



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW**

**NOVEMBER EXAMINATION 2018**

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

**SUBJECT CODE:** ICL9XCC

**DURATION:** 5 hours

**MARKS:** 75

**EXAMINERS:**

1	PROF M M WETHMAR-LEMMER (UNISA)
2	MS C JOHANNES (UJ)
3	PROF E A FREDERICKS (UJ)
4	PROF J L NEELS (UJ)

**NB: THIS PAPER CONSISTS OF SIX 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.

## **INTERNATIONAL COMMERCIAL LAW C**

<b>CISG non-reservation (Art 95) contracting States include Belgium, Finland, Greece and Japan.</b>
<b>The following countries are not contracting States to the CISG: India, Indonesia, Kenya, Pakistan, South Africa and the United Arab Emirates.</b>
<b>Rome I member states include Belgium, Finland and Greece.</b>
<b>The Cape Town Convention and the Aircraft Protocol are in force in Kenya but not in Japan.</b>

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

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of three pianos. The pianos were manufactured partially in Indonesia and partially in Japan. The pianos had to be delivered by ABC in the harbour of Tokyo (Japan) for transportation to the harbour of Mombasa (Kenya). The parties incorporated the latest version of the FCA Incoterms of the ICC. Payment by DEF had to take place in ABC's account at GHI Bank in Japan by a documentary letter of credit issued by JKL Bank in Delhi (India) 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 contract was concluded in Pakistan on 1 August 2018. Delivery and payment had to take place during October 2018. 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.

**INTERNATIONAL COMMERCIAL LAW C****QUESTION 1**

Assume that a dispute between the parties is referred to a court in Finland, which has jurisdiction on the basis of the location of some of DEF's assets in Finland. Will the CISG be applied?

**SUBTOTAL [6]**

**QUESTION 2**

Accept for the purposes of question 2 that the CISG applies. Assume that ABC delivered the pianos but that they are all out of tune when they are offloaded in Mombasa.

2.1 Will DEF be able to avoid the contract?

**[6]**

2.2 Will DEF be able to claim that ABC sends a piano tuner from Japan?

**[6]**

**SUBTOTAL [12]**

**QUESTION 3**

Assume that ABC delivered five pianos, instead of three. Consider the options of DEF. Assume (merely for the purposes of question 3) that the OHADA Uniform Act on General Commercial Law applies.

**SUBTOTAL [6]**

**QUESTION 4**

4.1 Why would the parties have chosen the FCA Incoterms rather than one of the other F-terms?

**[4]**

## **INTERNATIONAL COMMERCIAL LAW C**

- 4.2 Why should the parties under a FCA contract identify the address of the point of delivery as clearly as possible?

**[3]**

- 4.3 Assume that risk already passed to DEF at a cargo terminal close to the harbour. Who is liable for export taxes?

**[4]**

- 4.4 Reflect on whether there is an obligation on either ABC or DEF to arrange for marine cargo insurance.

**[3]**

**SUBTOTAL [14]**

## **QUESTION 5**

Assume that, according to a specific provision in the contract of sale, ABC was required to arrange for transportation of the pianos to the buyer. ABC indeed entered into an agreement with a carrier for the carriage of the goods by sea. The carrier issued a “shipped” bill of lading to the seller indicating that the goods were in good condition. During the voyage the pianos were damaged when they shifted because of improper stowage.

- 5.1 In which circumstances could the Hague Visby Rules possibly apply to the carriage arrangement even if the goods were not transported to or from one contracting state to another?

**[2]**

- 5.2 Does the bill of lading provide conclusive proof of the condition of the goods?

**[2]**

## **INTERNATIONAL COMMERCIAL LAW C**

5.3 Discuss the carrier's obligation in respect of the cargo.

**[3]**

5.4 Will DEF be able to claim on the basis of the insurance policy issued by PQR?

**[5]**

**SUBTOTAL [12]**

### **QUESTION 6**

Which legal system governs the question whether a contract between ABC and MNO exists? Apply the Rome I Regulation.

**SUBTOTAL [6]**

### **QUESTION 7**

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

7.1 English common-law systems;

7.2 Germanic civil-law systems; and

7.3 Romanic civil-law systems.

**SUBTOTAL [6]**

### **QUESTION 8**

Assume that the contract was concluded in Cape Town (South Africa). The parties to the contract of sale chose the Johannesburg High Court (South Africa) as the competent tribunal in respect of their contract. Would the current case be a "Commercial Court case" for the purposes of the Commercial Court Practice Directive of 3 October 2018?

**SUBTOTAL [6]**

**INTERNATIONAL COMMERCIAL LAW C****QUESTION 9**

Assume that the objects of sale were three helicopters instead of three pianos and that STU, a Japanese company, has a security interest in the helicopters. Reflect on the applicability of the Cape Town Convention and the Aircraft Protocol, referring to

9.1 the type of goods; and

**[3]**

9.2 the national location of the relevant parties.

**[4]**

**SUBTOTAL [7]**

**GRAND TOTAL [75]**