

EVALUATION GUIDELINES - Written examination

EXC 21211
International Commercial Law

Department of Law and Governance

Start date: 02.12.2017 Time 11:00

Finish date: 02.12.2017 Time 14:00

For more information about formalities, see examination paper.

1. (10%)

Frustration of contract is a term within English law. It is a doctrine that acts as a tool to set aside contracts if there has been an unforeseen event that either renders the contractual obligations impossible to fulfill, or event that radically changes the parties principal purpose for entering into a contract. It resembles “force majeure” but it is not the same.

2. (10%)

A letter of credit is a letter from a bank guaranteeing that a buyer's payment to the seller will be received on time and for the correct amount. It is a contract between the bank and the buyer, in favor of the seller. In the event that the buyer is unable to make payment of the purchase, the bank will be required to cover the full or remaining amount of the purchase. Due to the nature of international sales, including factors such as distance, differing laws in each country, and difficulty in knowing each party personally, the use of letters of credit has become a very important aspect of international trade.

The terms of the contract are set out in the LoC, and the bank usually requires specific information before the LoC is released. This is typically an invoice for the goods, cargo insurance, packing list and a clean Bill of Lading (evidence that goods have been loaded on board the ship without any apparent shortage or damage).

The students who mention different types of letters of credit and elaborate on them should be credited. These include commercial Letters of Credit

Commercial Letters of Credit

Confirmed Letter of Credit

Transferable Letter of Credit

Revolving Letter of Credit

Back to back Letter of Credit

Red clause Letter of Credit

Back to back Letter of Credit

Stand by Letter of Credit

Irrevocable Letter of Credit

3. (10%)

Competition laws are basically making and applying rules to make sure that companies compete with each other, and in order to sell their products, innovate and offer good prices to consumers. The goal of the laws are to maximize consumer welfare and allocate resources in a cost efficient way. Therefore, competition laws are beneficial to consumers.

4. (10%)

Whether the seller or buyer should take out cargo insurance depends on the INCOTERM incorporated into the sales contract. The INCOTERM defines which party is at risk during the transportation of the goods, whether it is at sea, by road or by air. If a buyer buys EX works, the buyer bears the risk of the whole transportation from the seller's premises.

The cargo insurance covers the goods according to the insurance policy and terms of the insurance contract. and there are A, B and C covers. The A cover gives the broadest protection, and the B and C cover have a limited cover. The cargo insurance will typically cover the cargo from door to door. It covers the invoice value of the goods, plus 10% anticipated profit. The cargo insurance also covers the cargo owner's cargo liabilities, including the liability to pay for salvage and general average contributions. Extraordinary costs for storage or transshipment is also covered.

5. (10%)

The students should elaborate on these risks, and not just list bullet points. To mention some:

The credit risk

Fluctuation in exchange rates

Cultural risks

Language problems

The risk of loss or damage to the goods whilst being transported

Political risks

Questions (counts total 50%)

1.

Yes, by virtue of Art. 1. It is a "sale", and the glassware is to be considered "goods", and the sale is "international".

2.

Article 39 deals with notification, and the notification must have been given in "reasonable time. whether a notice period in a particular case is "reasonable" cannot be determined without regard to the particular circumstances of each individual case. In this case the notification is within reasonable time since it was summertime and it was not perishable goods. See also Art. 38.

3.

First it has to be determined which of the parties were at risk, the buyer or the seller. The INCOTERM implementer in the sales contract, CPT. The INCOTERM used means the buyer is at risk when unloading the goods. So the conclusion is that the broken glasses were in the custody of the buyer when they were damaged, and thus the buyer cannot claim compensation from the seller.

4.

No, it would not have made any difference since the buyer would have taken over the risk for damage to or loss of the cargo when taking the goods over at the seller premises.

5.

The buyer alleges the glasses are not conforming with the description in the sales contract, ref Art. 35.1. This means there is a breach of contract on behalf of the seller. The allegation that the glasses are quite similar to the description is irrelevant. The buyer wants a price reduction.

The buyer may claim damages from the buyer according to section 3 in CISG and the starting point will be Art. 45. Art. 50 states the buyer can claim price reduction. The price reduction should reflect the difference in price between the present value of the goods and the value of the goods had it been delivered according to the contract. There is little information in the text as to the value of the nonconforming gasses. If a difference in value can be proved, the buyer may claim a price reduction.

The students can also discuss other remedies according to Articles 46, 47 and 48. Which remedy they conclude upon is not important. The buyer can also claim damages according to Art. 74.

6.

The INCOTERM used was CPT. This means the seller pays the export fees and the buyer pays the import fees.

7.

The parties only agreed to jurisdiction and applicable law. There was no agreement as to the method of dispute resolution. The parties must have either pre agreed, or agree at a later stage, that arbitration is the method of dispute resolution. Here it was not agreed and thus arbitration cannot be demanded.