

## **Part 1**

1. (10%)

There has over the past years been an increase in the number of competition laws worldwide. What are the reasons for that?

2. (10%)

Explain in short the main differences between the common law legal system and the civil law system and the civil law legal systems.

3. (10%)

What does the term “doctrine of consideration” mean?

4. (10%)

If you enter into a contract for the commercial sale and purchase of goods, what are the issues you would wish to regulate in the contract? Give a brief outline.

5. (10%)

INCOTERMS are international trade terms. When choosing an INCOTERM for a contract for the sale of goods, what are the issues you would take into consideration?

## **Part II (this part accounts for a total of 50% of the grade)**

### **Case:**

A French seller and a German company (buyer) negotiated a contract for the sale of cheese to be delivered to the chain of food stores owned by the German company. It was prolonged negotiations, but finally the parties agreed on the terms of the contracts including a description of the goods, the price and other details in August 2016.

After conclusion of the contract, the market price for cheese went up, and it was clear that the German company had made a “good deal”. The contract provided that there would be first delivery of cheese to be delivered no later than November 1<sup>st</sup> 2016 to the main office of the German company in Hamburg. It was also agreed that there would be two more shipments, one in April 2017 and one in June 2017.

Before the first delivery, it was discovered by the German health authorities that some similar cheese products imported by other companies had been infested with food bacteria, leading to the destruction of several shipments. The government therefore put a temporary stop to further imports of certain types of cheeses, if the cheese had not been certified before October 5<sup>th</sup> 2016.

The seller in France was delayed in half of the cheese to the trucks and therefore failed to certify all the cheese prior to this date on time. Had they been on time, all the cheese would have been certified within the cut off date. The reason for the delay was not clear.

The buyer suggested the seller to drive the balance of cheese to a place of storage outside of Germany (in Belgium) where buyer could store the cheese while waiting for clearance from the health authorities. It was clear this deviation would not be more expensive to the seller, who had agreed to pay for the transportation by inserting DDU in the contract.

The seller refused, arguing that the German government ban constituted a force majeure event which rendered the contract void. Instead, the seller sold the cheese to a company in Italy for a higher price than agreed with the German company.

The buyer claimed compensation as they later had to pay more for cheese from a different supplier after the ban had been lifted in early December. The buyer claimed that the refusal to deliver the cheese was a fundamental breach of contract. The ban would not have been an issue had the cheese not been delivered to the truck late in the first place. The buyer claimed that they had suffered a loss of profit since they were unable to sell the cheese before Christmas, where the market for cheese and the price they could would have been higher than after Christmas. The seller rejected the claim, and argued that the ban represented a force majeure situation entitling them to void the contract altogether.

The buyer wanted the dispute to be solved by arbitration, although there was no arbitration clause in the contract. Clause in the contract itself. The seller refused. In the contract, the applicable law would be German law.

- 1) Will the contract be governed by CISG? (assume that both countries have ratified the Convention)
- 2) Do you agree with the seller that the ban represented a force majeure situation, giving them the right to cancel the contract with respect to the cheese that were not delivered due to the ban?
- 3) Is the seller entitled to cancel the contract for the remaining future deliveries?
- 4) If the seller is liable for the non-delivery of half of the cheese, is the buyer entitled to a compensation for loss of profit from the seller?
- 5) Can the buyer demand that the dispute should be solved by arbitration?