

1 JUS5230 assignment V21

Exam JUS5230 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 Starseneca 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?

Assume now that the contract with the German hospital has an arbitration clause, which makes reference to the UNCITRAL Arbitration Rules.

The German hospital starts arbitration proceedings requesting damages for breach of contract.

The arbitral tribunal considers that the contract is international, and does not find it appropriate to apply a national law. Instead, it applies the UNIDROIT Principles.

The arbitral tribunal finds that the principle of good faith is very strong under the UNIDROIT Principles. It reasons that insisting on an accurate performance of the contract would be against the principle of good faith, because the product was new and it should have been expected that there would be some initial difficulties. On this basis, the Arbitral Tribunal finds that there was no breach of contract.

Assuming that the arbitral award was rendered in a country that has adopted the Model Law, please analyse the position of your client:

5. Did the arbitral tribunal have the power to apply the UNIDROIT Principles?
6. Assuming that it did not have this power, what law should have been applied?
7. Assuming that it did not have this power, what remedies against the award are available to the client?
8. Assuming that it had this power, did it apply the UNIDROIT Principles correctly?
9. Assuming that it did not apply them correctly, what remedies against the award are available to the client?

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