

**NATIONAL UNIVERSITY OF IRELAND, GALWAY  
FACULTY OF LAW**

**SUMMER EXAMINATIONS 1998/99**

**LL.B. - SECOND & THIRD YEAR  
OCCASIONAL STUDENTS**

**PRIVATE INTERNATIONAL (LW322)**

**Professor P. Beaumont  
Mr. A. Doyle**

Time Allowed: **THREE** Hours.

Answer **FOUR** Questions. Answer at least **one** Question from **Part A**, and at least **one** Question from **Part B**.  
ERASMUS students answer **three** Questions.

All questions carry equal marks. Materials permissible:-

*(Child Abduction and Enforcement of Custody Orders Act, 1991; Jurisdiction of Courts and Enforcement of Foreign Judgments Acts, 1989, 1993, 1998; Contractual Obligations (Applicable Law) Act, 1991;*

**PART A**

(Answer at least **One** Question)

1. The Sedetenland of South Eastern Germany became part of the new state of Czechoslovakia in 1919. In 1938, Germany annexed the Sedetenland and invaded Czechoslovakia. In 1945 the Sedetenland reverted to Czechoslovakia. In 1992 Czechoslovakia became two states: Czech Republic and Slovakia. Prague is in the modern Czech Republic. Bratislava is in modern Slovakia.

Jan was born in the town of Decin in the Sedetenland early in 1939. His mother was a Sedeten German. His father was a Sedeten Czech. The family remained in the Sedetenland until 1945. In 1945, they moved to Prague, where Jan grew up.

In 1962, Jan moved to Bratislava. He got a job in the University. In 1967-68 he was lecturing in Ireland when he met Ciara, an Irish women. They got engaged and arranged to return to Bratislava where they proposed to settle down. Two days before the wedding, the Soviet Union invaded Czechoslovakia. Jan applied for, and obtained, political asylum in Ireland. He lived in Ireland for the next 30 years. In 1989, he told his nephew that he expected to spend the rest of his days in Ireland.

Shortly after he made this statement, the Communist regime in Czechoslovakia collapsed, and Jan was free to return. He has retained his job in Ireland but has spent a considerable time lecturing in Bratislava and Prague since then. He spent two years on sabbatical, and lectures at Summer schools in the universities. He has expressed a desire to Ciara to return 'home'. Last week, he had a massive heart attack and died.

Advise Ciara on the evolution of Jan's domicile.

2. Bill is domiciled in Arkansas. Hilary is domiciled in Washington DC. Both reside in Washington DC. Bill's employment terminates and he moves to Ireland. Hillary remains in Washington. Bill lives here for two years. Then he seeks a divorce. Does the Irish court have jurisdiction to hear the case? What law should it apply? Does the existing jurisprudence of the Irish courts furnish any assistance?

p.t.o.

3. Answer (a) AND (b).

- (a) Is the reality of consent to marry a question of formal validity or essential validity?
- (b) If a person, living in a country in which he is not domiciled, wishes to return home but is unable to do so for health reasons, and therefore resigns himself to remaining where he is, does this affect his domicile?

4. Imran is a Pakistani national. In 1990 he marries Azul, another Pakistani, in Pakistan, when he is 21 and she is 12. The marriage is an arranged marriage, and is conducted according to a Muslim rite in a potentially polygamous form. The spouses have never met one another. In 1992 Imran comes to Ireland to work. He meets and marries Orla, an Irish national, and they have a son. In 1996, Imran deserts Orla. He returns to Pakistan for the summer where he is united with Azul and they move to England, where they set up home. They intend to return to Pakistan in a few years time.

Orla seeks an order for maintenance for herself in the High Court in Dublin. The Court decides it needs to establish the marital status of the parties. Discuss the jurisdictional and choice of law issues which arise. What conclusion do you believe the court should reach? (You may ignore choice of law in relation to maintenance).

