faced.

4. Mr Brown is asking an English court to enforce two judgments given in his favour.

The first was made by a court in Los Angeles; the second by a court in Paris.

He has been warned that his attempts to enforce these judgments will be strenuously resisted.

Advise Mr Brown as to what defences may be available, and explain to him how any differences in the outcomes of the two claims might be justified.

5. Has the introduction of Rome II Regulation effected an improvement in the jurisprudence on choice of law in tort?

6.
 - (a) What law governs capacity to enter into a commercial contract?
 - (b) What law governs capacity to enter into a marriage or civil partnership?

7.
 - (a) Mr Barrett, who is domiciled in Oceania, insured his life last year with Trustus, an English insurance company. He has recently assigned the policy to his wife in Oceania. By the law of Oceania the assignment is invalid because donations between spouses are not permitted. Can Mrs Barrett claim on the policy in England, by the law of which such an assignment is valid?
 - (b) Diana, whose domicile of origin was in England, married Pierre, a wealthy French property developer, with a domicile in France, in 1978. By the law of France, unless parties agree to the contrary, there is community of property between married couples. There was no such agreement. The matrimonial home was set up in France where they lived until 1990. In 1990, by which time Pierre was worth 20 million U.S. dollars, they moved to England. Pierre's property development continued to prosper. He died in 2007 worth 40 million U.S. dollars. He also had a chateau in Switzerland and an expensive yacht in Southern Spain.

By the law of France Diana is entitled to half of Pierre's property. Pierre's brother is contesting Diana's claim.

Advise Diana.

8. What is the applicable law of the following contracts, all of which were made in 2006?
- (i) A contract between Allfruit plc, a jam producer in the East of England, and Wodski, a Polish strawberry grower, under which Wodski supplies Allfruit with strawberries. Payment is to be in US dollars at a Polish bank in London upon delivery of the strawberries. Nothing is said about the applicable law, but previous contracts were expressed to be governed by English law.
 - (ii) A publishing contract between an English author, domiciled and resident in England, and a publisher with a central administration in the Netherlands. The contract states 'Disputes must be referred to the District Court in Rotterdam'. The publisher is refusing to pay the author her royalties because the book is considerably larger than that contracted for.
 - (iii) A contract between Jose of Jerez, a Spanish sherry producer, and a consortium of English off-licences to supply 20,000 bottles of sherry a month, payment to be in Euros at a branch of a Spanish bank in London. The contract stipulates 'In the unlikely event of a dispute arising, we will choose the law to govern our contractual relationship'. A dispute has now arisen, and the parties cannot agree a law to govern it.

END OF PAPER