



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

**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**

In 2012, Keegan (a national of Ghana at all relevant times) met John (a Kenyan national at all relevant times) in Algeria, they were both domiciled and habitually resident in Geneva (Switzerland) at the time. They fell in love and married a year later in 2013, at a resort in Mauritius. Keegan and John married out of community of property, excluding the accrual system subject to an antenuptial contract. Keegan and John both work for the United Nations as multimedia and events co-ordinators.

In 2015, Keegan and John visited Egypt on a work trip. During their time in Egypt, they met an orphan named Omar whom they decided to adopt. Whilst in Egypt, Keegan bought a rare Egyptian artefact which he gifted to John. During their time in Egypt John decided to draft his first will in their hotel room, in which he instituted Keegan as his sole heir. In 2016, Keegan and John moved to South Africa where they became domiciled and habitually resident. They were sent to work in South Africa by the United Nations. They purchased a home in Bryanston, Johannesburg.

In January 2018, Keegan discovered that John was still texting his ex-partner Franco and wanted a divorce. At the end of 2018, Keegan instituted divorce proceedings in the Gauteng Local Division of the High Court of South Africa, Johannesburg. At the time of the divorce between Keegan and John, Omar was 9 years old. Keegan and John both retained guardianship of Omar.

In January 2019, John and Franco travelled on a luxurious cruise ship (registered in Cyprus) to Greece. After a near death experience with alcohol poisoning aboard the cruise ship John was prompted to draft his second will on board the ship. John's second will expressly revokes his first will and instituted Franco as his sole heir.

In March 2020, John and Franco moved to Lisbon (Portugal) where they became domiciled and habitually resident later that year. John suffered from severe depression as he struggled to process his divorce from Keegan and being away from Omar. In April 2022, John overdosed on his pain and depression medication which led to his untimely death.

At the time of his death John left behind immovable property (a house in Lisbon, Portugal) and money in a bank account in South Africa. According to the law of Portugal, Jackie John's sister is his sole intestate heir. According to the law of South Africa Omar is John's sole intestate heir.

**1.1** The legal system of which country governs the inherent validity of the marriage between Keegan and John? In your answer, consider the impact of public policy, particularly the positive and negative role of public policy, on the legal system applicable to the inherent validity of the marriage between Keegan and John. **[3]**

- 1.2** The legal system of which country would govern the proprietary consequences of the marriage between Keegan and John according to Roman-Dutch law? In your answer you must consider the constitutionality of the application of this legal system to the marriage between Keegan and John. **[3]**
- 1.3** According to Stoll & Visser's proposal which legal system would govern a claim by John for redistribution in terms of s7(9) of the Divorce Act 70 of 1979? **[3]**
- 1.4** Discuss the requirements that Keegan and John would have had to comply with in order to validly adopt Omar from Egypt. **[3]**
- 1.5** Assume that Keegan and John were granted an adoption order by an Egyptian Court. Would the adoption order granted by the Egyptian Court likely be recognised by the Gauteng Local Division of the High Court of South Africa, Johannesburg? **[2]**
- 1.6** Assume that according to the law of Switzerland donations between spouses are revocable and are regarded as a proprietary consequence of a marriage. In South Africa donations between spouses are regarded as irrevocable and cannot be claimed at the time of divorce.
- 1.6.1** The legal system of which country would determine whether John is entitled to claim back the Egyptian artefact he donated to Keegan at the time of divorce if classification *lege causae* were applied? **[5]**
- 1.6.2** Would John be entitled to claim back the Egyptian artefact he donated to Keegan at the time of divorce if classification *lege fori* were applied? **[3]**
- 1.7** Could the doctrine of renvoi be applied to John's claim for the donation he made to Keegan by the Gauteng Local Division of the High Court of South Africa, Johannesburg? **[3]**
- 1.8** Assume that John's first will is formally valid in terms of the law of Switzerland only and John's second will is formally valid in terms of the law of Egypt only. Who inherits the money in John's bank account in South Africa? **[3]**
- 1.9** Assume that both John's first and second will are formally valid in terms of the law of South Africa only. Who inherits the money in John's bank account in South Africa? **[3]**
- 1.10** Assume that both John's first and second will are formally valid in terms of the law of Kenya only. Who inherits the money in John's bank account in South Africa? **[4]**
- 1.11** The legal system(s) of which country(ies) would govern Franco's capacity to inherit John's property in terms of John's second will? **[4]**
- 1.12** Assume that John dies intestate. At the time of John's death, Franco claims

that he is entitled to John's immovable property located in Portugal on account of a marriage ceremony he concluded with John in Greece prior to his death. According to South African private international law the *lex situs* governs the intestate succession of John's immovable property, making the law of Portugal applicable. According to the law of Portugal a surviving spouse is regarded as the sole intestate heir. If there is not a surviving spouse, the deceased's children (if any) are regarded as the intestate heirs.

The internal law of South Africa regards the marriage between John and Franco as invalid. The internal law of the Greece regards the marriage between John and Franco as valid. The internal law of Portugal regards the marriage between John and Franco as valid. According to the private international law of Portugal, the *lex patriae* of the husband at the time of the marriage, Kenya, determines the validity of a marriage. The internal law of Kenya regards the marriage between John and Franco as invalid.

