

Past Exam Papers - International Trade Law

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SOME PAST EXAM PAPERS IN INTERNATIONAL TRADE LAW 1991 - 1997

LAW FACULTY OF THE UNIVERSITY OF TROMS

EXAM: INTERNATIONAL TRADE LAW

International Trade Law, IRV Exam Paper, Spring 1997

Week 19, 1996 (9:00 Monday 5 May to 15:00 Friday 9 May)

The English text is the original and authoritative text.

Answer all questions.

1. You are called in to advise NorFiskEksport A/S (NFE) a large Norwegian fish export company on the following problems with regard to the export of salmon:

A. First - NFE wants advice on issues related to the bill of exchange and sale of goods in the following situation in which they find themselves. NFE has a monthly 20 tonne instalment contract with Cutter AS for the delivery of salmon CIF Bremerhaven, (Germany) (Incoterms 1990). Current price NOK 30 per kg. Payment is by bill of exchange drawn by the seller on the buyer, payable after 30 days. The relationship between seller and buyer is an old one, and there have been very few problems with Cutter AS in the past. The bill of exchange from last months delivery, which the seller has discounted at 10% below its face value, has been dishonoured by Cutter AS. The current holder Bank of the bill of exchange Den Store Norske has given the NFE as drawer, notice of non-acceptance of the bill of exchange and demands that it be honoured by NFE. Meanwhile this months delivery has been shipped and is en route to Cutter AS in Bremerhaven. The seller has tried to contact the buyer with no success. There are rumours that he is insolvent.

B. Second NFE wants advice on issues related to the letter of credit, insurance and contract of sale on the following set of facts. NFE contracted the sale to Bovin of 100 tonnes of salmon CIP Bologne (France) at NOK

3.200.000. Payment by letter of credit (UCP500), drawn on a French bank, the documents required were the commercial invoice, insurance policy, a marine bill of lading, and a certificate of quality given by a company accredited by the Norwegian Standards Organisation (NSO), stating that the salmon exported is Superior quality with a fat content of 12% or below and between 14 and 15 on the Roche scale. The Norwegian bank, acting as an advisor informs that the documentary credit has fallen through because the certificate of quality states:

Salmon Cut NS9401 sample fat content 12%; colour card 15. Analysis NS9402 compliant.

The rejection is based on the mention of NS9401 of which the bank knows nothing, and reference to the colour card 15 which does not specify the Roche scale. These references are considered by the bank to be outside their mandate.

The documents were presented directly to the buyer for payment who insists first on examining the salmon upon their arrival, stating that the agreement did not specify any special cut, NS9401 or otherwise. He is not a very experienced salmon importer and usually deals with Scottish salmon, this being his first dealing with Norwegian exporters. Norwegian salmon is if anything better known than Scottish salmon on the French market. There is no dispute over the Norwegian firm that issued the certificate of quality being one approved by the NSO. On their arrival he announced that according to his tests, the fat content is 14% and that he rejects this consignment and will accept substitute goods, but claims damages for loss of profit of NOK 800.000 for missing the high demand and consequently high prices, of the Christmas season. Meanwhile the goods are deteriorating due to inadequate packaging and improper storage.

Use of the Roche colour is standard in Norway and France. Use of NS9401 and NS9402 are standards used in the Norwegian salmon industry and widely known in the salmon industry. The Roche scale is a standard colour scale used in the salmon industry to measure the pinkness of salmon. E.g. 11 is very light pink 18 very dark pink, 14 15 is the normally preferred range for Norwegian salmon. NS9401 is the standard

Norwegian quality cut of salmon developed by the salmon industry for the (standard) assessment of fat content and colour. NS9402 refers to the way in which the colour and fat analysis should be carried out.

Disputes under both contracts of sale are to be settled by a single arbitrator by ad hoc arbitration Cyprus, which has been agreed because it applies the UNCITRAL Model Law. If the CISG applies assume that the arbitrators will use the original text of the CISG, on the grounds that any contracting State to the CISG must have fulfilled its treaty obligations. If required for the determination of applicable sales law assume (for the purposes of this paper) that the arbitrator(s) will apply the Convention on the Law Applicable to International Sales of Goods (The Hague, 1955).

2. Discuss damages under the CISG generally and in particular their measure. Compare Norwegian domestic sale of goods law.

Assume that the Norwegian Bill of Exchange Act or Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930) applies, specify what you use.

Claiming money from an insolvent or bankrupt foreign debtor is not a matter on which you are called upon to advise.

