



<u>FACULTY</u>	:	LAW
<u>DEPARTMENT</u>	:	PRIVATE LAW
<u>CAMPUS</u>	:	APK
<u>MODULE</u>	:	IPR0014 / PIL41A0 PRIVATE INTERNATIONAL LAW
<u>SEMESTER</u>	:	FIRST SEMESTER
<u>TEST</u>	:	JUNE ASSESSMENT (PAPER C)

DATE : As per timetable **SESSION** : As per timetable

ASSESSOR(S) : Ms. C Johannes (UJ)

Prof. M. Wethmar-
MODERATOR : (UNISA)

DURATION : 2 hours **MARKS** : 80

NUMBER OF PAGES: 6 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. Please write your **INITIALS, SURNAME & STUDENT NUMBER** on the top of **EACH ANSWER SHEET**.
2. Ensure that you write neatly and legibly.
3. Read the scenarios carefully and answer the questions that follow.
4. **You are reminded that all relevant rules and policies of the University and the Faculty of Law apply to this assessment.**
5. The mark allocation should guide you regarding how much you should write to answer each question. Do not spend excessive time on questions that only require a short answer.

QUESTION 1

Cassandra (a national of France) and Thapelo (a national of Lesotho) met, fell in love and married in Barcelona (Spain) in 2013. They were married out of community of property, excluding the accrual system, subject to an antenuptial contract. At the time of the marriage, both parties were domiciled and habitually resident in Mozambique where they worked. Cassandra worked as a teacher, while Thapelo worked as a diplomat. Cassandra met Thapelo 5 years after she divorced her first husband Charles (a national of France) to whom she was married for 10 years and with whom she shared 3 children (Nadine, Claudia and Edmund). Cassandra's children continued to live with their father in France. In 2015, Cassandra inherited R 4 million from her great aunt Hermionie Potter who died in London (England) from natural causes at the age of 96. At the end of 2015, Cassandra travelled to London (England) to collect her inheritance. While in her hotel room in London (England) Cassandra drafted her first will in which she instituted Thapelo as her sole heir. Cassandra returned from London (England) with a diamond encrusted watch that she gifted Thapelo.

In 2016, Thapelo and Cassandra moved to South Africa, when Thapelo got a job at the Department of International Relations and Cooperation (DIRCO) and purchased a home in Midrand, Johannesburg. That same year Cassandra and Thapelo acquired domicile and habitual residence in South Africa.

In 2017, Cassandra began feeling resentful towards Thapelo because they moved to South Africa to accommodate his work and she was sad that she had to live so far away from her children who were growing quickly. Cassandra's resentment towards Thapelo caused several arguments between the two causing an irretrievable breakdown in their marriage relationship. Thapelo could no longer bear the constant arguments. In January 2018, he instituted divorce proceedings in the Gauteng Local Division of the High Court of South Africa, Johannesburg.

In 2019, Cassandra was diagnosed with an auto-immune disease. In January 2020, Cassandra travelled to Zurich (Switzerland) to a treatment facility where she received treatment intended to slow down the progression of her auto-immune disease. While in Switzerland Cassandra decided to draft a second will. After her diagnosis Cassandra began to worry about the future of her children when she dies, and this prompted her to draft her second will. In her second will Cassandra expressly revokes her first will and institutes her children Nadine, Claudia and Edmund as her sole heirs. After receiving treatment in Switzerland for a few months in 2020, Cassandra returned to South Africa. The treatment prolonged Cassandra's life for two more years but by May 2022, Cassandra died as a result of her auto-immune disease.

At the time of her death Cassandra left behind immovable property (an apartment she purchased in France) and money in a bank account in South Africa. According to the law of France, Caitlin, Cassandra's sister is her sole intestate heir. According to the law of South Africa Cassandra's children are her sole intestate heirs.

