



**FOURTH YEAR EXAMINATION FOR THE AWARD OF THE  
DEGREE OF BACHELOR OF LAWS  
FIRST SEMESTER, 2022/2023  
(SEPTEMBER-DECEMBER, 2022)**

**LLBK 417: INTERNATIONAL TRADE LAW**

**STREAM: LLBK Y4 S1**

**TIME: 2 HOURS**

**DAY: FRIDAY, 12:00 – 2:00 P.M.**

**DATE: 23/12/2022**

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**INSTRUCTIONS**

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

**QUESTION ONE**

Kenya adopts legislation banning the sale of Hoodia (scientific name *Hoodia Gordonii*) and Hoodia-related products within Kenya. In order to make the ban effective, the Kenyan government also explicitly bans the export of Hoodia and Hoodia-related products. Hoodia is a succulent plant that occurs only in East Africa, and which is being sold, in East Africa and abroad, in large quantities as an aid to dieting. The demand for the succulent, in particular in the US and EU, has been identified as a threat to the continued existence of Hoodia, which the Kenyan government has placed on its endangered species list. The ban is subject to one exception, which permits indigenous communities, who use the plant as part of their traditional medicine, to continue harvesting and selling the plant on the Kenyan market. Insofar as consumption on the Kenyan market of Hoodia and Hoodia-related products is concerned, consumption of the plant itself accounts for about 10% and consumption of pills & powders for about 90% of Hoodia-related sales. Within the US, a number of companies import Hoodia and use it as the basis for diet preparations in the form of pills and powders. The safety of these pills and powders, which contain additional ingredients, has not

yet been established. These pills and powders are sold within the US and are also exported to a number of other countries, including back to Kenya. These importers and manufacturers are upset at the ban, which places their future business and continued existence in jeopardy. They want two things: to be permitted to continue importing the Hoodia plant from Kenya, and to be permitted to continue exporting Hoodia-related pills and powders to Kenya. They believe the lawfulness of the ban is open to challenge. The Kenyan government on the other hand believes that the ban is lawful.

- a) Advise the US companies of the steps they can take against the Kenyan government. (3 marks)
- b) Advise the US companies of the specific violations that the Kenyan government may have committed in instituting the ban. (5 marks)
- c) Advise the South African government of its potential defences should the lawfulness of the ban be challenged. This advice should be in the form of a brief memorandum to the South African government, in which relevant provisions under the WTO agreements and case-law is referred to and discussed. (12 marks)
- d) Advise the Kenyan government of the legal consequences were a complaint against it to succeed. (10 marks)

## **QUESTION TWO**

The WTO has been accused by some organisations of ‘destroying the environment’. The WTO’s response to these criticisms has simply been that they are unfounded. Critically consider the merits of both the accusation and the WTO’s rejection thereof in light of WTO jurisprudence under Article 20 of the GATT. (20 marks)

## **QUESTION THREE**

An ongoing debate amongst economists and political analysts is whether multilateralism and regionalism are ‘friends or rivals’. Explain why it is that some commentators consider regional trade agreements to be ‘building blocks’ to multilateralism, while others condemn regional trade agreements as a ‘pox on the world trading system’. In your explanation, consider the legal requirements that must be satisfied for a regional trade agreement to be WTO-consistent. (20 marks)

#### **QUESTION FOUR**

The United States of America and the United Kingdom are the architects of the multilateral trading system, which is exemplified by a commitment to trade-liberalisation and a rules-based system. However, current policies within the USA and UK as reflected in Donald Trump's protectionism and in Brexit, have been criticised for signalling a shift away from trade-liberalisation. What are the advantages and disadvantages of free trade? Consider in light of the arguments that have been made for, and against, trade liberalisation.

(20 marks)

#### **QUESTION FIVE**

Write brief notes on any **TWO** of the following topics;

- a) Remedies provided by the Dispute Settlement Understanding (DSU) for the breach of WTO Law. (10 marks)
- b) Preferential Tariff Treatment for Developing Countries under the Enabling Clause (10 marks)
- c) Non-Tariff barriers to trade (10 marks)
- d) Nature of the National Treatment Obligation of Article XVII:1 of the GATS (10 marks)
- e) Effectiveness of the participation of developing countries in the WTO's dispute settlement system. (10 marks)