



**UNIVERSITY OF JOHANNESBURG**

**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**MAY EXAMINATION 2017**

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

**DURATION:** 5 hours

**MARKS:** 80

**EXAMINERS:**

|   |   |
|---|---|
| 1 | DR E A FREDERICKS (UJ)                                    |
| 2 | PROF J L NEELS (UJ)                                       |
| 3 | PROF M M WETHMAR-LEMMER (UNISA)                           |
| 4 | PROF M G MARTINEK<br>(UNIVERSITY OF SAARLAND, GERMANY)    |
| 5 | PROF S KHANDERIA<br>(O P JINDAL GLOBAL UNIVERSITY, INDIA) |

**NB: THIS PAPER CONSISTS OF FIVE 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.
- 4 Please take note:
  - 4.1 Member States of the Brussels *Ib*s Regulation include France, Poland, Portugal and the United Kingdom.
  - 4.2 Contracting States of the Hague Convention on Choice of Court Agreements include France, Poland, Portugal, Singapore and the United Kingdom.

**INTERNATIONAL COMMERCIAL LAW A**

*Please read the following scenario and answer the questions that follow.*

ABC and DEF are both companies incorporated, domiciled and resident in India; their 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 7 890 bicycles, produced in the south of France. The parties incorporated the latest version of the FOB terms of the ICC in their contract. The contract was concluded in India during April 2017.

In terms of the contract, the goods had to be delivered by ABC in the harbour of Lisbon (Portugal) during May 2017, to be transported to Tunisia by GHI Shipping Company. Payment by DEF had to take place in ABC's account at JKL Bank in Singapore by way of letter of credit.

The parties expressly stipulated that the law of Ontario (Canada) would govern the agreement. They did not submit to the jurisdiction of any court.

Assume that a dispute between DEF (plaintiff) and ABC (defendant) arises in respect of the quality of the bicycles as delivered by ABC. Payment took place as agreed.

## **INTERNATIONAL COMMERCIAL LAW A**

### **QUESTION 1**

- 1.1 Discuss whether the relevant court in Ontario (Canada) would have jurisdiction in respect of the dispute.

**[25]**

- 1.2 Assume that the court in Ontario has jurisdiction. ABC submits that the court should apply the doctrine of *forum non conveniens*.

- 1.2.1 What role could the factor of the enforceability of a foreign judgment play in this regard?

**[6]**

- 1.2.2 Evaluate the relevancy *in casu* of the decision of the Supreme Court of Canada in *Lapointe Rosenstein Marchand Melançon LLP v Cassels Brock & Blackwell LLP* 2016 SCC 30.

**[5]**

**SUBTOTAL [36]**

### **QUESTION 2**

Assume that the parties expressly and exclusively submitted to the jurisdiction of the English courts. Discuss whether the relevant court in the United Kingdom would have jurisdiction in respect of the dispute.

**SUBTOTAL [7]**

## **INTERNATIONAL COMMERCIAL LAW A**

### **QUESTION 3**

Assume that the parties expressly and exclusively submitted to the jurisdiction of the English courts.

- 3.1 Discuss whether the courts in India would have and exercise jurisdiction in respect of the dispute with specific reference to the decision of the Supreme Court of India in *Modi Entertainment Network v WSG Cricket Pte Ltd* (2003) 4 SCC 341.

**[12]**

- 3.2 What would the position have been if India were a Contracting State to the Hague Convention on Choice of Court Agreements?

**[4]**

**SUBTOTAL [16]**

### **QUESTION 4**

Assume that the parties expressly and exclusively submitted to the jurisdiction of the English courts.

- 4.1 Assume that the English court exercises jurisdiction on the basis of the choice of court clause. Will the judgment be recognised and enforced in

- 4.1.1 Nigeria

**[4]**

.../5

**INTERNATIONAL COMMERCIAL LAW A**

4.1.2 Poland

**[3]**

4.1.3 Singapore?

**[4]**

4.2 How will Brexit probably influence the answer to question 4.1.2 in future?

**[4]****SUBTOTAL [15]****QUESTION 5**

Assume that the parties expressly and exclusively submitted to the jurisdiction of the English courts. However, the relevant court in the United Kingdom declines jurisdiction as the choice of court clause is invalid in terms of the legal system referred to by English private international law. Will a Singaporean judgment against ABC (based on the breach of contract by ABC) be recognised and enforced in Kenya?

**SUBTOTAL [6]****TOTAL [80]**