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ASSESSMENT ITEM 2

Weighting: 50%

Length: Approximately 3000 – 3500 words

Objectives

This assessment item relates to learning outcomes 5-12 as stated in the course profile and addresses material covered in modules 5-10 (weeks 6-12) of the course. Answer all questions.

Question 1

20 Marks

In January 2016, Ferrum Corp, a Queensland based-company entered into a contract – subject to Australian law, with Sino Steel, a Chinese steel milling firm for four 40,000 tonne shipments of high grade iron ore at US \$40 per tonne from Queensland in the first weeks of February, March and April 2016 respectively. Under the contract, there was also a \$2 million per instalment shipping charge. Each instalment charge was payable a week in advance by Ferrum Corp setting up a letter of credit with Queensland Bank. There was a minimum requirement of a week between payment and the earliest possible date for shipment. Ferrum Corp was to self-certify, under the contract, the ore quality for each shipment. Under the contract each instalment was to be delivered to the port of Guangzhou, China, by a Ferrum chartered shipping carrier at Ferrum's expense.

However, subsequent contract execution didn't conform to the hopeful expectations of either party.

Regarding the first shipment:

- Due to internal delays and errors by Queensland Bank, the Bank was 14 days late with the letter of credit. Ferrum relied on that bank delay as an excuse to delay shipment by 14 days to cover up its own 10 day delay in shipment, caused by plant failure.

Regarding the second shipment:

- Owing to a flood, loading in Queensland was delayed by six days.
- Due to a ship loading error at the port, half of the shipment was not of the appropriate ore quality.

Required:

- (a) Outline and discuss each party's likely legal rights and liabilities in relation to the first and second shipments by reference to Australian law and where applicable referring to the CISG.

(15 marks)

- (b) Would Sino Steel be entitled to terminate the remainder of the contract – the April 2016 instalment – and if so what consequences would follow?

(5 marks)

Question 2

20 Marks

As a variation of the facts outlined in Question 1 above, assume that Ferrum Corp and Sino Steel entered into a contract, subject to Australian law, for a single February 2016 iron ore shipment of 60,000 tonnes on the same advance payment terms. A certificate of quality was to be separately issued by a reputable independent company, Gladstone Iron Testing. Sino Steel's bank, Shanghai Bank, was also 10 days late in delivering the requisite irrevocable letter of credit. Due to fraud by a Gladstone Iron Testing employee, a false certificate was issued as to quality. There was also an error by a Shanghai Bank officer, who issued a letter of credit, even though there was not any basis for the issuing of the same.

Required:

(a) How might the parties best cooperate?

(5 marks)

(b) Assuming that only the false certificate issued and that alternatively only the incorrect letter of credit issued, what would be the respective innocent party's legal rights?

(15 marks)

Question 3

10 Marks

There is an extensive banana industry in both Australia and the Philippines. As bananas are grown in differing, complementary seasons in these countries, they would benefit from supporting mutual free trade in bananas. Outline and appraise the applicable GATT/WTO, bilateral and regional free trade agreement (AANZFTA), and WTO sanitary and phyto-sanitary (SPS) Agreement sourced rules which govern the Australia-Philippine banana trade and consider whether Australia can rely on strict SPS-quarantine rules to discourage imports.

Assessment Criteria**Fail**

You will have shown evidence of the following:

- the written expression is poor and difficult to understand
- the answer is poorly organised
- referencing is generally inadequate
- lack of familiarity with the legislation and its application
- failure to identify and address the issues in the question
- reasoning and application demonstrated is poor.

Pass

You will have:

- made a conscientious attempt to address the topic and/or answer the question
- shown evidence of having done the required reading and of having understood the reading
- presented a reasonable argument to back up your conclusions
- demonstrated a reasonable level of spelling and grammatical usage
- used referencing but this may need improvement
- issues that may need to be identified and addressed in more depth.

