

Professor Sisto

INTERNATIONAL ECONOMIC TRANSACTIONS
CAPITAL UNIVERSITY LAW SCHOOL
FINAL EXAMINATION
FALL - 1991

Terms of Exam: Open book, in class, limited to materials, distributed in class or specifically approved by Professor before examination commences.

Duration - Three (3) hours

Grading - Five (5) Questions weighted as follows;

1 - 20 points

2 - 20 points

3 - 20 points

4 - 15 points

5 - 15 points

Total 90 points

STOP DO NOT TURN PAGE UNTIL INSTRUCTED BY PROCTOR

Question #1

Your client, Easy-Wear, Inc., an importer of men's clothing approaches you with the following story about one of their recent shipments of men's suits. Discuss the legal issues involved and advise your client on the probability of success on their claims.

Claim A

Easy-Wear, Inc. is an Ohio Corporation that has been in the business of importing men's clothing for 15 years. One of their suppliers over those 15 years has been Yu-Suit of Pusan, Korea. Yu-Suit and Easy-Wear have had a very good relationship over the years with little, if any, problems.

On January 10, 1991, Easy-Wear faxed Yu-Suit a purchase order with the following language:

Desperately need 4,400 men suits with vests: Shipment by January 30, 1991, current style, standard colors: payment to be made 45 days from shipment: terms CIF Long Beach, \$300 per suit:

Yu-Suit responded the next day.

Order accepted: Terms-Freight Collect/deduct from payment.

When the vessel arrived in Long Beach Easy-Wear paid the carrier's agent for the freight. Easy-Wear then inspected the merchandise and found the suits to be badly damaged from water which was still in the container. All the documentation Easy-Wear presents to you is in good order and a "clean" bill of lading was issued by the Ocean carrier.

Easy Wear has prepared a letter demanding that Yu-Suit replace the suits at no addition expense within thirty days. Easy-Wear had pre-sold the specific suits made by Yu-Suit to several retail outlets for \$425 per suit.

Claim B

Assume that Easy-Wear chooses not to pursue any claim against Yu-Suit and wants to bring an action against the ocean carrier, O-Ver-Ceans. Although it cannot be determined exactly when the water damage occurred, O-Ver-Ceans had issued a clean Bill of Lading in Pusan stating "Merchandise in apparent good order: 4,400 sets of men's suits with vests". Each suit in this shipment was individually wrapped with a plastic bag after having been placed on a hangar.

The vessel carrying the cargo, Korean Express, left Pusan on January 27, bound for Long Beach. In route, the vessel made an unscheduled stop at Kobe, Japan to take on additional cargo. In order to fit the additional containers on-board, the container with the Easy-Wear suits was unloaded and when reloaded it was placed on the upper deck. The stop in Kobe took 36 hours and put the vessel two-days behind schedule.

Twelve hours outside of Long Beach the ship encountered heavy seas and rain. Waves crashed over the deck and caused some structural damage to the ship.

O-Ver-Ceans has contacted your client and offered to pay \$500 in full satisfaction for the container load of damaged suits. In their correspondence to your client, O-Ver-Ceans has referred to an opinion from their legal counsel based upon the liability limit of the U.S.'s Carriage of Goods by Sea Act.

Question #2

Colorado Caustic (C.C.) and Badhwas Imports, Ltd. (B.I.) had been negotiating the sale of caustic soda for several months when C.C. received this fax from B.I. on November 15, 1960.

Please ship 10 tons of caustic soda by December 31, 1960. Our agent in N.Y. informs us that labor problems may interrupt shipments to India after that date. We will pay as you demand \$7500 per ton-C.I.F. Bombay. Payment by letter of credit confirmed by Bank of N.Y. upon presentation of clean bill of lading, weight certificate, insurance policy and certificate of origin.

C.C. responded by fax on November 20, 1960:

We accept/ shipment to be made on December 10, 1960 from N.Y. on the Good Ship Lollipop.

On December 5, 1960 C.C. delivered a fully packed and sealed container to the carrier for shipment. As the paperwork was being prepared B.I.'s N.Y. agent arrived at the dock and demanded that he be allowed to inspect the cargo. C.C.'s Transportation Manager refused, stating that the container was carefully sealed and ready for loading. B.I.'s agent left very upset.

