



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS
FACULTY OF LAW
JUNE EXAMINATION 2020

SUBJECT NAME: INTERNATIONAL COMMERCIAL LAW B (ICL9XBC) LLM

DURATION: 5 hours

MARKS: 60

EXAMINERS:

1	PROF J L NEELS (UJ)
2	PROF E A FREDERICKS (UJ)
3	PROF M M WETHMAR-LEMMER (UNISA)
4	PROF M G MARTINEK (UNIVERSITY OF SAARLAND, GERMANY)

NB: THIS PAPER CONSISTS OF FIVE PAGES.

INSTRUCTIONS:

- 1 Your answers must be substantiated in detail and carefully formulated.
- 2 Type your answers, submit the document on Blackboard and email to jlneels@uj.ac.za. If you prefer to write your answers, please photograph every page of your exam script and send via Whatsapp to 083 637 9802. Send the typed version of your answers within three hours of completion of the examination to jlneels@uj.ac.za and upload on Blackboard.
- 3 This is an open-book examination. You may use any materials (including sources in an electronic format) but are not allowed to share information with other students.
- 4 You are not allowed to be in contact with other students (including by email, Whatsapp, mobile phone, telephone or any other method). You may use the official Whatsapp channel for ICLB or another Whatsapp number to communicate with the lecturer.
- 5 The lecturer may contact students via the official Whatsapp channel for ICLB if any clarification is needed.
- 6 Your answers will be tested for plagiarism in general and in respect of the answers of other students.
- 7 Do not copy and paste from any sources. Answers must be provided in your own words.
- 8 Use quotation marks where literally quoting from sources.
- 9 References to sources may be of an informal nature (*ie* the Nedbank case).
- 10 You are reminded to save your work continuously.

INTERNATIONAL COMMERCIAL LAW B

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

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

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of 10 tonnes of high-quality Ethiopian coffee. The coffee was at the time of contracting located on a farm in the highlands of Ethiopia. Negotiations were conducted in Providence (Rhode Island, United States of America). The contract was concluded in Seoul (South Korea) during February 2020. The contract employs the English language and the monetary unit is USD. Some typical common-law terminology is used in the contract. The parties neither expressly nor tacitly chose a legal system to govern the agreement.

In terms of the (CPT) contract, the goods had to be delivered by ABC in Nairobi (Kenya) during April 2020. The coffee would then be transported to Dar es Salaam (Tanzania) by GHI Transport. Payment by DEF had to take place in ABC's account at JKL Bank in Providence, Rhode Island (United States of America) by way of letter of credit. Payment took place as agreed.

The CISG is not applicable. The Rome I Regulation applies in Croatia. Rhode Island follows the approach of the first Restatement.

.../3

INTERNATIONAL COMMERCIAL LAW B**QUESTION 1**

Predict which legal system would in principle be applied to a substantive dispute between ABC and DEF by the courts in

1.1 Ethiopia

[14]

1.2 Rhode Island (United States of America)

[6]

1.3 South Korea

[12]

SUBTOTAL [32]

QUESTION 2

2.1 Classify the conflicts rule used in your answer to question 1.3. Provide the answer only.

[2]

2.2 Would the classification proposed in your answer to question 2.1 differ if Canadian private international law were applicable? Provide the answer only.

[1]

.../4

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- 2.3 Which legal system governs the formal validity of the contract between ABC and DEF in terms of Russian private international law?

[6]

SUBTOTAL [9]

QUESTION 3

- 3.1 During March 2020, Covid-related regulations were issued in Kenya, which would make it a criminal offence for ABC to transport the coffee from Ethiopia to Kenya. Assume that no similar Covid regulations were issued in Ethiopia or Tanzania. ABC returned DEF's payment but DEF claims damages for loss of profit from ABC in a Croatian court. The Croatian court has jurisdiction on the basis of a choice of court clause in the contract between the parties. Could the Kenyan Covid regulations have an effect on the decision of the Croatian court?

[10]

- 3.2 Refer to question 3.1. Assume that similar Covid regulations were issued in Ethiopia but neither in Kenya nor in Tanzania. Could the Ethiopian Covid regulations have an effect on the decision of the Croatian court?

[2]

.../5

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- 3.3 Refer to question 3.1. Assume that similar Covid regulations were issued in Ethiopia but neither in Kenya nor in Tanzania. Could the Ethiopian Covid regulations have an effect on the decision of the Croatian court? Assume (only for the purposes of question 3.3) that the law of Rhode Island (United States of America) is the law applicable to the contract on the basis of Article 4(3) of the Rome I Regulation.

[4]

- 3.4 Refer to question 3.1. Assume that similar Covid regulations were issued in Ethiopia but neither in Kenya nor in Tanzania. Could the Ethiopian Covid regulations have an effect on the decision of a Turkish court with jurisdiction?

[3]**SUBTOTAL [19]****GRAND TOTAL [60]**