# Chapter 5: International Contracts

TRUE/FALSE

1. Whenever a contract is established between two parties in the same country, the law governing the execution of this contract is determined by that country’s legal system.

ANS: T DIF: Easy REF: page 158

1. Whether or not a sales contract is international is always self-evident.

ANS: F DIF: Easy REF: page 160

1. Under the Uniform Commercial Code (UCC), when a buyer agrees to an offer made by a seller, but indicates a desire for a different schedule of delivery or term of payment, such a response is considered to be a rejection of the offer.

ANS: F DIF: Hard REF: page 161

1. Under the Uniform Commercial Code, an offer can be withdrawn at any time, without prejudice.

ANS: T DIF: Moderate REF: page 162

1. The “perfect tender” principle means delivered goods must exactly conform to the goods contracted and delivered within the framework specified in the contract.

ANS: T DIF: Hard REF: page 163

1. An agent can negotiate prices, delivery, or other sales terms with the buyer (importer) without direction from the exporter.

ANS: F DIF: Moderate REF: page 163

1. Agreements between an exporter and an agent and agreements between an exporter and a distributor are called distribution contracts.

ANS: T DIF: Moderate REF: page 163

1. In most Middle Eastern countries, agents and distributors are not required to be nationals of the country.

ANS: F DIF: Moderate REF: page 166

1. Normally, contracts between parties who speak different languages from each other can be written in both or all of their languages, and the contracts will have equal weight.

ANS: F DIF: Moderate REF: page 169

1. A contract is entered in good faith when neither of the parties has any other ulterior motive about the agreement.

ANS: T DIF: Easy REF: page 169

1. Contracts normally contain a clause that annuls the contract in the event of an overwhelming unforeseen event like a major storm or fire. This is called an evergreen provision.

ANS: F DIF: Easy REF: page 169

1. The scope of appointment clause is usually the first clause of a contract.

ANS: T DIF: Easy REF: page 170

1. The European Union tends not to recognize exclusive territories that limit an agent or distributor to one country.

ANS: T DIF: Moderate REF: page 170

1. The scope of appointment clause of a contract usually prevents an agent or distributor to select the most profitable products for extra selling effort and to minimize effort toward less profitable products.

ANS: T DIF: Moderate REF: page 170

1. Agents usually feel encouraged if the exporting firm they represent retains for itself a large number of corporate accounts.

ANS: F DIF: Easy REF: page 171

1. A contract with no determined duration and which can no longer be terminated for non-performance (since termination did not take place earlier, even though there was evidence of non-performance), is called an evergreen contract.

ANS: T DIF: Moderate REF: page 172

1. In general, the choice of law, or the choice of which country’s laws will regulate a dispute between international parties, is made by the agent or distributor rather than by the exporter.

ANS: F DIF: Moderate REF: page 173

1. If the country in which an arbitration takes place is one of the 130 signatory countries to the New York Convention on the Enforcement of Foreign Arbitral Awards, then the ruling can be enforced just about anywhere.

ANS: T DIF: Hard REF: page 173

1. In contracts with distributors, there are no restrictions on what the exporter and distributor can agree to add on to the wholesale price of the goods.

ANS: F DIF: Hard REF: page 175

1. The “facilities and activities” clause of a contract between an exporter and an agent/distributor spells out what kind of docking arrangements will be made when the goods arrive by ship into the agent/distributor’s country.

ANS: F DIF: Moderate REF: page 176

1. The contract of carriage for the on-carriage is usually a domestic contract of carriage.

ANS: T DIF: Easy REF: page 178

1. The portion of an international shipment that takes place in the exporting country is called the “on-carriage.”

ANS: F DIF: Easy REF: page 178

1. International contracts of carriage for the entire capacity of a ship are called contracts of total affreightment.

ANS: F DIF: Moderate REF: page 180

1. The “Hague Rules” limit the liability of an ocean carrier to USD 500 per package.

ANS: T DIF: Easy REF: page 182

1. The same liability convention is used for all international air shipments.

ANS: T DIF: Easy REF: page 183

MULTIPLE CHOICE

1. The advertising clause of a contract between an exporter and an agent/distributor spells out the obligations of both parties in the areas of

|  |  |  |  |
| --- | --- | --- | --- |
| a. | advertising. | d. | advertising, trade show attendance, and ownership of ideas. |
| b. | trade show attendance. | e. | advertising and new product ideas. |
| c. | ownership of ideas. |

ANS: D

The advertising clause spells out obligations regarding advertising, trade show attendance, ownership of ideas, and how the costs will be paid for.

