

MT1003 – TRADE PRACTICE & INCOTERMS – SEMESTER 1 EXAMINATION 2018-2019

Q1a. Consideration is one of the four elements that must be present in order for a contract to be legally enforceable. It is what one party agree to do in return for the other's promise, and generally, the promises of both parties are of monetary value, especially in business transactions.

Consideration need not be adequate, whereby consideration is still considered present when A decides to sell a luxurious car to B for the price of only \$1.

Consideration cannot be past, whereby there is no consideration when A decides to give B more money for a job well done, and for B to ensure that consideration is present, B must in exchange for something extra for that extra monetary reward given by A.

Consideration must move from the promisee, whereby if A bought a pen from B, and give it to X as a present. The pen is defective. X cannot sue B for damage, as he is not a party to the sales transaction.

Q1b. In order to work out an international sales contract, some issues to look into include: deciding on the country law to apply when dispute arises, the location to resolve a dispute should a dispute arises, the method to resolve a dispute, identify the form of dispute resolution method that are more enforceable internationally as compared to others, sale terms which include price, quality, description, product specifications, safety standards, currency of transaction, incoterms, rules relating to damages and mitigation, etc., transportation terms which include incoterms, carriage arrangement, payment for transportation and insurance, decision on carrier, etc., and payment matters which include methods, credit terms, currency of payment, time of payment, etc.



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Q2a. Road transportation is a very crucial element of logistics both internationally as well as locally, and it is important in their role in the pre-carriage and on-carriage connectivity provided to international cargo. The first mile and last mile can be used almost in all other mode of transportation viz sea, air, rail and pipeline. Road transportation may play a greater role in Europe for cross-border movements as well. In terms of services, there is a wide range of services using the road from parcel services to full truckloads to project cargo movements, and with road transportation, multimodal transportation offering door-to-door services are enabled. Road transportation is an enabler of the heart of multimodal transportation using containers, and it supports the loading and unloading of containers on ships especially the liner vessels. Just-In-Time (JIT) system delivery of raw material and finished goods can be executed and there are special heavy-duty truck like comettos, which can be used to carry heavy and oversized cargo. The comettos's axels can be increased up to a total of 25 in length. The cargoes range from household goods, hazardous goods, raw materials, oversized and awkward size cargo to heavy overweight cargo.

The advantages include flexibility and door-to-door service, avoids transfers to other modes and can give shorter overall journey time, do not have to build and maintain their own tracks, vehicles do not have to keep to rigid timetables, can go on journeys at short notice and with little planning, large number of carriers working in the same areas, minimum handling where unloading and reloading of goods from one carrier to another is not required, as in other modes of transport such as rail or sea, and fixed cost is relatively low and therefore economical for short distance delivery.

However, there are disadvantages as well. These include weight limitation where only loads up to 20-30 tonnes can be carried, European Union has a gross limit of 42 tonnes and different limits apply in different areas and countries, only can be used for smaller loads and hence relatively expensive, generally for shorter distances, used for delivering finished goods than bulky raw materials, and vulnerable to congestion and traffic delays, adverse weather conditions, floods. Over long distance, it is slower than rail.

Q2b. Multi-modal transportation is planned and coordinated as a single operation, minimises time spent, reduces the risk that goods are lost or damaged at transshipment points. It also improves time-to-market opportunities for sellers, with speedy transfer and transit times, and reduced burden of multiple documentation and other formalities connected with segmented transport. Multi-modal transportation offers more efficient movement of goods, freight rates are reduced and cost saving to shippers, consignees and freight forwarders and it promotes greater efficiency and productivity, and it minimises confusion. A MT operator provides a single point of contact as well.

Q2c. The roles and functions performed by international freight forwarders will still be relevant as shipping lines do not normally handle such roles and functions for the shippers. For example, Less-than-Container Load (LCL) shipments are only accepted by freight forwarders but not the shipping lines. There may be bigger shippers who have capabilities to execute roles and functions of freight forwarders and may consider doing in-house for economic reasons. Freight forwarders on the other hand will need to provide more online capability for the customers in line with the change in shippers' requirements and this may have enticed big shippers to consider using their service to benefits from their information technological advance systems.



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Q3a. Under Hague Visby Rules Article III Rule 3, after receiving the goods into his charge, the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things: (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage. (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper. (c) The apparent order and condition of the goods. Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

Q3b. Under Hague Visby Rules Article III Rule 3 and Rule 5, provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking. In addition, the shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Q3c. Under Hague Visby Rules Article III Rule 4, such a bill of lading shall be of prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith. Prima facie evidence is a legal term used to mean that you have enough evidence to prove something by pointing to some basic facts, but that your proof can be refuted.



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Q4a. Under Institute Clause A, the following are covered. Fire or explosion, Vessel / Craft being stranded, grounded, sunk or capsized, Overtuning or derailment of land conveyance, Collision or contract of vessel, craft or conveyance with external object other than water, Discharge of cargo at a port of distress, Earthquake, volcanic eruption or lightning, General Average sacrifice, Jettison, Washing overboard, Entry of sea, lake or river water into vessel, craft, hold, conveyance, container, lift-van or place of storage, Total loss of any package lost overboard or dropped whilst loading on to or unloading from vessel / craft, General Average and salvage charges, and Theft, pilferage, rough handling / contamination / wet-damage, breakage or other physical loss from external cause.

Under Institute Clause B, it covers all risks covered in Institute Clause A except Theft, pilferage, rough handling / contamination / wet-damage, breakage or other physical loss from external cause.

