

EFFECTIVE WITNESS EXAMINATION

WORKSHOP MATERIALS

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The Workshop on Effective Witness Examination will be comprised of four different components:

1. the faculty will provide a brief overview and demonstration of fundamental questioning techniques for 30 minutes;
2. the participants will practice the fundamental questioning techniques without reference to any case materials for 30 minutes;
3. the participants will practice the fundamental questioning techniques using the attached case materials for 30 minutes; and
4. the faculty will provide a brief concluding presentation on guidelines for preparing an effective cross-examination for 30 minutes.

ADVANCE PREPARATION

Before arrival at the Workshop, participants are requested to:

- (a) review the attached case materials;
- (b) prepare ten (10) questions for Buyer Inc. witness Mr. Mick Dundee; and
- (c) prepare ten (10) questions for Seller Corp. witness Ms. Marion Camembert.

CASE OVERVIEW

On 1 February 2017, Buyer Inc. and Seller Corp. signed a contract pursuant to which Buyer Inc. was to purchase 1000 widgets from Seller Corp. (“Contract 1”).

On 4 February 2017, Buyer Inc. and Customer Ltd. signed a contract pursuant to which Customer Ltd. agreed to purchase 1000 widgets from Buyer Inc. (“Contract 2”).

Contract 1 provides that Buyer Inc. must open a letter of credit in favour of Seller Corp. for the purchase price within two weeks from signature of Contract 1. Buyer Inc. failed to open the letter of credit within the stipulated time due to an internal administrative error. By letter dated 18 February 2017, Seller Corp. therefore terminated Contract 1 with immediate effect.

During the two weeks following termination, Buyer Inc. attempted to persuade Seller Corp. to provide it more time to open the letter of credit. However, Buyer Inc.’s efforts failed since Seller Corp.

demanded a higher price for the shipment of 1000 widgets and, when Buyer Inc. did not agree, sold them at a higher price to another party.

In 2016 and early 2017, the market price for widgets was stable. In the second week of February 2017, however, widget prices started to rise precipitously due to widespread strikes and riots at five manufacturing facilities of widget dust, the principal component of widgets. These five facilities manufacture 90% of the world's supply of widget dust. By 1 March 2017, the market price for widgets had increased by 50% as compared to 1 February 2017.

To satisfy its obligations to Customer Ltd. under Contract 2, Buyer Inc. was forced to find an alternative supplier of widgets. On 15 March 2017, Buyer Inc. signed an agreement with ABC Supplier GmbH pursuant to which Buyer Inc. agreed to purchase 1000 widgets from ABC Supplier GmbH ("Contract 3"). Given the significant increase in the market price of widgets, Buyer Inc. suffered a heavy loss on Contract 2.

Buyer Inc. has commenced an international arbitration against Seller Corp., contesting Seller Corp.'s termination of Contract 1 and seeking monetary damages, interest and costs. The arbitration is now proceeding to the witness hearing and you must ask questions of the Parties' main witnesses, Mr. Mick Dundee for Buyer Inc. and Ms. Marion Camembert for Seller Corp.

CASE MATERIALS

- (a) Annex A: Contract between Buyer Inc. and Seller Corp., dated 1 February 2017 ("Contract 1");
- (b) Annex B: Sale Contract No. 1234567 between Buyer Inc. and Customer Ltd., dated 4 February 2017 ("Contract 2");
- (c) Annex C: Seller Corp.'s letter of termination dated 18 February 2017 and subsequent email exchanges between Buyer Inc. and Seller Corp. of February 2017 ("Correspondence"); and
- (d) Annex D: Contract for Sale of Goods between Buyer Inc. and ABC Supplier GmbH, dated 15 March 2017 ("Contract 3").

Please note that the attached Contracts and letter of termination are intended to reflect the quality of real documents often encountered in practice. These documents should not to be considered as models of good legal drafting.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX A – CONTACT 1

SALE CONTRACT

CONTRACT NO. XXXX/2017

Between

THE FIRST PARTY

SELLER CORP.

1400, avenue du Seller

Paris

FRANCE

(hereinafter the “SELLER”)

And

THE SECOND PARTY

BUYER INC.

1100, Buyer’s Way

Sydney

AUSTRALIA

(hereinafter the “BUYER”)

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX A – CONTACT 1

CONTRACT NO. XXXX/2017

ARTICLE ONE – SUBJECT MATTER OF THE CONTRACT

The subject matter of this Contract is as follows (the “Contract Equipment”):

- 1000 widgets with the specifications set forth in the attached APPENDIX I

ARTICLE TWO – SHIPMENT

The sale shall be made FOB – Marseilles/France.

