



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Mercantile Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: IHR0021/ITL41B0 INTERNATIONAL TRADE LAW
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: January 2021

<u>DATE</u>	: 20 January 2021	<u>SESSION</u>	: 08:00-11:30
<u>ASSESSOR(S)</u>	: PROF EA FREDERICKS PROF MM WETHMAR-		
<u>MODERATOR</u>	: LEMMER		
<u>DURATION</u>	: 2 HOURS	<u>MARKS</u>	: 70

NUMBER OF PAGES: 6 PAGES

INSTRUCTIONS:

1. Please ensure that your surname, initials, student number and email address are on the answer script.
2. Please answer ALL THE QUESTIONS on the answer script.
3. Number your answers clearly.
4. Your answers should be substantiated in detail with reference to authority (including case law, legislation and authors).

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5. Please ensure that you submit the correct answer script.
6. Submit only ONE answer script.
7. You may not seek the assistance of a fellow student during this assessment. You may not use any part of another student's answers to complete this assessment. **YOU ARE REMINDED** that **ALL RELEVANT RULES** and policies of the University and the Faculty apply to this assessment.
8. It is your responsibility to contact the lecturer immediately (via WhatsApp, direct telephone call or email) if you experience any problems related to the question paper.
9. By undertaking this online assessment, you will be deemed to have made the following declaration:

"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorised assistance during this assessment."

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Useful information

- Brussels I Regulation member states include France, Germany and the Netherlands.
- The entire European Union are member states of the Hague Choice of Court Convention.
- Rome I Regulation member states include France, Germany and the Netherlands.
- France, Germany and the Netherlands are CISG non-reservation (art 95) member state.
- South Africa is a CISG non-member state.

Please read through the factual scenario below and answer the questions that follow.

Neon Sportswear (Neon) is a company incorporated in South Africa. Its central administration and principal place of business are in Cape Town (South Africa). Adventure Sport SARL (Adventure) is a company incorporated in France. Its central administration and principal place of business are in Paris (France). Adventure Sport SARL does not have branch offices anywhere else in the world but is the owner of immovable property in Johannesburg (South Africa).

Neon and Adventure concluded a contract of purchase and sale of sport equipment to be delivered in Cape Town (South Africa) by Adventure. The sports equipment had to be sent from the harbour in Marseille (France) to the harbour in Cape Town (South Africa).

Payment by Neon had to be effected by way of a documentary letter of credit (DLC) issued by Rand Merchant Bank in Johannesburg (South Africa) in Adventure's account at First National Bank in Johannesburg (South Africa).

The contract was concluded in Pretoria (South Africa) on 18 July 2020 and delivery and payment had to take place during October 2020.

The parties neither expressly nor tacitly chose a legal system to govern their contract. However, clause 15 of the contract provides the following: "The parties to this contract submit to the jurisdiction of the High Court in Rotterdam (the Netherlands) in the event of a dispute arising between them regarding any aspect of the contract." Further, the contract incorporates the FOB standard terms of the ICC (2020 version).

Payment was effected as agreed. Delivery also took place but Neon Sportswear claims that 30% of the sports equipment was defective.

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QUESTION 1

Neon, aggrieved by these events, approaches you for advice. Assess in detail whether:

- 1.1 The High Court in Rotterdam (the Netherlands) would have jurisdiction; (6)
- 1.2 The appropriate court in Cape Town have jurisdiction? Discuss in detail; (6)
- 1.3 The *Bundesgerichtshof* in Berlin (Germany) may possibly have jurisdiction. (5)

SUBTOTAL: [17]

QUESTION 2

Assume for purposes of **QUESTION 2 only**, that the appropriate court in France has jurisdiction over the matter.

- 2.1 Conduct an evaluation on whether the court will apply the substantive provisions of the United Nations Convention on the International Sale of Goods (CISG) (1980)? If not, which legal system will it apply? (11)
- 2.2 Assume that the contract is governed by the CISG. In which circumstances would Neon Sportswear have been entitled to avoid the contract? Discuss briefly. (8)

SUBTOTAL: [19]

QUESTION 3

Assume for the purposes of **QUESTION 3 only**, that the High Court in Cape Town has jurisdiction and that South African law is the proper law of the contract and governs the relevant proprietary issues.

- 3.1 When would ownership of the equipment have passed to Neon Sportswear? (3)
- 3.2 Explain to Neon Sportswear how English law would approach a claim for specific performance. (3)
- 3.3 Which legal system will govern limitation (prescription)? How long is the applicable limitation (prescription) period? (2)

SUBTOTAL: [8]

QUESTION 4

- 4.1 Compile a list of the countries referred to in the factual scenario and indicate in each instance to which family the legal systems of these countries belong. (4)
- 4.2 Neon Sportswear plans to institute action in France. Offer advice on the following:
- a) Adventure Sport *SARL* is a company; (1)
 - b) If the damages amounted to €15 000, would the matter be heard by the *Tribunal d'instance* or the *Tribunal de grande instance*? Provide the reason for your answer. (1)
 - c) Which court will hear the appeal from the court referred to in (b)? (2)

SUBTOTAL: [8]

QUESTION 5

Assume that the DLC was issued by Rand Merchant Bank in Johannesburg (South Africa) and that this bank was also responsible for notifying Adventure Sport *SARL* that a DLC was opened in its favour. The same bank would also effect payment in Adventure Sport's account held at First National Bank upon presentation of conforming documents. Which legal system governs the contractual relationship between Rand Merchant Bank and Adventure Sport *SARL* according to South African private international law? (4)

SUBTOTAL: [4]

QUESTION 6

Assume that the appropriate court in Germany handed down judgment against Adventure. Neon, of course, intends to initiate procedures for the recognition and enforcement of the judgement in France but is concerned that the court would probably refuse, since there really is no linkage of the parties and the contract to Germany. Is there any justification for Neon's concern, or are there other factors which the "court addressed" would take into consideration in order to decide whether the recognition and enforcement of a judgment is to be refused? Discuss briefly. (4)

SUBTOTAL: [4]

QUESTION 7

Assume that the dispute in question was not referred to a court but, in terms of the contract between the parties, to arbitration at the ICC's Court of Arbitration in London. The latter court then made an arbitral award against Adventure and your client submits an application to have this award recognised and enforced by the High Court in Johannesburg (South Africa). Adventure now insists, however, that the court should set aside the arbitration award especially since it (Adventure) is convinced that a French arbitral tribunal would have found differently.

Predict how the court would approach this issue and what the probable outcome would be. (5)

SUBTOTAL: [5]

QUESTION 8

In a certain case before the Johannesburg High Court the defendant argues that the court cannot apply the provisions of a certain Act of the Lesotho parliament as jurisdiction on the relevant issues is expressly reserved to the Lesotho High Court. The law of Lesotho is the proper law of the contract. Comment on the argument of the defendant. (5)

SUBTOTAL: [5]

TOTAL: [70]
