



UNIVERSITY OF JOHANNESBURG

KINGSWAY CAMPUS

FACULTY OF LAW

JUNE EXAMINATION 2020

SUBJECT NAME: INTERNATIONAL COMMERCIAL LAW A (LLM)

DURATION: 5 hours

MARKS: 60

EXAMINERS:

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

NB: THIS PAPER CONSISTS OF FOUR PAGES.

INSTRUCTIONS:

- 1 Your answers must be substantiated in detail.
- 2 Type your answers, submit the document on Blackboard and email to eafredericks@uj.ac.za.
- 3 This is an open-book examination. You may use any materials but are not allowed to share information with other students.
- 4 You are not allowed to be in contact with other students.
- 5 Your answers will be tested for plagiarism in general and in respect of the answers of other students.
- 6 Do not copy and paste from any sources. Answers must be provided in your own words.
- 7 Use quotation marks where literally quoting from sources.
- 8 You are reminded to save your work continuously.
- 9 You are welcome to contact the lecturer by WhatsApp during the examination.

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

Consol SA (Pty) Ltd (Consol) is a company incorporated, domiciled and resident in South Africa; its central administration and principal place of business are in Johannesburg (South Africa). Consol does not have branch offices anywhere else in the world but is the owner of assets in British Columbia (Canada), India and South Africa.

Glass-Smith & Co Canada (Glass-Smith) is a company incorporated, domiciled and resident in British Columbia (Canada); its central administration and principal place of business are in British Columbia. Glass-Smith has no branch offices anywhere else in the world, nor does it own any property abroad.

Consol (seller) and Glass-Smith (buyer) concluded a contract of purchase and sale in respect of five (5) tons of unrefined glass. (South Africa is one of the most prominent exporters of glass in the world.) The contract was concluded in Abuja (Nigeria) during February 2020.

In terms of the contract, the glass had to be delivered by Consol to a warehouse at Oliver Tambo airport, Johannesburg, South Africa (ORT) during March 2020, to be transported to Barcelona (Spain) by Iberia Airlines for further distribution in various European countries. Payment by Glass-Smith had to be effected in Consol's account at Central Bank of India in Mumbai (India) by way of documentary letter of credit.

The parties expressly chose the law of British Columbia (Canada) to govern their contract. However, they neither expressly nor tacitly selected the courts of a particular legal system to exercise jurisdiction over matters that may arise as a result of a dispute between them.

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Glass-Smith indeed effected payment and delivery also took place but it (Glass-Smith) claims that the quality of the glass as delivered by Consol was dissimilar to that which was actually agreed upon.

Both the Brussels *Ibis* Regulation and the Hague Convention on Choice of Court agreements apply in Spain.

QUESTION 1

Aggrieved by this event, Glass-Smith approaches you for assistance. Assess in detail whether the courts in the following countries or territories would exercise jurisdiction:

1.1	India	[7]
1.2	Nigeria	[10]
1.3	Spain	[12]
1.4	South Africa	[6]
		SUBTOTAL [35]

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QUESTION 2

Assume that the appropriate court in India exercised jurisdiction over the matter and handed down judgment against Consol. Glass-Smith, of course, intends to initiate procedures for the recognition and enforcement of the judgment. Predict whether the courts in the following jurisdictions would recognise and enforce the Indian judgment.

2.1 British Columbia (Canada) [5]

2.2 South Africa [15]

SUBTOTAL [20]

QUESTION 3

Assume that both South Africa and India ratified the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Hague Judgments Convention). Would this influence your answer to Question 2.2 above? Substantiate briefly. [5]

GRAND TOTAL [60]