



**UNIVERSITY OF JOHANNESBURG**

**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**JUNE EXAMINATION 2018**

**SUBJECT NAME:** INTERNATIONAL COMMERCIAL LAW A (LLM)

**DURATION:** 5 hours

**MARKS:** 70

**EXAMINERS:**

|   |   |
|---|---|
| 1 | DR E A FREDERICKS (UJ)                                    |
| 2 | PROF J L NEELS (UJ)                                       |
| 3 | PROF M M WETHMAR-LEMMER (UNISA)                           |
| 4 | PROF M G MARTINEK<br>(UNIVERSITY OF SAARLAND, GERMANY)    |
| 5 | PROF S KHANDERIA<br>(O P JINDAL GLOBAL LAW SCHOOL, INDIA) |

**NB: THIS PAPER CONSISTS OF FIVE PAGES.**

**INSTRUCTIONS:**

- 1 Your answers must be substantiated in detail.
- 2 Please write legibly.
- 3 This is an open-book examination. You may use any materials but are not allowed to share information with other students.

*You are invited to read the following scenario and answer the questions that follow.*

ABC is a company incorporated, domiciled and resident in France; its central administration and principal place of business are in France. (France is a member country of the European Union.)

DEF is a company incorporated, domiciled and resident in Japan; its central administration and principal place of business are in Japan.

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of 10 tonnes of high-quality caffeine-free Ethiopian coffee. The parties incorporated the latest version of the FOB terms of the ICC in their contract. The contract was concluded in Vancouver (British Columbia, Canada) during February 2018. Negotiations were conducted in Dubai (United Arab Emirates) and New York (United States of America).

In terms of the contract, the goods had to be delivered by ABC in the harbour of Barcelona (Spain) during April 2018, to be transported to Japan by GHI Shipping Company. (Spain is a member country of the European Union.) Payment by DEF had to take place in ABC's account at JKL Bank in Delhi (India) by way of letter of credit.

The parties expressly chose the law of British Columbia (Canada) to govern their contract. They did not submit to the jurisdiction of any court or tribunal.

Assume that a dispute between DEF (plaintiff) and ABC (defendant) arises in respect of the quality of the coffee as delivered by ABC. Payment took place as agreed.

**QUESTION 1**

1.1 Consider whether the following courts would have jurisdiction:

1.1.1 British Columbia (Canada)

**[12]**

1.1.2 India

**[5]**

1.1.3 Spain (Brussels *Ibis*)

**[15]**

1.2 Assume (only for the purposes of question 1.2) that the parties submitted to the jurisdiction of the ICC Court of Arbitration in Geneva (Switzerland). What would your answer to question 1.1.2 have been?

**[5]**

**SUBTOTAL [37]**

**QUESTION 2**

Would a court in

2.1 British Columbia (Canada)

**[6]**

2.2 Ontario (Canada)

**[6]**

**SUBTOTAL [12]**

**QUESTION 3**

Would the courts in the following countries have international jurisdiction according to South African private international law?

3.1 British Columbia (Canada)

**[5]**

3.2 Spain

**[4]**

3.3 India

**[3]**

**SUBTOTAL [12]**

**QUESTION 4**

4.1 What would your answer to question 3.3 have been if article 5(1)(g) of the Draft Hague Convention on the Recognition and Enforcement of Foreign Judgments of May 2018 (see the text below) became law in India and in South Africa?

**[5]**

4.2 Which arguments of policy could be advanced to support the introduction of the ground of the characteristic performance as connecting factor for international jurisdiction in South African private international law?

**[4]**

**SUBTOTAL [9]**

**TOTAL [70]**