

EXC 21211

International Commercial Law

Department of Accounting, Auditing and Law

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Answer sheets: Lines

Examination support materials permitted: All support materials allowed.

Exam

PART 1: 30%

1. What is the difference between a breach of contract and a fundamental breach of contract under CISG? What are the differences as to buyers' remedies depending on a breach being fundamental or not?
2. What is the doctrine of frustration?
3. A Corp. offers B Corp. to buy 10 cars for \$ 1 00 000 in a telephone conversation. B Corp. accepts the offer.
 - a) Is a valid contract formed under CISG?

B Corp sends A. Corp an e-mail later the same day and writes "If a conflict arises as to the interpretation of the contract, the conflict shall be solved by arbitration." A. Corp does not reply to the e-mail.

- b) Is the arbitration clause part of the agreement between A Corp. and B Corp. under CISG?

PART 2 70%

4. Super salmon is a Norwegian company that sells salmon to both national and international companies. On a trade fair the sales director of Super salmon meets the director of the Russian company Fishy. Both states are contracting states to the CISG. The director of Fishy finds the salmon showcased by Super salmon to be of great quality, and decides to order 1 ton with delivery four months ahead. The INCOTERM CIF was agreed on, and put into the contract. The price is a bit higher than the market price of salmon, but the director of Fishy decides the superb quality of Super salmons products are worth to pay a bit more for, especially since Fishy only sells salmon to sushi restaurants. The director of Fishy compliments the sales director of Super salmon as he makes the order, saying the salmon will be perfect for sushi.

When it is only weeks left before the salmon is to be delivered, the price on salmon make a huge drop due to a very good salmon season. The director of Fishy is annoyed when he finds out, and he wishes to avoid the contract so he can buy the fish cheaper.

- a) During negotiations the parties discussed the INCOTERMS CIF and DDP, but the parties agreed on CIF. What would have been the difference for Super Salmon if they agreed on DDP instead?
 - b) Can the director of Fishy avoid the contract due to the decrease in salmon prices?

For the rest of the questions, assume that the contract can not be avoided.

The salmon arrives on time in Russia, but when the director inspects the salmon he gets a surprise. Half of the salmon does not look good, and it is definitely not safe for humans to eat. It looks like the poor quality of half of the salmon is due to the fish lacking enough packaging to keep it cold.

The director of Fishy is very stressed, and he decides he needs to grab some vodka to calm his nerves. The owner of Fishy is not going to be pleased! One bottle of vodka leads to another, and after one week the director finally decides it's time to stop drinking. He freshens up and goes over to the office to tell the owner of the company. The owner gets just as mad as expected, but he is also saying

things the director has not thought about. For instance, he is especially mad that the director has not yet informed Super salmon about the uneatable salmon, because he fears notice is given too late. The director of Fishy sends Super salmon a notice about the poor quality of the salmon the same day.

- c) Is notice about the poor quality of the salmon given in a timely manner?
- d) If notice is given too late, what are the consequences?

For the rest of the questions assume that the notice to Super salmon about the uneatable salmon is timely.

After giving notice to Super salmon, Fishy wants to avoid the contract for half of the salmon being uneatable. The salmon is thrown away by Fishy, and they also claim compensation for their expenses for throwing away the salmon. Super salmon refuses to give Fishy any compensation, as the salmon could have been sold as dog food.

Assume that the salmon indeed could have been sold as dog food.

- e) Did Fishy have a duty to sell the salmon as dog food? Can Fishy get compensation for the cost of throwing away the salmon?
- f) Can Fishy avoid the contract for half of the delivery?