



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

SUBMISSION OF FINAL EXAMINATION PAPERS
JUNE/JULY 2017

MODULE NAME: PRIVATE INTERNATIONAL LAW

MODULE CODE: IPR0014

LECTURER (S): R. V. CUADO

HEAD OF DEPARTMENT: PROF M.M. WATNEY

EXIT MODULE: YES/ NO YES

FOR EXIT MODULES:
EXTERNAL MODERATOR: PROF MM. WETHMAR - LEMMER

EXTERNAL MODERATOR FORM ATTACHED: _____

INSTRUCTIONS:

1. How many of the following items will be required per student?

Examination script (4 pages) 2

Scanner sheet 0

Other (please specify) N/A

2. How many students are still attending lectures (with a view to the number of examination papers required)? 295

SIGNATURE OF LECTURER: 

DATE: 16/05/2017

**SIGNATURE AS HEAD OF DEPARTMENT
(AS INTERNAL MODERATOR)** M. M. Watney

DATE: 16/07/2017

FOR ADMINISTRATIVE PURPOSES:

Noted: _____

Date: _____



PROGRAM : NATIONAL DEGREE
LAW

SUBJECT : PRIVATE INTERNATIONAL LAW

CODE : IPR0014

DATE : EXAMINATION
MAY 2017

DURATION : (X-PAPER) 14:00 - 16:00

WEIGHT : 40 : 60

TOTAL MARKS : 80

EXAMINER : MS RV CUPIDO (UJ) Sanso Number

MODERATOR : PROF MM WETHMAR-LEMMER (UNISA) File Number

NUMBER OF PAGES : 4 PAGES

INSTRUCTIONS : QUESTION PAPERS MUST BE HANDED IN.

INSTRUCTIONS TO CANDIDATES:

PLEASE ANSWER ALL THE QUESTIONS.

QUESTION 1

Sara (a citizen of Brazil) and Beth (a citizen of Mozambique) were married in South Africa in 2010. They were married out of community of property. At the time of the marriage, both parties were domiciled and habitually resident in Swaziland. While on honeymoon in Thailand in 2010, Beth decided to execute a will to protect Sara in case of her death. In terms of this will, Sara was named as the sole heir to Beth's estate, which was composed of a house in Portugal that Beth inherited from her parents and R500 000 in a bank account in Johannesburg (South Africa). In 2014, Beth and Sara decided to adopt a son, Alistair, from an orphanage in Mozambique.

In 2015, Sara got a job as a teacher in South Africa, and moved to South Africa with Beth and Alistair in August of that year. The family acquired domicile and habitual residence in South Africa in 2016. Shortly after adopting Alistair in 2014, Beth decided to execute another will while staying at her family's house in Mozambique. This will expressly revoked the first will, and provided that her house in Portugal would go to her wife, Sara, and that the money in her bank account in Johannesburg would be left to their son Alistair. In terms of the relevant legal system, Alistair would be Beth's sole intestate heir.

In December 2016, Beth and Sara decide to take Alistair on safari to introduce him to South Africa. During a stay in a game reserve, Beth goes beyond a safe distance and is mauled by a lion. She later dies in hospital from her injuries.

- 1.1. Discuss the constitutionality of the common law interpretation of the *lex domicilii matrimonii* with reference to the relevant sources and the alternative interpretations of this concept. (10)
- 1.2. The legal system of which country governs the formal validity of Beth's first will in respect of the money in his bank account
 - 1.2.1. *qua lex ultimi domicilii*
 - 1.2.2. *qua lex patriae*
 - 1.2.3. *qua* habitual residence at time of execution (3)
- 1.3. What are the requirements for Beth and Sara to adopt Alistair from Mozambique validly? (3)
- 1.4. Assume that the first will is formally valid in terms of the law of Thailand only and that the second will is formally invalid in terms of all the legal systems that govern formal validity. However, the second will is formally valid in terms of the law of Brazil. Who inherits the money in Beth's bank account? (1)
- 1.5. Assume that the first will is formally valid in terms of the law of South Africa only and that the second will is formally invalid in terms of all the legal systems that govern formal validity. However, the second will is formally valid in terms of the law of Thailand. Who inherits the money in Beth's bank account? (1)
- 1.6. Assume that the first will is formally valid in terms of the law of South Africa only and that the second will is formally valid in terms of the law of South Africa and Mozambique. Who inherits Beth's house? (1)

