

JUS5230 International Commercial Law, Spring 2022

Information

In the spring semester 2022, the exam will be a 24 hour home exam, maximum 2500 words on master's level.

Footnotes should be included in the word count of the main text. Not included in this count: front page (title etc.), summary, table of contents and references (bibliography). (If relevant for the paper).

Assignments/papers with text exceeding the word limit will not be accepted.

JUS5230 Exam S22

Industrimaskin AS is a Norwegian company active in the production of industrial equipment. For the past ten years, Industrimaskin AS has been purchasing components from an English component producer, Components Ltd, under a long-term supply agreement that is about to expire.

Some weeks before the supply agreement expires, the CEOs of the two companies have a meeting to discuss renewal of the contract for five new years. The two CEOs agree that the renewed contract will have the same terms and conditions as the supply agreement that is about to expire, with an adjustment of the price.

However, the CEO of Industrimaskin AS requests to change the frequency of the deliveries: instead of monthly deliveries (on the 1st of every month), deliveries should be made twice a month: on the 1st and on the 15th of every month.

The CEO of Components Ltd finds it difficult to meet this request, because it would require that the production plan be changed, and this would affect deliveries to other clients.

After intense negotiations, the two CEOs agree to deliveries twice a month. This is recorded in the minutes of the meeting, which are signed by both parties.

After the meeting, Industrimaskin AS sends a signed renewed contract to Components Ltd; Components Ltd signs it and sends it back.

The text of the renewed contract reflects most of what the two CEOs had agreed in their meeting, but does not reflect the change in the frequency of the deliveries. The renewed contract still provides for deliveries once a month.

Components Ltd assumes that Industrimaskin AS at last understood all the good arguments that the CEO of Components Ltd had presented to avoid changing the frequency of the deliveries, and that it therefore decided to not request more frequent deliveries after all. Therefore, Components Ltd does not change its production plan and prepares to perform the renewed contract with monthly frequency.

The renewed contract enters into force, and the first delivery is made in accordance with the contract on the 1st of the month. Industrimaskin AS expects a new delivery on the 15th, but the delivery does not arrive.

Industrimaskin AS requests delivery in accordance with the agreement contained in the signed minutes of the meeting between the two CEOs. According to Industrimaskin AS, the minutes of the meeting are a binding agreement between the parties, that supplements the renewed contract.

Components Ltd replies that deliveries shall be made in accordance with the renewed contract, and that the renewed contract does not reflect the minutes of the meeting.

The renewed contract contains an Entire Agreement clause with the following wording: "This Contract contains the entire agreement between the parties hereto and supersedes all prior negotiations, representations, undertakings and agreements on any subject matter of the Contract."

The renewed contract does not contain a choice of law clause.

Please answer the following questions:

- Which law governs the contract? Please explain what sources shall be used to determine the governing law. You can assume that the content of these sources is equivalent to the Rome I Regulation.
- Would deliveries have to be made twice a month if the contract was subject to English law?
- Would deliveries have to be made twice a month if the contract was subject to Norwegian law?
- Would deliveries have to be made twice a month if the contract was subject to transnational law?
- Assuming that the dispute is resolved in arbitration: the arbitral tribunal determines that English law is applicable, but applies it wrongly and comes to a result that is not correct under English law. Does the losing party have remedies against the award? You can assume that the UNCITRAL Model Law applies.
- Assuming that the dispute is resolved in arbitration: the arbitral tribunal determines that the relevant national laws give inconsistent results and decides the dispute in equity, without having regard to any law. Does the losing party have remedies against the award? You can assume that the UNCITRAL Model Law applies.