- 1.1** Assume that Cassandra & Thapelo were minors who were unable to marry in Mozambique without their parents' consent, which was not forthcoming. Assume they crossed the border to Zimbabwe to marry there, since they were considered of legal age to marry in that country. The legal system(s) of which country(ies) would be applicable to the inherent validity of the marriage between Cassandra and Thapelo? **[4]**
- 1.2** The legal system of which country would determine where Cassandra is domiciled, and according to that legal system where would Cassandra be domiciled immediately after her marriage to Thapelo? **[3]**
- 1.3** The legal system of which country would govern the proprietary consequences of the marriage between Cassandra and Thapelo at the time of divorce according to the proposal by Stoll and Visser? **[2]**
- 1.4** Assume that Cassandra does not have a claim for redistribution in terms of section 7(9) of the Divorce Act and meets the requirements set out in s7(3) – (4) of the Divorce Act 70 of 1979. Would Cassandra be permitted to claim for redistribution in terms of South African law? **[4]**
- 1.5** Could the doctrine of renvoi be applied by the Gauteng Local Division of the High Court of South Africa, Johannesburg to determine the legal system applicable to a claim by Cassandra at the time of divorce for the watch she donated to Thapelo? **[3]**
- 1.6** Assume that following her divorce from Charles Cassandra relocated to South Africa with Thapelo and brought her children along with them without first obtaining Charles' permission. Discuss the remedies available to Charles. **[3]**
- 1.7** Assume that Cassandra's first will is formally valid in terms of the law of Mozambique only and Cassandra's second will is formally valid in terms of the law of England only. Who inherits the money in Cassandra's bank account in South Africa? **[3]**
- 1.8** Assume that both Cassandra's first and second will are formally valid in terms of law of only Mozambique. Who inherits Cassandra's immovable property? **[4]**
- 1.9** Assume that both Cassandra's first will and second will are formally valid in terms of the law of France only. Who inherits Cassandra's immovable property? **[3]**
- 1.10** Assume that Cassandra decided to draft her will by means of an audio recording rather than a written will, the legal systems of which country would govern the formal validity of Cassandra's audio recorded will? **[½ x 8 = 4]**
- 1.11** For the questions that follow assume that Cassandra died without a will, leaving behind R4 million in a bank account in South Africa. Assume that Thapelo and Cassandra remained married until her death. Assume that in terms of the law of Mozambique, surviving spouses are entitled to a legitimate portion of half

of the deceased estate and a legitimate portion is regarded as a proprietary consequence of a marriage. In South Africa, this matter would be regarded as one of intestate succession and Thapelo would only be entitled to a child's portion of Cassandra's estate. Cassandra's three children would likewise be entitled to a child's portion of her estate. Thapelo argues that he is entitled to a legitimate portion of Cassandra's estate upon her death and not merely a child's portion of her estate.

1.11.1 The legal system of which country would govern the existence of a legitimate portion in favour of Thapelo if classification *lege fori* were applied? **[5]**

1.11.2 Would Thapelo be entitled to a legitimate portion of Cassandra's estate if classification *lege fori* were applied to determine the existence of a legitimate portion in favour of Thapelo? **[1]**

1.11.3 How would your answer to Question 1.11.2 differ if classification *lege causae* were applied to determine the existence of a legitimate portion in favour of Thapelo? **[4]**

1.12 For the questions that follow assume that at the time when Cassandra and Thapelo divorced Thapelo wanted to claim maintenance from Cassandra. Assume that Cassandra claimed that Thapelo could not claim maintenance because they were never validly married, because her divorce from Charles was not validly obtained. Charles and Cassandra married in the Philippines and were unable to obtain a divorce there because divorce is illegal in that country. The parties thus obtained a divorce in the Dominican Republic.

According to the private international law of South Africa the *lex loci celebrationis*, Barcelona (Spain), governs the formal validity of the marriage between Thapelo and Cassandra. Assume that the internal law of South Africa regards the marriage between Thapelo and Cassandra as valid and recognises the divorce obtained in the Dominican Republic. The internal law and private international law of Spain regards the marriage between Thapelo and Cassandra as invalid and does not recognise the divorce obtained in the Dominican Republic.

