



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: PIL41A0/ IPR0014 Private International Law
<u>SEMESTER</u>	: First semester
<u>EXAM</u>	: Supplementary Examination

<u>DATE</u>	Supplementary : Examination	<u>SESSION</u>	2 hours
<u>ASSESSOR(S)</u>	: Ms C Johannes		
<u>DURATION</u>	: 2 hours	<u>MARKS</u>	: 100

NUMBER OF PAGES: 5 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. **Please write your surname, initials and student number on the answering paper.**
2. Read the factual scenario's carefully and answer the questions that follow.
3. Write neatly and legibly.
4. Answer in the answer sheet provided.
5. You must address all the matters required to answer the question, but you need not do so in a particular order.
6. Your answers should express a clear point of view in relation to each question.
7. All examination rules of the University of Johannesburg are applicable.

QUESTION 1

Kagiso, a Zimbabwean national, was domiciled and habitually resident in Australia, where he met Lerato, a Zimbabwean national, who was domiciled and habitually resident in Botswana. In 2010, the couple were married in Madagascar. They were married out of community of property *ex lege*. Since 2012, Lerato was the breadwinner, and contributed the most towards their common household expenses. This is because Kagiso stopped working to continue his medical studies in order to become a doctor.

In 2016, the couple moved to South Africa and acquired domicile and habitual residence there. In 2016, Kagiso graduated as a medical doctor and started working at Baragwanath Hospital in Soweto. From 2016, Kagiso contributed the most towards their household expenses.

In January 2017, Kagiso fell in love with one of his colleagues Thandi. Kagiso no longer wished to remain married to Lerato and instituted a divorce action in the Gauteng Local Division of the High Court of South Africa, Johannesburg.

- 1.1** The legal system of which country governs the formal validity of Kagiso and Lerato's marriage? **[2]**
- 1.2.1** Reflect on the circumstances in which the doctrine of *renvoi* could possibly be applied by a court in respect of the issue referred to in question 1.1. **[3]**
- 1.2.2** Explain why the application of *renvoi* is not *ab initio* excluded in this regard. **[4]**
- 1.2.3** Which legal system would govern the proprietary consequences of the marriage between Kagiso and Lerato under Roman-Dutch law? **[5]**
- 1.3** Refer to question 1.2.3 above. Critically discuss the position under Roman- Dutch law in light of the Bill of Rights in the Constitution of the Republic of South Africa, 1996. **[4]**
- 1.4** Which legal system must govern the question as to where the parties were domiciled at the conclusion of the marriage? **[2]**
- 1.5** Where would Lerato have been domiciled immediately after the wedding in terms

of the common law? Discuss how your answer would differ today, with the application of the Domicile Act 3 of 1992. **[5]**

1.6 Indicate the legal system that would be applicable to the proprietary consequences of the marriage between Kagiso and Lerato at the time of divorce by applying the proposal of Stoll & Visser. **[5]**

1.7 Which legal system governs the question as to whether Kagiso would have a claim for household expenses against Lerato at the time divorce in the South African court? **[4]**

1.8 Assume that Lerato wants to claim for redistribution of the marital assets at the time of her and Kagiso's divorce, but does not meet the requirements of s 7(3)-(4) of the Divorce Act 70 of . Advise her of the likelihood of success with reference to the relevant legislation. **[4]**

1.9 Assume that Lerato wishes to adopt a child from Ghana after her divorce from Kagiso. What are the requirements for her to validly adopt the child? **[3]**

1.10 Assume that Kagiso wants to exclude the application of foreign law in the divorce matter. What are the public policy grounds for excluding foreign law in terms of *Bell v Bell* 1991 4 SA 195 (W)? **[4]**

1.11 Assume that the divorce between Kagiso and Lerato was not granted by the Gauteng Local Division of the High Court of South Africa, Johannesburg. Assume that Kagiso and Lerato later obtained a divorce in the Dominican Republic. In 2017, Kagiso marries Thandi in Australia. In April 2019, Thandi decides to divorce Kagiso and claim half of his estate, as they were married in community of property. Kagiso disputes Thandi's claim on the grounds that his marriage to Thandi is invalid because his divorce from Lerato was not validly obtained.

1.11.1 Identify the incidental question in the given facts. **[1]**

1.11.2 What type of incidental question is present in this instance? **[1]**

QUESTION 2

Ayanda (a national of Ethiopia) and Lungelo (a national of Nigeria) married in Zimbabwe in 2011. They were married in community of property. Lungelo was domiciled and habitually resident in Kenya at the time of the marriage. At the time of the marriage, Ayanda was domiciled and habitually resident in Botswana. She executed two wills during her lifetime. In 2014, Ayanda and Lungelo went on holiday in Paris, France. After nearly falling from the Eiffel Tower, Ayanda immediately drafted her first will on top of the Eiffel Tower instituting Lungelo as her sole heir.

