



<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>	: Main Examination

<u>DATE</u>	: 06 June 2019	<u>SESSION</u>	: 16.30 - 18.30
<u>ASSESSOR(S)</u>	: Ms. C Johannes		
<u>MODERATOR</u>	: Prof M Wethmar- Lemmer		
<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

Minenthle (a South African citizen at all relevant times) and Bongani (an Australian citizen at all relevant times) married in Zambia in 2007. They were married out of community of property excluding the accrual system, subject to an ante-nuptial contract. Both parties were habitually resident in Namibia at the time, working for Windhoek Travel Tours. At the time of the marriage, Minenthle (the wife) was domiciled in Namibia and Bongani (the husband) was domiciled in Kenya. At the time the marriage was concluded, the parties had intended to move to Ghana and acquire domicile there. Instead, they were working in Morocco in 2009 and acquired domicile and became habitually resident there. While in Morocco Minenthle and Bongani adopted a little girl named Busi.

Minenthle and Bongani remained in Morocco for four years, and finally moved to South Africa during 2012. In 2015, they acquired domicile in South Africa, and both were habitually resident there. They purchased a house in Johannesburg.

In 2015, Minenthle and Bongani visited Italy on holiday, while in Italy Bongani gifted Minenthle with a bottle of premium Italian wine.

During 2016, Minenthle contributed a disproportionately large amount to the common household expenses, as Bongani continued his studies. From 2017 to 2018, Minenthle stopped working to further her studies. During this time, Bongani contributed a disproportionately large amount to the common household expenses.

In 2019, Minenthle meets Kenzo with whom she falls in love and decides to separate from Bongani. She then institutes an action for divorce in the Gauteng Local Division of the High Court of South Africa, Johannesburg. At the time of the divorce between Bongani and Minenthle, Busi is 15 years old.

- 1.1 Which legal system governs the content of the concept of domicile? [1]
- 1.2 Which legal system governs the inherent validity of Minenthle and Bongani's marriage? [1]
- 1.3 With reference to case law discuss how your answer to Question 1.2 would differ if Minenthle was a minor unable to marry according to her *lex domicilii*. [4]
- 1.4 Assume that South African Private International Law provides that the proprietary consequences of the marriage are governed by Kenyan law. The Private International Law of Kenya refers the matter to the law of Namibia. Assume that the Kenyan Court applies the partial *renvoi* theory. The legal system of which country will be applied by in the Gauteng Local Division of the High Court of South Africa, Johannesburg if it were to reject *renvoi*? [1]
- 1.5 What type of *renvoi* is referred to in Question 1.4 above? [2]

- 1.6** The legal system of which country would govern the proprietary consequences of the marriage between Minenthle and Bongani at the time of divorce according to Roman-Dutch law? In your answer, discuss the constitutionality of the common law position with reference to case law. **[4]**
- 1.7** The legal system of which country would govern the proprietary consequences the marriage between Minenthle and Bongani at the time of divorce according to the proposal of Stoll and Visser? **[4]**
- 1.8** The legal system of which country would govern a claim for maintenance by Bongani against Minenthle at the time of divorce? Discuss how your answer would differ if Bongani's claim for maintenance was closely linked to a claim for redistribution. **[3]**
- 1.9** Would Bongani meet the requirements to claim for redistribution at the time of divorce against Minenthle in terms of section 7(3)-(4) of the Divorce Act 70 of 1979? **[4]**
- 1.10** Assume that Bongani does not have a claim for redistribution in terms of section 7(9) of the Divorce Act and meets the requirements above in Question 1.9. Would Bongani be permitted to claim for redistribution in terms of South African law? **[4]**
- 1.11** Assume that Bongani wants the application of foreign law to be excluded in the divorce matter. List the public policy grounds for excluding foreign law in terms of *Bell v Bell* 1991 4 SA 195 (W)? **[4]**
- 1.12** Discuss the requirements Minenthle and Bongani had to meet to adopt Busi from Morocco? **[3]**
- 1.13** Assume that Following the divorce of Minenthle and Bongani, Bongani moves to Canada with Busi, without first obtaining Minenthle's permission. Discuss the remedies available to Minenthle. **[3]**
- 1.14** Refer to Question 1.13 above. Discuss the defences Bongani can raise for Busi not to be sent back to her place of habitual residence. **[4]**
- 1.15** According to South African Private International Law the donation of the wine from Bongani to Minenthle is regarded as a personal consequence of the marriage. Assume that the law of Kenya regards the donation of the wine as a proprietary consequence of the marriage.
- 1.15.1** The legal system of which country would govern a claim for the donation of the wine by Bongani against Minenthle at the time of the divorce if classification *lege fori* were applied? Illustrate your answer with a diagram. **[10]**
- 1.15.2** Explain whether your answer to Question 1.15.1 would be affected if you were to apply classification *lege causae*. **[5]**