DIF: Moderate REF: page 176

2. The most sensitive issue in an international distribution contract between an exporter and an agent/distributor is

|  |  |  |  |
| --- | --- | --- | --- |
| a. | termination. | d. | product line. |
| b. | advertising. | e. | customers. |
| c. | territories. |

ANS: A

Termination can have legal repercussions if it is not done right. In addition, a spurned former agent/distributor can wreak havoc with future marketing efforts by the exporter and/or its new agent/distributor.

DIF: Moderate REF: page 167

3. When an international distribution contract between an exporter and an agent/distributor is terminated for “just cause,” in most cases the termination is made by the

|  |  |  |  |
| --- | --- | --- | --- |
| a. | agent/distributor. | d. | government of the exporter’s country. |
| b. | government of the agent/distributor. | e. | government of the importer’s country. |
| c. | exporter. |

ANS: C

Usually it is the importer not doing something it is required to do, or the representative is doing something that it is contractually not allowed to do. Rarely do exporters fail to fulfill their part of the agreement.

DIF: Moderate REF: page 167

4. An increasingly popular way of settling disputes between international exporter-agent/distributor partners is

|  |  |  |  |
| --- | --- | --- | --- |
| a. | joint ventures. | d. | lawsuits in courts in the agent/distributor’s country. |
| b. | arbitration. | e. | amicable settlement. |
| c. | lawsuits in courts in the exporter’s country. |

ANS: B

Arbitration is a way to avoid action in courts of either parties’ countries, therefore it is seen as being more independent and even-handed.

DIF: Moderate REF: page 186

5. An exporter’s termination of a relationship with an agent/distributor on the basis of “convenience” is

|  |  |  |  |
| --- | --- | --- | --- |
| a. | essentially risk-free. | d. | in little danger of ending up in court. |
| b. | with little obligation on the part of the exporter to the agent/distributor. | e. | fraught with potential problems. |
| c. | easy to accomplish. |

ANS: E

A termination for convenience should be handled with the greatest care, as the potential for damages to the spurned party can be substantial. If there are issues to resolve, every effort should be made by the exporter to compensate the distributor or the agent. If it is not done, the representatives can very easily ask courts to intervene. These statutes usually mandate long notice periods and generous compensation packages.

DIF: Hard REF: page 167

6. *Lex Mercatoria* is

|  |  |  |  |
| --- | --- | --- | --- |
| a. | a major calamity like a storm or other natural disaster. | d. | trade law made up of a multitude of different sources of law and jurisprudence. |
| b. | the Uniform Commercial Code. | e. | the laws of the country of import recognized by the country of export. |
| c. | common law. |

ANS: D

The Uniform Commercial Code is business law for the United States, common law is judge-made law. Lex Mercatoria is trade law made up of multiple sources.

DIF: Moderate REF: page 158

7. Courts generally look at two criteria to determine if a contract is international. Those criteria are

|  |  |  |  |
| --- | --- | --- | --- |
| a. | economic and judicial criteria. | d. | legal and customary criteria. |
| b. | agent and distributor criteria. | e. | common sense and regulatory criteria. |
| c. | physical delivery and monetary exchange criteria. |

ANS: A

Economic and judicial criteria consists of whether there was a transaction involving a transfer of merchandise from one country to another (with its mirror image resulting reverse transfer of funds), and if the transaction has links to the laws of the different countries to which the transaction participants are subject.

