SCHOOL OF BUSINESS AND SOCIAL SCIENCES
AARHUS UNIVERSITET

Sommer 2024
Ordinary exam

Written exam:	**460141E035 International Business Law**
Duration:	**3 hours**
Exam aids:	**Flowlock exam. Only written material (typed, printed and/or handwritten) is allow. Use of internet is not allowed during the exam. Own PC required.**

Question 1 (15%)

Jens Knudsen (JK) is the owner and CEO of the established and recognised business Gamlesmykker A/S in Skjern. Gamlesmykker A/S buys and sells new as well as old and refurbished jewelry and other associated luxury products.

In May 2024, Jens Knudsen asks his procurement manager, Anders Andersen (AA), to go to a prestigious jewelry fair in Copenhagen, Denmark to look at the new trends for the upcoming Autumn and Winter season 2024/2025. The Jewelry fair is to take place at the luxury hotel "D´Angleterre", in the center of Copenhagen.

At the first day of the fair, Thursday 2 May, Anders goes to see the grand opening which takes place at the "Palmehaven" (Palm Court) room at 10:00 AM. Here, 20 exhibitors from all over the world have their displays. With almost 250 fair guest already present the room is very crowded.

First, Anders wants to see the new luxurious "Tiffany" collection, but many others have gotten the same idea. As Anders has had a "Paddle-tennis" accident the week before (playing with the CEO Jens Knudsen), he is still a bit out of balance, as he cannot put full weight on his right foot. Nevertheless, Anders tries to push his way through all the people to get a better view. Partly due to his eagerness, partly due to his foot, he accidently pushes to some people, and they get quite upset and ask Anders politely to wait until it is his turn. Anders just excuses himself due to his bad foot and tries to move closer to the displays.

Suddenly, Anders loses his balance, falls and hits an 80 year old lady in the fall. The old lady falls into an antique and very rare Tiffany glass display which is completely destroyed. The lady ruins her dress, which is a very rare and expensive Dior model.

Tiffany and the old lady now sue Anders as well as Gamlesmykker A/S for damages, DKK100,000 for the glass display, and DKK50,000 in damages for the dress.

a) **Is Anders and/or Gamlesmykker A/S liable for the damages to the display and the dress?**

b) **Irrespective of your reply to subquestion a): What is the internal allocation of the liability between Anders and Gamlesmykker A/S?**

Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

This is a discussion of non-contractual liability and the rule in Danish Law of King Christian V of 1683, rule 3-19-2 on the vicarious liability of an employer for the negligent acts committed by his employees in the course of their employment.

It is negligent to act like Anders does, as he knows he does not have the balance required and thus can foresee that his acts might cause damages. Anders´s acts are not abnormal, and the CEO knows he has a food injury which might impair his balance. Hence, there is liability for the employer Gamlesmykker A/S for the negligent acts by Anders. The injured parties can choose to sue both Anders and Gamlesmykker A/S, but there will be recourse according to the rules in Sect. 23 in the Liability Act. If Gamlesmykker has paid, then they can claim recourse according to Sec. 23(1) according to the extent this is reasonable according to, quote:"…the fault displayed, the employee´s position and the circumstances of the case".

If the claimants sue Anders, he will have recourse against Gamlesmykker A/S to the extent, that Gamlesmykker should have paid according to Sec. 23(1).

Question 2 (15%)

In May 2024, Gamlesmykker A/S receives complaints about jewelry which was sold at a "Gamlesmykker A/S Factory outlet" in April 2024. The jewelry was bought by a private consumer, Nina Nielsen (NN). The jewelry has left marks on Nina´s dress due to a defect coating on the jewelry. The marks do not disappear in washing, and hence Nina asks for compensation.

