



**UNIVERSITY OF PETROLEUM & ENERGY STUDIES
DEHRADUN**

End Semester Examination – December, 2017

**Program/course: BBA LLB (Hons) (Corporate Laws)/B.Com LLB (Hons)
Semester: VII**

Subject: Private International Law

Max. Marks: 100

Code: LLBL 433

Duration: 3 hours

No. of page/s: 2

Section A-Objective type / Short Answer type memory based general questions (2x5)

1. What is the difference between essential validity and formal validity of marriage?
2. Explain theory of obligation as the basis for recognition and enforcement of foreign judgments.

Section B-Short answer type Conceptual questions (2x10)

1. What are the conditions of enforcement of foreign judgements under common law?
2. What are the advantages and disadvantages of 'intended matrimonial home doctrine'? Also explain the impediments in determining the validity of marriages.

Section C-Analytical type questions (2x10)

1. Discuss the five general rules relating to domicile. Also briefly discuss about the domicile of married women.
2. Provide for at least three defenses to recognition and enforcement with the help of case laws.

Section D-Application based Case study (2x25)

1. Emma and Kenneth met in Paris in early 1988 and within ten weeks decided to get married. Emma was born in France in 1955 while Kenneth was born in Germany, in 1953. They married in Barbados in late 1988 and decided to move to Berlin where they started a family. Whilst Emma became domiciled in Germany, she maintained her France citizenship, including after becoming a German citizen in late 1992 since dual nationality was permitted by both France and Germany.

Banzai and Shenzi were married in Burundi in 1988 according to the local custom of the Zahili tribe, by which each male, on reaching adulthood, was required to marry a cousin prior to her ceremony of reaching womanhood, which usually took place before she was 13 years old. While this marriage as recognised by the customary law of Burundi, the government of Burundi had attempted to harmonise the customary laws of the various tribal

groups and deemed all marriages invalid unless both parties were over the age of 16. Banzai and Shenzi fled Burundi during its civil war and were able to obtain refugee visas allowing entry into Germany. Shortly after arriving in 1993, Shenzi fled from Banzai and has not seen him since then.

Kenneth and Shenzi met during an evening class at the local college in 2004 and began a passionate affair. When Emma found out, she packed her bags and returned home to Paris, where she rekindled her relationship with her high school sweetheart, Hugh. Hugh quickly proposed, and Emma sought advice from 'Make Em and break Em', a relationship counselling agency, about getting a divorce from Kenneth. On their advice, Emma returned to Barbados and obtained a divorce there on the basis that she had renounced her commitment to Kenneth. On returning to Paris, Emma discovered that divorces obtained in Barbados by a court exercising jurisdiction only on the basis that the original marriage was celebrated in Barbados was not recognised in Paris, and in fact, was not recognised in any other French province except Alsace province. At the same time, she discovered that the courts of all the French provinces can have jurisdiction in divorce proceedings when the applicant is a French citizen. Having obtained some compensation from 'Make Em and break Em' for their incomplete advice, Emma and Hugh travelled to Alsace and were married there in early 2007. On learning of Emma's marriage, Kenneth proposed to Shenzi.

Can Kenneth and Shenzi marry in Germany?

2. Changu, a national of England, committed breach of contract with an Indian citizen 'Mangu', who was on a holiday in England. To avoid trials in England, Changu wanted to run away from England and tried to book a flight ticket to Pakistan. But unfortunately for him, as he was weak in geography, he booked the ticket to New Delhi, thinking that New Delhi was the capital of Pakistan. Such an Idiot! Anyway, as soon as he arrived in New Delhi airport, thinking that he was in Pakistan, he started shouting in happiness, foolishly assuming that he has avoided trial in England, that "*I have looted the Indian...that swine scoundrel Indian*". The Indian authorities at the airport who were until then unaware of any such incident, now, came to know that something is wrong. And poor Changu was arrested at the airport.

Since he was the domicile of England, England demanded Changu to be sent back to England for trials. However, Indian authorities said he committed the breach of contract with an Indian citizen and also he was arrested in India, therefore Indian courts had the jurisdiction to try the matter.

- a. Which country has the jurisdiction to decide the matter? Argue from only one side.
- b. If Indian courts were to decide the matter, laws of which country will be applicable to the facts?

Provide reasons for your answers.

(P.S.: Changu was a great believer in geography being destiny.)