DIF: Hard REF: page 160

8. If an international agreement between an exporter and an agent/distributor grants a monopoly to the agent/distributor, that agent/distributor is considered to be

|  |  |  |  |
| --- | --- | --- | --- |
| a. | operating illegally. | d. | operating under a force majeure clause. |
| b. | a subsidiary of the exporting company. | e. | in breach of contract. |
| c. | an exclusive representative. |

ANS: C

Exclusive representative is an agent or distributor that has been granted the right of being the sole representative of the exporter.

DIF: Easy REF: page 170

9. A legal dispute in which the loser bears court costs is said to be operating under

|  |  |  |  |
| --- | --- | --- | --- |
| a. | common law. | d. | arbitration. |
| b. | European rules. | e. | American rules. |
| c. | contract law. |

ANS: B

European rules is a custom in which the loser bears court costs.

DIF: Moderate REF: page 188

10. The United Nations Convention on Contracts for the International Sale of Goods (CISG) considers a contract to have been accepted

|  |  |  |  |
| --- | --- | --- | --- |
| a. | when most of the items in the seller’s offer are agreed to. | d. | if the contract is valued at above U.S. $500 and is in writing. |
| b. | when there has been a counter-offer. | e. | when all of the terms in the contract have been explicitly agreed to. |
| c. | when both parties agree to the basic parts of the contract, except for details like price, payment, quality and quantity of goods, shipping instructions, and liability. |

ANS: E

The CISG does not consider that a contract has been accepted until both parties agree to *all* of its terms. It is customary for a seller to make an offer. Under the CISG, changes are considered to be a rejection of the offer made by the seller and understood as a counter-offer by the buyer, unless the terms suggested do not materially affect the contract. The CISG specifies that changes to “price, payment, quality, and quantity of the goods, place, and time of delivery, extent of one party’s liability to the other—most likely to be understood as Incoterms—or the settlement of disputes are considered to alter the terms of the offer materially” and therefore that no acceptance is made in those cases. The U.S. Uniform Commercial Code (UCC), not the CISG, requires that any sales agreement above U.S.$ 500 be in writing.

DIF: Hard REF: page 162

11. A termination for “convenience” is

|  |  |  |  |
| --- | --- | --- | --- |
| a. | illegal. | d. | usually accomplished with good feelings on both sides. |
| b. | a termination for any reason other than non-performance. | e. | usually accomplished through mediation. |
| c. | a simple process about which the exporter should not have to worry. |

ANS: B

A termination for convenience is legal, but should be handled with care and sensitivity toward the party being terminated since it can cause legal complexities and bad feelings.

DIF: Easy REF: page 168

12. While an exporter and distributor can agree on what the distributor can add for margin on the wholesale price of goods, in agency contracts

|  |  |  |  |
| --- | --- | --- | --- |
| a. | commissions are limited to U.S.$ 1.2 million per quarter. | d. | commissions are set by the UCC. |
| b. | the commission is limited to 12 percent. | e. | commissions are determined through negotiation between the principal and the agent. |
| c. | the commission is whatever the agent decides it should be. |

ANS: E

There are no restrictions placed on the amount of commission that the agent can earn.

DIF: Hard REF: page 175

13. Under the United Nations Convention on Contracts for the International Sale of Goods (CISG), when an offer is made

|  |  |  |  |
| --- | --- | --- | --- |
| a. | it cannot be withdrawn by the buyer or seller before its expiration date. | d. | international courts usually recognize that it can be withdrawn even after the expiration date. |
| b. | it can be withdrawn at any time before the expiration date. | e. | it must be accepted within a month (30 days) of being made. |
| c. | it must be in writing. |

ANS: A

The offer cannot be withdrawn at any time before the expiration date. Under the CISG, the offer does not have to be in writing, nor do international courts usually recognize that it can be withdrawn even after the expiration date.

DIF: Moderate REF: page 162

14. Instead of using courts to settle disputes, an increasing number of contracts call for disputes to be settled by

|  |  |  |  |
| --- | --- | --- | --- |
| a. | international law. | d. | the Uniform Commercial Code. |
| b. | diplomacy. | e. | the International Chamber of Commerce. |
| c. | an arbitration panel. |

ANS: C

An arbitration panel is often used to settle disputes.