The damages to the dress have been estimated at DKK10,000. Gamlesmykker A/S refuses to pay, first of all they argue that they are not the producer of the jewelry, which is actually an Italian company that has now gone bankrupt. Secondly, Gamlesmykker A/S has not made any mistakes. Thirdly, Gamlesmykker A/S refers to a big and obvious sign at the entrance of the Factory Outlet Sale, stating:

"This is a Factory Outlet Sale of surplus and outdated jewelry. All jewelry is bought "As seen" at discounted prices, without warranties of any kind. You as a buyer therefore accept to have no claim against Gamlesmykker A/S, no matter what the type or nature of your claim or legal argument is."

Can Nina claim compensation for damages from Gamlesmykker A/S? Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

This is a discussion of product liability, covered by the Product Liability Act as the damage is caused to consumer products, Product Liability Act Sec. 2(1). A deduction of 4.000 DDK is made, cfr. Sec. 8, but this amount may be claimed according to the rules on case law product liability.

Gamlesmykker acts as an intermediary, and is direct liable according to Sec. 10a for a producer´s fault or neglect. It does not matter Gamlesmykker A/S did not commit a fault. This liability cannot be limited by any agreement, so the sign has no effect, see Sec. 12 (book p. 122).

Question 3 (15%)

The owner and CEO, Jens Knudsen (JK), had long wanted to purchase some paintings by the local artist, Benny Hansen (BH), for his office in the company, as he believed that Benny Hansen's paintings elegantly and subtly depicted what it was like to live in Skjern, which was beneficial when hosting foreign clients. He therefore told his Facility Services Manager, Christina Pedersen (CP), to call BH.

Christina thus made a call to Benny and expressed Gamlesmykkers A/S' interest. Benny was flattered and pleased by the recognition and said that Christin could just send him a letter with a brief description of the desired items. Immediately after the phone call, Christina on behalf of Gamlesmykker A/S sent a letter to Benny, ordering 3 paintings without further specifications other than that Benny must have "held the brush in the creation of the paintings."

Benny responded by letter, stating that he could paint 3 paintings for DKK 24,000 by 27 July, 2024, but that it required final confirmation of the order no later than 7 June, 2024.

Christina thereafter told her secretary to send a final acceptance of the offer dated Friday 31 May, 2024, but it was added that Gamlesmykker A/S would like frames for the paintings as well. The secretary sent the letter immediately. Sunday, 2 June, CEO Jens Knudsen read that Benny had been out praising some of Gamlesmykker A/S' competitors. Jens became furious and asked Christina to withdraw the acceptance to Benny. Christina immediately sent a letter to Benny dated 3 June, clearly stating that the acceptance was withdrawn.

On 7 June, Benny went out of his house to collect the mail. Benny only took the letter containing the acceptance of the offer, because the mail carrier had placed the rejection letter at the very back of the mailbox. He started to make preparations for the first painting, but on 10^{t} June, he found the withdrawal letter and was very surprised, as he thought the contract was binding.

Is there a binding contract between Gamlesmykker A/S and Benny Hansen? Please explain in detail the legal arguments – including the relevant legal sources – for your conclusion.

First, the "general authority" question whereas Christina must be considered to have a general authority as a "Facility Manager" according to s. 10(2) in the Danish Contracts Act. Christina is told to make an agreement with Benny – the contract is therefore not void because Christina from Gamlesmykker A/S acts within her authority as Facility Manager.

Secondly, there is the question of non-conformity, s. 6 in Contracts Act, when Christina adds to the offer. Would an ordinary reasonable person (offeree) have expected this to be part of the agreement? A frame for a painting probably depends on price and context. Acceptable according to s 6(2)? Otherwise, a counter-offer 6(1). Benny must without undue delay give notice to Christina et al, if he does not believe the frame is to be expected, otherwise binding as is, cf. s. 6(2).

Lastly, s. 7 (recovation of acceptance). The contract is void due to the fact that the offer is withdrawn as the withdrawal of the offer simultaneously comes to the recipient's knowledge – revocation and acceptance legally coincides, both comes to his notice on June 7, 2024.

The discussion of non-conformity is less relevant due to revocation of acceptance.

