

## The Ian Fletcher International Insolvency Law Moot (2020)

### CLARIFICATIONS

<b>Question 1</b>	At paragraph 5 of the Moot Problem (under Background), it states that Apricot operates through branches throughout the world, with its businesses situated in "more remote locations". Are these locations only in Mercuria or across other jurisdictions as well?
<i>Clarification</i>	<i>The business of installation of fibre-optic cables to provide high speed connectivity between city-based businesses and data centres situated in more remote locations occurs in all jurisdictions in which Apricot operates.</i>
<b>Question 2</b>	Are the arguments under the first grants of appeal restricted to 14(f) or can one argue the common law?
<i>Clarification</i>	<i>The court expects to hear arguments not only on the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) but also, as relevant, on the common law.</i>
<b>Question 3</b>	Please specify the values owed by Apricot for each bank (both that voted for and that didn't participate)?
<i>Clarification</i>	<i>The debts owed to each bank were of approximately similar amounts.</i>
<b>Question 4</b>	What is the nature of the law which governs the other six term loans respectively, common or civil?
<i>Clarification</i>	<i>The nature of the law governing the other term loans is not relevant to the points on which the Court expects to hear argument.</i>
<b>Question 5</b>	What is the value of the debts owed by Apricot Corp to all seven bank creditors?
<i>Clarification</i>	<i>The debts owed to each bank were of approximately similar amounts.</i>
<b>Question 6</b>	Has UNCITRAL Model Law for Recognition and Enforcement of Insolvency Related Judgements been adopted by the other states where the other six bank lenders are incorporated?
<i>Clarification</i>	<i>This is not relevant to the points on which the Court expects to hear argument.</i>
<b>Question 7</b>	What is the status of the sixth bank lender which has not voted for the plan? Has it not voted in favour, or not voted at all, or not participated in the proceedings like Blueberry Bank SA?
<i>Clarification</i>	<i>The sixth bank lender received notice but did not vote or participate in any way in the proceedings. The reasons for its non-participation are not known.</i>

<b>Question 8</b>	Is Mercuria a common law country or a civil law country?
<i>Clarification</i>	<i>It is a civil law country.</i>
<b>Question 9</b>	What is the exact proportion of assets which has to be kept as capital under the Nuzilian Laws as mentioned in paragraph 20 of the Problem?
<i>Clarification</i>	<i>This is a complex computation and is not relevant to the points on which the Court expects to hear argument.</i>
<b>Question 10</b>	Is the second ground for Appeal (as discussed in paragraph J of the Problem) from the side of Blueberry Bank SA an argument 'in alternative' to the first ground for appeal?
<i>Clarification</i>	<i>The grounds for appeal are not in the alternative The Court has granted permission to appeal on the first ground to Blueberry Bank. The Court has granted a separate permission to appeal on the second ground to Apricot.</i>
<b>Question 11</b>	There seems to be a conflict between Paragraph 18 and paragraph 29 of the Problem to the extent that Blueberry Bank SA has accepted that Article 14(g) of UNCITRAL Model Law for Recognition and Enforcement of Insolvency Related Judgements is not a ground for contention. Does this mean that submission to the jurisdiction of the originating state is not a point of argument?
<i>Clarification</i>	<i>It is correct that submission to the jurisdiction of the originating state is not a point on which the court expects to hear argument. It is intended to be accepted/common ground that while Blueberry Bank did not submit to the jurisdiction of the Mercurian Courts, the Mercurian Courts assumed jurisdiction over Blueberry Bank in the same way that the Nuzilian Courts would have assumed jurisdiction over a foreign creditor, in the context of a Nuzilian scheme, even where that foreign creditor chooses not to participate in the scheme and has not otherwise submitted to the jurisdiction of the Nuzilian Courts.</i>
<b>Question 12</b>	Could the Balance Sheet of Apricot Corp for the financial year of 2018-2019 be shared?
<i>Clarification</i>	<i>This is not required for the points on which the Court expects to hear argument.</i>
<b>Question 13</b>	In Paragraph 19 of the Problem, " <i>That evidence established that, upon the insolvency of a corporation, there is no set-off of any kind allowed as between the insolvent debtor and its creditors (irrespective of whether there would, but for the insolvency, have been any other form of set-off between them under Mercurian law or under any applicable foreign law)</i> ". In the above line please clarify if 'but for insolvency' is contradictory with the intent of the paragraph.
<i>Clarification</i>	<i>There is no contradiction with the intent of the paragraph.</i>

<b>Question 14</b>	As suggested by Paragraph 20 of the problem, do the Nuzilian banks enter into a contract with the standard terms with all its debtors?
<i>Clarification</i>	<i>The precise manner in which Nuzilian banks incorporate Nuzilian law into their contracts with counterparties is not relevant to the points on which the Court expects to hear argument. Paragraph 20 of the Judgment does not suggest that they do so on standard terms.</i>
<b>Question 15</b>	Kindly provide us with the relevant clauses of the Swap Agreement entered into by Apricot and Blueberry SA.
<i>Clarification</i>	<i>This is not required for the points on which the Court expects to hear argument.</i>
<b>Question 16</b>	Kindly provide us with the relevant clauses/parts of the section 111 of the Mercurian Insolvency and Reorganisation Law of 2006.
<i>Clarification</i>	<i>The essential features of section 111 are set out in paragraph 13 of the Judgment. It is not necessary, for the purposes of the points on which the Court expects to hear argument, to cite the full text of the section.</i>