DIF: Easy REF: page 173

15. In judging whether or not a contract has been breached, the Uniform Commercial Code (UCC) applies the principle of “perfect tender.” This means that

|  |  |  |  |
| --- | --- | --- | --- |
| a. | there must be a cash exchange to enforce the contract. | d. | the goods and their delivery must exactly conform to what was written in the contract. |
| b. | the UCC treats the matter the same as the CISG. | e. | the parties must agree that the contract has been fulfilled. |
| c. | the parties must refer to their oral agreements, not to what they have written. |

ANS: D

The UCC requires that the goods conform exactly to the contract, whereas the CISG demands a substantial product or delivery discrepancy before recognizing that the contract has been breached.

DIF: Moderate REF: page 163

16. A termination of an international contract between an exporter and an agent/distributor can be made by

|  |  |  |  |
| --- | --- | --- | --- |
| a. | either of the parties. | d. | only an agent/distributor. |
| b. | only an exporter. | e. | the government of either the exporter's or the importer's country. |
| c. | only an importer. |

ANS: A

Options “only an exporter,” “only an importer,” and “only an agent/distributor” are incomplete: either of the parties can terminate the contract.

DIF: Easy REF: page 167

17. An agreement between an exporter and an agent/distributor may state that the laws of the exporter’s country apply to governing of the contract. This can be complicated by

|  |  |  |  |
| --- | --- | --- | --- |
| a. | the practice of many exporters to bribe the judges in their home countries. | d. | the government of the country where the agent/distributor is located, as it may say it has jurisdiction over the contract. |
| b. | a shortage of lawyers in the exporter’s home country. | e. | the International Chamber of Commerce, as it may say that the laws of the importer's country must apply. |
| c. | it being illegal for the exporter to make such an agreement. |

ANS: D

The importing country’s government may protect agents/distributors under labor law.

DIF: Moderate REF: page 164

18. Contracts contain a *force majeure* clause which dissolves the contract in the event of a major unforeseen event, like a ship sinking in a storm. Loosely translated, *force majeure* means

|  |  |  |  |
| --- | --- | --- | --- |
| a. | “forced dissolution.” | d. | “major forfeit.” |
| b. | “overwhelming power.” | e. | “major force.” |
| c. | “major provisions of contract no longer in force.” |

ANS: B

F*orce majeure* is a French expression that loosely means “overwhelming power.”

DIF: Moderate REF: page 169

19. Unless otherwise specified, contracts between an exporter and an agent and contracts between an exporter and a distributor are called

|  |  |  |  |
| --- | --- | --- | --- |
| a. | contract law. | d. | distribution contracts. |
| b. | labor law. | e. | entry contracts. |
| c. | common law. |

ANS: D

Contract law and labor law are too limited to apply in this case, and common law is simply incorrect. Distribution contracts is an agreement between the parties in the absence of specifics.

DIF: Easy REF: page 168

20. When a party to a contract is continually looking for loopholes to avoid living up to the obligations of that contract, it can be said that

|  |  |  |  |
| --- | --- | --- | --- |
| a. | the laws of the country of the importer should apply. | d. | that party is a shrewd negotiator. |
| b. | the laws of the country of the agent/distributor should apply. | e. | that party is likely to turn any contract in its favor. |
| c. | that party is not acting in good faith. |

ANS: C

The mandatory clause “good faith” requires neither party to have any ulterior motive about the agreement and must want to fulfill the terms of the contract.

DIF: Easy REF: page 169

21. What is the name of the portion of an international shipment that takes place in the exporting country?

|  |  |  |  |
| --- | --- | --- | --- |
| a. | first carriage. | d. | on-carriage. |
| b. | export carriage. | e. | initial carriage. |
| c. | pre-carriage. |

ANS: C

The first segment of an international shipment in the exporting country is called the “pre-carriage.”