International Trade Law, IRV Exam Paper, Spring 1996

Week 19, 1996 (9:00 Monday 6 May to 15:00 Friday 10 May)

The English text is the original and authoritative text.

Answer both questions.

1. Your client NORESTRA AS of Norway a producer of biotechnology food processing systems and BR of Russia a producer of caviar enter into a contract for the sale of a large scale biotechnology food processing plant (for the enzymatic de-skinning of fish row) DDU INCOTERMS Arkhangelsk NOK 1.750.000 by April 1. Payment to be by letter of credit confirmed with DnB against presentation of an invoice, a certificate of inspection issued by an inspection company CERT, the bill of lading and an

arrival note issued by the carrier after the off-loading the equipment at the port, evidencing the goods arrival at their destination. The choice of law is Swedish law as applied to the international sale of goods with ad-hoc arbitration in Stockholm under the UNCITRAL Arbitration Rules. BR have informed your client that the time of delivery is important as it is at that time that personnel will be available to do the necessary installation, and they hope to have the unit in production to supply caviar for certain celebrations in Europe, mid April, which they expect to be particularly lucrative.

Your client takes out insurance on their own behalf with a Norwegian insurance company on terms identical to the Standard Institute Cargo Clause A policy, with the exception of the choice of law clause which selects Norwegian law.

The goods are aboard the SS Sonya which is caught in a storm as a result of which she incurs some damage necessitating a stop for repairs at Murmansk, as a result of which SS Sonya arrives in Arkhangelsk 5 days later than scheduled, this being on April 3rd.

The letter of credit opened by BR stipulates that the document evidencing arrival of the goods should show that they did so on or before April 1. Your client was in touch with BR to inform them of the ships delay, and to request that they together with the bank alter the terms of the credit. BR refuses. Your client presents the documents, including the CERT certificate of inspection to the banks who both likewise refuse to pay - because of the date of arrival of the goods. Your client then presented the documents directly to BR for payment together with an offer to send people capable of doing the necessary installation. BR refused to take delivery of the goods or documents, and to pay for the goods. BR claim your client to be in breach of contract and to avoid the contract. BR further claim damages - informing your client that they now prefer and will be buying a rival product costing NOK 100.000 more, which will take another 12 days to arrive. BR claim the difference in price, plus 14 days lost production costs NOK 75.000 and loss of profit NOK 100.000. BR insist that the information they provided as to the importance of the date of arrival, together

with the contractual term specifying the date by which goods should be delivered, and choice that payment be by letter of credit against strictly conforming documents all indicate that time was of the essence and that they were entitled to avoid the contract.

23 Your client is of the opinion that the circumstances do not entitle BR to avoid the contract, and that payment was due on their presentation of the documents to BR. As regards payment by letter of credit your client mention that this method of payment was in fact insisted upon by themselves for their benefit, so to ensure that they received payment on delivery.

24 There is no general market for the food processing plant within Russia, the equipment in question being specialised. In any event your client does not think they can get the appropriate import licences for the goods. BR have put the goods in temporary storage in a bonded warehouse (awaiting import clearance or their re-export) on behalf of your client, who have had to re-insure the equipment, (and do so on the same terms as before), and arrange for their reshipment to Tromsø. Costs of warehousing, insurance and reshipment totalling NOK 75.000. The equipment was custom made for BR and much refitting is necessary for it to be possible to sell the machinery elsewhere, estimated cost NOK 500.000.

25 Discuss the legal issues that arise from the sequence of events. Also comment on the suitability of arbitration.

26 **2.** Discuss §275 of the Norwegian Sjøfartsloven.

27 **International Trade Law, IRV Exam Paper, Spring 1995**

Week 19/1995: 9:00 Monday 8 May to 15:00 Friday 12 May 1995

28 Answer both questions.

29 **1.** NORBIO is a Norwegian bio-technology company that produces ENZYNNOR on which it has worldwide patents. ENZYNNOR is an enzyme that can be used in a wide range of processes within the food manufacturing, and pharmaceutical industries. Small amounts of ENZYNNOR are required

for the production of much larger amounts of the products produced in the processes in which it is used.

ENZYNNOR is prepared in a viscous solution, that must be stored within 30 a narrow temperature range, (between 1 and 4 degrees Centigrade) as it is destroyed by freezing, and rapidly deteriorates (if not being used in the intended process) at temperatures above 6 degrees Centigrade. This is recognised by NORBIO as a problem for the international distribution of ENZYNNOR which they are trying to overcome in various ways.

