



Benjamin Gottlieb

HS 2022

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## **International Sales Law (CISG)**

### **Exam**

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**Duration:** 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 2 pages and 4 questions.

**Notes on marking**

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	20% of total points
Question 2	30% of total points
Question 3	30% of total points
Question 4	20% of total points

**We wish you a lot of success!**



**1. A Belgian seller and a German buyer concluded an oral contract for the sale of a horse. The animal was to be delivered 'free farm'.**

- a) Is the CISG applicable in this case?
- b) Assuming it is
  - where is the place of delivery?
  - when does the risk pass to the buyer?
  - who has to carry the transportation costs?

[cf. CISG-online 609]

*Note: Germany and Belgium are CISG contracting states.*

**2. Analyze the case below. Is the CISG applicable in this case? Assuming it is, what are the buyer's remedies? Can the buyer avoid the contract? Was the choice of forum clause validly concluded?**

A German seller sold a used packing machine to a Spanish buyer for the price of EUR 320,000. In the written order confirmation, the seller included a reference to its standard conditions of sale, which were to apply as displayed on the seller's website. The standard conditions were not attached to the confirmation.

The standard conditions of sale contained (i) an exemption clause, which excluded any liability for defects of used equipment and (ii) the following applicable law and forum selection clause:

*9.1. For the legal relations between the parties the law of Switzerland shall exclusively apply. [...]*

*9.3. The venue of jurisdiction for all present and future issues arising from the business relation, [...], shall be Zurich, Switzerland.*

Three days after delivery, it becomes apparent that the machine can only be put into operation with the assistance of outside experts because of certain defects. The buyer immediately notifies the seller, giving details of the defects.

[cf. CISG-online 617 / 1906]

*Note: Germany and Spain are CISG contracting states.*

**3. Analyze the case below. What are the rights and remedies of the buyer and the seller, respectively?**

A Spanish seller and a Swiss buyer concluded a contract for the supply of five different raw food products to be used in the production of food items to be sold in Switzerland. The contract specified that the products had to be certified and approved by Bio-Suisse, i.e. that Bio-Suisse had to issue certificates for these goods. During the negotiations, the



seller showed samples of three of the products to the buyer who only took a quick look at them.

As of the date of the delivery of the goods, the buyer had not yet received the relevant certificates. Accordingly, the seller declared that he will not pay the purchase price until the certificates were delivered and reserved the right to claim damages for the late delivery.

After 3 weeks, the buyer was able to send all the certificates to the buyer. However, the buyer still refused to pay, because it requested that additional specifications of the goods (nutritional and microbiological data of the food products) be handed over to it. The buyer claimed that these specifications had to be reported to the Swiss authorities to minimize hazards to the health of the consumer and that this rule applies to anyone who manufactures, processes, handles, stores, transports or distributes food in Switzerland. In any event, it declared set-off with the damages it suffered for the late delivery.

[cf. CISG-online 2468]

*Note: Spain and Switzerland are CISG contracting states.*

**4. Analyze the case below. Is the seller exempted from performance? Which arguments speak in favor and which against an exemption?**

An American buyer that deals in used railroad rail bought 18,000 metric tons of used Finnish rails from a German seller. The rail was to be shipped from the port of Helsinki in Finland. It takes approximately three to four weeks for ships loaded with rail to travel from Helsinki, Finland to the United States. Delivery had to occur by December 31, 2021.

The German seller failed to deliver by that time, but claimed that its failure to perform should be excused because it was prevented from shipping the rail by the fact that the Helsinki port unexpectedly froze over on approximately December 1, 2021.

In a typical winter, the Helsinki port does not freeze over until late January, and such freezing does not prevent the vessels from entering and exiting the port. Ice breakers are normally used to allow for shipping. The winter of 2021 was the worst winter in Helsinki in almost twenty years and ice interfered with shipping already in mid-November. Even the icebreakers were stuck in the ice. This notwithstanding, a ship of the seller managed to leave port on 20 November 2021.

[cf. CISG-online 925]

*Note: Germany and America are CISG contracting states.*