The SELLER undertakes to pack in a seaworthy manner the Contract Equipment, deliver all documentation related to the Contract Equipment and load the Contract Equipment on board at FOB Marseilles/France according to INCOTERMS 2000.

The BUYER undertakes to receive the Contract Equipment in Marseilles/France on the date on which the SELLER makes the Contract Equipment available to it. The SELLER shall notify the BUYER of this date with six weeks advance notice.

The BUYER has the right to appoint 2 persons for verifying and supervising the task of the packing of the Contract Equipment. The said company/person may solely intervene as an observer / adviser. The cost of the said verification, supervision and all related charges shall be for the BUYER's account.

ARTICLE THREE – PRICE OF THE CONTRACT EQUIPMENT

The total price of the Contract Equipment amounts to EUR 4,500,000.- (say EURO four million five hundred thousand only) FOB – Marseilles/France.

The said price includes the seaworthy packing of the Contract Equipment as well as FOB conditions stipulated in INCOTERMS 2000 (see Article Two).

The said price also includes the transport of the Contract Equipment to the Port of Marseilles/France and the charges for handling, organising and storage at the dock, in addition to the loading on board the ship designated by the BUYER.

All charges generated after the Contract Equipment is put at the BUYER's disposal at the Marseilles/France shall be for the BUYER's account.

ARTICLE FOUR – TERMS OF PAYMENT

The total contract price shall be paid by BUYER to SELLER in accordance with the following conditions:

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX A – CONTACT 1

Letter of Credit: 100% (one hundred percent) of the contract price, viz. EUR 4,500,000- (say EURO four million five hundred thousand only) shall be opened in favour of SELLER within 2 (two) weeks after signature of the Contract.

The Letter of Credit shall be IRREVOCABLE AND CONFIRMED. Payment out of this Letter of Credit shall be made by following method:

1. 25% (twenty-five percent) of the contract price, viz. EUR 1,125,000.- (say EURO one million one hundred twenty five thousand only) paid to the SELLER out of letter of credit against the following documents:
 - a. Bank guarantee for the above down-payment issued by the SELLER to the BUYER.
 - b. Commercial invoice, two originals plus two copies.
2. 75% (seventy-five percent) of the contract price, viz. EUR 3,375,000.- (say: EURO three million three hundred seventy five thousand only) shall be paid to the SELLER against the following documents:
 - a. Commercial invoice, two originals plus two copies.
 - b. Packing list, two originals plus two copies.
 - c. Full set clean on board bill of lading.
 - d. Fumigation Certificate.

All banking charges incurred in connection with any transfer of money to the SELLER or opening of the Letter of Credit shall be borne by the BUYER. The Letter of Credit shall be valid until 21 days after the bill of lading date.

ARTICLE FIVE – CONTRACT EQUIPMENT DELIVERY PERIOD

The delivery of the Contract Equipment shall be made within a PERIOD OF 3 MONTHS from the CONFIRMATION of the letter of credit.

ARTICLE SIX – TAXES AND DUTIES

Any taxes, duties, levies, charges up to FOB are the responsibility of the SELLER. Any taxes, duties, levies, charges beyond FOB are the responsibility of the BUYER.

ARTICLE SEVEN – GUARANTEES

The SELLER gives no guarantee of the condition or performance of the Contract Equipment. The SELLER does, however, guarantee the completeness of the Contract Equipment.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX A – CONTACT 1

ARTICLE EIGHT – LAW AND ARBITRATION

This Contract shall be governed by and interpreted in accordance with the laws of Switzerland, including the UN Convention on Contracts for the International Sale of Goods.

All disputes arising out of or in connection with the present contract shall be finally settled under the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Geneva, Switzerland and the language of the arbitration shall be English.

ARTICLE NINE – NOTIFICATIONS

All notifications and other communications shall be considered to have been validly served if sent by fax to the other Party.

ARTICLE TEN – EFFECTIVENESS

This Contract shall come into effect at the date of signing.

ARTICLE ELEVEN – SIGNING OF THE CONTRACT

This Contract is signed on 1 February 2017 in two originals. This Contract is composed of eleven articles and one appendix as APPENDIX I.

FOR THE BUYER

[Signed]

Name: Mr. Purchase

BUYER INC.

FOR THE SELLER

[Signed]

Name: Ms. Sales

SELLER CORP.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX A – CONTACT 1

CONTRACT NO. XXXX/2017

APPENDIX I

The Contract Equipment shall be composed of:

1. 250 blue widgets;
2. 250 red widgets;
3. 300 green widgets; and
4. 200 yellow widgets.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX B – CONTACT 2

SALE CONTRACT NO. 1234567

This Sale Contract No. 1234567 is dated as of 4 February 2017 by and between Buyer Inc., a company organised under the laws of Australia with its principal place of business at 1100, Buyer’s Way, Sydney, Australia and Customer Ltd., company organised under the laws of Australia with its principal place of business at 999 Rugby Road, Sydney, Australia.