Question 4 (5%)

After the challenges with the agreement to purchase a painting, Gamlesmykker A/S decided to focus on something they had great knowledge about: jewelry. Gamlesmykker A/S entered into an agreement with Guldfeber ApS to purchase a gold Rolex watch for DKK100,000 that just needed a final cleaning. Guldfeber ApS was located at Vordingborggade 36, Copenhagen Ø, but they had considered moving to the owner's residence, Simon Kristensen, who lived at Nansensgade 1, also in Copenhagen Ø. A few weeks before the purchase the agreement was signed by the parties. The representatives, including CEO Jens Knudsen, were informed that Guldfeber ApS would have the gold Rolex watch cleaned and ready for delivery and subsequently stored in Jutland at Frederiksgade 33, Aarhus C.

Where must the watch be picked up? Please explain in detail the legal arguments – including the relevant legal sources – for your conclusion.

The watch should be picked up at the address in Jutland, as both parties were aware that the watch was to be picked up at this address before the agreement was made, cf. s. 9(2) in the Danish Sales of Goods Act. It is the seller's responsibility to make the watch available for pickup at this location.

Gamlesmykker A/S should therefore not pick up the Rolex at the neither company address nor owner address of the seller, cf. s. 9(1), because both parties did or should have known that the place of delivery was Frederiksgade 33 in Aarhus C (s. 9(2)).

Question 5 (15%)

Gamlesmykker A/S also wanted to purchase some large wool coats from the Danish Island Bornholm for the models who should showcase some of the company's other jewelry at the end of the year. Therefore, they entered into a trade agreement with Pengehesten A/S (situated at the main city Nexø at Bornholm) for the delivery of 10 wool coats for DKK50,000, "FOB Nexø Harbor " Despite the relatively short sea distance from Nexø Harbor to Aarhus Harbor, half of the wool coats were damaged during sea transport due to weather conditions combined with the temperature in the container. Jens Knudsen from Gamlesmykker A/S was furious and demanded compensation for the damaged wool coats.

a) **Is Gamlesmykker A/S entitled to claim damages?**
b) **Who should bear the costs for transportation?**

Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

a) Gamlesmykker A/S is not entitled to claim damages, cf. s. 62(1-3) in the Danish Sales of Goods Act. Since the delivery was free of defects at the time of the transfer of risk, the buyer has to pay the purchase price DKK50,000.

b) Furthermore, the buyer should also bear the costs of transportation, cf. s. 62(2).

Question 6 (15%)

At the end of May, Gamlesmykker A/S held a fashion show to showcase all their beautiful and unique Danish jewelry from Skjern to the world. There were several interested parties from across the globe. Consequently, in the beginning of May 2024, Gamlesmykker A/S received an offer from the Spanish company Madrid Tango S.A., which wished to purchase 10 necklaces featuring an engraved cityscape of Skjern with the Danish flag in the background. The agreed price was DKK10,000 per piece. Gamlesmykker A/S dispatched the jewelry according to the agreement.

Upon receiving the 10 necklaces in the beginning of June 2024, Madrid Tango S.A. refused to pay for the jewelry, despite the fact that the delivery conformed to the terms of the agreement. Gamlesmykker informed Madrid Tango S.A., that if they did not pay for the necklaces, they would sell the necklaces to another customer in Madrid, which was interested in the necklaces, however at a lower price of DKK8,000 per necklace. If Madrid Tango S.A. did not pay, Gamlesmykker would terminate the agreement and sue for damages.

Is Gamlesmykker A/S able to terminate the agreement and claim damages due to breach of contract if Madrid Tango does pay the price for the jewelry?

Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

(Note: due to confusion in the question text (…does pay…should have been does <u>not</u> pay..) the students may choose to reply based on an interpretation of either of the possible formulations (…does pay….or does not pay…). Hence, no negative grades are being given for choosing either of the formulations.).

Governed by CISG, as the parties had their places of business in different Contracting States (art. 1(1)(a), i.e., both Denmark and Spain are Contracting States under CISG.

