

INTRODUCTION TO LEGAL CASE-SOLVING AND MOOTING

concerning § 5 Exercises in legal case-solving and mootng

**Case 4**

(facts of the case)

The French wine exporter A sells a small quantity of superior Bordeaux wine to the Singaporean wine importer B. The contract involves the carriage of the wine to Singapore by the shipping company C. In their e-mails, both parties refer to their attached standard terms of business, but no party cares to read the terms of the other. At the end, they both confirm that they want the deal "as agreed in the bundle of our e-mails".

Soon afterwards A delivers a huge quantity of the Bordeaux wine to a cargo ship of C waiting at a French port. The delivery contains the wine for A and for other customers. While the ship is at sea, A asks C to let the crew attach individual labels to the pallets allocating each pallet to an individual customer. However, stormy weather and a rolling sea make it impossible to comply with this demand. Finally, in the Street of Malacca, the ship runs onto a rocky reef and sinks.

Some weeks later, A and B meet at Malacca and drink together the only bottle of wine that the crew could save from the sinking ship. They want to go on doing business together but first need to know if B has to pay the price for the lost wine or not. B reminds A that the wine has never arrived at his place while A explains to him that he has delivered the wine to C at the French port as required in the contract. When they have a look on the exchanged e-mails, they find out that the attached standard terms of business are quite different: While those of A determine that "the risk passes to the buyer when the goods are handed over to him or to a carrier", those of B accept it only when "the goods arrive at our place". Furthermore, according to A's terms "French law is applicable to this contract", while B's terms insist on the "application of Singaporean law".

A and B could bring their case before an international commercial arbitrator. But they do not like to waste so much money for that. When they meet you in a bar and learn that you have just followed a course on legal case-solving in international sales law, they offer you 10 bottles of superior Bordeaux wine and ask you to "clear up the mess". What will you tell them?