

Kansainväliset sopimukset 32E25100 6 cr

CASES

Initial group work cases

1. Conclusion of contract, non-complying answer

In an international business trade relationship, the same as that in cases 5 and 7, the Finnish buyer Jalonojan Juusto Oy sends to the French seller Fromagerie Général Ardennes s.a. a reply to the offer made by the latter, in which it explains its acceptance of the offer. However, instead of the letter of credit mentioned in the offer, the buyer suggests another method of payment, payment by cheque. Please give a reasoned report on whether the agreement is born.

2. Smart Contract

Smart contracts (SC) are self-enforcing computer programs, which can create legally binding rights and obligations to their parties. As digital programs, based on the *blockchain* (BCT) consensus architecture, they will self-execute when the terms of the agreement are met, and due to their decentralised structure are also self-enforcing and tamper-proof. At its best, SC may change the legal environment from what it is restrictive, antagonistic, contentious, competitive, divisive and costly, into a self-organizing, responsible, responsive and collaborative one.

On the other hand, the grounds for the lawfulness of interactions being automatized are by no means perfect as concerns consent. There is no room for alternative interpretations because a machine does not really understand in the sense of a state of mind with all its possible variations, even code language. In agreements fixed onto BCT on the basis of a human mistake, fraud or at a gunpoint, for example, execution would be inevitable. Contract law rules on e.g. formation of contract and liabilities in cases of breaches of contract are not automatically implemented in the programs, and almost any possibilities of implementation still remain to be assessed.

Try to outline the current situation of SC from the point of view of traditional and developing contract law. Your focus could be e.g. on fitting the general principles of contract law or rules on formation of contract and contractual liability with smart contracts, or on the possible legislative approaches to smart contracting. This may include also digital platforms as a resource in opening contracting interfaces to third parties, as happens e.g. in transfer of payments.

If you like, you can start from the existing legal and methodological background. This includes: (a) *Contract law* (proactive law, relational contract, contract as a process – dynamic contract, digital signatures, formation of contract, liability rules, consumer protection, disclosure duties), (b) *Business law, business economics and arts* (contract management, strategic contracting and contract techniques, legal design and visualisation of contracts), (c) *Business law & technology*: blockchain technology and its legal implications (allocation of trust based risk and liability positions, disclosure duties; Internet of Things (IoT), automated transactions and Big Data, data protection

and data security, digital signatures) (d) *Procedural law* (enforcement of contracts, especially online dispute resolution ODR) and (e) *constitutional law* (rule of law, access to justice and legal remedies).

3. Disclosure duties on the conclusion of a contract

According to an agreement on successive deliveries, Skaraholm Skofabrik Ab, a Swedish company, should deliver at the beginning of each month for a period of one year the x pairs of rubber boots to a Finnish buyer, Kauvatsankylän Kenkä Oy, in accordance with the specifications provided by the purchaser for each batch. Contract negotiations had shown that boots needed by the purchaser should be able to withstand some corrosive substances. Because of this, the seller had proposed the use of a certain raw material component in the manufacture of footwear, and the buyer had made known its confidence in the resistance of the footwear. After the first batch delivery, however, it appeared that the resistance was inadequate. Please take the role of an expert nominated by parties and provide a summary of the conflicting views of parties and a reasoned proposal for the solution of the situation. Also report the legal remedies available to the parties.

4. Conclusion of contract; entire contract clause

After getting acquainted with the brochures of the seller and with the object of purchase, Finnish Air Rescue Services (ARS) Ltd is buying from Augusto & Well (AW) Ltd, the English manufacturer, a helicopter which has been used in air shows. The buyer is going to use the helicopter for rescue activity. Prior to the conclusion of the contract the buyer asks the seller whether the helicopter is suitable for the installation of rescue equipment. AW answers that this will be checked and taken care of. In contract negotiations AW suggests that a "normal" Entire Agreement clause be included in the contract, with the wording: "This contract constitutes the entire agreement and understanding between the parties. There are no understandings, agreements, conditions, reservations or representations, oral or written, that are not embodied in this contract or that have not been superseded by this contract."

The helicopter then delivered to the buyer is not suitable for rescue equipment. The seller says that the helicopter is provided according to what has been agreed, but the buyer considers this the seller's breach of its promise of the rescue equipment suitability of the helicopter.

Analyze the situation from a legal standpoint, from the point of view of the seller and the buyer, and try to find a resolution of the dispute.

(Case 8 below is based on the same contractual relationship.)

5. Clauses of limitation of liability and liquidated damages

In the agreement with the Finnish purchaser Jalonojan Juusto Oy, the French company Fromagerie Général Ardennes S.A. is committed to delivering a batch of cheese to the buyer by 30 May. The

delivery does not take place by the end of June, resulting in major damage to the buyer who is committed to selling the cheese to a department store chain in early June. The department store chain notifies the purchaser that it cuts off the business relation because of several similar delays. The damage to the purchaser for the loss of the client is 100,000 euros a year. The purchaser intends to request an indemnification from the seller. What are the possibilities of the buyer to get compensation and how they could be affected by contract terms? Consider the situation in accordance with the following three options: (a) the agreement contains not a limitation of liability clause or a liquidated damages clause, (b) there is a limitation of liability clause but no liquidated damages clause in the contract, (c) in the contract there is not a limitation of liability clause but a liquidated damages clause, and (d) the contract contains a limitation of liability clause, as well as a liquidated damages clause. Ask yourself, what kind of a limitation of liability clause would be appropriate from the point of view of the different parties, or whether it would be most favourable for either of them to leave the clause out of the agreement. Present the views of both the seller and the buyer and the solution proposal according to the various options. (Cases 1 and 7 are based on the same contractual relationship.)

