



<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>	: Special Examination

<u>DATE</u>	: Special 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: 6 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

Keegan (a Zambian national) and John (a Kenyan national) met in Namibia, where they were both domiciled and habitually resident. They decided to get married in Zimbabwe at the Victoria Falls in 2014. They were married out of community of property excluding the accrual system, subject to an ante nuptial contract. Both Keegan and John acquired domicile in South Africa in 2016, and bought a house in Johannesburg (South Africa)

During 2017, Keegan and John visited Ghana while working for the United Nations. During their time in Ghana, they met an orphan named Samuel. Keegan and John decided to adopt Samuel. Whilst in Ghana, Keegan bought a rare African artefact for John and gave it to him as a gift.

In 2018, John contributed a disproportionately large amount to the common household expenses, as Keegan stayed at home to look after Samuel and continue his studies. In January 2019, Keegan and John decided to divorce after John caught Keegan texting his ex-partner Franco. John 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 content of the concept of domicile? [1]
- 1.2 The legal system of which country governs the formal validity of the marriage between Keegan and John? [2]
- 1.3 Reflect on the circumstances in which the doctrine of *renvoi* could possibly be applied by a court in dealing with the formal validity of a marriage. [3]
- 1.4 The legal system of which country governs the proprietary consequences of Keegan and John's marriage according to Roman Dutch law? Discuss whether the application of this system is constitutionally valid? [5]
- 1.5 The legal system of which country would govern the proprietary consequences of Keegan and John's marriage at the time of divorce? Apply Stoll & Visser's proposal. [4]
- 1.6 The legal system of which country governs the proprietary consequences of the marriage between Keegan and John in respect of the ownership of the house in South Africa at the time of divorce? Apply the *obiter dictum* of Van Rooyen AJ in *Sadiku v Sadiku*. [2]
- 1.7 The legal system of which country would a claim, at the time of divorce, for the donation of the rare African artefact Keegan gifted John? Motivate your answer using case law. [3]

- 1.8** Discuss the requirements that Keegan and John had to comply with to validly adopt Samuel from Ghana. **[3]**
- 1.9** The legal system of which country determines whether at the time of divorce John would be able to claim for the household expenses referred to in the given facts? **[5]**
- 1.10** Discuss Samuel's domicile according to the Domicile Act 3 of 1992. In your answer you must discuss if Samuel's domicile would have differed at common law. **[4]**
- 1.11** Would John have a claim against Keegan for re-distribution in terms of South African Law at the time of divorce? **[6]**
- 1.12** Regardless of the classification of John's claim for re-distribution, if he does not have a claim according to s7(3)-(4) of the Divorce Act 70 of 1979 and does not meet the requirements set out in these provisions, would he have a claim for re-distribution in South Africa. **[4]**
- 1.13** Following their divorce John wishes to move back to Ghana with Samuel what will John need to do in order to be able to move to Ghana with Samuel? **[3]**

QUESTION 2

In 2014, Denver decided to draft his will while on holiday in Ethiopia, by means of an audio recording. At the time of drafting the will in 2012, Denver was domiciled in Kenya. Denver left his movable property to his daughter Ashley and his house situated in Senegal to his son Lance who were both born from his first marriage to Molly. In 2016, Denver moved to South Africa where he was domiciled and habitually resident. Denver met his second wife Jolene in South Africa and lived there, with her until he died in a horrific car accident in January 2019.

Jolene is upset to learn that Denver left all his property to his children and did not leave her anything. She claims that Denver's "will" is formally invalid. As the Private international law lawyer dealing with the above case, you are required to identify the law applicable to the formal validity of Denver's will. **[8]**

QUESTION 3

Danny (a national of Kenya at all relevant times) left two wills. He left money in a bank account in Windhoek (Namibia) and immovable property in Johannesburg (South Africa). In 2013, Danny executed his first will, while he was domiciled in South Africa. He executed his first will while on holiday in Zanzibar (Tanzania). In his first will ("will 1") Danny bequeathed his estate to Anzani, his best friend at the time. Following a huge fallout with Anzani, Danny drafted his second will ("will 2") which expressly revoked the first will. In his second will Danny bequeathed his estate to his wife Jackie.