1. Description of the Goods

Buyer Inc. shall deliver to Customer Ltd., and Customer Ltd. shall, subject to the conditions set forth in this Sale Contract, take delivery of the following goods (the “Goods”):

1000 widgets, broken down as follows: 250 blue widgets, 250 red widgets, 300 green widgets, and 200 yellow widgets.

2. Place of Delivery

The Goods are to be placed at Customer Ltd.’s disposal at Buyer Inc.’s premises at 1100, Buyer’s Way, Sydney, Australia. Buyer Inc. bears the risk that the Goods are accidentally damaged or lost until Customer Ltd. takes over the Goods or breaches the contract by failing to take delivery.

3. Time of Delivery

Delivery of the goods is to be effected in accordance with Article 2 between 15 May 2017 and 15 June 2017.

4. Contract Price

Customer Ltd. shall pay Buyer Inc. the equivalent in Australian dollars of EUR 5,500,000 (the “Contract Price”), based on the official EUR-Australian dollar exchange rate of the Bank of Australia on the dates of payment.

5. Payment Conditions

Customer Ltd. shall remit 25% of the Contract Price to Buyer Inc.’s account with First Australian Bank in Sydney, Australia (IBAN no. 123456789). This amount shall be received by Buyer Inc.’s bank in immediately available funds at least seven days before the earliest date of the delivery period.

Buyer Inc. shall invoice Customer Ltd. upon Buyer Inc.’s delivery of the Goods for the remaining balance. Time of payment shall be 30 days from the date of invoice.

6. Applicable Law

This Sale Contract shall be governed by the laws of Australia.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Sale Contract on this 4th day of February 2017:

FOR THE SELLER

[Signed] _____

Name: Mr. Purchase
BUYER INC.

FOR THE BUYER

[Signed] _____

Name: Ms. Resale
CUSTOMER LTD.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX C – CORRESPONDENCE

SELLER CORP.

1400, avenue du Seller
Paris, France

By Fax

Buyer Inc.
1100, Buyer's Way
Sydney
AUSTRALIA

18 February 2017

Reference: Contract No. XXXX/2017 between Buyer Inc. and Seller Corp.

Dear Sirs,

As you know, Buyer Inc. was required to open a Letter of Credit in favour of Seller Corp. within two (2) weeks after signing of the above-noted Contract (see Article Four – Terms of Payment).

Unfortunately, Buyer Inc. did not arrange for the Letter of Credit to be opened within this two (2) week period required under the Contract.

Since Buyer Inc. did not comply with its payment obligation, Seller Corp. hereby terminates the Contract with immediate effect.

Sincerely yours,

[Signed]

SELLER CORP.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX C – CORRESPONDENCE

Email

From: mick.dundee@buyer.au
Sent: 19 February 2017, 9:52 a.m.
To: marion.camembert@seller.fr
Subject: Contract No. XXXX/2017 between Buyer Inc. and Seller Corp.

G'day Mary,

We were very surprised to receive your fax of yesterday claiming to terminate our contract to purchase 1000 widgets. We do not understand why you would terminate this contract without asking about the status of the letter of credit or giving us any prior warning. In all of the years that we have been dealing with each other you have never engaged in this type of conduct before. What is going on, mate?

Our finance manager suffered a major head injury surfing at Bondi Beach last week and was not able to set up the letter of credit. We did not realise she hadn't done so until we received your fax yesterday. Can't we sort this out, get the letter of credit opened today or tomorrow, and get the contract back up and running?

Terminating the contact just like that is not fair dinkum! We look forward to hearing from you as soon as possible to resolve this situation and get our longstanding relationship back on track.

Mick

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX C – CORRESPONDENCE

Email

From: marion.camembert@seller.fr
Sent: 22 February 2017, 11h00
To: mick.dundee@buyer.au
Subject: Contract No. XXXX/2017 between Buyer Inc. and Seller Corp.

Cher Micky,

Sorry to hear about the surfing accident. Too bad for you – dommage. But it does not change much for the contract.

For me, what counts is that the market price has gone way up. I have already started talking to other customers who are willing to pay big money for these 1000 widgets.

If you want in the game, you need to pay more. If not, I move on and deal with somebody else. Let me know what you want to do – tout de suite.

