



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW

MAY EXAMINATION 2019

SUBJECT NAME: INTERNATIONAL COMMERCIAL LAW A (LLM)

DURATION: 5 hours

MARKS: 65

EXAMINERS:

1	PROF EA FREDERICKS (UJ)
2	PROF JL NEELS (UJ)
3	PROF MM WETHMAR-LEMMER (UNISA)
4	PROF MG MARTINEK (UNIVERSITY OF SAARLAND, GERMANY)

NB: THIS PAPER CONSISTS OF FOUR PAGES.

INSTRUCTIONS:

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

INTERNATIONAL COMMERCIAL LAW A

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

ABC is a company incorporated, domiciled and resident in South Africa; its central administration and principal place of business are in South Africa. ABC is the owner of assets in British Columbia (Canada), India and South Africa.

DEF is a company incorporated, domiciled and resident in British Columbia (Canada); its central administration and principal place of business are in British Columbia.

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of 10 000 boxes of citrus fruit. (South Africa is, after Spain, the largest exporter of citrus fruit in the world.) The contract was concluded in Mombasa (Kenya) during March 2019.

In terms of the contract, the goods had to be delivered by ABC to a warehouse at ORT (Oliver Tambo airport, Johannesburg, South Africa) during April 2018, to be transported to Antwerp (Belgium) by KLM for further distribution in various European countries. Payment by DEF had to take place in ABC's account at GHI 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 citrus fruit as delivered by ABC. Payment took place as agreed.

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

INTERNATIONAL COMMERCIAL LAW A

QUESTION 1

Consider whether the courts in the following countries or territories would exercise jurisdiction:

1.1	India	[6]
1.2	Kenya	[10]
1.3	Portugal	[8]
1.4	South Africa	[4]
SUBTOTAL		[28]

QUESTION 2

Assume that an Indian court exercised jurisdiction in the matter and entered judgment against ABC. Consider whether the following courts would recognise and enforce the Indian judgment.

2.1	British Columbia (Canada)	[16]
2.2	South Africa	[12]
SUBTOTAL		[28]

INTERNATIONAL COMMERCIAL LAW A**QUESTION 3**

Presume that the contract between ABC and DEF included an exclusive choice-of-forum clause in favour of the courts of Portugal. The contract is available in a durable electronic form only. Would the Portuguese court exercise jurisdiction?

SUBTOTAL [9]**GRAND TOTAL [65]**