At the time when Danny drafted his second will he was domiciled in Zambia. He drafted his second will on board a cruise ship in the Mediterranean. The ship was registered in Greece. At the time of his death in March 2019, Danny was domiciled in Mauritius.

In terms of South African law, the intestate heirs are Kelly and Tom Danny's two children. In terms of the law of Mauritius, Farrah and Grant, Danny's parents are the intestate heirs.

- 3.1** Assume that both the first and the second will are formally valid in terms of the law of Mauritius only. Who inherits the money in Danny's bank account in Namibia? **[4]**
- 3.2** Assume that the first will is formally valid in terms of the law of only Mauritius only and the second will is formally valid in terms of the law of South Africa only. Who inherits Danny's the Money in Danny's bank account in Namibia? **[4]**
- 3.3** Assume that the both the first and second will are formally valid in terms of the law of South Africa only. Who inherits Danny's immovable property situated in South Africa? **[4]**
- 3.4** Assume that the first will is formally valid in terms of the law of Tanzania only and the second will is formally valid in terms of the law of Greece only. Who inherits the money in Danny's bank account in Namibia? **[4]**

QUESTION 4

Sibonelo's will ("will 1") granted the power of appointment of a final beneficiary under a usufruct to Luyanda. Luyanda executed this power in his will ("will 2"). At the time of drafting his will Sibonelo was a Nigerian national. He drafted his will in Tanzania while working there as a safari guide. At the time of his death Sibonelo was domiciled in Namibia. Will 1 is formally valid in terms of the law of Namibia but not in terms of the law of Tanzania or Nigeria.

At the time of drafting his will (will 2) Luyanda was a South African national. He drafted his will in Florida, Orlando in the United States of America, while visiting Disneyland. At the time of his death Luyanda was domiciled in Morocco. Will 2 is formally invalid in terms of the legal systems of the law of Morocco, the United States of America and South Africa, but it is formally valid in terms of the law of Nigeria and Namibia. Is the execution of the power of appointment (the appointment of a final beneficiary under the usufruct constituted by Sibonelo) formally valid? **[5]**

QUESTION 5

Angie and Noel married in Australia in 2006. The parties later obtained a divorce in the Dominican Republic in 2009. Noel then married Chandra in Mauritius later that year. After a few years, Chandra decides to divorce Noel and claim half of his estate, as they were married in community of property. Noel disputes Chandra's claim on the basis that their marriage was invalid because his divorce from Angie was not validly obtained.

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

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

5.3 Discuss the four possible approaches the court could follow in answering the incidental question above? **[4]**

QUESTION 6

Critically discuss the law applicable to the transfer of ownership of movable property in South African Private international law. In your answer you must discuss the exceptions to the law generally applicable, with reference to case law. **[8]**

QUESTION 7

A company called "Whishy Washy" manufactures washing machines in Japan where it is registered and has its principal place of business. The washing machines are sold to buyers in South Africa, one such buyer is Siyanda. Siyanda is habitually resident and domiciled in South Africa. A week after Siyanda purchased his washing machine and paid the purchase price in full, the washing blew up, whilst Siyanda was washing his clothes for work, at his home in South Africa. Siyanda institutes a delictual claim for damages in South Africa against Wishy Washy.

7.1 Predict which legal system would be applied by a South African court with jurisdiction. **[5]**

7.2 Assume that the delictual claim was not heard by a South African but rather a Japanese court and judgement was granted in favour of Siyanda. Predict whether the judgment against Wishy Washy will be recognised and enforced in South Africa. **[7]**

GRAND TOTAL: 100
