



UNIVERSITY
OF
JOHANNESBURG

<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Mercantile Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: ITL41B0 INTERNATIONAL TRADE LAW
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: December 2021

DATE : 01 December 2021 **SESSION** : 08:00-11:00

ASSESSOR(S) : PROF EA FREDERICKS

MODERATOR : MR F ADAMS

DURATION : 2 HOURS **MARKS** : 70

NUMBER OF PAGES: 6 PAGES

INSTRUCTIONS:

1. Please ensure that your surname, initials, student number and email address are on the answer script.
2. Please answer ALL THE QUESTIONS on the answer script.
3. Number your answers clearly.
4. Your answers should be substantiated in detail with reference to authority (including case law, legislation and authors).

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5. Please ensure that you submit the correct answer script.
6. Submit only ONE answer script.
7. You may not seek the assistance of a fellow student during this assessment. You may not use any part of another student's answers to complete this assessment. **YOU ARE REMINDED** that **ALL RELEVANT RULES** and policies of the University and the Faculty apply to this assessment.
8. It is your responsibility to contact the lecturer immediately (via WhatsApp, direct telephone call or email) if you experience any problems related to the question paper.
9. By undertaking this online assessment, you will be deemed to have made the following declaration:

"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorised assistance during this assessment."

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Useful information

- Brussels I bis Regulation member states include France, Romania and the United Kingdom.
- Hague Convention on Choice of Court Agreements member states include: France, Romania and the United Kingdom.
- Rome I Regulation member states include France, Romania and the United Kingdom.
- South Africa is not a member state to any of the instruments indicated above.
- France and Romania are CISG non-reservation (art 95) member states.
- CISG non-member states include South Africa and the United Kingdom.

Please read through the factual scenario below and answer the questions that follow.

Computech (Pty) Ltd (Computech) is a company incorporated in South Africa. Its central administration and principal place of business are in Cape Town (South Africa). Martel Ordinateur SARL (Martel) is a company incorporated in France. Its central administration and principle place of business are in Paris (France). Martel does not have branch offices anywhere else in the world but is the owner of immovable property in Port Elizabeth (South Africa).

Computech and Martel concluded a contract for the purchase and sale of personal computers (PCs) to be delivered in Cape Town by Martel. The PCs had to be sent from the harbour at Port of Dunkerque (France) to the harbour in Cape Town (South Africa).

Payment of the purchase price (€50 000) by Computech had to be effected by way of a documentary letter of credit (DLC) issued by Rand Merchant Bank in Johannesburg (South Africa) into Martel's bank account at Première Banque Nationale in Avignon (France).

The contract was concluded in Pretoria (South Africa) on 20 September 2021 and delivery and payment had to take place during October 2021.

The parties neither expressly nor tacitly chose a legal system to govern their contract. However, clause 12 of the contract provides the following:

“The parties to this contract submit to the jurisdiction of the High Court in London (United Kingdom) in the event of a dispute arising between them regarding any aspect of the contract.”

Further, the contract incorporates the FOB standard terms of the ICC (2020 version).

Payment was effected as agreed. Delivery also took place but Computech claims that 25% of the PCs were defective (as they were unable to function on the operating system installed for South African purposes). Computech considers instituting action against Martel.

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QUESTION 1

- 1.1 Would the High Court in London have jurisdiction? (5)
- 1.2 Would your answer in 1.1 differ if Computech's central administration and principal place of business were in Romania? (4)
- 1.3 Would the High Court in Cape Town have jurisdiction? Discuss in detail. (6)

SUBTOTAL: [15]

QUESTION 2

Assume for purposes of **QUESTION 2 only**, that the High Court in London indeed has jurisdiction over the matter.

- 2.1 Which particular court would probably hear the matter? (2)
- 2.2 What would the proper law of the contract be? (3)
- 2.3 Assume further for purposes of **2.3 only**, that English law is the proper law of the contract and that it governs the transfer of property. How would the court address the transfer of ownership of the PCs from Martel to Computech? Discuss briefly. (3)
- 2.4 Compare the sources of this particular legal system with that of France. (3)

SUBTOTAL: [11]

QUESTION 3

Assume for purposes of **QUESTION 3 only**, that the appropriate court in France has jurisdiction over the matter.

- 3.1 Will the court apply the substantive provisions of the United Nations Convention on the International Sale of Goods (CISG) (1980)? If not, which legal system will it apply? (5)
- 3.2 Assume that the contract is governed by the CISG. In which circumstances would Computech have been entitled to avoid the contract? Discuss briefly. (6)
- 3.3 Assume that the contract is governed by the CISG. Would Computech be in a position to insist that Martel repair the defective PCs? (3)

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- 3.4 Assume that the contract is governed by the CISG. Would Computech be in a position to claim a reduction in the purchase price? (4)

SUBTOTAL: [18]

QUESTION 4

Regarding the standardised contractual terms between the parties, answer the following questions:

- 4.1 When would risk in respect of the PCs pass to Computech? (3)
- 4.2 Explain the obligations between Computech and Martel with regard to "Allocation of costs." (4)

SUBTOTAL: [7]

QUESTION 5

- 5.1 To which legal family of the world does France belong? (1)
- 5.2 Name the 6 (six) jurisdictions in the Middle-East that share the same legal family as France. (3)
- 5.3 What sort of companies are:
(a) Computech; and
(b) Martel? (1)
- 5.4 What are the acronyms for the equivalent companies (that you listed in 5.3) in:
(a) the United Kingdom; and
(b) Germany? (1)

SUBTOTAL: [6]

QUESTION 6

Assume that the DLC was issued by Rand Merchant Bank in Johannesburg (South Africa) and that this bank was also responsible for notifying Martel that a DLC was opened in its favour. The same bank would also effect payment in Martel's bank account held at Première Banque Nationale upon presentation of conforming documents. Which legal system governs the contractual relationship between Rand Merchant Bank and Martel according to South African private international law? (4)

SUBTOTAL: [4]

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QUESTION 7

Assume that the High Court in London handed down judgement against Martel and that Computech intends to initiate procedures for the recognition and enforcement of this judgement in France. Under which circumstances will this judgement not be recognised (and enforced)? (4)

SUBTOTAL: [4]

QUESTION 8

Assume that the dispute in question was not referred to a court but, in terms of the contract between the parties, to arbitration at the ICC's Court of Arbitration in London. Could the arbitral award against Martel be enforced by the High Court in Johannesburg (South Africa)? (5)

SUBTOTAL: [5]

TOTAL: 70 MARKS
