Prof. Dr. Yeşim M. Atamer HS 2021

International Sales Law (CISG)

January 14, 2022

Duration: 120 minutes

- Please check at receipt of the exam the number of task sheets. The examination contains 3 (three) pages and 5 (five) questions.

- The questions are all weighted equally (20%).

International Sales Law (CISG)

Exam

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1. **Are following issues governed by the CISG? If your answer is yes, which is/are the relevant provision/s? (20%)**

   a) **Formation of arbitration clauses;**
   b) **Claim for the payment of the price in a consumer sales contract;**
   c) **Question of proof.**

2. **Please analyse the case below and answer the following questions. (20%)**

   a) **Did the parties conclude a sales contract subject to the CISG?**
   b) **Did the parties agree on the allocation of the transport costs?**
   c) **Assuming that the parties did not agree on the allocation of the transport costs, who has to carry them according to the CISG?**

A manufacturer of concrete slabs (i.e. tiles) with place of business in Belgium offered to sell 10 slabs for a price of € 350.– per slab to a buyer with a place of business in the UK. The parties agreed that Belgian law shall apply to the contract.

While the manufacturer's original offer via phone included the phrase “Transport costs € 9.– per km”, the buyer's order via email contained the stipulation “free delivery to construction site”. The manufacturer's confirmation of the order via email included the phrase “Transport costs € 9.– per km” again. After the delivery of the goods to the UK the buyer refused to pay for the transportation costs.

[cf. CISG-online 716]

Note: Belgium is a CISG contracting state, the UK is not.

3. **Please analyse the case below. Does the Swiss buyer have remedies against the Turkish seller? (20%)**

A Turkish company sold 10 boxes of frozen cheese to a food wholesaler in Switzerland, who – as the Turkish seller knows – primarily supplies a German supermarket chain with food items. After the boxes with the cheese arrived in Switzerland on 1 May 2021, they were immediately transported onwards to the main warehouse of the German supermarket chain, where they arrived on 5 May 2021 and were stored in the cold storage room without being opened. On 25 May 2021 the cheese was delivered to various supermarkets of the chain, where it was subsequently sold to customers. After some customers complained on 29 May 2021 about worms, they had found in some of the cheese, the manager of the supermarket chain informed the Swiss food wholesaler on 5 June 2021. On 10 June 2021, the Swiss food wholesaler in turn called the Turkish seller and informed him in sufficient detail about the wormy cheese.

Note: Turkey, Switzerland, and Germany are contracting states.

4. Please analyse the case below. Does the buyer have a right to avoid the contract? How would you judge his claim for damages? (20%)

The buyer, a company seated in Germany, is a mass producer of plastic car parts. It requires specifically manufactured moulds into which liquid plastic is pressed to produce the car parts with correct dimensions. Since 2018, the buyer obtained such injection-moulding tools from a company seated in Hungary. The tools were manufactured according to its specifications. With respect to four supply contracts in 2020, the buyer complained about defects in the tools which the seller unsuccessfully tried to cure. Later, the buyer itself repaired all defective moulds and used them for its production. Nonetheless, the buyer declared these four contracts avoided.

The seller requested outstanding payments of approximately € 180,000.–. The buyer rejected the claim because it had terminated the contracts. In addition, it declared set-off with its own damages claims (in the amount of approximately € 550,000.–) for the repair of the defects.

[cf. CISG-online 2545]

Note: Germany and Hungary are CISG contracting states.

5. Please analyse the case below. What are the remedies of the seller? How would you judge his claim for damages? (20%)

In August 2020 MAP, an Australian corporation with its principal place of business in Australia, issued several purchase orders for products to be shipped in October 2020 by HK, a company with its place of business in New York. On 15 October 2020 the seller sent notice to the buyer that the products were at the harbour ready for shipment.

Pursuant to the agreement between the parties, the buyer MAP was required to open a letter of credit seven days prior to shipment. When the buyer failed to do so, the seller HK sent a notice on 1 November 2020, stating that the buyer had to provide the letter of credit within thirty days. On 8 December 2020, the seller sent a second notice requiring the buyer to open a letter of credit pursuant to the terms of the agreement. When the buyer still did not cure, the seller sent a notice of termination dated 15 December 2020. Later the seller sold (and, in January 2021) shipped the goods that were ready for shipment to another customer at a price lower than the price agreed with the buyer MAP. The seller also commenced legal action against the buyer for payment of damages. During the legal proceedings, it was established that the buyer had filed for bankruptcy in October 2020.

Note: Australia and the USA are CISG contracting states.