UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS
FACULTY OF LAW
MAY EXAMINATION 2018

SUBJECT NAME:	**INTERNATIONAL COMMERCIAL LAW B (LLM)**	
DURATION:	**5 hours**	
MARKS:	**70**	
EXAMINERS:	**1**	**PROF J L NEELS (UJ)**
	2	**DR E A FREDERICKS (UJ)**
	3	**PROF M M WETHMAR-LEMMER (UNISA)**
	4	**PROF M G MARTINEK (UNIVERSITY OF SAARLAND, GERMANY)**
	5	**PROF S KHANDERIA (O P JINDAL GLOBAL LAW SCHOOL, INDIA)**

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. You may use any materials but are not allowed to share information with other students.**

INTERNATIONAL COMMERCIAL LAW B

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

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

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

ABC (seller) and DEF (buyer) concluded a contract of purchase and sale in respect of 10 tonnes of high-quality caffeine-free Ethiopian coffee. The parties incorporated the latest version of the FOB terms of the ICC in their contract. The contract was concluded in Slovenia during February 2018. Negotiations were conducted in Delaware (United States of America).

In terms of the contract, the goods had to be delivered by ABC in the harbour of Mombasa (Kenya) during April 2018, to be transported to China by GHI Shipping Company. Payment by DEF had to take place in ABC's account at JKL Bank in Delhi (India) by way of letter of credit.

The parties did not choose a legal system to govern the agreement and they did not submit to the jurisdiction of any court or forum.

Assume that a dispute between DEF (plaintiff) and ABC (defendant) arises in respect of the quality of the coffee as delivered by ABC. Payment took place as agreed. As Ethiopia is not a contracting State to the CISG, assume that this instrument is not applicable.

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QUESTION 1

Which legal system would be applied to the dispute by the courts in

1.1 China

[20]

1.2 Delaware (United States of America)

[12]

1.3 Ethiopia

[5]

1.4 Slovenia (Rome I Regulation)?

[10]

SUBTOTAL [47]

QUESTION 2

Assume that South African law is both the proper law of the contract and the *lex loci contractus* and that the debt prescribed in terms of South African law but not in terms of Indian law. ABC raises the following defences against DEF in respect of prescription/limitation in an Indian court. Consider whether the defences will be successful.

2.1 The South African prescription rules are of a substantive nature in terms of internal South African law.

[4]

…/4

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2.2 The proper law governs prescription and limitation in terms of South African private international law.

[4]

2.3 The South African prescription rules are of a substantive nature in terms of internal South African law, the proper law governs limitation and prescription in terms of South African private international law and the parties were not resident or domiciled in South Africa at any relevant time.

[3]

2.4 The Indian Law Commission proposed that the proper law of the contract should govern prescription and limitation.

[3]

2.5 Section 11 of the Indian Limitation Act, 1963, is in conflict with Article 9(1)(d) of the Hague Principles on Choice of Law in International Commercial Contracts.

[3]

SUBTOTAL [17]

QUESTION 3

Assume that the parties agreed that ABC could elect to have either Chinese or Ethiopian law apply to the contract. Discuss whether this type of choice of law should be valid.

SUBTOTAL [6]

TOTAL [70]