EXAMINATION QUESTION PAPER - Written examination

EXC 21211
International Commercial Law

Department of Law

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Exam Commercial Law fall 2016

All questions to be answered

Part I (50%)

1. How do we determine jurisdiction when a dispute arises?

2. What do we mean by a "legally binding" contract?

3. When are INCOTERMS used, and what is their purpose?

4. If goods are shipped from the seller to the buyer, who bears the cost of exporting licenses, taxes, cost of freight, insurance, and costs associated with the importing of the goods if the term is EX WORKS, FOB or CIF?

5. Name at least 5 typical risks when importing and exporting goods from abroad? (irregardless of where the importers and exporters are located).

Part II (50%)

Ole Hanson is a manager of a Norwegian company manufacturing and importing clothes and fabrics from different countries. In the fall of 2015, he started negotiating a potential contract with a restaurant chain in Denmark. The contract was for the manufacturing of customized uniforms for the restaurants in the chain. The manager of the restaurant chain was Peter Olsen, located in Copenhagen. In September 2015, Peter Olsen started negotiating a contract for the manufacturing of the uniforms with two companies simultaneously. Ole Hansen`s company, and another supplier in Belgium. Peter Olsen provided details of the uniforms, fabrics to be applied, sizes and quantity.

Ole Hansen sent an offer for the production of the uniforms according to the restaurant chains specifications, inclusive of the required fabrics and other necessary details regarding size, quantity etc. He said he needed a reply by September 20th 2015. The Belgian company also sent a similar offer, but quoting a higher price. Peter Olsen reverted to the Belgian company saying the price was too high, but they would consider an offer subject a lower price, in the range of 10% less than the original asking price. The Belgian company reverted with a proposal to reduce theprice by 10%. The offer was sent by e mail and said " we assume we have a binding contract if not rejected by October 2nd 2015."

In the meantime, Peter Olsen received an offer from Ole Hansen, in which the price was 20% less than the original prize quoted by the Belgian company. Peter Olsen accepted the offer, and agreed that the deliveries of the customised uniforms should be before May 20th 2016, since three new restaurants were to be opened in June 2016. The delivery term was DDU at the port in Copenhagen, and the order was for 2500 uniforms at the cost of 4200 NOK per uniform.

Peter Olsen was busy, and forgot to notify the Belgian company that they had entered into a contract with the Norwegian manufacturer. The Belgian company mailed a contract to Peter Olsen for signing on October 3rd. 2015.

The production of the uniforms was delayed due to a nationwide strike in Norway, combined with a breakdown of some vital machinery in the Norwegian factory. The uniforms were only ready for delivery in the port in Copenhagen July 12th 2016.

By the time the container with the uniforms had passed customs and all paper work was done, it was 1st August 2016. The process in the port with clearance of customs was delayed since the papers needed for clearing customs were not in order.

When opening the container with the uniforms, Peter Olsen was not happy with the quality of the cotton used in the uniforms, and made a claim against the factory. He alleged that he had expected better quality, and wanted a price reduction of 10%. When comparing the uniforms with the samples provided before entering into the legally binding contract with the Norwegian seller, the difference in quality was slightly detectable.

It appeared that there had been a small hole in the top of the container provided by the shipping company, and 150 uniforms were considered a total loss. The restaurant chaain also made a claim towards the Norwegian factory for late delivery, and the cost of having had to rent acceptable uniforms for the three new restaurants from another company at the cost of 10.000 NOK per week.

The Norwegian factory denied liability, arguing that the delay was caused by a nationwide strike, and as thus could be considered force majeure. They also claimed that the leakage in the container was the shipping company`s fault, and not theirs. Further, they stated that the quality of the cotton was according to the sample uniforms provided by the Danish company. In addition, they said the held up in the Copenhagen port was not for their costs and risk, due to the use of the term DDU.

The Danish company argued that the claims should be solved by arbitration in Copenhagen, but the Norwegian company did not agree to this. There was no arbitration clause in the contract.

Peter Olsen also faced another problem. The Belgian company submitted a claim for damages, stating that the restaurant chain was contractually bound to buy the uniforms from them, referring to the e mail and contract they had sent. They assumed silence meant “yes”. They claimed for loss of profit.

Questions:

1. Is there a binding contract between the restaurant chain and the Belgian factory?

2. Since there was no jurisdiction clause in the contract between the Norwegian and Danish company, can the Danish company demand Arbitration in Denmark?

3. Will CISG apply to the contract between the Norwegian seller and the Danish buyer, if so, why?

   a) With respect to the claim for the delay of delivering the uniforms, will the buyer be able to claim compensation from the seller? (The Norwegian company)? If liable for which time period could damages be claimed? Which type of damages would they be liable to pay?

   b) Will the Norwegian seller be liable for the alleged inferior quality of the fabrics used for the uniforms?

   c) Will the Norwegian company be liable for the water damage to 150 uniforms?

4. Can the Norwegian company be liable for the delay caused in the port of Copenhagen?