In 2015, Lungelo and Ayanda moved to Zambia where they became domiciled and habitually resident. Lungelo got a job with the Zambian Embassy. In 2016 Ayanda fell pregnant and gave birth to their son Mandla. This prompted Ayanda to draft a second will, expressly revoking her first will and nominating her son, Mandla as her sole heir. Ayanda executed her second will in Lesotho in 2017. During 2018, Ayanda was diagnosed with cancer which led to her death in January 2019, leaving Mandla in Lungelo's care. In terms of the relevant legal system, Mandla is Ayanda's sole intestate heir.

Ayanda left behind money in a bank account in Ethiopia and a house situated in Zambia.

- 2.1** Assume that Lungelo argues that he is entitled to a legitimate portion of Ayanda's estate upon her death. Assume that in terms of the law of Kenya, surviving spouses are entitled to a legitimate portion. Assume that the issue of a legitimate portion is deemed to be a patrimonial consequence of marriage according to Kenyan law. The legal system of which country would govern the existence of a legitimate portion in favour of Lungelo if classification *lege fori* were applied? **[10]**
- 2.2** The legal systems of which countries govern the formal validity of Ayanda's first will? **[3]**
- 2.3** Assume that both the first and the second will are formally valid in terms of the law of France only. Who inherits the money in Ayanda's bank account in Ethiopia? **[3]**

2.4 Assume that the first will is formally valid in terms of the law of Ethiopia only and the second will is formally valid in terms of the law of the Zambia only. Who inherits Ayanda's immovable property in Zambia? **[3]**

2.5 Assume that the first will is formally valid in terms of the law of France only and the second will is formally valid in terms of the law of Botswana only. Who inherits the money in Ayanda's bank account in Ethiopia? **[3]**

QUESTION 3

Siyanda (Seller) and Dumisani (Buyer) concluded an "instalment agreement" for the sale of a rare Egyptian artefact (king Tutankamun's mask) owned by Siyanda. The contract was concluded in Morocco while both parties were attending an ancient Egyptian artefact auction. At the time of the conclusion of the contract, the mask was being held at a museum in Cairo, Egypt. Siyanda is domiciled and habitually resident in Egypt, and Dumisani is domiciled and habitually resident in Johannesburg (South Africa). According to the contract, delivery had to take place at Dumisani's residence in Johannesburg, and payment was to be effected in Siyanda's account at a bank in Egypt. The contract provided that ownership would only pass at payment of the full purchase price. The reservation-of-title clause was not registered in any public registry. Assume that delivery took place as agreed, but a dispute between Siyanda (plaintiff) and Dumisani (defendant) arises in respect of payment, only 40% of the purchase price has been paid to date. The parties did not choose a legal system to govern their agreement. Assume that Siyanda institutes proceedings against Dumisani in the Gauteng Local Division of the High Court of South Africa, Johannesburg.

3.1. The legal system of which country would most likely be applicable to the contractual dispute between Siyanda (plaintiff) and Dumisani (defendant) in respect of the breach of contract (short payment)? **[10]**

3.2 Assume that the law of Egypt is the proper law of the contract. Could the South African National Credit Act nevertheless be applicable to the contract? **[3]**

3.3. Assume that the law of Egypt is the proper law of the contract. The law of which country governs:

3.3.1 the formal validity of the contract between Siyanda and Dumisani. **[2]**

3.3.2 the reservation of title clause. **[2]**

3.3.3 Siyanda's contractual capacity. **[2]**

3.4 Assume that the case was not heard by a South African but rather an Egyptian court. Predict whether a judgment against Dumisani will be recognised and enforced in South Africa by a South African court. **[7]**

QUESTION 4

A company called "Hair Caress" manufactures flat irons (hair irons) in London where it is registered and has its principle place of business. The hair irons were sold to various hair salons in South Africa, one such hair salon being "Harriets". Harriets has its principle place of business and is registered in South Africa. While Harriets used one of the hair irons at the salon, on their celebrity client Zammy Smith, the hair iron started malfunctioning and blew up burning Zammy's hair. Zammy is furious and promises to ruin Harriets' business. Harriets institutes a delictual claim for damages in South Africa against Hair Caress. Identify the legal system applicable to the delict and motivate your answer using case law. **[5]**

GRAND TOTAL [100]