Credit

You will have:

- addressed the topic and/or answered the question directly
- presented soundly based arguments and backed these up with reasons

- gone beyond description to analysis of key issues
- used the English language well
- shown evidence of reading widely
- demonstrated understanding of the reading
- used referencing that is satisfactory.

Distinction

You will have:

- met the above criteria for a credit
- demonstrated the attainment of a high degree of understanding of the concepts of the course
- demonstrated deep insight into the application of knowledge and skills acquired to complex theoretical and practical situations
- used referencing correctly
- made reference to all appropriate legislation.

High Distinction

You will have:

- met the above criteria for a distinction
- demonstrated the attainment of an outstanding level of achievement regarding the objectives of this course
- demonstrated an interesting and/or original approach/idea/argument
- demonstrated mastery of the relevant referencing system
- ensured conclusions are backed by well-reasoned arguments demonstrating a detailed insight and analysis of issues
- ensured references are made to the appropriate legislation for particular issues.

END OF ASSESSMENT ITEMS



LAWS20062 – International Commercial Law

Assessment Two

S0279063

5th October 2016

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A1:

a1. Outline and discuss the three (3) parties in the first shipment related to legal rights and liabilities.

- **Ferrum Corp.**

Ferrum Corp must inform to the Sino Steel about delay of shipment caused by either delay of letter of credit by Queensland Bank or by plant failure. According to United Nations Convention on CISG (2010), Article 65(2) is about the failure of providing the goods to the buyer on time as in the agreement but the supplier must inform to the consumer of the reason about this failure and must figure out another reasonable time of providing the goods with the buyer, and Article 79 is about the reason of the failure by a third party of reaching agreements, hence, the supplier is exempt from liability. Therefore, Ferrum Corp relies on these Articles to excuse to delay shipment.

Ferrum Corp liability is to ship goods (iron ore) to Sino Steel on time but Ferrum Corp did not due to ten (10) days delay caused by plant failure. According to Commonwealth Consolidated Acts (2016), in section 62 is the supplier needs to guarantee about supply on time, if there has nothing changes in the contract for the supply of the services which is agreed by consumer and supplier.

Therefore, Ferrum Corp had breached the contract with Sino Steel by not shipping the iron ore on time without getting the delay time from Sino Steel.

- **Sino Steel.**

As Sino Steel (buyer) expects to get goods on time as on the agreement but Ferrum Corp did not. Sino Steel can claim remedies from Ferrum Corp because of Ferrum Corp had breached the contract, which was shipment iron ore not on time. According to Fair Trading (2015), the buyer can claim the refund if the party breaches the agreement. Therefore, Sino Steel can claim for refund or might lead to cancel the contract. Similarly to Australian

Competition & Consumer Commission (2016), the buyer can reject the goods and ask for full refund or look for reducing of the goods' price as compensations.

Sino steel liabilities are to update the information about the shipment with Ferrum Corp in order to make clear that iron ore will be shipment on time. According to CISG (2010), Article 49 is the buyer informs the contract to avoid of non-delivery on time.

- **Queensland Bank.**

Queensland Bank had delayed a letter of credit for 14 days because of its internal delays and error. However, letter of credit is to offer the security in term of payment (buyers will pay to sellers) made by bank and also built the trust between buyers and sellers (Australian Trade and Investment Commission 2016). Therefore, Queensland Bank is to prove the payment to buyer that seller will pay. However, as the 14 days delay by Queensland Bank, the bank must inform to the both parties seller and buyer about this issue regarding to let them know about the problem and they will fix it.

a2. Outline and discuss the three (3) parties in the second shipment related to legal rights and liabilities.

- **Ferrum Corp.**

Ferrum Corp had breached the contract again with Sino Steel by delay six (6) days because of flood. Flood is not firms' fail as it is a natural disaster so no one can control it. On the other hand, the cause of delay because of the port quality, therefore, Ferrum Corp can claim from the port (CISG 2010, Article 42(1)) for the cost of goods' quality. According to Commonwealth Consolidated Acts (2016), Article 61(2) is about the guarantee of goods' quality; similarly to CISG (2010) Article 35 is about the seller must deliver goods which are mentioned in the contract (quantity and quality). Hence, Ferrum must take a good care of the quality of goods

for Sino Steel but regarding to the second shipment, quality of half ore shipment was not of the appropriate. That is reason that Ferrum must give this dispute to the port in order to handle this issue.

