EVALUATION GUIDELINES - Written examination

EXC 21211
International Commercial Law

Department of Law

Start date:	05.12.2016	Time 09:00
Finish date:	05.12.2016	Time 12:00

For more information about formalities, see examination paper.

Part 1

1.

Jurisdiction is the place where action will be taken if the parties have a dispute and the dispute is not settled amicably. Commonly there will be a jurisdiction clause in the contract, and many standard contracts will contain a jurisdiction clause. If no jurisdiction has been inserted into the contract, it may be up to the courts in the country where an action is taken to consider whether the claim has a link to that state enabling the court there to rule in the matter.

2.

If a contract is “legally binding” it means that the parties have the duty to fulfil their obligations and exercise their rights as laid out in the contract. If there is default or breach of the contract from any of the parties, legal action may be taken against the party in breach.

3.

INCOTERMS are international commercial terms published by the International Chamber of Commerce. It is rules related to international commercial law and consist of 11 terms. A series of three-letter trade terms related to common contractual sales practices, the Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods. Incoterms inform sales contract defining respective obligations, costs, and risks involved in the delivery of goods from the seller to the buyer. However, it does not constitute contract or govern law but are incorporated into the sale and purchase contract for goods. Some terms are only intended for sea carriage, whereas others can be applied to several modes of transportation.

4.

If the term Ex Works is used, the seller makes the goods available at their premises, or at another named place. This term places the maximum obligation on the buyer and minimum obligations on the seller. Exporting licenses, taxes, cost of freight, insurance, and costs associated with the export and or carriage of the goods will all be for the buyers risk and cost. In some cases, the export licences may, according to the law of the country which the goods is transported from, be prepared by the seller. However, the students are not required to cover this.

If the term FOB (free on board) is used, the seller bears all costs and risks up to the point the goods are loaded on board the vessel appointed and paid for by the buyer. Exporting licenses will be for the sellers risk and cost. If taxes apply in the exporting state the seller bears the costs, but taxes in the buyers country will be for the buyers cost. The cost of freight up to, and including the loading of the goods onboard the vessel, will be for the sellers risk and expense. The seller must/should insure the goods until the goods have been loaded on board the vessel. After this point, the buyer should/must pay for insurance (usually cargo insurance). As a main

rule, FOB only applies to sea carriage, but in some countries it may also be applied to other modes of transportation.

If the term CIF is used, the seller pays for the carriage of the goods up to the named port of destination. Risk transfers to buyer when the goods have been loaded on board the ship in the country of export. The Shipper is responsible for origin costs including export clearance and freight costs for carriage to named port. The seller must pay for the freight and a minimum insurance cover (cargo) for the entire transportation for the buyers benefit. The buyer must pay for import clearance and import taxes.

5.

In international sale and purchase contracts there are several rislks facing the buyer and seller. The students are required to list 5 risks according to choice. Some common risks are:

Political risks

Language and interpretation of the contract

Cultural differences

Transport risk

Political risk

Currency and payment risk

Part II

1.

The question is whether or not a legally binding has been entered into by the above mentioned parties. In order for a contract to be legally binding, there has to be an offer and an acceptance. In this case, the parties appears to have entered into a legally binding contract, but the contract was never signed. A point of discussion would be whether silence from one party amounts to an acceptance. The students should reach the conclusion that there is no binding contract in this case.

2.

Arbitration in Denmark cannot be demanded by one party unless the other party agrees to arbitration. If the dispute is subject to arbitration, the parties must have agreed to it and inserted an arbitration clause in the contract, or agree after the dispute arose.

3.

CISG will apply by virtue of Article 1 in the code. It is a sale of goods (uniforms) and the sale is international and entered into between parties who both reside in countries that have ratified CISG.

a)

Firstly, it must be determined whether there actually was a delay, and to which extent the delay was for the sellers or buyers risk.

It is clear from the text of the case that there was a delay in delivery of the goods, which constituted a breach of contract subject CISG Article 33 a)

" if a date is fixed by or determinable from the contract, on that date".The last delivery day was 20th May, but the goods was not delivered to the port until 12th July, and to the buyer on 1st August.

The students must then discuss the extent of the delay and the consequences of the delay (remedies). The delay on the seller` side was partly caused by a nationwide strike and breakdown of machinery. It may be argued that the nationwide strike constituted a force majeure situation subject Art 79. (1)

""A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.to provide proper documentation".

The seller can refer to the above article and claim "force majeure" as a defence. But there was also a break down of machinery, which must be blamed on the seller. Since it is not clear from the text how much time was lost by the strike and the breakdown of machinery, the students can not be obliged to distinguish a set time that will be subtracted.

However, the students must refer to the above articles and there is clearly delay for which the buyer may claim remedies. The actual date the buyer took over the goods was 1st August.It is not stated in the text to which extent the delay was caused by the strike and how much was caused by the breakdown of machinery. Therefore, if the students count the whole delay time or make an assessment, both answers should be accepted.

However, they must see that the delay caused by the seller did not include the time spent for clearance of documents which lasted from 12th July until 1st August, with reference to the INCOTERM used, DDU. Under DDU, the buyer is obliged to provide for document clearance and was for the buyer`s time and expense. Article 53 in CISG may be referred to:

"The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention."

The maximum period the seller is responsible for the delay is therefore from May 20th till July 12th.

As for remedies, the students can refer to Art. 74.

“Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.”

The buyer can claim damages in form of costs for renting uniforms for the time up to July 12th being NOK 10.000 per week. (with the exception of time delayed due to the strike which is not known.)

b)

It is stated in the text that the difference in quality was “slight”. Article 35 of CISG says:

“(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.”

It is debatable whether there was a difference in quality giving the buyer the right to claim remedies. Both answers (yes and no) should be accepted. If the seller is found in breach, Remedies can be claimed according to Art. 45 and following.

c)

As for the water damage, the INCOTERM was DDU, which means the seller bears the risk for cargo damages occurring during transportation. The buyer can refer to Art 35 and claim damages for the 150 uniforms that were damaged.

Remedies for breaches is found in Art 45 and following. Reference can also be made to Art. 74.

4.

As said above, the term DDU means “delivered duty unpaid”. The delay in Copenhagen port was due to the seller`s failure to provide correct documentation. The seller will not be liable for any costs incurred in this connection.