BBB is a multinational enterprise, involved in the industries in which ENZYNNOR can be used. BBB has for several years based several areas of its 31 production on a similar product from another European manufacturer.

NORBIO being keen to market ENZYNNOR outside Norway, are triumphant 32 in having persuaded BBB to switch to the use of ENZYNNOR. This is regarded as likely to make the marketing of ENZYNNOR to other companies much easier. The deal is widely publicised in trade papers.

By the agreement between BBB and NORBIO, NORBIO is to supply 33 for 1 year, starting January, 1995, monthly installments of 100kg of ENZYNNOR, CFR INCOTERMS 1990, Liverpool, at an agreed total price of NOK 1.200.000 (NOK 100.000 per installment). Payment to be by letter of credit opened for each installment, against the presentation of a bill of lading, invoice and a certificate of quality issued after an analysis of samples of the shipment by CERT, a Dutch Company with offices Norway. The contract does not include a termination or cancellation clause.

BBB accept that the agreement be governed by Norwegian law, as they 34 have experience with the United Nations Convention on Contracts for the International Sale of Goods (CISG) through their dealings in other countries. BBB however insist that reference be made to the original text of the CISG, as this is the text with which they are familiar and for which expertise is readily available to them. The arbitration clause specifies commercial ad hoc arbitration in Stockholm.

NORBIO are aware that BBB intend to start using ENZYNNOR immediately, 35 on receipt of the first installment. BBB's former supplier is not

pleased about BBB having dropped their product and refuse to make further deliveries. The urgency of the situation has been made clear to NORBIO.

NORBIO pack the ENZYNOR in containers that are kept in a special refrigeration unit, to keep the ENZYNOR at the required temperature. CERT perform their tests, are satisfied, and issue a certificate of quality.

There is a mishap with the first attempt to send the first installment when the stevedores operating a lift-van, knock the container with ENZYNOR off the pier. NORBIO's domestic insurance only covers them on their business premises.

NORBIO have to hurriedly prepare a second shipment to replace the first that was lost, and are able to deliver and have a new CERT inspection and certificate of quality issued, within the contractually stipulated period for delivery of the goods.

After its arrival in Liverpool, BBB perform tests on the ENZYNOR and inform NORBIO that the ENZYNOR does not work. BBB state that they are satisfied on the strength of the CERT certificate of quality that it did on shipment. BBB reports that it will be making a claim against their insurance company, as they have taken out an Institute Cargo Clause all risks policy with Lloyd's. They also inform NORBIO that it has cost them two days production, the period during which their plant was shut down, until they could get a substitute product, and that such shutdowns are particularly expensive as much equipment must be replaced due to strict hygiene regulations.

The February installment arrives intact. But NORBIO have zealously changed the packaging of ENZYNOR so that details are provided in English, and part of the name of the product which is entered on the bill of lading is translated, so that it does not match the name of the product that is given to the bank on the opening of the letter of credit, which was in Norwegian. The bank which is English refuses payment unless BBB authorize the change, and this is requested. BBB refuse. NORBIO contact the bank several times, adamant that payment should be made, but the

bank does not pay.

The time for payment under the credit expires, and NORBIO send the documents directly to BBB for payment.

BBB in reply fax a long complaint. The fax sent by BBB states the following:

BBB claims against NORBIO loss amounting to NOK 900.000 sustained from closure of plant for 2 days, on the grounds the goods did not fit the sample, were not fit for purpose, and were inadequately packed. As to inadequate packing they claim the refrigeration unit used was faulty and could not be relied upon to the keep the strict temperature regime that NORBIO indicate is necessary in their storage instructions (which are written on the packaging of the product). The amount claimed includes various overheads (NOK 200.000), and extra costs related to stopping and starting what should have been a continuous process (NOK 400.000), and loss of profit (NOK 300.000).

BBB regard the February shipment as substitute goods, and will not pay for it.

In the alternative, to the February shipment being substitute goods, BBB claim the loss of the insured value of the first shipment of ENZYNOR, 180% of the CFR price, from NORBIO. Apparently the insurance company avoided the policy on the grounds that they had not been made aware of the extreme temperature sensitivity of the goods, which they claim was material to their assessment of the risk. The insurance company stated further that in any event they would not have had to pay out BBBs claim as it would have fallen under an exception being due to inherent vice in the goods and/or unsuitable packing. BBB point to the fact that NORBIO should have made this information available to them for insurance purposes when BBB requested such information.