Under Institute Clause C, it covers all risks covered in Institute Clause A except Earthquake, volcanic eruption or lightning, Washing overboard, Entry of sea, lake or river water into vessel, craft, hold, conveyance, container, lift-van or place of storage, Total loss of any package lost overboard or dropped whilst loading on to or unloading from vessel / craft, and Theft, pilferage, rough handling / contamination / wet-damage, breakage or other physical loss from external cause.

Q4b. Insurable Interest would suggest that a person cannot insure something in which he or she has no interest. It has been suggested that insurance is a form of gambling, in that both present a risk of loss. The difference is that a wager creates a risk while insurance provides security against the consequences of a loss. Further, with a wager the gambler stands to make a profit if he or she wins; one who insures seeks only to avoid an economic loss. Loss must not be excessive. Where large number of people are subject to heavy risk at the same time it is obvious that the principle that the losses of a few are borne by the contributions of many cannot apply. One example would be earthquake risk and property damage caused by war. It must not be against public interest as well, whereby insurance in respect to fines and penalties imposed by law is against public interest.



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Q5a. Seller wants to be paid before he ships out the goods, and Buyer wants to receive the goods before he pays. Since each party has a different preference, and without establishing trust between the parties, a transaction may never happen, and thus impeding international trade.

In order to solve this issue, a third party trusted by both seller and buyer, such as a reputable bank, will be considered a trustworthy intermediary and will promise to pay the seller after shipping out the goods on behalf of the buyer, and this document used is known as the Letter of Credit (L/C).

How a L/C works is that the Buyer apply for a L/C and get a bank's promise to pay on his behalf, then the Bank promises the Seller to pay on behalf of the Buyer by issuing a L/C, then Seller ships out the goods. Thereafter, the Bank pays Seller in exchange for Bill of Lading (B/L), and the B/L will be given to the Buyer once Buyer pays the Bank. The cost of a L/C ranges from 0.2% to 2 percent of the value.

The L/C minimises trust issues as it is irrevocable once it is issued and it does not require any of the parties to know the financial health of the other party.

Q5b. Documentation fraud is a deliberate deception to secure unfair or unlawful gain by using documentation and in international trade, transactions rely heavily on documents thus resulting in common document-based frauds.

Buyers may face frauds with backdated bill of lading, goods received are not what the buyer ordered, and did not receive goods after making payment. On the other hand, sellers may not be able to get payment after shipping out or after releasing the goods to the buyer, and faces fraudulent claims for lost of goods and damaged goods.

In order to avoid frauds, the parties should know the opposite well before starting any transaction, to engage reputable service providers, and to be vigilant and include more safeguards during the first few transactions.



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Q6a. A chartering process flow can be classified into three main steps, namely Pre-Fixture, Fixture, and Post-Fixture. Firstly, Pre-Fixture. Brokers shall gather information from the charterers before going into the market, which includes Charterer's & Shipper's background, Type of cargo, quantity, stowage factor, Loading and discharging ports, Loading and discharging rates according to Charterer's sales contracts, Commission details, and Laycan (shipment date). Some other information such as Charterer's and Shipper's reputation, Last few shipments of this charterer, business address and contact details, person in charge, Check with Shippers whether the cargo is in port or when it is expected to arrive, If there are any possibilities to improve loading / discharging rates, Possibility to avoid / reduce address commission as it impacts resultant freight rate, will be gathered as well.

Secondly, Fixture. Brokers have to initiate rate to Owners for discussions, complete terms and conditions of the charter for review both ends, charterer may agree to the terms or may wish to make changes, carry out further negotiations, and once an agreement reached, all trading certificates to the charterer. In addition, recap has to be prepared for all parties, confirmation that all subs lifted, prepare C/P, and finally charter party to be signed by both parties.

Lastly, Post-Fixture. Brokers have to ensure that the charterer / shipowner has nominated an agent at the ports, ensure that the load port agent has received the nomination from shipowner in order to nominate the ship with the port, monitor the agents, stevedores, shipper, cargo movement on a daily basis share, monitor that the bills of lading in order, monitor and report daily loading speed, loading berth, weather, check Notice of Readiness (NOR) and Statement of Facts (SOF) upon completion of loading, check on demurrage matters, as well as receive, check & send freight invoice.

Q6b. A Charter Party (C/P) is a document in written terms between the ship owner and charterer. It defines the obligations, rights and liabilities, usually drawn up by shipbroker after negotiations conclude or terms fixed. The C/P is usually of lease nature with Banking Finance Grounds, and it usually uses the Recognised Standard Form by BIMCO, (e.g. GENCON, BALTIME, NYPE), and it includes Standard Clauses / Rider Add-On Clauses.

Q6c. Laytime is the time allowed by the shipowner to the voyage charterer or Bill of Lading holder in which to load and / or discharge the cargo. It is expressed as a number of days or hours or as a number or tons per day. There is normally a provision in the Charter-Party for the commencement of laytime, which is often at a certain hour after notice of readiness has been tendered by the master, a provision for periods when laytime does not count, for instance during bad weather, weekends or holidays or a provision for laytime being exceeded, when demurrage or damages for detention become payable, or not being fully used, when despatch may be payable.

Demurrage (DEM) is the amount of money paid to the shipowner by the charterer, shipper or receiver, as the case may be, for failing to complete loading and / or discharging within the time allowed in the Charter-Party. The rate of demurrage, normally an amount per day, is agreed in the Charter-Party. Some charters specify that, after a certain period of demurrage, either additional demurrage or damages for detention become payable.

Despatch (DES) is the amount of money the rate of which is agreed in advance, payable by the shipowner to the charterer, shipper or receiver, as the case may be, for loading and/or discharging in less than the time allowed; normally despatch money, if a provision for it has been made, is at the same rate as, or half the rate of the rate of demurrage agreed in the Charter-Party.