## PART B

(Answer at Least One Question)

5. The Department of the Environment is the Irish government department with responsibility for road safety. Under an EU directive, the Irish government has to introduce compulsory vehicle testing. Following a competitive tender, the Department awards a contract to a Swedish company, Absolut Safety AB, under which that company will carry out all vehicle testing in the state. Every vehicle over five years old must be tested annually. When tested, the vehicle can only be put back on the road if Absolut Safety has certified that it is "roadworthy".

Bulloch, who is domiciled in Ireland, has owned 'Maud', a 1960 Morris Minor car, for some time. Maud is registered in Ireland. Bulloch obtains a safety certificate of roadworthiness from Absolut and sells the car to McCabe, a dealer in Northern Ireland. Angus, who is domiciled in Scotland, buys Maud from McCabe. Angus intends to sell the car in France at a substantial profit. As Angus drives the car off the ferry in France Maud's bodywork crumbles and Angus is left sitting in the middle of the road.

Angus sues McCabe to get his money back and for damages for loss of bargain. McCabe wants to recover from Absolut any money which he may be liable to pay. Discuss the jurisdiction issues raised. (Northern Ireland and Scotland are separate jurisdictions).

6. DigiTV is a broadcasting company established in the Netherlands. It holds a licence to broadcast television signals from a transmitter in Belgium. The broadcasts are made in the English language and are targeted at the UK.

DeChannels operates a television deflector in Wexford. A deflector works by receiving a signal on one frequency and re-broadcasting it on another frequency. DeChannels uses specialised apparatus to receive DigiTV's broadcasts which it then rebroadcasts to consumers in Wexford.

In March 1999, DigiTV broadcasts a documentary in which it alleges that PJ Purcell of Timolin was a prominent member of the Provisional IRA. PJ Purcell is a Garda Sergeant in Camolin. Since the broadcast, the citizens of Camolin have started to call him 'PJ the Prove'.

PJ wants to take legal action for defamation. Advise him on the issue of jurisdiction only: whom can he sue and where?

*p.t.o.*

Write a short note on ANY TWO of the following questions.

- (a) Where is the dividing line between a matter relating to contract and a question of tort, delict, or quasi-delict under the Brussels Convention.
- (b) Robert has been a passenger on the Aer Orr flight from Galway to Antwerp once every month for the past two years. Last week, Aer Orr canceled the flight, leaving Robert stranded in Antwerp. He had to pay £575.67 for a ticket home with Sabena and Aer Lingus. Robert wants to sue Aer Orr in Ireland, but its standard form ticket provides that the Brussels Commercial Court shall have exclusive jurisdiction. Assuming there are no special conventions dealing with liability in the airline sector, advise on the jurisdiction issue.
- (c) Bertie's goose escapes from Bertie's farm in Ireland and crosses onto his neighbour David's farm in Northern Ireland. The goose attacks David and causes him a serious injury. David sues in the High Court in Dublin. What law is the Irish court likely to apply?
- (d) Crusher is an investor, domiciled in Germany, who owns an office block in Dublin. He is being pursued by creditors. To escape liability to them, he transfers the office block to his wife, Dot. He swears a fraudulent declaration, saying that the transaction is not entered into with intent to defraud creditors. Dot sells the property to Juice, who is also German. Juice is a bona fide purchaser for value without notice of the fraud. Zitronenbank, one of Crusher's creditors, seeks an order before the Irish courts to set aside the transfers to Dot and Juice. Does the Irish court have exclusive jurisdiction?
- (e) Discuss the circumstances in which one can challenge jurisdiction after filing an appearance.
8. Dorf, a car manufacturer, wants to advertise its new car, the Dorf Fiasco, to European consumers on the Internet. It enters into a contract with Webserf GmbH under which Webserf will establish a web site to run a competition giving away free Fiasco's. Dorf's head office is in the UK, but it has other establishments throughout Europe. Webserf has its head office in Germany. It arranges that the web site, called 'www.winafiasco.com' will be administered from its server in Ireland, and that its Irish staff will run the site. Dorf supplies information directly to Webserf by e-mail. It is not aware that the Webserf server is located in Ireland until the server crashes and remains out of action for two weeks. Dorf sues Webserf before the Irish courts. Advise Dorf on jurisdiction and choice of law.