

# **International Contracts and Sales (2/2)**

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# Obligations of the Parties

## The seller

Right goods (quantity/quality) time and place

Important to determine in the contract

Samples, warranties & 'fit for specific purposes'

Oral agreements (procedural aspects)

Public law requirements (esp. when knowledge)

If no clear specification

Delivery within reasonable time

When handling to the first (independent) carrier

Place of delivery and jurisdiction

Passing of the risk (accidental loss of the goods)

# Some Incoterms (2000)

EXW EX WORKS (...named place)

FAS FREE ALONGSIDE SHIP (...named port of shipment)\*

FOB FREE ON BOARD (...named port of shipment)

CFR COST AND FREIGHT (...named port of destination)

CIF COST, INSURANCE AND FREIGHT (...named port of destination)

CPT CARRIAGE PAID TO (...named place of destination)

DES DELIVERED EX SHIP (...named port of destination)

DEQ DELIVERED EX QUAY (...named port of destination)

# Obligations of the Parties

Conformity is determined at the passing of risk

Also when discovered later

The buyer

Timely and proper notice of breach

Must be specified properly

Two-year cut-off rule

Unless otherwise agreed (e.g. warranties)

Examination within as short a period as possible

Considering the nature of the goods

Payment performance and take delivery

Seller must preserve the goods if failure to take delivery

# Remedies for breach

## Specific performance

(Complete) failure to perform

Unless avoidance is used or specific performance is not available under the court's law

## Re-delivery

Fundamental breach (non-conform delivery)

Timely notice

## Repair

Any breach

Unless unreasonable

# Remedies for breach

## Avoidance of the contract

=> No performance obligations

Requires fundamental breach

Forseable substantial detriment

E.g. Non-conforming goods

Delivery of 5 out of 11 computer components (no avoidance)

Timely notice (reasonably time after realizing)

Dispatch (not necessarily reach)

Seller's right to cure if not unreasonably inconvenience

# Remedies for breach

Nachfrist notice (only non-delivery)

Time is not of the essence by default

Anticipatory breach

- Avoidance if clear indication of total repudiation

- Suspension of performance

  - Not performing substantial part

    - Immediate notice

Avoidance => released from obligations

- Subject to damages

# Remedies for breach

Proportionate price reduction

Delivery not conforming with the contract

Damages for breach

May be claimed for any breach

Both seller and buyer

The loss suffered (expectation interest)

Only foreseeable loss

Not necessarily actually foreseen

Obligation to preserve goods

No recovery for avoidable loss

# Case

A UK company gets from a Danish company an offer to buy 500 tons apples at 5 EUR per kilo to be delivered 17 December 2004. It is indicated that the offer must be accepted within a week.

The UK company sends an accept by mail after 5 days. The accept arrives after 9 days. The Danish company ships the apples after receiving the accept.

The apples arrive on 23 December 2004. The UK company informs that they will only pay 3 EUR per kilo due to the late delivery.

The Danish company offers to sell the apples at 4 EUR per kilo, but get no response until 4 January, where the UK company inform that the apples are not in good condition ('useless'). The UK company refuse to pay anything for the apples.

The Danish Company sues the UK company.

Where?, which law? what can be claimed?

# Thank you for your attention!

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