- 1.12.1** Apply the internal law of the *lex fori* to answer the incidental question. Which legal system would be applicable and who will inherit John's immovable property? [2]
- 1.12.2** Apply the legal system which according to South African private international law authors should have been applied to the incidental question (not acknowledged) in *Dhansay v Davids 1991 (4) SA 200 (K)*. Which legal system would be applicable and who will inherit John's immovable property? [2]
- 1.12.3** What type of renvoi would a reference from South African private international law to the law of Portugal, and from the private international law of Portugal to the law of Kenya be? [1]
- 1.12.4** Refer to the reference in Question 1.12.3 above. Who would inherit John's property if the partial renvoi approach were applied? [1]

**SUB-TOTAL: [45]**

## **Question 2**

In January 2018, "Burn it's Cold in Here" (seller) a company with its usual place of business and incorporated in Hamburg (Germany) entered into a sales agreement with "Bring the Heat" (buyer) a company with its usual place of business and incorporated in Johannesburg, South Africa. According to the agreement Burn it's Cold in Here sold 800 gas heaters to Bring the Heat, to be sold at Bring the Heat's store in South Africa. The agreement between the parties was concluded in the Netherlands where the directors of the two companies met. The heaters were manufactured and stored at Burn it's Cold in Here's warehouse Bangkok (Thailand). According to the contract delivery had to take place in the harbour of Cape Town, South Africa to be transported inland to Johannesburg, while payment had to be made

to one of Burn it's Cold in Here's bank accounts in Hamburg (Germany). Assume that a dispute between Bring the Heat (plaintiff) and Burn it's Cold in Here (defendant) arises in respect of short delivery, because Burn it's Cold in Here only delivered 500 gas heaters. The parties did not choose a legal system to govern their agreement. Assume that Bring the Heat institutes proceedings against Burn it's Cold in Here 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 applied by the Gauteng Local Division of the High Court of South Africa, Johannesburg to the contractual dispute between Bring the Heat (plaintiff) and Burn it's Cold in Here (defendant) in respect of the breach of contract if the scission principle is applied? **[4]**

**2.2** Assume that the law of Germany is the proper law of the contract. Could the South African National Credit Act nevertheless be applicable to the contractual agreement between Bring the Heat and Burn it's Cold in Here? **[2]**

**2.3** The legal system(s) of which country(ies) would govern Bring the Heat's contractual capacity if such contractual capacity were in dispute? Apply *Powell v Powell* (52917/07) [2008] ZAGPHC 44. **[2]**

**2.4** Assume that Bring the Heat institutes a claim against Burn it's Cold in Here in the Gauteng Local Division of the High Court of South Africa for unjustified enrichment rather than breach of contract. The legal system(s) of which country(ies) would govern Bring the Heat's claim for unjustified enrichment? **[3]**

**2.5** Assume that ownership of the heaters passes from Burn it's Cold in Here to Bring the Heat on conclusion of the contract. Immediately after the transfer Bring the Heat cedes its right of ownership to the heaters to a third-party company that also sells heaters called "Warm Winters". The legal system of which country will govern the formal validity of the cession, and which legal system will determine whether Bring the Heat's right of ownership is capable of cession? **[4]**

**2.6** Assume that ownership of the heaters passes from Burn it's Cold in Here to Bring the Heat while the heaters were in transit to its destination. The legal system(s) of which country(ies) would govern the transfer of ownership? **[2]**

**2.7** Assume that ownership of the heaters passes from Burn it's Cold in Here to Bring the Heat on conclusion of the contract. The legal system(s) of which country(ies) would govern the transfer of ownership? **[2]**

**2.8** Assume that Bring the Heat obtained judgment in its favour before a court in Germany and not a South African court. Assume that the Court in Germany ordered specific performance. During the proceedings Burn it's Cold in Here entered an appearance only to contest the jurisdiction of the German Court. Following the decision, Burn it's Cold in Here appealed the German Court's

judgment, and the appeal is pending. Identify whether the South African Court would recognise and enforce the German Court's judgment? **[8]**

**2.9** Assume that Bring the Heat sells the heaters they purchase from Burn it's Cold in Here to clients who purchase the heaters online from around the world. Several of Bring the Heats clients have complained that the heaters have blown up while in use due to a manufacturing default, one such client is Massimo from Italy. Massimo institutes delictual proceedings against Burn it's Cold in Here in the Gauteng Local Division of the High Court of South Africa, Johannesburg. The legal system of which country would most likely be applied by the Gauteng Local Division of the High Court of South Africa, Johannesburg to Massimo's delictual claim against Burn it's Cold in Here? **[4]**

**2.10** Discuss how your answer to Question 2.9 above would differ if the Gauteng Local Division of the High Court of South Africa, Johannesburg applied the Rome II Regulation (EC) Np 864/2007. **[2]**

**SUB-TOTAL: [35]**

**GRAND TOTAL: 80**

\*\*\*\*\*