- 1.7. Assume that both the first and the second will are formally valid in terms of the law of Swaziland only. Who inherits Beth's house? (1)
 - 1.8. Assume that the first will is formally valid in terms of the law of Brazil only and that the second will is formally valid in terms of the law of Thailand. Who inherits the money in Beth's bank account? (1)
 - 1.9. Identify how the *lex domicili matrimonii* would be determined in this instance if Schoeman's approach is followed. Explain how you arrived at your answer. (5)
 - 1.10. In answering the questions in this section, a certain procedure was followed. Explain the different phases in the choice of law process. (4)
- (30)

QUESTION 2

Brad, a Mexican citizen, was domiciled and habitually resident in New York (USA), where he met Angelina, a South African citizen, who was also domiciled and habitually resident in New York. In 2014, the couple were married in Australia. They were married in community of property.

Shortly after the wedding, Brad gave Angelina a rose gold necklace with a diamond pendant as a symbol of his love for her. In 2015, the couple moved to South Africa and acquired domicile and habitual residence there. In January 2016 Angelina gave birth to a daughter, Samantha. In December 2016 Brad files for divorce in the Western Cape High Court, saying that he has met somebody else and is moving back to Mexico. The order of divorce is granted in May 2017 in terms of which Angelina is awarded guardianship and care of Samantha.

- 2.1. Assume that Brad and Angelina are disputing which legal system would govern the donation of the necklace, as their divorce matter is being heard in South Africa. Apply classification *lege fori* in order to advise them. Illustrate your answer using a diagram. (10)
 - 2.2. Explain the concept of redistribution of assets at divorce with reference to the relevant legislation. (5)
 - 2.3. Assume that Angelina allows Samantha to visit Brad in Mexico and later receives word that Brad has decided to keep Samantha there. Which legal instrument would Angelina consult for a remedy? (1)
 - 2.4. What would Angelina have to prove in order to rely on this remedy? (1)
 - 2.5. Which defences would Brad have in this instance? (2)
 - 2.6. Assume that South African private international law refers a certain matter to the law of Australia. The private international law of Australia refers the matter back to the law of South Africa. Assume that the private international law system of Australia applies the partial renvoi theory. The legal system of which country will be applied by a South African court if it were to reject renvoi? (1)
- (20)

QUESTION 3:

Emile and Dali concluded an “instalment agreement” for the sale of Dali’s antique furniture. The contract was concluded in France. At the time of contract conclusion, the furniture was being held at Dali’s storeroom in Johannesburg (South Africa). Emile is domiciled and habitually resident in France, and Dali is domiciled and habitually resident in South Africa. According to the contract, delivery had to take place at Emile’s chateau in Bordeaux (France) and payment was to be effected in Dali’s account at a bank in Johannesburg (South Africa). 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. Delivery took place as agreed, but only 40% of the purchase price has been paid to date.

- 3.1. Would the South African National Credit Act be applicable to the contract? Motivate your answer. (2)
- 3.2. The law of which country would probably be the proper law of the contract? Also indicate which connecting factors your answer is based on. (3)
- 3.3. Discuss which country’s legal system would govern Emile’s capacity to contract based on the judgment in *Powell v Powell* 1953 4 SA 380 (W), as interpreted by Fredericks (2006 *THRHR* 279). (5)
- 3.4. Assume that a court in France has already issued judgment against the defendant (Emile) in favour of Dali. If the French court was competent, the judgment was final and the parties were the same as those in the South African court, the defendant could raise the special plea of _____ (3.4.1) _____ in the South African court. Statutory authority here would be _____ (3.4.2) _____. (2)
- 3.5. The law of which country governs
 - 3.5.1 The transfer of ownership of the goods
 - 3.5.2 The validity of the reservation of title clause
 - 3.5.3 The formal validity of the contract (3)
 (15)

QUESTION 4

- 4.1. Discuss the determination of the law of closest connection in the private international law of contract with reference to the views of Neels and Fredericks in 2008 *THRHR* 351-254 and 2008 *THRHR* 533-539. (10)
 - 4.2. Explain the different methods in which a will may be revoked in South African private international law with reference to the views of Neels in 2007 *ICLQ* 613. (5)
- (15)

GRAND TOTAL: 80