- **Sino Steel.**

It is similar to the first shipment that Sino Steel did not do anything wrong. However, Sino Steel legal rights and liabilities are similar to the first shipment which is Sino Steel can claim for refund for the goods with inappropriate quality or claim for full refund from Ferrum Corp.

- **Port of Guangzhou.**

There was a flood, which made Ferrum delay for six (6) days, but it was fine because it was not Port's mistake. However, half of the shipment was not of the appropriate ore quality because of error internal of quality of the Port. The Port need to tell to Ferrum about its problem in order to Ferrum keep the ore with standard quality during the Port fix its problem. According to CISG (2010), Article 47(2) is about the seller needs to inform to buyer in term of delay within the period of fixing problem but it depends on buyer accept it or not, if buyer does not accept that notice, buyer can claim remedies for breaching the contract. Therefore, Port of Guangzhou needs to response for the half shipment of ore with inappropriate quality with Sino Steel.

- b.** Sino Steel will terminate the remainder of the contract with Ferrum Corp for several reasons. **Firstly**, Ferrum Corp had breached the contract by delays of the shipment and **secondly**, Ferrum Corp had beached contract, not just only delay of the shipment, is the quality of iron ore. Based on CISG (2010), Article 74 is about the breaching of contract by one party which including loss of profit or suffered by the other party then it is a possible to breach the remainder contract. Likewise, anticipatory repudiation when either party breach the contract related to reasonable time line and can claim any remedy for breach (Uniform Commercial Code 2002). Therefore, Sino Steel has rights to cancel or terminate the remainder

contract with Ferrum Corp because of Ferrum Corp had breached the contract twice and might be happened for the next shipments.

A2:

- a. The parties can go to the courts for solving the dispute but it is to public and it will affect to the parties' reputation and the courts do not give effective result as well as spending more cost to go on courts. Therefore, the best cooperate for the parties should be **Mediation, Conciliation and Arbitration**.

- **Mediation.**

The mediation is about giving ideas of solving the problem much faster and cheaper than going to the courts (Oprea 2016). Moreover, mediators help parties to find alternative ways to get the good outcome, which they might not think about them (Grievance Mediation Service 2010).

- **Conciliation.**

Conciliation is a process of negotiation used by government agencies to solve the industrial issues which involving with employers and employees (The Treasury 2016). It provides several benefits to parties like saving time and cost for solving the disputes between parties (Ackerley 2014).

- **Arbitration.**

Arbitration is one among the best strategies of negotiation between parties to solve the disputes. The significant of the arbitration is the arbitrator has role of a judge with faster and lower cost than courts between the parties (Oprea 2016).

Therefore, the alternative dispute resolution, which including **Mediation, Conciliation and Arbitration**, is negotiation strategies to solve the issues with saving cost and time without going to courts, which is more public. Moreover, these strategies also assist to find the legal solution which mistakes were made by employees.

b. The respective innocent party's (Ferrum Corp) legal rights.

- **Ferrum Corp.**

Ferrum Corp had shipment iron ore to Sino Steel on time based on the contract, which subject to Australian law. The payment supposed to be made a week in advance before shipping by Sino Steel's bank (Shanghai Bank) to Ferrum Corp. However, Ferrum Corp received the letter of credit 10 days late from Shanghai Bank due to problems made by Shanghai Bank officer. Hence, Ferrum Corp did not anything wrong so Ferrum Corp need to claim for restitution for money from Sino Steel because based on Competition of the Consumer Act 2010, Article 259, Sino Steel party damaged the goods, which was offering 10 days late of letter of credit to Ferrum Corp, therefore, Ferrum Corp can seek for remedies.

