

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination, November 2024

Semester-VII

(Trade & Investment Law Hon's)

Subject: Law of Export Trade

Time: Three Hours

Marks- 100

Instructions:

1. Answer any five questions.
2. Bare Acts are not allowed.
3. Try to answer the questions citing the relevant provisions and case laws.

Q.1)

"The need to create internationally uniform rules for contracts linked to more than one country designed to transcend national borders in order to maximise the utilisation of resources and create certainty has been recognised for almost a century ago. Various attempts to make these rules uniform and certain had been made. But most of these treaties had not been seen so many countries ratifying the conventions. Only the ratification of international commercial treaty accelerated once Convention on International Sale of Goods (CISG) came into existence." Comment and analyse the statement in the light of advantages and general principles of CISG.

(Marks 20)

Q.2)

Plaintiff runs a vine nursery in Austria dealing, inter alia, with the breeding and refinement of vines as well as the sale of these vines. In the grafting process, the [plaintiff] uses a special wax in order to protect the vines from drying out and in order to reduce the risk of infection. The wax, which plaintiff also in part resold, was purchased by [plaintiff] for many years from the defendant, whose owner also runs a vine nursery. The defendant in turn obtained the wax from the F.W. Company. The manufacturer of the wax was the company S. Werke GmbH.

In a letter dated January 18, 1994, plaintiff asked defendant, as in previous years, to submit an offer for "about 5,000 kg black vine wax." With reference to this letter, the defendant offered to plaintiff, in a letter dated January 21, 1994, 5,000 kg of "black vine wax" at the price of DM [Deutsche Mark] 5.43 per kilogram. On January 31, 1994, plaintiff placed such order.

The wax which was thereupon delivered to plaintiff was a type of wax newly developed by S. Werke, as requested by defendant. Defendant had neither actually received nor accepted the goods prior to delivery to plaintiff. The delivery took place in the original

packaging directly from the manufacturer, S. Werke, as requested by defendant via the F.W. Company.

Plaintiff partially used the wax for the treatment of its own vines. In addition, plaintiff also sold the wax and vines which had been treated in its nursery with the wax to other nurseries which, in turn, treated their vines with the wax and also delivered vines that had been treated with the help of the wax to other customers.

In a letter dated June 16, 1994, plaintiff gave notice of the defective wax to defendant and complained of major damage to vines treated with the wax. In the lawsuit at issue, plaintiff demands the value of sA [Austrian Schillings] 14,146,348.40 in damages from the defendant. Defendant refuses to compensate [the buyer]. [The defendant] attributes the alleged damages to frost and argues that it is exempt from any liability as an intermediary pursuant to Article 79 of the CISG because the reasons for the damages are out of its control. In addition, [defendant argues that] the asserted damages are excluded by its general terms and conditions of sale.

The *Landgericht* [Court of First Instance] dismissed the complaint. Upon the appeal of the plaintiff, the *Oberlandesgericht* [Regional Appellate Court] held that the complaint presented a valid cause of action and remanded the case to the *Landgericht* for further hearings on the amount of damages. The appeal of defendant argues against this and requests the reinstatement of the *Landgericht* judgment.

Argue and decide.

(Marks 20)

Q.3)

Sidanish & Co.' ["the seller"] sells grapes to another company named 'Chadanya Wines' ["the company"] which after processing it, sells wine to their buyer called 'Krishreya Alcohols' ["the buyer"]. The seller had financial difficulties and sent a confirmation order to the buyer stating a condition that they could only deliver the grapes at a particular place X, other than the place of business of the company. The seller would be completely liable for all damages in case such delivery is not made at place X at the specified time. The delivery was to be governed by the Incoterm DDP. The buyer signed the confirmation order and returned it to the seller through the company. The seller delivered grapes to the Company at place X and even sent invoices to the buyer showing such deliveries. These invoices mentioned the place of delivery as the place of business of the company. Due to loss of certain key employees, the company became bankrupt, as a result of which, it could not collect the grapes to process the wine. The grapes rot and lost the quality standards for which the buyer had contracted. Krishreya Alcohols refused to pay the purchase price to Sidanish & Co. as they did not receive the wine. Sidanish & Co. denied this contention and brought this matter to the Court.

Argue and decide.

(Marks 20)

Q.4)

“A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.” Critically examine the statement in the light of Article 25 of the CISG.

(Marks 20)

Q.5)

- a. Discuss the subject matter of international sales contract. How do you define goods for the purposes of international sales contract? Why have sales of stocks, investment securities and negotiable instruments have been excluded from the preview of Convention on International Sale of Goods?
- b. What factors are taken into account when determining whether the seller fulfills mere ancillary obligations of a sales contract or whether its duty is to perform a mixed contract which does not fall within the scope of the CISG in its entirety?

(Marks 10+10)

Q.6)

Write short notes on **two** of the following:

- (a) Avoidance of contract under CISG
- (b) Hierarchy of principles in terms interpretation of CISG
- (c) Open price term sales contract

(Marks 10+10)