

EXAMINATION QUESTION PAPER - Written examination

EXC 21211

International Commercial Law

Department of Law

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**Examination support
materials permitted:** All

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1. (15%)

Two parties (a seller in Denmark and a buyer in Spain) had entered into a contract for the sale of plywood from Norway to Belgium. The parties agreed to Danish Law, but the contract did not have a dispute resolution clause. When the payment was due, the seller claimed that he was entitled to receive the payment in Denmark, where he had his principal place of business. The buyer objected, saying he could choose to make the payment in Spain instead, since it would be cheaper for him to pay it there due to reduced banking fees. The Spanish buyer wanted the dispute to be decided by Arbitration in Barcelona, but the seller refused. The seller suggested that they could have an arbitration in Denmark instead.

- a) Will CISG apply to this case?
- b) Can the seller demand the payment to be made in Denmark?
- c) Can the Spanish buyer demand arbitration in Barcelona?
- d) Can the dispute be solved by arbitration in Copenhagen?

2. (60%)

A Norwegian seller agreed to sell and deliver a mobile grain dryer to a buyer in Germany. The dryer was to be delivered DAP by truck to Wiesenburg, Germany, a few kilometers from the field where the buyer intended to use the grain dryer. The cost of the grain dryer was Euro 145.000,- and the parties had agreed on a 50% payment by 1st May, and the remaining 50% to be paid within 2 months after the delivery date. Delivery was agreed to be on May 8th 2015. The contract was signed by the parties on 15th. March 2015.

The grain dryer was delivered on May 15th 2015 instead of on May 8th. Prior to delivery the seller experienced delays in his factory producing the grain dryer, since relevant parts for the production arrived late from his sub supplier in Finland. The seller informed the buyer about the delay by sending an email on April 22nd 2015. The buyer never replied to the email since the employee receiving the mail had gone on a medical leave.

Upon arrival of the truck carrying the grain dryer, the driver requested the buyer to help unload it at the buyer's factory. After the buyer's personnel, using their own tractor and chain, had successfully lifted the grain dryer down from the truck and driven a few meters, the chain holding the grain dryer broke, causing substantial damage to it. The damage was immediately repaired locally, and the repair costs were in the amount of EUR 21.000,-

In early June, the buyer discovered that the grain dryer also had hidden deformities attributable to the accident, and that it needed new repairs. The repair work took two days, and were carried out at the buyer's premises by a local firm. The cost of the new repairs were Euro 2300,-.

During the continuous use of the grain dryer in June and July 2015, it was noted that there was less engine power in the grain dryer than expected. It was found that the grain dryer had a power loss of abt. 20% compared to the specifications in the sales contract. This resulted in additional costs for the buyer, since the workers had to work overtime to complete their work. The buyer calculated that they had spent 4 additional working days at a cost of EURO 1000,- per day due to the reduced engine power.

Following these incidents, the buyer sent an email to the seller on July 22nd, where he refused to pay the remaining part of the purchase sum to the seller. Instead, he declared the contract void, due to the extensive repairs and the delay in delivery. The buyer also held that the seller was liable for paying all the repair costs, as well as the additional costs incurred due to the reduced engine power. The buyer also wanted a price reduction with reference to the reduced engine capacity.

The seller claimed he was entitled to payment in full by July 8th, two months after the agreed delivery date. He claimed he would be entitled to interest on the accrued payment if not received by the said date.

- a) Will CISG apply?
- b) Can the buyer void the contract?
- c) Is the seller liable for paying the repair costs?
- d) Can the buyer claim a price reduction?
- e) If the contract cannot be void, can the buyer claim compensation for the additional time he had to pay the workers?
- f) Is the seller entitled to payment in full by 8th of July? If payment is not made within the time agreed, can the buyer claim compensation for late payment?

3. (15%)

- a) What do we mean by a "commercial contract?"

b) Is a licensing contract the same as a purchase contract?

c) Which mode of payment would you prefer if you export goods overseas?

4. (10%)

What is “competition law”, and how can it affect international business? Give a brief explanation.