- **Sino Steel.**

Sino Steel did not make payment to Ferrum Corp through Shanghai Bank; and it was one of reasons that Shanghai Bank could not issue the letter of credit. Therefore, Sino Steel damaged the contract in term of making payment.

- **Gladstone Iron Testing.**

Gladstone Iron Testing, which issuing a certificate of quality of iron ore, did not do anything wrong by itself but its employee did.

- **Employee.**

Gladstone Iron Testing employee had fraud the testing of quality of iron ore so the certificate of iron ore's quality could not be issued (the false certificate issued); and it became another reason that the letter of credit, which issued by Shanghai Bank, was 10 days late.

- **Shanghai Bank (Sino Steel's bank).**

The Shanghai Bank, itself, did not do anything wrong in term of damage the contract but its employee did.

- **Employee.**

By looking at the previous points above regarding to time of issuing the letter of credit to Ferrum Corp, the issues were Sino Steel did not make payment to Shanghai Bank and was fraud of testing the quality of iron ore by Gladstone Iron Testing employee. However, the main real reason about the incorrect letter of credit was because of an error by a Shanghai Bank officer, which means Shanghai Bank officer had done something wrong that lead to have problems of issuing the letter of credit.

For all problems that have been mentioned above, Ferrum Corp can claim for remedies from either Sino Steel or Gladstone Iron Testing based on Competition and Consumer Act 2010 – Schedule 2. Ferrum Corp can seek for compensations from Sino Steel in term of payment as Sino Steel did not make payment to its bank and it made problems of issuing the letter of credit. However, Sino Steel can against with Shanghai Bank under reason of bank officer made some error of issuing the letter of credit. On the other hand, Ferrum Corp can seek for remedies from Gladstone Iron Testing in term of its employee had fraud that lead to a false certificate quality was issued, which is the breach of damaging of the iron ore quality.

A3:

- **Outline and appraise the applicable of General Agreement Tariffs and Trades (GATT) / World Trade Organization (WTO), bilateral and regional free trade agreement (AANZFTA).**
 - **GATT** is international agreement regulating for trading among 153 countries and it is also resolving international trade problems (Goodson 2014). This international agreement also reduces the tariff duties among the

contract nations. Moreover, GATT is normally negotiations on specific trade troubles which influencing to commodities (Encyclopaedia Britannica n.d) and also negotiation process. The contracting between parties will provide advantages like reduction the level of tariff for imports and exports. Therefore, in both ways either imports or exports from Australia to the Philippines or from the Philippines to Australia, the tariff is not a barrier as based on GATT agreement which assists to reduce taxes as well as based on the agreement between these two parties. Moreover, **World Trade Organization (WTO)** also provides the process of negotiation in term of reductions of the trade barriers and enforces trade rules between countries. **WTO** is working on creating the official documents issued by the GATT. Hence, GATT / WTO is an official international trade agreement regarding to reducing taxes of imports and exports between parties (countries).

- **AANZFTA (ASEAN Australia New Zealand Free Trade Agreement)** is a free trade agreement negotiation which involving many countries across the globe which also has Australia and Philippines that had entered on 1 October 2015 (Department of Immigration and Border Protection 2016). Furthermore, this agreement is also involving on reduction tariff which makes it easier for those who wants to cooperate with its members by getting this advantages.

- **WTO Sanitary and Phytosanitary (SPS) Agreement.**

Sanitary and Phytosanitary (SPS) Agreement is the policies that prevent the diseases from overseas which could cause to people, plants, animals as well as environment (Biosecurity Australia 2010). This agreement is significant looking after human health, animals' health as well as other factors. In order to achieve this agreement, there have basic rights and obligations that members must follow. These regulations are to protect human, animals or plant life or health by having measurement on sanitary or phytosanitary. Hence, this is a

valuable agreement in term of protection lives on earth. Moreover, this is also an indirect and a direct to improve the level of sanitary. For direct influence is the banana industry must make sure that its products muse be clean, sanitary, no disease that can negative influence to lives. For indirect influence is on banana industry's employees, as they must sanitary all the time when they are at work then it will become a habit.

