

## CIVILA AND COMMERCIAL

INDIVIDUAL TEST, PART OF THE CONTINUOUS EVALUATION

30.11.20

Name: Click or tap here to enter text.

NOVA student number: Click or tap here to enter text.

### Rules

Camera and microphone have to be open at all times.

The documents will be analysed with specialized software. Any detection of plagiarism will lead to you failing the test. Note that plagiarism includes copy paste from each other and from other sources. Citations of external sources do not count as plagiarism when properly indicated. TurnItIn allows me to check for that.<sup>1</sup>

You can write a maximum of **one page** per answer. Therefore, there is plenty of time. Use this time wisely to plan your answer. Do not change the font size or type, nor change the margin size.

Time limit: 3 hours since the greenlight by me.

**IMPORTANT:** within the 3 hours, you have to send me the email with the test. If you delay, your test will not be considered.

The grades will be published on Moodle, using your NOVA student number instead of the name.

### Preliminary activities

1. Rename the file as: CCC\_Surname\_Studentnumber
2. Prepare the email that you will use to send me the file at [fabrizio.esposito@novalaw.unl.pt](mailto:fabrizio.esposito@novalaw.unl.pt).

Good luck!

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<sup>1</sup> <https://www.quora.com/How-can-copying-and-pasting-my-own-work-from-one-Word-document-to-another-Word-document-be-detected-An-institution-said-they-will-be-able-to-tell-if-our-document-is-copied-and-pasted-during-online-exams-How-true-is>

## **Exam questions**

Had RESPONDENT the right to avoid the contract, or at least terminate it?

Assuming RESPONDENT had the right to avoid the contract, does CLAIMANT have to deliver the last order of masks?

## **Case**

In January 2020 a new virus of the *Lyssavirus* family has begun to spread among dogs and other mammals, including humans. Like all *Lyssaviruses*, virus T affects the brain and spinal cord leading to extreme behavioural changes such as restlessness or apprehension, both of which may be compounded by aggression. Again like all *Lyssaviruses*, virus T is transmitted through saliva: hence a bite leads to an infection. In addition, virus T is airborne, and its symptoms are manifested very rapidly, while the incubation period varies between 1 and 3 months. Unfortunately, traditional vaccines for *Lyssaviruses* do not work on virus T. The diffusion of virus T has led to hundreds of thousands of deaths, an economic crisis, as well as major lifestyle changes worldwide.

CLAIMANT, Umbrella Corporation, is a leader in the pharmaceutical sector, offering a wide range of products. Its place of business is in Caledonia, which is a Contracting State of the CISG. In particular, CLAIMANT was the first to introduce on the market a sophisticated protective mask which is extremely difficult to remove without someone else's help – Mask C1P8. Since its launch in March 2020, Mask C1P8 has significantly contributed to contain the diffusion of the virus T.

Since April 2020, CLAIMANT has been supplying Masks C1P8 to RESPONDENT, HumanCare, under a sale contract signed on 4 April 2020 [Exhibit 1]. HumanCare is a major distributor of medical equipment and supplies in Mediterraneo, another Contracting State of the CISG. Its clients included the National Healthcare System (NHS) of Mediterraneo, as well as many of its private hospitals and pharmacies. Soon after, several competitors of CLAIMANT have been offering masks similar to the Mask C1P8; the C1P8 model remains, in the eyes of the public, the most reliable mask.

On 4 November 2020, *Wikileaks* published documents suggesting that CLAIMANT had committed human rights violations to develop Mask C1P8. CLAIMANT vigorously denied the authenticity of the documents.

Following a series of phone calls between CLAIMANT and RESPONDENT, as well as RESPONDENT and its clients, RESPONDENT avoided the contract with CLAIMANT on 10 November 2020 via email. The reason was that the allegations of human rights violations lead to a fundamental breach of contract. Additionally, RESPONDENT refused to pay the outstanding balance "since the seriousness of the allegations against you require us to dissociate us from you as much as possible; in particular, the NHS of Mediterraneo is extremely preoccupied with the idea of having financed a company engaged in human rights violations. Until the situation becomes clearer, we cannot authorize the payment" (email, 10.11.20). At the same time, RESPONDENT intimated to CLAIMANT to deliver the last order of Mask C1P8. The shipment had taken place on 8 November 2020, but CLAIMANT had recalled it after RESPONDENT's intention to suspend the payment. This happened notwithstanding that RESPONDENT wrote in its email on 10 November that "since the last shipment has already been handed over to the carrier, it goes without saying that you do not have the right to suspend delivery" (email, 10.11.20).

