

INTERNATIONAL TRADE LAW (IHR0021)



PROGRAM : LLB
SUBJECT : INTERNATIONAL TRADE LAW
CODE : IHR0021
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DURATION : 2.5 HOURS
WEIGHT : 50%
TOTAL MARKS : 70

EXAMINER : DR EA FREDERICKS
MODERATOR : PROF MM WETHMAR-LEMMER
NUMBER OF PAGES : 5 (FIVE) [INCLUDING COVER PAGE]

INSTRUCTIONS:

PLEASE WRITE NEATLY.

YOUR ANSWERS SHOULD BE SUBSTANTIATED IN DETAIL WITH REFERENCE TO AUTHORITY (INCLUDING CASE LAW, LEGISLATION AND AUTHORS).

READ ALL QUESTIONS CAREFULLY.

THE RULES OF THE UNIVERSITY OF JOHANNESBURG RELATING TO EXAMINATIONS APPLY TO THIS EXAM.

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Useful information

- Brussels I bis Regulation member states include Germany, France, the Netherlands and the United Kingdom.
- The Hague Choice of Court Convention member states include Germany, France, the Netherlands and the United Kingdom.
- Rome I Regulation member states include Germany, France, the Netherlands and the United Kingdom.
- Germany, France and the Netherlands are CISG non-reservation (Art 95) member states.
- CISG non-member states include Mauritius, South Africa and the United Kingdom.

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

Gazelle Ltd (Gazelle) is a company incorporated in the United Kingdom (UK). Its central administration and principal place of business are in London (UK). Maîtriser SARL (Maîtriser) is a company incorporated in France. Its central administration and principal place of business are in Paris (France). Maîtriser does not have branch offices anywhere else in the world but is the owner of immovable property in Johannesburg.

Gazelle and Maîtriser concluded a contract for the purchase and sale of computer monitors (monitors) to be delivered in Durban by Maîtriser. The monitors had to be sent from the harbour at La Rochelle (France) to the harbour in Durban (South Africa).

Payment of the purchase price (€20 000) by Gazelle had to be effected by way of a documentary letter of credit (DLC) issued by Lloyds Banking Group Ltd (Lloyds) in London (UK) into an account held by Maîtriser at *Banque Populaire* (Banque) in Paris (France).

The contract was concluded in Port Louis (Mauritius) on 25 September 2017 while the duly authorised representatives of the companies were on holiday there. Delivery and payment had to take place during November 2017.

The parties neither expressly nor tacitly chose a legal system to govern their contract. Also, they neither expressly nor tacitly submitted to the jurisdiction of any particular court. The contract, however, incorporates the CIF standard terms of the ICC (2010 version).

Payment was effected as agreed. Delivery also took place but Gazelle claims that 20% of the monitors were defective (as the operating systems installed were dysfunctional for the South African market). Gazelle considers instituting action against Maîtriser.

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QUESTION 1

Your client, Gazelle, approaches you for advice on whether:

- 1.1 A court in Germany would have jurisdiction; and (5)
- 1.2 The High Court in Durban would have jurisdiction. (5)
- 1.3 Your client requests you to assess what the position would be if the contract between itself and Maîtriser contained a clause that stipulated the following:

“The parties to this contract submit to the jurisdiction of the District Court in the city of Amsterdam (the Netherlands) in the event of a dispute arising between them regarding any aspect of the contract.”

Your assessment should include a detailed discussion of whether the mentioned Dutch court would indeed exercise jurisdiction and on what basis (if any) it is entitled to do so. (10)

SUBTOTAL: [20]

QUESTION 2

Assume for the purposes of **QUESTION 2 only**, that the court in Germany indeed has jurisdiction over the matter.

- 2.1 Which particular court would probably hear the matter? (2)
- 2.2 Explain how you would go about determining the proper law of the contract. (3)
- 2.3 Assume further for the purposes of **2.3 only**, that German law is the proper law of the contract.

Predict how the court would address an issue relating to the transfer of ownership of the monitors from Maîtriser to Gazelle. (5)

SUBTOTAL: [10]

QUESTION 3

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

- 3.1 Conduct an evaluation of whether the court will apply the substantive provisions of the United Nations Convention on the International Sale of Goods (CISG) (1980). (5)
- 3.2 Assume that the contract is governed by the CISG. How would the court assess whether Gazelle is entitled to avoid the contract? (6)

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3.4 Assume that the contract is governed by the CISG. How would the court approach a claim for specific performance by Gazelle? (3)

3.5 Assume that the contract is governed by the CISG. How would the court approach a claim for the substitution of goods by Gazelle? (2)

SUBTOTAL: [16]

QUESTION 4

Your client has some concerns regarding the standard terms incorporated into the contract.

4.1 Compare the rules in respect of the passing of risk under the standard terms chosen by the parties with those of the CISG. Your answer should include an indication of when precisely risk would have passed to Gazelle in respect of both the chosen standard terms and the CISG. (6)

4.2 Explain the parties' obligations regarding the "delivery document" in respect of the chosen standard terms. (4)

SUBTOTAL: [10]

QUESTION 5

Critically evaluate the accuracy of the following statements in respect of comparative law:

In Germany, France and the Netherlands, principles that circumvent the abuse of rights form the basis of the legal system; the central figures are professors and judges; the case law holds no value; and their civil codes are compact and precise.

Whereas, in the United Kingdom and South Africa for example, specific rules form the basis of the legal system; the central figures are academics and judges; the case law is highly persuasive; and legislation is the primary source of law. (6)

SUBTOTAL: [6]

QUESTION 6

Assume that the DLC was issued by Lloyds and that Banque was appointed (by Lloyds) merely to effect a payment to Maîtriser if the contractual conditions were met. Formulate an argument in which you assert that the legal system that governs the contractual relationship between Lloyds and Maîtriser according to South African private international law, is the law where Banque is situated. (5)

SUBTOTAL: [5]

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QUESTION 7

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. The latter court then made an arbitral award against Maîtriser and your client submits an application to have this award recognised and enforced by the High Court in Johannesburg (South Africa). Maîtriser now argue that since there is no common-law ground of jurisdiction between the parties, the court should refuse the application.

Predict how the court would approach this issue and what the probable outcome would be. (3)

SUBTOTAL: [3]

TOTAL: 70 MARKS
