



KENYATTA UNIVERSITY
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS
LIL 303: CONFLICT OF LAWS

2ND SEMESTER 2022/2023

TIME: 2 HOURS

INSTRUCTIONS:

1. Answer **ALL** Questions
2. Support your answer 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 or your question paper
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

Question 1

Vincent, a Kenyan citizen, is in Cape Town, South Africa, for long holidays. While in Cape Town, Vincent will be using a BMW X6, by i-Drive, a company incorporated in the United Kingdom but carries its business globally, including South Africa, but not Kenya. The BMW X6 hired by Vincent is manufactured in Germany by Bayerische Motoren Werke AG (BMW), which owns the property, on which, BMW Kenya, a local dealership sits.

While Vincent was driving along the streets of Cape Town, the braking system failed causing the car to crash. Following the crash, he was admitted at the Intensive Care Unit (ICU) at the Cape Town Royal Medical Centre for a period of three (3) months. Thereafter, the family, through Flying Doctors Air Ambulance, airlifted him back to Kenya for advanced neuro-surgical treatment at the Kenyatta National Hospital.

Weeks after being discharged from the hospital, Vincent contends that the accident was as a result of Bayerische Motoren Werke AG's negligence i.e manufacturing faulty braking system, and that of i-Drive for failing to carry-out regular maintenance on the said car.

Vincent seeks your counsel on the potential conflict of laws issues that may arise should he prefer to bring an action in the Kenyan courts for compensation for damages suffered against Bayerische Motoren Werke AG and i-Drive.

In rendering your counsel, you are reminded of the following additional information:-

- a) The contract between Vincent and i-Drive has a term which confers exclusive jurisdiction on South African Courts in the event of any claim/dispute by parties;
- b) Under the South African law, proceedings to recover damages for personal injury is one(1) year. The corresponding limitation period in Kenyan law is three (3) years, which is yet to expire.
- c) Under the German law, a successful litigant on product liability is entitled to compensation of up-to three times the quantum of damages where product liability causes personal injuries.

Citing relevant authorities, proceed to render your legal advise (30 Marks)

Question 2

'The notion of habitual residence appears to be emerging as a concept acceptable to lawyers from both common law and civil traditions, as representing a compromise between domicile and nationality, or at least as a more acceptable connecting factor than domicile to be used as an alternative to nationality.'

Discuss the development of 'habitual residence as a connecting factor in the conflict of laws'

[20 marks]

Question 3.

'Palpably missing from the discourse on African Economic Community (AEC) is any discussion of the role of private international law in this pursuit.' Prof. Oppong

Discuss (20Marks)