BBB further state that they will not require any ENZYNOR after the sixth installment, and that NORBIO should consider themselves notified of this fact.

47 NORBIO admit that in the circumstances they did not have the time to properly check the refrigeration unit in which they sent the first installment which arrived destroyed. As regards BBB stating they do not intend to continue the agreement after the sixth installment, NORBIO point out that BBB's failure to honour the agreement will probably cause NORBIO loss beyond this agreement as other manufacturers who were considering to switch to ENZYNOR are now less likely to do so.

48 NORBIO seek your advise on the legal issues raised by the circumstances described.

49 **2.** Discuss the effects of deviation and delay in relation to goods.

50 **International Trade Law, IRV Exam Paper, Spring 1994**

51 **Week 18/1994 - 02/04 (09:00) - 06/04 (15:00)**

52 Answer both questions.

53 January 1994, two instalment contracts are entered upon between Sechele of Botswana* and Blink of Norway, both of whom are traders. All disputes arising under them are to be subject to arbitration in London, the conclusion of which is to be final.

54 The first contract calls for six instalments, each for: 10 tonnes of prime Botswana beef, NOK 200.000, CIF Stavanger, *INCOTERMS 1990*.

55 The second contract calls for six instalments, each for: 20 oil industry drill bits, NOK 500.000, CIF Stavanger, *INCOTERMS 1990*.

56 The times of shipment for all six instalments are fixed in both cases. Shipment of the first two instalments to take place in March and May respectively.

Both contracts of sale call for the immediate opening of letter of credit facilities confirmed by the Botswana National Bank, for the first two instalments of each item. These are duly opened in conformity with the contract. Payment is to be against an invoice, a marine bill of lading, and

an insurance policy issued by Lloyd's of London underwriters for 150% the invoice value of the goods. The contract for the drill bits specifies in addition that they are to be insured on *Institute Cargo Clause A* terms, and this is reflected in the credit.

57 The contracts also specifically require Sechele to arrange carriage under bills of lading to which the *Hague-Visby Rules* apply and to declare the value of the goods in the bills of lading.

58 The goods are shipped aboard *MS Volant*. The bills of lading obtained are expressly subject to the *Hague-Visby Rules* but Sechele fails to have the value of the goods stated in them. The bills of lading contain *inter alia* the following clause:

59 "The carrier warrants that he will at all times keep the vessel registered with a recognised classification society. Production of a current certificate of class shall be conclusive evidence that the vessel is seaworthy."

60 [*Candidates may assume that the ship has such a certificate.*]

61 Apart from the usual entries on a bill of lading, the bill of lading for the beef also states that up to 40% of the consignment may have been heat damaged by a fire that occurred on board the ship.

62 The drill bits are mostly of steel and are of relatively low value in themselves, but each has a diamond impregnated segment, which is part of a smaller detachable unit, that is of extremely high value.

63 *MS Volant* en-route to Stavanger makes a scheduled and permitted stop in Lagos, Nigeria where she is detained. As is commonly known by shipowners and carriers operating in the region the Nigerian authorities require that every ship has a complete manifest together with certificates of origin for all cargoes on board. The reason behind this this being Nigeria's active role in the effort to prevent trade with South Africa. The consequences of such non-compliance being the almost certain detention of the ship for an indefinite period of time and, possible confiscation of any suspect goods. *MS Volant* has not complied with this requirement. The detention lasts six weeks.

64 There is reason to believe that the beef may in fact be from South Africa
and that Sechele was aware of its origin.

65 Sechele has presented documents as described above to the Botswana Na-
tional Bank and been paid for the first instalment of both contracts.

66 On arrival in Stavanger:

67 Norwegian authorities will not pass the beef as fit for human con-
sumption though it may be used as animal feed or fertiliser. Apart
from the earlier fire damage to a portion of the beef, the whole con-
signment appears to have deteriorated during the detention of *MS*
Volant in Lagos. Refrigeration on board was apparently unable to
68 cope with the tropical heat over the extended period of the voyage.

The consignment of drill bits are found to be without any of the
diamond impregnated segments. These appear to have been stolen
whilst *MS Volant* was detained in Nigeria, though whether by crew
or others is unclear.

69 The drill bits are found not to be strictly in conformity with Blink's
contractual specifications requiring an additional piece to be fitted in
order for them to be connected to and made usable on the equipment
they were ordered for.

70 The underwriters have so far refused to pay on either claim pending their
investigation of the circumstances of the case.