SUB -TOTAL: [57]

QUESTION 2

Bonang, a South African national, died in Ethiopia in March 2019. She was at all relevant times domiciled and habitually resident in Kenya. She left money in a bank account in South Africa and a house in Johannesburg. She executed two wills during her lifetime. In her first will, her first husband, Thabo, was instituted as her sole heir. This will was executed in Zimbabwe while Bonang was on holiday at the Victoria Falls with Thabo. In her second will, her second husband, Siphiso, was instituted as sole heir. This will was executed in Lesotho at the top of the Sani Pass. The second will expressly revokes the first will. Thabo and Siphiso are still alive. Bonang leaves one child behind named Vuyo. Vuyo is the son of Thabo her first husband. Bonang divorced from both Thabo and Siphiso during her lifetime. The second divorce took place three years before her death. In terms of South African law Vuyo would be Bonang's sole intestate heir.

- 2.1** Assume that both the first and the second will are formally valid in terms of the law of Kenya only. Who inherits the money in Bonang's bank account in Johannesburg? **[3]**
- 2.2** Assume that the first will is formally valid in terms of the law of Kenya only and the second will is valid in terms of the law of Zimbabwe only. Who inherits the money in Bonang's bank account in Johannesburg? **[3]**
- 2.3** Assume that both the first will and the second will are formally valid in terms of the law of Zimbabwe only. Who inherits the money in Bonang's bank account in Johannesburg? **[3]**

SUB -TOTAL: [9]

QUESTION 3

Denver, a Nigerian national, domiciled in Ethiopia, executed his will in Tanzania. Denver's will ("will 1") granted the power of appointment of a final beneficiary under a trust to Rory. Denver's will is formally valid in terms of the law of Nigeria, but not in terms of the law of Tanzania and Ethiopia. Rory, a South African national, executed the power of appointment conferred upon him, in his own will ("will 2"). Rory drafted his will in Botswana. Will 2 is formally invalid in terms of the legal systems of South Africa and Botswana, but it is formally valid in terms of the law of Tanzania. Is the execution of the power of appointment (the appointment of a final beneficiary in Rory's will) formally valid? **[5]**

SUB -TOTAL: [5]

QUESTION 4

Player One is a company incorporated in Johannesburg (South Africa). Games Galore, a kids' entertainment company, is incorporated in England. Player One (seller) and Games Galore (buyer) concluded a contract of purchase and sale in respect of eight PlayStation Fours, produced in Germany. The contract was concluded in Antwerp (Belgium) during February 2019. In terms of the contract, the PlayStations that were manufactured in Germany had to be delivered by Player One in the harbour of

Hamburg (Germany) during March 2019. Payment by Games Galore had to take place in Player One's bank account at First National Bank in South Africa. The parties did not choose a legal system to govern their agreement. Assume that a dispute between Games Galore (plaintiff) and Player One (defendant) arises in respect of the quality of the PlayStations as delivered by Player One. Several of the PlayStations overheated and blew up after a few hours of play on the game machines. Payment took place as agreed.

- 4.1** Assume Games Galore institutes a claim against Player One in the Gauteng Local Division of the High Court of South Africa, Johannesburg based on their contractual agreement. Predict which legal system would be applied to the contractual dispute by the Gauteng Local Division of the High Court of South Africa, Johannesburg. **[12]**
- 4.2** Assume Games Galore institutes a delictual claim for the malfunctioning PlayStations. Predict which legal system is applicable to the delict and use case law to motivate your answer. **[5]**
- 4.3** Assume that the case was not heard by a South African Court but rather a German Court. Predict whether the judgment against Player One will be recognised and enforced in South Africa. **[8]**
- 4.4** Assume that the PlayStations have not yet been shipped from Player One to Games Galore but have already been sold to Games Galore. Which legal system would govern the transfer of ownership of the PlayStations from Player One to Games Galore? **[4]**

SUB -TOTAL: [29]

TOTAL: 100