1.12.1 Identify the incidental question in the set of facts above. **[1]**

1.12.2 Apply the private international law of the *lex fori* to answer the incidental question. Which legal system would be applicable and would Thapelo be entitled to claim maintenance from Cassandra? **[2]**

1.12.3 Apply the private international law of the *lex causae* to answer the incidental question. Would Thapelo be entitled to claim maintenance

from Cassandra? [1]

1.12.4 What type of incidental question is present in the set of facts and does it differ from the incidental question present, but not acknowledged, in *Dhansay v Davids 1991 (4) SA 200 (K)*. [2]

1.12.5 What type of renvoi would a reference from South African private international law to the law of Spain, and from the private international law of Spain back to South African law be? [1]

SUB-TOTAL: [50]

Question 2

In January 2019, “I Shoes You” (seller) a company with its usual place of business and incorporated in Milan (Italy) entered into a sales agreement with “If the Shoe Fits” (buyer) a company with its usual place of business and incorporated in Johannesburg, South Africa. According to the agreement I Shoes You sold 2000 pairs of shoes, to be sold at If the Shoe Fits new store opening in Angola. The agreement between the parties was concluded at a restaurant in Namibia where the directors of the two companies met. The shoes were manufactured and stored at I Shoes You’s warehouse in Guangzhou (China). According to the contract delivery had to take place in the harbour of Cape Town, South Africa to be transported onward to Angola, while payment had to be made to one of I Shoes You’s bank accounts in Milan (Italy). Payment had to be made in Euro. The contract provided that ownership would only pass on payment of the full purchase price. The reservation-of-title clause was not registered in any public registry. Assume that a dispute between I Shoes You (plaintiff) and If the Shoe Fits (defendant) arises in respect of payment. Delivery took place as agreed, but 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 I Shoes You institutes proceedings against If the Shoe Fits in the Gauteng Local Division of the High Court of South Africa, Johannesburg.

2.1 The legal system(s) of which country(ies) would most likely be applicable to the contractual dispute between I Shoes You (plaintiff) and If the Shoe Fits (defendant) in respect of the breach of contract? Apply the Unitary principle. [5]

2.2 The legal system(s) of which country(ies) would govern costs awarded in favour of I Shoes You (the plaintiff)? [1]

2.3 Apply the proposal of Prof Neels. The legal system of which country would apply to the reservation of title clause? [2]

2.4 The legal system(s) of which country(ies) would govern the inherent validity of the contractual agreement entered into by I Shoes You and If the Shoe Fits? [4]

2.5 The legal system(s) of which country(ies) would govern I Shoes You's contractual capacity if such contractual capacity were in dispute? Apply *Tesoriero v Bhyjo Investments Share Block (Pty) Ltd* 2000 (1) SA 167 (W)? **[2]**

2.6 The legal system(s) of which country(ies) would govern the transfer of ownership of the shoes from I Shoes You to If the Shoe Fits if ownership passed while the shoes were in transit to its destination? **[2]**

2.7 Assume that I Shoes You and If the Shoe Fits concluded the contract via email. If the Shoe Fits communicated its offer to purchase the shoes by way of email and I Shoes You accepted the offer by way of email. I Shoes You communicated its acceptance in an email sent to the director of If the Shoe Fits, Daniel Green. The email acceptance was sent to Daniel Green while he was on holiday in Bali, Indonesia. Which legal system would be applicable to the contractual dispute between the parties? **[3]**

2.8 Assume that I Shoes You obtained a judgement in its favour in an Italian court and not a South African court. Assume that the Italian court awarded punitive damages and specific performance. During the proceedings If the Shoe Fits entered an appearance only to contest the jurisdiction of the Italian court. Following the decision, If the Shoe Fits appealed the Italian court's judgment and the appeal is pending. Identify whether the South African court would recognise and enforce the Italian court's judgement? **[7]**

SUB-TOTAL: [26]

QUESTION 3

A company called "Vision Images" manufactures televisions in Tokyo (Japan) where it has its usual place of business and is incorporated. The televisions were sold to a company called "TV Tech" with its usual place of business and incorporated in Johannesburg, South Africa. TV Tech sold the televisions to many customers in South Africa, one such customer is Debra Black. While Debra was using the television, she purchased from TV Tech it began malfunctioning and blew up due to a manufacturing default. Assume that Debra institutes a delictual claim for damages in the Gauteng Local Division of the High Court of South Africa, Johannesburg against Vision Images. The legal system of which country would be applicable to Debra's delictual claim? **[4]**

SUB-TOTAL: [4]

GRAND TOTAL: 80
