



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Mercantile Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: INTERNATIONAL COMMERCIAL LAW C (LLM) ICL9XCC
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: November 2019

<u>DATE</u>	: 11 November 2019	<u>SESSION</u>	: 10:00 – 15:00
<u>ASSESSOR(S)</u>	: PROF JL NEELS PROF MM WETHMAR-		
<u>MODERATOR</u>	: LEMMER		
<u>DURATION</u>	: 5 HOURS	<u>MARKS</u>	: 75

NUMBER OF PAGES: 5 PAGES

INSTRUCTIONS:

1. Your answers must be substantiated in detail.
2. This is an open-book examination. You may use any materials but are not allowed to share information with other students.
3. The rules of the University of Johannesburg relating to examinations apply to this exam.

QUESTION 1

CISG non-reservation (Art 95) contracting States include Greece, Italy, the Netherlands and Vietnam.

China (including Hong Kong and Macau) is a reservation (Art 95) contracting State.

The following countries are not contracting States to the CISG: Ethiopia, India, Mauritius and the United Arab Emirates.

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

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of a specified number of Italian marble tiles. The contract was concluded on 1 August 2019 in Addis Ababa (Ethiopia). The tiles had to be delivered by ABC in the harbour of Rome (Italy) for transportation to the harbour of Hong Kong (China). The parties incorporated the 2010 version of the CFR Incoterms of the ICC. They added the following clause: "NB: Delivery in Hong Kong before 1 November 2019." During negotiations, which took place in Mauritius during July 2019, DEF made it clear that, according to the relevant building plan, the tiles were needed in the construction of an apartment building in Hong Kong on 5-6 November 2019.

Payment by DEF had to take place in ABC's account at GHI Bank in Vietnam by a documentary letter of credit issued by JKL Bank in Dubai (United Arab Emirates) and confirmed by MNO Bank in Abu Dhabi (United Arab Emirates). The parties agreed that ABC would arrange cargo insurance with PQR Insurance in Athens (Greece). The parties neither expressly nor tacitly chose a legal system to govern the agreement and they did not submit to the jurisdiction of any court or arbitral tribunal.

The tiles were received in the harbour of Hong Kong on 8 November 2019.

QUESTION 1.1

Assume that the dispute between ABC and DEF is referred to a court in Hong Kong (China). Will the CISG be applied?

SUBTOTAL [20]

QUESTION 1.2

Accept for the purposes of question 1.2 that the CISG applies.

1.2.1 Will DEF be able to avoid the contract?

[12]

1.2.2 Assume that DEF was entitled to avoid the contract. DEF bought similar tiles from another provider on 4 November at a purchase price 30% more as compared to the contract between ABC and DEF. Can DEF claim the difference from ABC (in addition to reclaiming any amounts paid to ABC)?

[4]

SUBTOTAL [16]

QUESTION 1.3

1.3.1 Reflect on whether the CFR Incoterms were the most appropriate choice in the particular circumstances.

[5]

1.3.2 Reflect on whether there was an obligation on either ABC or DEF to arrange for marine cargo insurance.

[3]

SUBTOTAL [8]

QUESTION 1.4

Which legal system governs the contract between JKL and MNO if the Rome I Regulation were applicable?

SUBTOTAL [5]

QUESTION 1.5

Identify the legal systems in the factual scenario on page 2 that belong to the following legal families:

1.5.1 English common-law systems;

1.5.2 Romanic civil-law systems; and

1.5.3 mixed English common-law and Romanic civil-law systems.

SUBTOTAL [4]

QUESTION 2

The CEO of ABC, a company incorporated and with its principal place of business in State X, posted material on the internet to harm the reputation of DEF, a company incorporated and with its principal place of business in State Y. The damage to DEF's reputation showed clearly in sharply decreasing sales figures in States X, Y and Z over the past three months. ABC's sales increased dramatically over the same period of time. Assume that the Hague Resolution of the *Institut de droit international* on Injuries to Rights of Personality Through the Use of the Internet (2019) and the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019) already apply in States X, Y and Z.

QUESTION 2.1

Will the court in State Y have jurisdiction in respect of DEF's claim for defamation?

[8]

QUESTION 2.2

Assume that the court in State Y has jurisdiction. May DEF sue for the harm caused in State Z?

[3]

QUESTION 2.3

Assume that the court in State Y has jurisdiction. Which law must be applied?

[3]

QUESTION 2.4

Will the judgment of the court in State Y be enforced in State X?

[8]

SUBTOTAL [22]

GRAND TOTAL [75]