DURATION: 2 HOURS

INTERNAL EXAMINER : MRS P.P. SINGH
INTERNAL MODERATOR : MR K ZONDI
EXTERNAL MODERATOR : MR M HARTWELL

INSTRUCTIONS:

1. All questions are compulsory

2. All answers must be thoroughly supported by appropriate legal precedent

3. It is in your interest to write legibly as all illegible handwriting will be disregarded
Enterprise Inc (‘Enterprise ’), an American-based charterer, wished to charter the MV Voyager; (the vessel’) from Starfleet Shipping Company (‘Starfleet’), a London-based corporation.

The two companies used brokers to conduct negotiations. These negotiations were conducted via emails and telephone communications. After numerous communications between the brokers, the Enterprise accepted Starfleet’s hire rate for the vessel of USD12 000 per day and certain terms such as time and place of delivery, trading exclusions, commissions, arbitration in case of disputes, duration of the charter, and description of the vessel.

Enterprise’s broker, based in New York, sent a fixture recap email to Starfleet confirming the terms on which agreement had been reached and ending with the words ‘subject to NYPE 46 CP’. The two companies then entered into negotiations regarding the details of the NYPE 46 CP. Enterprise’s broker faxed Starfleet’s broker Enterprise ‘s proposed amendments to the NYPE 46 CP. Starfleet accepted some of the amendments but rejected others, imposing a deadline for Enterprise to respond. Enterprise did not meet this deadline. Starfleet then chartered the vessel to a third party.

Enterprise considered that it had already chartered the vessel and approached Starfleet to refer their dispute to arbitration as provided for in the term in the charterparty on which agreement had been reached, providing for referral of disputes between the parties to arbitration on which agreement had been reached. Starfleet refused on the basis that there was no agreement to arbitrate, as there had never been a binding charter party agreement.

Enterprise approaches you for advice on its prospects of success in holding Starfleet to the terms on which agreement had been reached. Their brief to yourself is limited in scope and requires you to advise them of the possible result that the English court would reach in this scenario. In addition would your advice differ if American law was the applicable law? Your answer must canvass criticisms and advantages of the respective approaches under these two systems of law.

TOTAL Q1: 30 MARKS
QUESTION 2

Discuss the differences between a time and a voyage policy for the purposes of marine insurance

TOTAL Q2: 10 MARKS

QUESTION 3

A South African fruit exporter wishes to export his produce to China but cannot afford the freight costs of shipping the goods or the premiums for insurance cover for the produce while in transit. Before approaching potential purchasers of his produce in China, he seeks your advice on the most appropriate Incoterms 2010 to negotiate to avoid having to pay freight charges or insurance premiums.

TOTAL Q3: 15 MARKS

QUESTION 4

In the recent case of *MV Hua Qiang Kalahari Mining Logistics and Others v Wilest International* 2013 (5) SA 12 (KZD) the court held that an action in rem could not be used to vindicate cargo. Explain and discuss the legal basis for this judgement.

TOTAL Q4: 15 MARKS

[TOTAL EXAM MARKS: 70 MARKS]