Claim A

On December 9, 1960 the container was loaded on board the Good Ship Lollipop and a clean Bill of Lading was issued by the carrier. That same day C.C. presented the documents to the Bank of New York. On December 10, 1960 the Longshoremen's Union of the East Coast went on strike and the Good Ship Lollipop was unable to leave port. Early on December 10, 1960 B. I. sent a fax to C. C. stating "Due to your failure to allow inspection, you have breached the contract and we are informing the Bank of N.Y. not to pay on the Letter of Credit."

Discuss the various legal issues and probable outcome.

Claim B

Assume for the purpose of the following portion of the question that the Letter of Credit is paid. The strike is settled in February of 1961 and the Good Ship Lollipop arrives in Bombay

on March 31, 1961. B.I. brings suit against C.C. in Federal Court in New York for damages incurred as a result of the delay.

Discuss the various issues and probable outcome.

Question #3

In March of 1989, Texas Crude, Inc. (TCI) of Dallas Texas received an order for oil well equipment from Can't Wait Driller's, Inc. (CWD) of the United Kingdom. The terms of the purchase order were 11C.I.F. Port Terminal #6, Kuwait. The purchase order contained a clause on the back stating that the "... U.N. Convention on Contracts for the International Sale of Goods will govern this purchase of equipment and trade terms used within are those as defined by the International Chamber of Commerce, Incoterms. All disputes to be resolved by Arbitration in Kuwait."

TCI responded with an invoice stating "We accept the order. Pay by letter of credit to Texas Crude, Inc., confirmed by U.S. Bank, payable on shipment and presentation of documents. The invoice contained a clause on the back stating that "... sales of equipment under this invoice shall be governed by the Uniform Commercial Code. All disputes to be resolved in the Federal District Court for the Northern District of Texas."

The equipment was shipped and TCI presented documents and received payment. While the vessel was in route, the Iraqi armed forces invaded Kuwait. When the ship entered the gulf region, an Iraqi gunboat seized the vessel as a prize of war. The equipment was never recovered.

CWD contacted the insurance company used by TCI to place a claim. The claim was denied, no war risk insurance having been bought. TCI responded to CWD's claim for replacement equipment that it was not responsible to purchase war risk insurance under the ICC terms unless requested to do so by CWD.

CWD has approached you for advice and wants to bring an action in the Federal District Court for the Northern District of Texas.

Please discuss the legal issues involved.

Question #4

A letter of credit with the date of March 1, 1991 was issued by Bank Two of Glory, Ohio at the request of and the account of its customer, Unlimited, Inc. The letter of credit made available upon the drafts of China Yarn, Inc. "up to \$500,000.00" at "60 days date" to cover Unlimited's purchases of acrylic yarn from China Yarn. It is well known in the garment industry that Chinese acrylic yarn is the purest available on the market.

The letter of credit prescribed the terms of the drafts as follows:

"Drafts to be dated same as Bills of Lading.

Draft(s) to be accompanied by:

1. Commercial invoice in triplicate stating that its covers 100,000 lbs. 100% Acrylic Yarn, Package dyed at \$1.35 per lb., FOB Buyers Plant, Glory, Ohio, U.S.A., Duty Paid.
2. Certificate stating goods will be delivered to buyer's plant duty paid.
3. Inland Bill of Lading evidencing shipment from West Coast Port to Unlimited, Inc., Glory, Ohio."

On the back of the letter of credit was the following clause:

"Except as otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 revision), the International Chamber of Commerce, Brochure No. 400".

China Yarn made several shipments in accordance with the contract and received payments totaling \$375,000.00. On April 27, 1991 China Yarn made a final shipment of yarn worth \$125,000.00. China Yarn wrote up the certificate, credit memorandum and draft called for in the letter of credit. The draft was dated April 28, 1991 and drawn on Bank Two by China Yarn payable to itself. The commercial invoice was prepared by China Yarn reading "Imported Chinese Acrylic Yarn."

The draft was presented for payment on May 10, 1991. You work in Bank Two's legal department and have been asked to review the documents and prepare an opinion letter to the Manager of the International Division on whether the draft should be honored.

Question #5

Your new client, A.B.C. Exports, Inc. has approached you for legal advice. Various distributors and buyers have asked them to use the new U.N. Convention as the governing law in their contracts.

In the time remaining, advise your client by comparing and contrasting the provisions of the Uniform Commercial Code with the United Nations Convention on Contracts for the International Sale of Goods including, but not limited to, the following topics:

- 1) Scope
- 2) Contract Formation
- 3) Seller's Remedies
- 4) Buyer's Remedies
- 5) Risk of Loss (Limit U. C. C. trade terms to CIF & FOB)

In addition to specific comparisons, make some general observations and comments in your answer.