71 Blink is also extremely worried about future instalments based on this
first experience, the fact that the price of meat has fallen substantially,
and changes have been announced in the use of drill bit technology by
the company he hoped to supply. The second instalment is now due for
shipment.

72 Advise Blink.

73 [** The question is set on the basis that Botswana is a Contracting State*
to the U.N. Convention for the International Sale of Goods 1980 as is
suggested by the ratification table in Basic Documents on International
Trade Law, 2nd ed. Graham and Troutman Ltd., isbn 1.85333.359.X]

[Candidates may assume there is no problem of jurisdiction over any of
the parties that Blink may wish to proceed against.] 74

[The examiners are aware that Botswana is a landlocked country.] 75

[Consider the implications of the following alternative facts: Sechele has
presented documents as described above to the Botswana National Bank
and has been paid for the first instalment of drill-bits. The bank refused
payment of the beef against the documents tendered. Sechele has pre-
sented the documents for the beef directly to Blink for payment.] 76

2. Discuss Article 25 of the *United Nations Convention on Contracts for* 77
the International Sale of Goods 1980.

NB. A short comment (subsequently added). Some general observations
on the manner in which the question is set.

The problem not set in the traditional Norwegian form - where the can-
didate is given two disputed sets of facts and expected to put themselves
in the position of a judge. The student is here given a set of facts and ex-
pected to advise one party. Some differences are likely to arise out of this
mode of examination. 78

There was some objection to the fact that a lawyers role is not neutral,
whereas that of a judge is. A neutral perspective being that which is sought
in Norwegian law examinations. 79

Whilst it is true that the role of a lawyer representing a party in court or
arbitration is to further his cause, and adversarial, at the stage of giving
advice to a client the lawyers role should be neutral, explaining: the legal
issues that arise; the strengths and weaknesses of the case; against whom
action may be taken; and with what chances of success. Such a "neutral
perspective" is expected to be displayed here. 80

This mode of examination was regarded as far more appropriate in cir-
cumstances of an international sale of goods in which there are several
different parties involved in several different contracts that are governed
by different national laws and jurisdictions. Depending on which claims
the buyer in this question decides to pursue, he will appear in different
81

courts. The same adjudicator will not be called upon to answer questions related to the sale of goods contract between the buyer and seller in this example which is expressed to be subject to arbitration in London; and/or any legal proceedings involving the buyer and insurance company arising from the contract of insurance; and/or proceedings between the buyer and carrier arising from the contract of carriage; and/or between the buyer and bank arising from the letter of credit.

Without being asked specifically, students are expected to give legal advice in relation to all the buyer's problems/claims, in relation to whichever party is consequentially relevant; to elaborate on any uncertain legal issues that they might be able to clarify (eg. why is it important that S indicate the value of the goods in the bill of lading, apart from the fact that it was a contractual specification).

It is quite usual for examiners to present insufficient factual information to reach a definite legal conclusion, and for students to be expected to point this out, and explain what information they require, and why, ie. what legal consequences knowing those facts would have. Also if as a consequence of missing factual information there are alternative legal consequences, it is usual to deal briefly with the alternatives (eg. if such an event took place before this point in time, the result would be X, if after Y). Neither is it unusual to present some facts which are not directly relevant to answering the questions, and to expect candidates to dismiss them as such or ignore them altogether.

It is not unusual to present unlikely or even far fetched circumstances, provided some point of law can be argued or discussed - for example I am not aware of any Nigeria specific practice in relation to ships, or in relation to South Africa. The bit about ships manifests and certificates of origin is fictional. If true it would have certain legal consequences and these should be discussed. I am quite sure that any reasons for Nigerian sanctions against SA have been removed/lifted (within the time frame set in the question); although again, if Nigeria did have such a law, it would quite likely outlive the original reason for its existence (as is provided in the question).

An interesting though obscure legal (or even far fetched) point or argument should be made, with whatever necessary qualification rather than overlooked, if there is any chance of its being argued successfully.

I understand that this way of presenting facts for discussion differs from the norm here. It is well suited to the subject however. I hope it is not regarded as being too revolutionary.

Finally no offence is meant by using real country names, though I note there was objection to a question in which the Norwegian parties were in breach and recalcitrant. These are private law questions and individuals of all types exist in different parts of the world. Perhaps it would be better to use fictitious place names.

