

Mercantile law 312

A1 Memorandum 25 April 2024

Question 1(i)

The Insolvency Act allows the trustee to attach to estate of the solvent spouse

Spouse is defined as wife of a man married or a man or a woman who live together as if they are married.

In the Gregory case court held that in such scenario the married woman is the spouse

In this case Mary and Johan/John are not married and technically not spouses whereas Isabel would be as she and John live together.

Is factual question whether there sufficient evidence that John and Isabel live together as if married.

Arguable that both are spouses

Question 1(ii)

In terms of the Act the following courts would have jurisdiction:

- John domiciled or has property
- Ordinary place of residence or business conducted within last twelve months
- Cape Town where John has ordinary place of residence
- John has property in Johannesburg because of shares – property is located where securities register is kept
- John has a debtor in Durban and hence property in Durban.
- Court will determine jurisdiction based on what is the best way to wind up/administer the estate

Question 1(iii)

You had to highlight the most important points of the *Harksen v Lane* case in respect expropriation of property and equality and how the court went about to come to its judgment. Some important aspects in respect of equality.

Mercantile Law Question Paper And Memorandum

RC Schank



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A Compendium of Mercantile Law John William Smith,1877 **The Mercantile Law Journal** ,1913 **The Mercantile Law of England and the United States** John William Smith,1887 **Slater's Mercantile Law** John Arthur Slater,R. H. Code Holland,1931 Parliamentary Papers Great Britain. Parliament. House of Commons,1907

Accountant Student and Accountants' Journal ,1890 Smith and Keenan's Mercantile Law Kenneth Smith,Denis J. Keenan,1988 **Bar Examination Papers, Questions and Answers, 1901-** ,1901 **The American and English Encyclopedia of Law** John Houston Merrill,Thomas Johnson Michie,Charles Frederic Williams,David Shephard Garland,1896 **The American and English Encyclopædia of Law: Index-digest** ,1896 *New York Court of Appeals. Records and Briefs.* New York (State). Court of Appeals.,1870 Volume contains 49 NY 301 Taussig v Hart 49 NY 266 Austin v Goodrich 49 NY 280 Settle v Van Evera 49 NY 318 Kelly v Babcock 49 NY 385 Getty v Binsse 49 NY 390 Dent v No Amer S S Co 49 NY 396 Benedict v Cowden 49 NY 485 Delavan v Duncan 49 NY 546 Dininny v N Y N H R R Co 49 NY 666 Terrett v N Y B S S M L Co 49 NY 667 Wetmore v Candee 49 NY 668 Mass Mut L Ins Co v Carpenter 49 NY 669 Carver v Bonner 50 NY 23 Viner v N Y c S S Co 50 NY 673 Abernethy v Knight *The Accountant* ,1916 **The Railway and Corporation Law Journal** ,1891 **An Introductory Guide to EC Competition Law and Practice** Valentine Korah,1873 **An Introduction to the Final Examination: Being a Collection of All the Questions in the Papers Set by the Incorporated Law Society, and Many Similar Additional Questions, with the Answers** Henry Foulks Lynch,1874

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