

EVALUATION GUIDELINES - Written examination**EXC 21211
International Commercial Law****Department of Law****Start date:** 09.06.2016 Time 09:00**Finish date:** 09.06.2016 Time 12:00

For more information about formalities, see examination paper.

1. (15%)

- a) CISG will apply according to Art. 1. This is a commercial sale and the sales contract is between two parties residing in different states. Both countries have ratified CISG.
- b) The parties have no agreement as to the payment of the price. The seller can demand the purchase sum to be paid in Denmark. Payment is regulated in Art. 57 (1) (a) in CISG. If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller at the seller's place of business. Art. 10 (b) states that if a party does not have a place of business, reference is to be made to his habitual residence. If the seller's principal place of business is in Copenhagen, or it is the sellers habitual residence, the buyer must pay there. This will be in Denmark.
- c) The parties have agreed to applying Danish law. However, they have not agreed on the method of dispute resolution. This is not regulated by CISG. In order to use arbitration as a method of dispute resolution, the parties must have pre agreed to arbitration, or agree to arbitration when a dispute has occurred. The Spanish buyer can not demand arbitration in Barcelona.
- d) The dispute can be solved by arbitration in Copenhagen only if both parties agree to it.

2. (60%)

- a) CISG will apply according to Art. 1. This is a commercial sale and the sales contract is between two parties residing in different states. Both countries have ratified CISG.
- b) In order to void the contract, there must be a fundamental breach of contract, ref. made to Art. 25. Firstly, it must be determined whether the product delivered represented a breach of contract. The reason for voidance of the contract is either the delay, or a breach of contract related to the product itself.

Chapter 2 in CISG deals with obligations of the seller. He is obliged to deliver the goods in accordance with the agreement in the contract. According to Art. 33 (a), he is also obliged to deliver on the date fixed by or determinable by the contract. The date fixed was 8th May, but the actual delivery was 15th May. The question however, is whether or not the buyer has accepted the later date. An email was sent from the seller in April, where he confirmed the grain dryer would be delivered late. Since the buyer did not object, it is fair to say that the new delivery date was accepted by the seller since they did not object to the email.

The grain dryer delivered was not delivered in the agreed condition according to the contract, since it had a reduced engine capacity (ref Art 30 and 33). The question is whether or not this represents a fundamental breach of contract giving the buyer the right to void the contract (Art. 49) but the breach must be fundamental (ref. Art 25). A 20%

reduced capacity is fairly much. However, it appears the seller was able to make use of the grain dryer, with only a few days additional work. It is fair to assume the reduced capacity does not constitute a fundamental breach. However, those students concluding it was a fundamental breach should not be punished.

c)

The repair costs were incurred at delivery. The seller is responsible for arranging carriage and for delivering the goods, ready for unloading from the arriving conveyance, at the named place, subject the INCOTERM DAP used. (An important difference from Delivered At Terminal (DAT), where the seller is responsible for unloading.) Risk transfers from seller to buyer when the goods are available for unloading, so unloading is at the buyer's risk. In this case, the buyer unloaded the cargo (although with the help of the seller's carrier). The repair costs are related to an incident shortly after the unloading at the buyer's premises. All repair costs are therefore for the sellers risk and cost.

d)

The grain dryer delivered was not according to the contract (ref. Art 33 (a)), and there is a breach of contract on behalf of the seller. See also Art. 35 (c). The goods must possess the qualities which the seller has held out to the buyer in the contract.

In accordance with Art 36, the seller is liable for any lack of conformity existing at the time of delivery of the goods (the grain dryer). The reduced engine capacity existed at the time of delivery, and represents a breach of contract, although not discovered at delivery. Art. 38 (a) says the buyer must examine the goods within as short period as possible. If not doing so, the buyer may lose his right to claim remedies. In this case, the reduced engine capacity became evident over a period of time, and the notification will not be deemed late. According to Art 38 (b) the maximum notification time is within 2 years and the buyer is well within this limit. The buyer has a rightful claim against the seller, and he wants a price reduction.

According to Art. 45 (a and b), the buyer is entitled to exercise the rights provided in Articles 46 to 52 and claim damages as provided in Art. 74 to 77.

According to Art. 50, the buyer may reduce the price in the same proportion as the value that the goods actually had at the time of delivery bears to the value that conforming goods would have had at the same time. It is clear the buyer can claim a price reduction. If the students conclude there should be a 20% reduction on the purchase price, that is ok but not a requirement.

e)

With reference to above, it is clear the seller has breached the contract by delivering a grain dryer with reduced engine capacity. The buyer claims compensation for the additional costs incurred by the slower working of the grain dryer. Damages can be claimed according to Art.

74 to 77 in chapter II in CISG covering damages. According 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. The loss must have been reasonably foreseen. This requirement is fulfilled. It is clear the reduced engine capacity would lead to an extended working time. The buyer can claim the additional working days covered.

f)

The date fixed for payment in the contract was 8th July. The buyer must pay the price agreed on or within that date according to Art 53 and 59. Late payment represents a breach of contract by the buyer, unless he has grounds for voiding the contract. According to Art. 61(a) and b) the seller can exercise the rights provided in Articles 62 to 65 and claim damages as provided in Articles 74 to 77. The question is then whether the seller can claim interest on the purchase sum if the buyer pays late. This question is answered in Art. 78. If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it.

3. (15%)

a)

A commercial is a contract entered into for business purposes as opposed to a consumer contract.

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

No. A licensing contract is a contract between two parties, the licensor and the licensee. In a typical licensing agreement, the licensor grants the licensee the right to produce and sell goods, apply a brand name or trademark, or use patented technology owned by the licensor. This will typically be subject conditions set by the licensor. A purchase contract is a contract for the sale of goods, not production or manufacturing of goods. The parties are the seller and the buyer of the goods.

c)

There are different modes of payment that can be used when exporting/importing goods. A Letter of Credit is commonly used. It is a guarantee of payment from the buyer's bank to the seller's bank, subject to necessary documentation being provided by the parties before the LoC is executed (such as a packing list, clean Bill of Lading (BL) evidence of cargo insurance and invoice). Especially if the LoC is irrevocable, it represents a very secure payment for the seller.

Other modes of payment may be f.inst bank transfers.

4. (10%)

Competition law, also called anti-trust law, is a law that promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies. Competition law is implemented through public and private enforcement. EU directives are important for European competition law. The aim is to promote consumer satisfaction by preserving market competition. Competition law affects international business, because it may prevent mergers or purchases of other companies, if the company afterwards will have a too dominant market position. The companies may also have to seek the approval of authorities when co-operating or forming legal alliances or mergers.