6. Economic optimization of contract; risk aversion of the party

The Finnish medicine factory Medicina Oy, as the buyer, and the US equipment manufacturer Healthmatics Co., as the seller, are agreeing upon the delivery of a pharmaceutical factory automation system. The seller proposes in the negotiations that the price should be determined in accordance with the price level of the date of delivery, while the buyer would like to apply the date of agreement price levels, according to which the price would be 3.2 M USD. The effects and probabilities of price-level changes cannot be precisely determined. Forward agreement (hedging) cost is 0,4 M USD and the buyer is looking for added value of the trade agreement, the calculatory present value of which according to the price level of the contracting date is of 0.3 M USD, while that of the seller is of 1 M USD. What sort of price terms and possible other arrangements would make the agreement interesting to both parties if it is assumed that the parties want it to do with each other? Assume that (a) the parties are risk neutral, (b) the purchaser is risk seeking and the seller risk averse, and (c) the relationship of the parties to the risk is the opposite of that in paragraph (b), and (d) both parties are risk averse.

7. Letter of credit; bill of lading

In the agreement with the Finnish purchaser Jalonojan Juusto Oy (JJ), the French company Fromagerie Général Ardennes S.A. (FGA) is committed to delivering a batch of cheese to the buyer by 30 May. (Cases 1 and 4 are based on the same contractual relationship.) In continued negotiations the parties agreed upon the application of letter of credit (documentary credit) as the payment method. After this, JJ opened an irrevocable confirmed at sight documentary credit in favor of FGA. The sales contract contained a reference to the Incoterms conditions: Delivery of the Goods shall be made CIF (Helsinki) 26th Nov 2013, and the contract for the carriage (transport) of the cheese was concluded by FGA with Frenchlines Ltd (FL), a French shipping company. According to the charterparty, no liability was imposed on the carrier for slight negligence in handling and stowing the goods.

The bill of lading handed by the carrier to the shipper on loading contained the mandatory Paramount clause with references to exemptions from liability adopted by the Hague-Visby rules. The bill of lading was a clean one: it stated that the goods are in apparent good order and condition.

When discharged at destination upon arrival of the delivery, some packages were flawed, and part of the cheese was spoiled.

Account for the liabilities of each party (FGA, JJ and FL) for the arisen losses. Can JJ prevent his bank from paying the documentary credit for the poor quality of the cheese?

Additional (reserve) cases

8. Drafting a contract clause. Changed circumstances

It is assumed that according to the agreement between the the Finnish Air Rescue Services Ltd (ARS) and the English manufacturer Augusto & Well (AW) Ltd, which is referred to also in case 3, the buyer would be charged with part of renovation work on the rescue helicopter to be carried out in the seller's factory in England, to render the helicopter compatible with rescue equipment. The buyer would want to reckon for a change with the British or EU safety standards for which the planned changes would perhaps no longer be acceptable. The buyer would want to ensure the binding force of the agreement with a contract provision requiring the Contracting Parties in such a situation to amend the plans to comply with the new safety standards. The seller, on the other hand, may not be willing to accept that, but rather to be able to get rid of the agreement in the new situation. Please assess the situation from the point of view of the buyer and the seller on the basis of various types of contract clause options, considering also if there is at all need for special contractual conditions for the impact of the change in circumstances. Prepare also an appropriate contract text for the situation.

9. Drafting a contract clause; guarantee clauses; economic optimization of contract

The Finnish forestry company Forest Paper Oy is negotiating a paper machine order with Pulp Machinery Ltd., a Finnish company as well. For the buyer, it is important that the machine is put to use in production continuously, on the day when the old machine will be handed over to a foreign buyer. Production outage would result in a loss of a class 10,000 € per day, to which must be added the contractual penalty of 5.000 €/day claimed by a foreign paper purchaser. In addition, it should be ensured that the new machine meets the production volume x of the ton /day. The agreement should also offer protection against production interruptions for the first year. The additional advance investments required in buyer's paper mill to exploit the production capacity of the new machine are about 1.5 M €. For the purposes of the negotiations between the seller and the buyer, please try to determine what kind of contract terms could best safeguard the buyer's intentions. If the parties are going to make a preliminary agreement for the event of not being able to conclude the final contract, what would be the optimal contents of a contractual penalty clause in the

preliminary agreement? Also in general, take into account wherever possible the opportunities of the economic optimization of the contract.

10. The structure of the official legal remedy system in international contractual relationships

Outline the structure of the dispute settlement system based on the process (a) in court and (b) in arbitration from the point of view of international contractual relations of a Finnish company. Take into account the determination of jurisdiction, choice of law and recognition and enforcement of judgments. View the problem from the point of view of the three types of contracts: business trade, consumer sales and a business agreement between companies on project export. Take into account also the possibility that a foreign partner is hesitant to boilerplate-type contract terms, for example, terms on conflict of laws and conditions governing the jurisdiction of the Court.

Please find the material for the preparation of the case on the pages of the course, especially slide sets 5 (contractual liabilities in a sales contract) , 6 (choice of law, international competence of courts), 7 (comparison of Nordic and Common Law based contract law systems) and 10 (international legal systems).

11. The risks of dispute concerning the birth of a contract and how to get prepared for them

(To be supplemented later in need)