HARSTAD POLYTECHNIC - HIGSKOLEN I HARSTAD

EXAM: INTERNATIONAL TRADE LAW

The Law of International Trade, HIH Exam Paper, Autumn 1994

Week 42*/1994

Answer the questions as instructed. Question 1 accounts for half the total marks.

1. NORTECH A/S is a small Norwegian high tech company with no previous experience in exporting.

NORTECH A/S is the first company to produce X-Comm units that work at 10 times the speed of other similar units on the market. X-Comm units are required in the making of various types of highly profitable communications equipment. The competition appear to be at least a year away from having a similar product on the market.

NORTECH A/S seeks your legal advice after the following experience:

After lengthy preliminary negotiations an instalment contract is entered with Klauswirth GmbH in Europia (an imaginary European country) for the purchase of X-Comm on monthly CIF (INCOTERMS) shipments of

10.000 units of X-Comm, NOK 2.500.000 per shipment (NOK 250 per unit) starting November 1994.

96 NORTECH A/S sent the first consignment as contracted in November, and has just received a notice from Klauswirth that the X-Comm units are unusable, in which they claim substantial damages and threaten to avoid the contract unless replacement X-units are sent immediately.

97 Klauswirth GmbH state that the X-Comm units are not identical to the samples provided to them during negotiations and that they are therefore unusable.

98 Klauswirth GmbH state that whilst they believe the first explanation to be case, there is another possibility which they are investigating, that the consignment was damaged during transit due to inadequacy of packing.

99 In any event a further examination is necessary to reveal whether the reason for X-Comm units being unusable is because they in fact do not work, or because their specifications are not the same as the sample, or their being as required by the contract. Klauswirth GmbH state that they will be claiming damages as follows: as a result of having to delay production for at least one month to have had to have lost NOK 1.000.000 (fixed costs - employment of personnel, renting of factory space etc.); an additional 500.000 for loss of one months profits; and a further 200.000 that they claim they will have to pay a customer in damages for their failure to deliver on that contract in time; 1.750.000 in loss of future profits due to loss of goodwill from their retailers and customers who are unlikely to purchase their product in the future because they were unable to deliver on time. If they decide to avoid the contract they also claim restitution of the amount that they have paid.

100 They state that NORTECH A/S was made aware of their special requirements and that NORTECH A/S are in any event aware of the nature of the industry in which they are dealing and that they as a result were aware that the delivery of non-usable X-Comm units would bring about such consequences, resulting in the damages claimed.

101 NORTECH A/S tell you they are confident that their X-Comm units are

flawless and fit the contract description (when sent). They tell you that they believe the problem is due rather to the incompetence of Klauswirth GmbH in the installation of the X-Comm units into their communications equipment. Meanwhile their investigations indicate a possibility that the consignment may have been wet on board the Ms Breeze on which they were shipped due to the negligence of the carrier, and if this was in fact the case this would explain their not working as the units of X-Comm are very sensitive to water.

The December consignment has just been sent aboard the MS Cloud and the CIF documents already handed over to Klauswirth GmbH, who have refused to pay and is holding the documents because of his large claims against NORTECH A/S on the previous consignment.

NORTECH A/S seeks your advise on this problem.

NORTECH A/S is currently negotiating with NISA in Conquador (an imaginary developing country in South America), to contract to supply CIF (INCOTERMS) instalments every other month of 50.000 units of X-Comm, NOK 12.750.000 per instalment (NOK 255 per unit) starting January (this contract has not yet been concluded)..

NORTECH A/S are worried about dealing with NISA because of their experiences with their first export sale, and are concerned in particular with regard to securing payment from a South American country. NISA states that if NORTECH A/S are worried about payment that they are prepared to pay by letter of credit. NORTECH A/S require advice as to whether to accept this arrangement, and in particular want an explanation of the letter of credit and how it works and any security that it might provide.

[Candidates are to assume the countries concerned in the problem apply the syllabus conventions.]

2. Answer (a) or (b)

(a) The Hague-Visby Rules imply terms with regard to carriage of goods by sea under a bill of lading. Discuss.

or

110 (b) A bill of lading may be the contract of carriage, or may merely be
evidence of the contract of carriage. The same bill of lading may become
the contract of carriage once transferred to a third party. Explain.

111 3. Answer (a) or (b)

112 (a) If possible using examples from any studied areas of international
trade law, explain the division of contractual terms in the English law of
contract into conditions, warranties and innominate terms. Compare this
with the situation under the Vienna Sales Convention.

113 or

114 (b) Discuss mistake under English contract law.