DIF: Easy REF: page 178

22. In order to ensure that a container is not overweight, a carrier will request a document from the shipper, called the:

|  |  |  |  |
| --- | --- | --- | --- |
| a. | Verified Gross Mass Certificate. | d. | Verified Carrying Weight Certificate. |
| b. | Weight Certificate. | e. | Verified Gross Weight Certificate. |
| c. | Carrier Weight Certificate. |

ANS: A

The Verified Gross Mass Certificate is required since 2016 when shipping a container by ocean.

DIF: Easy REF: page 180

23. Which law governs an international road shipment that originates in the United States and ends in Canada?

|  |  |  |  |
| --- | --- | --- | --- |
| a. | the 1906 Carmack Amendment of the United States. | d. | the United Nations Convention on the Contract for the International Carriage of Goods by Road (CMR) |
| b. | the Canadian Uniform Bill of Lading regulations. | e. | No convention regulates this shipment |
| c. | the United States Convention on the International Sale of Goods. |

ANS: A

A road shipment from the United States to Canada is regulated by the 1906 Carmack Amendment, and one from Canada to the United States is regulated by the Canadian Uniform Bill of Lading convention.

DIF: Moderate REF: page 181

24. Which of the following is NOT one of the international liability conventions in place for the international carriage of goods by ocean?

|  |  |  |  |
| --- | --- | --- | --- |
| a. | Hague Rules. | d. | Hamburg Rules. |
| b. | Hague-Visby Rules. | e. | The Hague Rules. |
| c. | Rotterdam Rules. |

ANS: E

The Hague Rules do not exist.

DIF: Easy REF: page 180

25. When two parties are in disagreement about the terms of an international contract, which process would allow them to reach a compromise that is satisfactory to both parties, without one winning and the other “losing”?

|  |  |  |  |
| --- | --- | --- | --- |
| a. | litigation. | d. | mitigation. |
| b. | mediation. | e. | conciliation. |
| c. | arbitration. |

ANS: C

Mediation is an option in conflict resolution that allows both parties to reach a compromise solution to the problem.

DIF: Moderate REF: page 188

COMPLETION

1. An arbitration panel is usually made up of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ arbitrators.

ANS: three

DIF: Easy REF: page 173

2. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ notice spells out how many days the exporter must give the agent/distributor before their termination becomes effective.

ANS: pre-termination

DIF: Moderate REF: page 167

3. How trade secrets and other strategic advantages are to be handled is included in a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ clause of a contract.

ANS: confidentiality

DIF: Hard REF: page 176

4. A complex multitude of international agreements and international trade laws which complement domestic laws is a form of trade law called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ANS: *Lex Mercatoria*

DIF: Hard REF: page 158

5. The contract clause that spells out if a representative will be an agent or distributor is usually the first clause of the contract and is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of appointment clause.

ANS: scope

DIF: Easy REF: page 170

6. Accounts that the exporter will keep to itself and will not allow the agent/distributor or any other local representative to sell to are called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_accounts.

ANS: corporate

DIF: Easy REF: page 170

7. The main reason some countries use specific statutes to regulate international distribution agreements is that they feel they need to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agents and distributors.

ANS: protect

DIF: Moderate REF: page 164

8. When a territory clause in an international distribution contract makes an agent/distributor an exclusive representative, it essentially grants a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to the representative.

ANS: monopoly

DIF: Moderate REF: page 170

9. Normally, an exporter pays the agent’s commission when the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ pays the exporter.

ANS: customer

DIF: Moderate REF: page 175

10. A facilities and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ clause in a contract spells out what the exporter and the agent/distributor have agreed upon with respect to the type of establishment the agent/distributor will maintain.

ANS: activities

DIF: Easy REF: page 176

11. The portion of a shipment that does not take place in the importing country or the exporting country is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ANS: international carriage

DIF: Easy REF: page 179

12. The responsibilities of the carrier toward the goods are spelled in international \_\_\_\_\_\_\_\_\_ conventions.

ANS: liability

DIF: Easy REF: page 182