Amitiés,

Marion

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX C – CORRESPONDENCE

Email

From: mick.dundee@buyer.au
Sent: 22 February 2017, 11:38 pm
To: marion.camembert@seller.fr
Subject: Contract No. XXXX/2017 between Buyer Inc. and Seller Corp.

Mary,

I can't believe this – you are killing me. We had a contract and a great relationship. Do you want to screw up all of that for one deal? Crikey – it just does not make any sense.

I already told you that I'm already committed to selling the 1000 widgets to those jerks at Customer Ltd. I can't agree to pay anything more for them – I'd have to eat a big loss and my boss would gut my annual bonus.

But maybe we can work something out over a couple of future contracts. Let me know when you are free to talk about this. C'mon, be a decent sheila.

Mick

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX C – CORRESPONDENCE

Email

From: marion.camembert@seller.fr
Sent: 25 February 2017, 14h50
To: mick.dundee@buyer.au
Subject: Contract No. XXXX/2017 between Buyer Inc. and Seller Corp.

Cher Micky,

If you do not want to pay more for this deal, it is not my problem. I have my bonus to worry about too. The markets only jump like this once every five or six years.

I already agreed to sell the 1000 widgets to somebody else. So sorry – trop tard.

A+

Marion

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX D – CONTACT 3

CONTRACT FOR SALE OF GOODS

This Contract for the Sale of Goods is made on 15 March 2017 by and between ABC Supplier GmbH, a German corporation with its principal place of business at 1500 Wagnerstrasse, Leipzig, Germany ("Seller") and Buyer Inc., an Australian company with its principal place of business at 1100, Buyer's Way, Sydney, Australia ("Buyer") for the purchase of the goods described below:

Qty.	Description	Price
250	Blue Widgets	EUR 1,625,000
250	Red Widgets	EUR 1,625,000
300	Green Widgets	EUR 1,950,000
200	Yellow Widgets	EUR 1,300,000
1000	TOTAL PRICE: EUR	6,500,000

1. Term: This Contract shall begin on 15 March 2017, and end upon the last delivery, which shall be shipped no later than 15 May 2017. However, if as of such date, Buyer is in arrears on the account, Seller may cancel this Contract and sue for its damages, including lost profits.
2. Delivery: Seller will arrange for delivery through a carrier chosen by Buyer, the costs of which shall be F.O.B. Hannover, Germany. Delivery must be made by no later than 15 May 2017.
3. Risk of Loss: The risk of loss from any casualty of the goods, regardless of the cause, will be the responsibility of the Seller until the goods have been received by the Buyer.
4. Acceptance: Buyer will have the right to inspect the goods upon receipt, and within 10 days after delivery, Buyer must give notice to Seller of any claim for damages on account of condition, quality or grade of the goods, and Buyer must specify the basis of the claim in detail. Failure of Buyer to comply with these conditions will constitute irrevocable acceptance of the goods by Buyer.
5. Charges: 10 days after conclusion of the Contract at the latest, Buyer shall open at its own costs an irrevocable letter of credit in the full amount of the contract price in favour of Seller. The letter of credit shall not expire before 30 days after the time of delivery. Buyer's failure to open the letter of credit by the time stipulated above shall be deemed to be a fundamental breach entitling Seller to avoid the Contract by notification to Buyer without fixing an additional period of time for performance.

EFFECTIVE WITNESS EXAMINATION
WORKSHOP MATERIALS

ANNEX D – CONTACT 3

6. Warranty: Seller warrants that the goods sold hereunder are new and free from substantive defects in workmanship and materials. Seller's liability under the foregoing warranty is limited to replacement of goods or repair of defects or refund of the purchase price at Seller's sole option. No other warranty, express or implied, is made by Seller, and non shall be imputed or presumed.

8. Taxes: All sales taxes, tariffs, and other governmental charges shall be paid by Buyer and are Buyer's responsibility except as limited by law.

9. Governing Law: This Contract shall be governed by and construed in accordance with the CISG. Issues which are not expressly settled in this Contract or in the CISG are to be settled in conformity with German law.

10. Force Majeure: Seller may, without liability, delay performance or cancel this Contract on account of force majeure events or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply, or casualty.

11. Resolution of Disputes: All disputes arising out of, relating to or in connection with this Contract shall be submitted to binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce. The seat of arbitration shall be Paris, France. The number of arbitrators shall be three. The language of the arbitration shall be English.

12. Signing of the Contract: This Contract is signed on 15 March 2017 in two originals.

FOR THE BUYER

[Signed]

Name: Mr. Purchase

BUYER INC.

FOR THE SELLER

[Signed]

Name: Mr. von Garnier

ABC Supplier GmbH