115 **The Law of International Trade, HII Exam Paper, Spring 1994**

Week 20/1994

116 Answer all questions.

117 1. Brd runs a factory in Bergen that produces the designer fabric *Moretex*.
An essential element in its manufacture is a special solvent sold under the
trade name *Lindrexite*.

118 Brd contracts with Steven for the purchase of 60,000 litres of *Lindrexite* on
FOB terms, the *Lindrexite* to be loaded at Copenhagen, shipping arrange-
ments to be made by Brd, delivery in three equal instalments in February,
March and April. The contract of sale was expressed to be governed by
the *Convention on Contracts for the International Sale of Goods 1980*.

119 As regards each instalment, Brd arranges transport under a bill of lading
to which the *Hague-Visby Rules* applied, and takes out a voyage insurance
on *Institute Cargo Clause A* terms with Lloyds of London underwriters.

120 Late in January Brd nominated *MS Xerxes* “expected ready to load 16th
February”, but the *MS Xerxes* did not arrive until 22nd February, and
Steven incurred expensive storage charges, for which he has charged Brd.
Moreover the *Lindrexite* was badly damaged in storage and could not be
used by Brd on its arrival.

121 Late in February, Brd nominated *MS Yarn* for the second instalment.
Steven was unable to deliver, and requested that Brd secure his supplies for
this instalment elsewhere, but assured Brd that there should be no problem
with the final instalment.

122 On 1st April, Brd nominated *MS Zebra* for the final instalment of *Lin-*
drexite. Before the *MS Zebra* reached Copenhagen, Steven requested its
master to load 10,000 litres of *Lindrexite* from Hamburg instead of Copen-
hagen. The master was unable to communicate with the shipowner or Brd
and complied with Steven’s request under protest. Steven did not inform
Brd of this change in plan.

123 *MS Zebra* is lost at sea with all her cargo while in transit from Copenhagen
to Bergen, because she was unseaworthy when she set sail. The reason for
her unseaworthiness being, when she was last overhauled (prior to her stop
in Hamburg), poor quality rivets were used by the independent contractor
engaged by the shipowner. The shipowner did not know this, and the fault
could not have been easily discovered on any inspection by him.

124 Brd found that his insurance policy did not cover the loss of *Lindrexite* on
board the *MS Zebra* because of the change of port of loading.

125 On all three occasions Brd had to cut back his production of *Moretex* (loos-
ing highly profitable sales), whilst he made arrangements to secure sup-
plies elsewhere (from a local competitor) at a considerably higher price.

126 Brd seeks your advice as to his chances of recovery of his losses on all
three instalments. Advise Brd.

127 2. Discuss the following problems applying (i) English contract law
principles and (ii) the *United Nations Convention on Contracts for the
International Sale of Goods 1980*.

128 (a) Sly sells Bingo 10 cars for NOK 1 000 000. Civil unrest in Sly’s
country prevents all exports, and it is uncertain how long this will con-
tinue. Bingo loses profits on valuable resale contracts.

129 (b) Sly sells Bingo 10 cars for NOK 1 000 000. Sly is unable to deliver

on the date set by the contract. Bingo loses profits on valuable resale contracts.

(c) Sly sells Bingo 10 cars for NOK 1 000 000 which Bingo has made known he needs for use in Norway. On receipt of the goods by Bingo he finds that they are right hand drive, (the steering wheel is on the right side) and cannot be sold within Norway.

(d) Sly sells Bingo 10 cars for NOK 1 000 000. On the day on which payment is due under the contract Bingo says he has changed his mind and refuses to pay.

3. What are the requirements of formation of contract in English law and under the *United Nations Convention on Contracts for the International Sale of Goods 1980*?

The Law of International Trade, HII Exam Paper, Autumn 1992

Autumn 1992

Each question carries equal marks. Attempt all questions.

1. Steven sells to Bjrn (a Norwegian merchant) 5000 tons of lima beans, CIF Bergen, Incoterms 1990, NOK1.000.000 cash against a clean shipped bill of lading, and other CIF documents.

Steven ships all 5000 tons on the "Lucky Charm". It is well known amongst bean traders in Bombay, that the entire contents are suspect, having been the object of various abortive deals, and although usable within a few days are most unlikely to be merchantable after a voyage to Europe. This is however a matter of general gossip, and only an expert could tell whether this was actually true by inspecting samples.

The master though he has heard the gossip signs a clean bill of lading. Stephen takes out insurance on Institute Cargo Clause C terms for 110% the invoice value of the lima beans. The insurance company is not informed of the gossip, or of any related facts.

