

EXAMINATION QUESTION PAPER - Written examination

EXC 21211

International Commercial Law

Department of Law and Governance

Start date: 17.12.2019 Time 09.00

Finish date: 17.12.2019 Time 12.00

Weight: 100% of EXC 2121

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No. of attachments files to
question paper: 0

Examination support
materials permitted: All printed and handwritten support materials

Max no. of answer paper
attachment files: 0

Allowed answer paper file
types: pdf

Re-sit Ordinary

PART I (60%)

a) (7,5 %)

How can political factors influence international sales contracts? b)

(7,5 %)

How can cultural differences affect contracts in general?

c) (7,5 %)

If you are a seller of manufactured goods and you are negotiating with a foreign buyer on which INCOTERM to use, which factors will you consider when choosing the preferred term?

d) (7,5 %)

Does CISG imply any specific INCOTERM?

e) (10 %)

Explain what Competition Law is and what the effect of any breaches may be. f)

(10 %)

Explain the differences between Common Law and Civil Law and how these differences may affect the interpretation of contracts.

g) (10 %)

What is the English Law doctrine "Rule of Consideration"?

PART II (40 %)

A Norwegian producer of cured salmon (Salmon Supply AS) entered into a contract with a Belgian company (Gourmet GMBH) regarding sales of fresh salmon from Norway to Belgium. In the contract there was a reference to the INCOTERM FOB. The contract was entered into on June 8th 2018. The contract was for weekly deliveries for 2 years. The contract was duly signed by both parties.

On July 19th, Salmon Supply AS suddenly realized they had not included an Arbitration and Choice of Law clause in the contract. They sent an email the same day to Gourmet GMBH, stating that the following clause was to be included in the contract:

"The contract shall be subject to Norwegian Law and any dispute to be resolved by Arbitration in Oslo."

The email further stated "if we don't hear from you by July 20th, we consider the clause to be part of the contract".

Due to an implementation of a new IT system in Gourmet GMBH, the email was never received.

The first shipment of salmon (3 tons) was prepared by the seller on July 28th 2018 and delivered to a truck at Salmon Supply AS' premises. The truck driver delivered the cargo to the Master of the ship that should transport the cargo to Belgium. The ship owner (the carrier) was appointed by Gourmet GMBH. Upon arrival in Antwerp, it was discovered that 1/3 of the fish (1 ton) was thawed and had to be sent for destruction. The loss was caused by the ship's crew not setting the container temperature correctly.

Gourmet GMBH claimed damages from Salmon Supply AS for the losses resulting from the destruction of the salmon. Salmon Supply AS rejected liability, stating that the transport was for the buyer's risk and expense.

As of first of October 2018, the Belgian government imposed an unexpected import tax on salmon from Norway, of 10% of the invoice value of imported fish. Salmon Supply AS claimed that Gourmet GMBH should pay the new tax, which Gourmet GMBH repudiated as it would lower their profit. They held that an increase in taxes would have to be for the exporter's risk and expense.

In January 2019, a new shipment of salmon was received by Gourmet GMBH. It was discovered that 300 kg were of an inferior quality, and had to be sold at a lower price than anticipated, causing a loss of NOK 500.000,-

Due to miscommunication internally, Gourmet GMBH failed to notify Salmon Supply AS of the claim for the inferior quality fish until May 19th. Salmon Supply AS refused to compensate the losses, stating they had not been notified in time.

Questions

1. Will CISG apply to this case?

2. Can Gourmet GMBH claim compensation from Salmon Supply AS for the thawed fish?

3. Which company has to pay for the new import tax?
4. Can the Belgian company claim compensation for the losses resulting from the inferior quality salmon delivered in January 2019?
5. Assume the INCOTERM used was DDP, would it make a difference with respect to which company that would have to pay the new tax?
6. Can Salmon Supply AS demand that the disputes shall be resolved according to Norwegian Law and by arbitration in Oslo?