

## study case

On his way home from work Bob is getting thirsty. He buys a bottle of mineral water and wants to open it. At this moment the bottle explodes and injures Bob seriously. Bob is now thinking about his claims for damages against the possible defendants. Please give him legal advice and point out the requirements for possible claims.

## study case

Bob is currently working a few months abroad in the London branch of Jupiter GmbH. He wants to purchase a range of TV screens from a Japanese supplier. Bob knows about the Vienna Convention from his law lectures at university and wants to apply the terms of the Vienna Convention to the contract. During the negotiations he agrees on this point with his Japanese counterpart, but this point does not appear in the written contract.

Has Bob achieved his object? Which legal regulation applies to the contract? Please give also short reasons.

Does something change if the contract contains the clause:

"German Civil Law applies to the contract"



1. Please give an overview regarding the sphere of application of the Vienna Convention and distinguish especially between the discretionary and the mandatory possibilities of application. **14 points**
  
2. Please give in each case an explanation: What is a "Service Level Agreement (SLA)" ? What is a contract of work and labour? What is a contract of labour? What is a contract of service ? What is a contract of supply ? Which of those contracts are subject of the Vienna Convention and why resp. why not ? **14 points**
  
3. Bob is a smart guy. In his free time he has developed the new software product "railhail" which helps him to control his railroad at home. Now he fears competition and wants you to give him legal advice concerning the possibilities of legal protection. Please give and discuss the requirements for all his legal options and decide whether they are feasible and reasonable. **14 points**
  
4. On his way home from work Bob is getting thirsty. He buys a bottle of mineral water and wants to open it. At this moment the bottle explodes and injures Bob seriously. Bob is now thinking about his claims for damages against the possible defendants. Please give him legal advice and point out the requirements for possible claims. **14 points**
  
5. Please interpret the following section of the Vienna Convention and give especially the meaning, underlying sense and purpose.

**Article 31**

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract related to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;

(c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

**12 points**

6. Bob is currently working a few months abroad in the US branch of Jupiter GmbH. He wants to purchase a range of TV screens from a British supplier. Bob knows about the Vienna Convention from his law lectures at university and wants to apply the terms of the Vienna Convention to the contract. During the negotiations he agrees on this point with his British counterpart, but this point does not appear in the written contract. Has Bob achieved his object? Which legal regulation applies to the contract? Please give also short reasons. Does something change if the contract contains the clause: "US Civil Law applies to the contract"

*Germany*  
**12 points**

7. After her InfoTech study Lisa starts to work in Stuttgart as a software engineer earning 3000,-- € per month. Her employer has purchased a special PC for her with an included software package (ABC-SOFTWARE) she needs for her programming work for the price of 1200,-- € from a supplier which is based in USA. During the first start of the PC the following text appears in a pop-up window:

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE PROGRAM. ABC-SOFTWARE WILL LICENSE THE PROGRAM TO YOU ONLY IF YOU FIRST ACCEPT THE LINKED TERMS OF THIS AGREEMENT BY MARKING THE BOX BELOW. BY USING THE PROGRAM WITHOUT MARKING THE BOX BELOW YOU NEVERTHELESS AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE UNUSED PROGRAM TO THE PARTY (EITHER ABC-SOFTWARE OR ITS RESELLER) FROM WHOM YOU ACQUIRED IT TO RECEIVE A REFUND OF THE AMOUNT YOU PAID.

Lisa is confused and a little bit concerned but she continues without ticking the box because she don't want to observe the linked terms and conditions of the License Agreement which are not acceptable for her work. A few days later she meets a friend from the legal department and asks him for advice. Is Lisa entitled to use the Programm ? Is Lisa obliged to meet the linked terms and conditions ? Is Lisa obliged to return the programm ? What will her friend recommend ?

**Modification 1:** Same situation as in the original case, but after the first start Lisa needs online support for the program from ABC-SOFTWARE. During her inquiry on the ABC-SOFTWARE homepage the same pop-up window as above appears again. Lisa again doesn't tick the box. What will her friend advise now ?

**Modification 2:** Same situation as in the original case, but the program only works if Lisa ticks the box. Because Lisa is not willing to tick the box she can't do her work for one month till another PC is available. What will her friend advise now ? Please examine and explain the requirements regarding all the possible claims of the involved persons.

**20 points**

Good luck!

**total 100 points**