On 15 November 2020, CLAIMANT filed a lawsuit against RESPONDENT. CLAIMANT denies the existence of any breach of contract without producing new evidence in this regard. Moreover, CLAIMANT argues that the document leak led to the sinking of the value of the stocks and bonds of CLAIMANT on financial markets. Accordingly, CLAIMANT's operational capacity is at risk, given the liquidity crisis that followed these events. Regarding the last delivery, CLAIMANT is willing to perform, provided RESPONDENT pays the outstanding balance.

RESPONDENT argues that the breach of contract is fundamental, given RESPONDENT's commitment to respect the value of human life. Accordingly, a strong signal of discontinuity was needed. In relation to the

payment of the outstanding balance, RESPONDENT points out that the documents leaked strongly suggest that CLAIMANT violated human rights. Being this the case, CLAIMANT's conduct is causing and will continue to cause significant reputational and commercial damage to RESPONDENT. RESPONDENT declares its willingness to pay once CLAIMANT proves the inauthenticity of the leaked documents. Finally, RESPONDENT explains that the reason for insisting on the delivery is very simple: on such short notice, it is impossible to obtain a substitute of MASK C1P8 from a competitor of CLAIMANT at a reasonable price.

**Answer to Question 1.**

**Answer to Question 2.**

**SALE AGREEMENT**

Whereas the rapid diffusion of virus T is a major concern in Mediterraneo;

Whereas HumanCare is a major distributor of medical equipment and supplies in Mediterraneo, with a strong commitment to the protection of human health and wellbeing;

Whereas Umbrella Corporation has developed Mask C1P8, which has proven effective in containing virus T.

Humancare and Umbrella Corporation have entered into the following sale agreement

**Art 1: Contracting Parties**

Seller: Umbrella Corporation Inc., 100 Main Street, Star City, Caledonia

Buyer: HumanCare Ltd, 12 Mandela Street, Sunnydale, Mediterraneo

**Art 2: Obligations of the seller**

The seller agrees to sell monthly to the buyer up to 10.000 units of its Mask C1P8 for the price of 12 EUR per unit. The characteristics of Mask C1P8 are specified in annex A.

The seller guarantees the conformity of the delivered units of Mask C1P8 to annex A and to the health and safety regulations of Mediterraneo, as in force at the time of the conclusion of the contract.

The delivery has to take place by the 8<sup>th</sup> day of every month. Seller is responsible for the choice of the carrier. The shipment has to be handed over to buyer by the 15<sup>th</sup> day of the month. Given the health crisis, any delay in delivery is considered a fundamental breach within the meaning of Art. 25 CISG.

**Art 3: Obligations of the buyer**

The buyer agrees to buy a minimum of 7.500 units of Mask C1P8 per month at the agreed price.

The buyer is responsible for informing the seller of any change in the regulations of Mediterraneo after the conclusion of the contract.

**Art 4: Changes in the law of Mediterraneo**

In case of changes in the law and regulations of Mediterraneo that may lead to the prohibition to sell Mask C1P8 in Mediterraneo, seller will have to prove the compatibility of Mask C1P8 with said regulations.

In the absence of such proof, buyer is entitled to refuse delivery and.

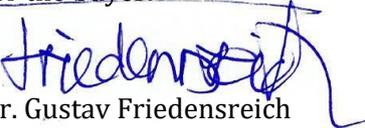
[...]

**Art 19: Duration and termination**

This contract shall run until virus T is contained in Mediterraneo.  
Thereafter, each party can terminate the contract with effect on the 1<sup>st</sup>  
day of the next month.

Date: 4 April 2020

For the buyer:

  
Mr. Gustav Friedensreich

For the seller

  
Mr. Werner Weinbauer