Remedies for breach of contract by the buyer. Art. 61(1) CISG, if the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- *exercise the rights provided in articles 62 to 65;*
- *claim damages as provided in articles 74 to 77.*

NB. buyer not deprived of claiming damages in conjunction to other remedies, cf. art. 61(2)

Referring to Articles 53 and 54 CISG, the buyer's breach can constitute a fundamental breach of contract (art. 25) because the buyer did not comply with the obligation required under the contract. The seller thus is entitled to declare the contract avoided pursuant to Articles 61(1) and 64(1a) CISG.

Since the seller had to resell the jewelry to another buyer at a lower price, it can be stated that the buyer foresaw or ought to have foreseen at the time of the conclusion of the contract that its failure to perform would lead the seller to reduce price as a possible consequence (Art. 74 CISG). Therefore, the buyer must compensate the seller for the difference between the contract price and the price of the "substitute transaction", hence the seller resold the goods for a lower price (viz. DKK8,000 instead of DKK10,000) which is to be covered (Art. 75 CISG).

Question 7 (15%)

Bill Brody (BB) worked in the company The Software House A/S, in Herning, where he was employed as a programmer. In the past two years, he had worked on developing a new super-game "World of Power" for The Software House, which was meant to knock the competitors of their feet. The first release of the game was a Danish version. Later on, Germany would be the next market in which to launch a German edition of the game. The finished product was ready for mass production. The manager of The Software House was very pleased with the game, which in the intro showed some nice graphics, which the computer generated at random, and at the same time you could hear music from the famous pop group "H2O".

The product was sent on the market at DKK499 per item, and in the beginning the sale went very well, but after only 14 days the sale dropped dramatically.

It turned out that a computer nerd with the codename "FreeSoft" in Aarhus sold a copy of the game for DKK 50 a piece - also online.

Both Bill and The Software House claimed ownership to the game, World of Power, and wanted to stop Freesoft's sale of it. They did not know in detail how the game was protected by law.

Meanwhile the band H2O also claimed ownership of the music used in the game. The band never gave permission to use it as background music.

a) **Give a reasoned statement regarding the mentioned claims.**

b) **Is it possible to protect the rights to the game outside of Denmark?**

Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

a) Ownership to copyright protected inventions etc.
Danish law in this context – Ophavsretsloven § 7 – in a workcontext guidelines concerning the copyright is often agreed on in the workcontract. Copyright can be shared between designers, web developers etc
The music in the game is also protected by copyright and use of it in the game is not legal if there is no agreement with the band concerning this.

Special rules about software is to be found in § 36
Sanctions are mentioned in §§ 76

b) It is possible to protect the game outside Denmark in EU and in the rest of the world by following the rules mentioned on
EU: https://europa.eu/youreurope/business/running-business/intellectual-property/copyright/index_da.htm
International agreements outside EU: WIPO - https://www.wipo.int/portal/en

Being able to mention the two set of rules is fine. Furthermore, it is expected that the students in both contexts can mention the relevant exclusive rights to show that they are aware of the fact that the exclusive rights are defined the same way no matter where you try to protect them.

Being able to mention that it always is possible protect an exclusive right in another country by following the rules in that specific country.

Question 8 (5%)

On 22. September 2023 exporter Bart Johnson, Amsterdam, and grocer Claus Christensen, Copenhagen, made an agreement about the delivery on 18 January 2024 of 300 crates of grapefruits, 100 crates of dates and 200 barrels of nutmeg. The grapefruits and the dates were to be sent with the ship Carrier from Amsterdam to Copenhagen and to be delivered FOB (INCOTERMS) Amsterdam.

The grapefruits and the dates were sent according to plan from Amsterdam, but because of a fault made by a member of the crew on the ship, most of the goods were ruined by penetrating salt water. However, 50 crates of dates were still good for consumption.

In case the Dutch company wants to sue the Danish company where is the possible venue for the legal action?

Please explain in detail the legal arguments – including the relevant legal sources – for your conclusions.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Principle rule art. 4,1
Alternatives – art 7 – place of delivery
Venue agreed in the contract

It is messing things up answering this question by mentioning choice of law rules/legislation.