

LJU4804

October/November 2013

PRIVATE INTERNATIONAL LAW

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST

PROF MM WETHMAR-LEMMER

SECOND :

PROF FT ABIOYE

Closed book examination.**This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.**

This paper consists of 4 pages.

INSTRUCTIONS:**Read the questions CAREFULLY before answering them.****It is in your own interest to write LEGIBLY and to FORMULATE your answers CLEARLY.****QUESTION 1****Instructions.** Indicate in each instance whether the statement is TRUE or FALSE and provide a REASON for your answer. Each question counts 2 marks – one mark for the correct answer and one mark for the reason provided**1.1** The origin of the *via media* approach to classification is to be found in the writings of the author Kahn-Freund

- a) TRUE and a reason for your answer, or
- b) FALSE and a reason for your answer

(2)

1.2 If South Africa adhered to the *partial renvoi* approach and the law of country X was found to be applicable, the whole law of country X, including its conflict of laws rules and its rules applying *renvoi*, would be applied.

- a) TRUE and a reason for your answer, or
- b) FALSE and a reason for your answer

(2)

[TURN OVER]

- 1.3 According to sec 3 *bis* (1)(d) of the Wills Act 7 of 1953, a revocation clause will not be formally invalid if it complies with the *lex loci actus* of the revoked will
- a) TRUE and a reason for your answer, or
b) FALSE and a reason for your answer (2)
- 1.4 According to South African principles of private international law, the essential or intrinsic validity of a marriage is governed by the *lex domicilii matrimonii*.
- a) TRUE and a reason for your answer, or
b) FALSE and a reason for your answer (2)
- 1.5 The case of *Frankel's Estate v The Master* 1950 (1) SA 220 (A) provides us with an example of an intertemporal conflict.
- a) TRUE and a reason for your answer, or
b) FALSE and a reason for your answer (2)
- [10]**

QUESTION 2

Instructions: Write the letter option of your choice for each question next to the relevant question number For example: 2.1 = c. This question should be completed in your answer book

- 2.1 According to South African conflict of laws principles, the personal consequences of marriage are determined by the _____
- a) *Lex domicilii* of the spouses at the date of the transaction
b) *Lex loci contractus*
c) *Lex loci celebrationis*
d) *Lex domicilii matrimonii* (2)
- 2.2 According to the opinion of most modern South African writers, the testator's capacity to make a will disposing of movables is governed by the _____
- a) *Lex patriae*
b) *Lex ultimi domicilii*
c) *Lex domicilii* of the testator when the will was made
d) *Lex situs* (2)
- 2.3 Which one of the following cases serves as authority for the application of the doctrine of immutability in South African law in respect of the law applicable to proprietary consequences of marriage?
- a) *Powell v Powell* 1953 (4) SA 380 (W)
b) *Brown v Brown* 1921 AD 478
c) *Perrot-Humphrey v Perrot-Humphrey* 1967 (4) SA 304 (W)
d) *Pitluk v Gavendo* 1955 (2) SA 573 (T) (2)

[TURN OVER]

2.4 Which one of the following statements is INCORRECT?

- a) According to section 1(1) of the Law of Evidence Amendment Act 45 of 1988, a court may take judicial notice of foreign law insofar as it can be ascertained readily and with sufficient certainty
- b) Foreign law is a question of fact, not of law
- c) The objective approach to determining the proper law of the contract was founded by the English writer Westlake
- d) In the case of *Laurens v Von Höhne* 1993 (2) SA 104 (W) the enlightened *lex fori* approach to classification was endorsed. (2)

2.5 The conflict rule governing intestate succession to movables was expounded in which one of the following cases?

- a) *Re Macmillan's Estate* 1913 TPD 198
 - b) *Re Eliashofs Estate* 1903 TS 833
 - c) *Re Estate Bhyat* 1920 TPD 198
 - d) *Estate Baker v Estate Baker* 1908 25 SC 234 (2)
- [10]**

QUESTION 3

A executed a will in France in which he granted a power of appointment of a final beneficiary under a trust to B. A died in Austria. A also left movable assets in South Africa. A was domiciled in Germany at all relevant times. He was a citizen of Turkey at the time of his death. B executed the power of appointment in his will, which was executed in Lesotho. He died in Swaziland. B was domiciled in Zambia at all relevant times and was a Japanese citizen at the time of his death.

- 3.1 Which legal systems govern the formal validity of A's will? Provide a list of three countries (eg "Austria") (3)
- 3.2 Which legal systems govern the formal validity of B's will? Provide a list of three countries (eg "Swaziland"). (3)
- 3.3 Assume that A's will is formally valid in terms of German law, but formally invalid in terms of French and Turkish law. Assume that B's will is formally invalid in terms of all its possibly applicable legal systems, but formally valid in terms of German and Turkish law. Is the execution of the power of appointment valid in terms of section 3bis (1)(c) of the Wills Act of 1953? Provide a reason for your answer (4)
- 3.4 Assume that A's will is formally valid in terms of French and German law, but invalid in terms of Turkish law. Assume that B's will is formally invalid in terms of all its possibly applicable legal systems, but valid according to French law. Is the execution of the power of appointment valid in terms of section 3bis (1)(c) of the Wills Act of 1953? Provide a reason for your answer. (2)

[12]**[TURN OVER]**

QUESTION 4

Provide a detailed discussion of the case of *Society of Lloyds v Romahn* 2006 (4) SA 23 (CPD). Your answer should include a discussion of the facts, legal question and judgment and specific emphasis should be placed on the court's approach to classification [15]

QUESTION 5

A German company (A) and a South African company (B) concluded a contract in terms of which A sold office furniture to B. The contract was concluded by A and B's managing directors whilst attending a conference in New York. Payment had to take place into A's account in Stuttgart and the furniture to be delivered to B's head office in Johannesburg. The furniture was delivered as per agreement but B failed to pay the purchase price. Company A instituted a claim for payment against B in a South African court. The international sales contract contained no choice of law clause. How would the South African court determine the proper law of the contract? Discuss the different theories and relevant case law. [20]

QUESTION 6

Which legal system governs the **formal** validity of a marriage according to South African private international law? Discuss the general rule in this regard as well as the exceptions to the rule. Refer in your answer to relevant case law [15]

QUESTION 7

Mr and Mrs Jones got married in Mauritius during December 2000. At the time of entering into the marriage, Mr Jones was a British citizen and Mrs Jones was an Australian citizen, and Mr Jones was working in Perth (Australia) on a 2 year fixed term contract. At the time of concluding the marriage, the parties were planning to establish a domicile in South Africa and they did indeed immigrate to South Africa upon the expiry of Mr Jones's Australian contract of employment. In June 2007, Mrs Jones instituted divorce proceedings against Mr Jones in a South African High Court.

- 7.1 Which legal system governs the proprietary consequences of marriage according to the South African principles of private international law? Discuss the rule with reference to **three** relevant cases (10)
 - 7.2 The current South African connecting factor for proprietary consequences of marriage is in need of reform. Discuss this statement (5)
 - 7.3 Where was Mr Jones domiciled at the time of entering into the marriage? Apply the principles of the Domicile Act 3 of 1992 (3)
- [18]**

TOTAL: [100]