The cargo is severely wetted during an exceptionally heavy storm occur-

ring before the ship sails. The water penetration was due to inadequate sealing of the hatch covers. The master before issuing the bills of lading alters it with a marginal note "cargo wet by rain after loading." Before the bill of lading is tendered, Bjrn's agents in Bombay inform him of the rumours regarding the cargo. One week after the ship sails Steven tenders to Bjrn a bill of lading. Bjrn would like to refuse it on the grounds that it is not "clean".

The cargo on arrival is found to be completely unfit for human or animal consumption, and is of value only as fertilizer.

Discuss the legal position of the respective parties to the respective contracts (sale of goods; carriage of goods; marine insurance). Assume that the *UN Convention for the International Sale of Goods 1980*; *Incoterms 1990*; the *Institute Cargo Clauses*; an act very similar to the *English Marine Insurance Act 1906*; and the *Hague-Visby Rules* apply.

2. Give an overview of the effects of the *Hague Visby Rules* in relation to Bills of lading.

3. Outline the operation of bills of exchange and letters of credit, and the practical ways in which these payment mechanisms can facilitate the needs of the buyer and seller in an international sale transaction.

4. What is the doctrine of frustration of contract in English law. Discuss any similar provision under the *UN Convention for International Sale of Goods 1980*.

5. Discuss briefly the nature of representations and terms in English Contract law, and the effects of a representation being untrue, as compared with a breach of contract.

The Law of International Trade, HII Exam Paper, Autumn 1991

Autumn 1991

Question 1 accounts for 50% of the total marks, so most time should be spent on this question. Attempt all questions as instructed.

The following contract is entered into between Stig in Norway and Bond in Nigeria:

“1000 tons of ‘grade A’ dried cod, NOK 1.500.000, CIF Lagos INCOTERMS 1990, as per sample submitted. Payment to be by irrevocable letter of credit confirmed by DnB Oslo opened by October 3rd 1991 for a period of 2 weeks, and to be made against documents evidencing the fulfilment of his CIF obligations, and a certificate of inspection stating the cod to be of grade A quality.”

The letter of credit facility is duly opened and the relevant documents being specified to DnB bank and Stig proceeds to perform his obligations under the contract.

Bond in Nigeria hears rumours that the consignment shipped will not be grade A but grade C, and that the certificate of inspection presented will be a forgery, and instructs both banks not to pay against it.

Stig presents DnB with the following documents: a received for shipment bill of lading for 1000 tons of grade A dried cod in apparent good order and condition; an invoice for the same goods; an insurance policy taken on Institute Cargo Clause C terms; and a certificate of inspection. DnB bank pays particular attention to the certificate of inspection but is unable to find anything wrong with it as it appears to be in order and as described in their mandate (instructions for opening the credit). DnB pays Stig.

During the voyage the ship is in a collision and part of her cargo is wet, whilst another portion is deliberately thrown overboard by the crew in order to reduce her weight.

When the consignment arrives it is found to be 200 tons short (i.e. there are only 800 tons) and 100 tons of the consignment are damaged by water, and the consignment is found not to be up to sample and not of grade A quality.

1. Assume that Norwegian law is to apply to the sale of goods transaction. Answer the following:

(a) In the situation described in the problem, what international conven-

tions or uniform sets of rules apply or are likely to apply to the sale of goods transaction, their transport, the marine insurance policy and the letter of credit and explain why this is the case, and give a brief outline of what these do. (10%)

(b) Discuss Stig’s obligations under the contract he has entered into. (15%)

(c) Advise Bond as to any rights he may have with respect to the seller, carrier, insurance company, bank and any other relevant parties. Inform him of any further details you may require. (25%)

2. What are the functions of the bill of lading in international trade? Mention briefly how these facilitate trade. (facilitate means to benefit, or make easier)

3. Answer any two of the following questions (a, b, c and d):

(a) What is: a condition, a warranty, and an innominate term, in English law? What is the meaning of “fundamental breach” under the *United Nations Convention on the International Sale of Goods 1980 (CISG)*?

(b) What are inherent vice; general average; seaworthiness?

(c) What is an insurable interest? What is the duty of disclosure in relation to contracts of insurance?

(d) What is meant by: the autonomy of a letter of credit, and; the doctrine of strict compliance?

4. What are the requirements of formation of contract under English law and the *United Nations Convention on the International Sale of Goods 1980 (CISG)*?

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