

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.

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Puja Mehta



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