

1 JUR1230 assignment V21

Exam JUR1230 International Commercial Law - Spring 2021

Starseneca is a multinational pharmaceutical company with headquarters in England and production facilities in many different countries. In the course of the year 2020, it develops a vaccine against a contagious disease that worries sanitary organisations in many countries.

Before the product is fully developed, in April 2020, an English hospital enters into a contract with Starseneca for the purchase of one million vaccines as soon as the product is developed and approved by the authorities.

After the product has been developed, in September 2020, a German hospital enters into a contract with Star Seneca for the purchase of one million vaccines to be delivered within three months after the product is approved by the authorities.

The product is approved in December 2020.

Starseneca has a production capacity of two million vaccines every quarter, if all its factories work at full capacity. However, some of the factories do not run at full capacity, because the production equipment needs an upgrading. Therefore, the rate of production is lower than expected, and Starseneca cannot deliver to both hospitals according to their respective contracts.

At the end of March 2021, Starseneca has delivered in full the agreed volume of vaccines to the English hospital, and only a reduced volume to the German hospital.

Assuming that you are a lawyer for the German hospital, please analyse the legal position of your client.

1. You can assume that neither of the contracts has a choice of law clause. Which law shall be applied?
2. Is the necessity of upgrading the production equipment an event that can be considered to be a force majeure circumstance?
3. Assuming that it is a force majeure circumstance, can it be invoked as an impediment to the performance of the contract?
4. Assuming that it can be invoked as an impediment, what are the consequences on the performance of the contract?

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