- **Considering whether Australia can rely on Sanitary and Phytosanitary (SPS) – quarantine rules to discourage imports.**

Australia can depend on strict SPS – quarantine rules to discourage or reduce imports. However, this regulation might be influenced to countries that are not WTO/GATT members only as those countries do not need to follow these rules. Another reason is those are not become member of GATT/WTO because of those countries might not eligible to be a member as they might not have enough standard of sanitary for exporting their goods to overseas as well as hardly to get free trade agreement as their tariff level might be higher than those who are GATT/WTO members. However, Australia cannot 100% rely on strict SPS – quarantine rule to reduce imports from other countries that are GATT/WTO members because they are already had free trade agreement.

References

Ackerley, N 2014, 'Employment advice: conciliation', *Veterinary Nursing Journal*, vol. 29, no. 7, pp. 232-233, Academic Search Complete, EBSCOhost, viewed 4 October 2016.

Australian Competition & Consumer Commission (2016), *Consumers' rights & obligations*, viewed 5 October 2016, <https://www.accc.gov.au/business/treating-customers-fairly/consumers-rights-obligations>

Australian Trade and Investment Commission 2016, *Getting paid*, viewed 5 October 2016, <http://www.austrade.gov.au/Australian/Export/Guide-to-exporting/Getting-paid>

Biosecurity Australia 2010, Extension of existing policy for the importation of fresh mango fruit from the Republic of the Philippines to Australia – Inclusion of the additional growing area of Davao del Sur, Mindanao Island, *Australian Government*, viewed 5 October 2016, http://www.agriculture.gov.au/SiteCollectionDocuments/ba/plant/jun10-dec10/Davao_del_Sur_mango_policy_ext.pdf

Commonwealth Consolidated Acts 2016, *Competition and Consumer Act 2010 – Schedule 2*, viewed 5 October 2016, http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html

Department of Immigration and Border Protection 2016, ASEAN Australia New Zealand, *Australian Government*, viewed 5 October 2016, <https://www.border.gov.au/Busi/Free/ASEA>

Encyclopaedia Britannica n.d, General Agreement on Tariffs and Trade (GATT), *International Relations*, viewed 5 October 2016, <https://www.britannica.com/topic/General-Agreement-on-Tariffs-and-Trade>

Fair Trading (2016), *Supporting local communities*, viewed 5 October 2016, http://www.fairtrading.nsw.gov.au/ftw/consumers/contracts.page#Delays_in_delivery_and_non-supply

Goodson, MJ 2014, 'GATT/WTO', *Duke University School of Law*, viewed 5 October 2016, <https://law.duke.edu/sites/default/files/lib/gatt.pdf>

Grievance Mediation Services 2010, *Dispute Resolution Journal*, vol. 65, no. 4, pp. 9-10, Health Business Elite, EBSCOhost, viewed 4 October 2016.

Oprea, G 2016, 'Business Negotiation, from Mediation to Arbitration', *Economic Insights – Trends & Challenges*, vol. 82, no. 2, pp. 73-85, Business Source Complete, EBSCOhost, viewed 4 October 2016.

The Treasury 2016, 'Types of ADR – Mediation; Conciliation; Arbitration; and Counselling', *Australian Government*, viewed 5 October 2016, <http://www.treasury.gov.au/Policy-Topics/Business/Small-Business/Legal-Topics/Dispute-Resolution-Proceedings/Types-of-ADR>

United Nations 2010, *United Nations convention on contracts for the international sale of goods*, viewed 06 September 2016, <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>

Uniform Commercial Code 2002, *2-610. Anticipatory Repudiation*, viewed 5 October 2016, <https://www.law.cornell.edu/ucc/2/2-610>