Term Project /Group assignment 1

Kaihari Waina v. Vino Veritas

Please read the statement of claim together with the exhibits and prepare a Memorandum/statement of claim, answering the following questions with reference to specific articles of the CISG:

SUPPORT SELLER/RESPONDENT

1. Was there a legally binding contract between the parties? Please explain
2. Was there a breach of the contract? By whom? Please explain.
3. What were the main obligations of the buyer in this situation? Were they complied with?
4. What were the main obligations of the seller in this situation? Were they complied with?
5. Can the Claimant rely on the specific performance? Why yes/no? What would be considered as specific performance in this case?
6. Can the Claimant claim damages? Why yes/no?
7. Can the Respondent rely on force majeure? Please explain why yes/No.
8. Which court can the Claimant apply to? Which law will be applicable to the case?
9. Please site any other arguements (good faith etc) in support of the Claimant/Respondent.

**[EXHIBIT 1]**

**FRAMEWORK AGREEMENT**

**Art 1:** **Contracting Parties**

Seller: Vino Veritas Ltd, 56 Merlot Rd, St Fundus Vuachoua, Mediterraneo

Buyer: Kaihari Waina Ltd, 12 Riesling Street, Oceanside, Equatoriana

**Art 2: Obligations of the seller**

The seller agrees to sell annually to the buyer up to 10.000 bottles of its wine of diamond quality to the buyer at a price to be agreed between the parties in accordance with the following provisions. The seller agrees to support the buyer in its marketing activities wherever possible without disruption to its ordinary course of business.

**Art 3: Obligations of the buyer**

The buyer agrees to buy a minimum of 7.500 bottles of wine of diamond quality from the seller as a price to be agreed by the parties in accordance with the following provisions. The buyer agrees to market and resell the wine as a premium product and to refrain from any actions which may damage the reputation of the seller or its wine.

**Art 4: Quantities and Price**

The buyer will each year no later than 20 December place its orders for that year’s vintage. The parties will then enter into negotiations to determine the price for the orders. If no price can be agreed between the parties a reasonable market price will be determined by an expert appointed by the Mediterranean Wine Association. The price fixed by the expert shall not be more than 15% higher than the price for the previous year.

**[...]**

**Art 19: Duration and termination**

This contract shall run for a minimum period of 5 years. Thereafter, unless either a party terminates the contract before 1 January of any year the contract is prolonged automatically for one year.

**Art 20: Dispute Resolution/Applicable Law**

All disputes shall be settled amicably and in good faith between the parties. If no agreement can be reached the dispute shall be decided by arbitration in Vindobona by the International Arbitration Tribunal (VIAC) under its International Arbitration Rules in accordance with international practice. The number of arbitrators shall be three to be appointed in accordance with those Rules. The proceedings shall be conducted in a fast and cost efficient way and the parties agree that no discovery shall be allowed. The award shall be binding and each party shall comply with the award. This contract is governed by the law of Danubia including the CISG.

Date: 22 April 2009

For the buyer: Mr. Gustav Friedensreich

For the seller: Mr. Werner Weinbauer

**[EXHIBIT 2]**

Mr. Gustav Friedensreich

4 November 2014

Werner Weinbauer Vino Veritas Ltd

56 Merlot Rd St Fundus Vuachoua Mediterraneo

Order: 10.000 bottles of Diamond Mata Weltin

Dear Mr Weinbauer,

First of all let me congratulate you on the various prizes your wines have won during this year. They are well deserved and underline your status as the top vineyard in Mediterraneo.

In line with our overall agreement we herewith order the maximum guaranteed number of 10.000 bottles of diamond Mata Weltin 2014. In light of the number of pre‐orders we have already received, we would be more than happy to buy another 2.000 bottles, so that the 10.000 bottles guaranteed under the contract is really the minimum we need.

Ms Buharit, our development manager, would like to visit you on 25 November to discuss this order and our new marketing strategy which offers exiting opportunities for you.

Please let me know whether the date suits you and what time would be most convenient.

Kind regards

Best wishes,

Gustav Friedensreich

**[EXHIBIT 3]**

Vino VEritas

1 December 2014

Kaihari Waina Ltd 12 Riesling Street Oceanside Equatoriana

‐by email‐

Dear Mr Friedensreich,

As already discussed with Ms Buharit we will only be able to deliver 4.500 – 5.000 bottles of Mata Weltin 2014 at a price of EUR 41,50 per bottle to you. This year’s harvest was made particularly difficult by the very wet second half of August which at the same time was marked by high night temperatures.

That combination led to a great deal of rot in the grapes. Since the weather conditions did not improve during September the harvest was one of the most in recent memory. That resulted in one of the worst harvests in the last ten years in relation to quantity, albeit one of the best quality ones. We only will be able to bottle half of the usual quantity of diamond Mata Weltin.

Given our long lasting relationship with all our customers we have decided that it is in the best interests of everyone that we distribute the available quantities pro rata and deliver therefore only up to half of the ordered quantities to each of them. From the first impression, we are confident that the quality of the 2014 vintage will compensate you and your customers at least for some of the inconvenience caused by the bad harvest.

The proposal submitted by Ms Buharit looks in some parts very interesting but because of our new strategy we will in the future, however, be unlikely to be able to guarantee delivery of more than 8.000 bottles per year. We should discuss that during the price negotiations agreed for next week. We are looking forward to be able to present you a high quality elegant and nutty diamond Mata Weltin in May 2015.

Kind regards

Werner Weinbauer

**[EXHIBIT 4]**

Kaihari Waina Ltd

2 December 2014

Werner Weinbauer

Vino Veritas Ltd 56 Merlot Rd St Fundus Vuachoua Mediterraneo

Order: 10.000 bottles of Diamond Mata Weltin

Dear Mr Weinbauer,

We have been very surprised by your letter of yesterday and cannot accept the proposal you made as to quantities. At the meeting on 25 November Ms Buharit made clear that we needed all 10.000 bottles of wine. That amount is guaranteed to us under Article 2 of the Framework Agreement and has already largely been promised to our customers. We understand that there has been a drop in quantity this year. However, we doubt that at present you already have binding orders which exceed the quantity harvested and that would legally oblige you to deliver on a pro rata basis. Our relationship was deliberately structured in a way that we would order before all other customers.

That allowed you to guarantee us delivery up to the maximum amount agreed and then to negotiate with the other customers concerning the remaining quantity. You will understand that we are in particular not willing to give up some of our bottles for the delivery to our biggest competitor SuperWines.

According to press releases they are buying large quantities from you for the first time. Since we know you to be a trustworthy business partner we are confident that you will honour your contractual obligations to us and that this will not affect our long lasting and mutually beneficial relationship.

As Ms Buharit already told you we are willing to cooperate even more closely with you and use your facilities more frequently for wine events with our collectors creating additional opportunities for you. The price of EUR 41,50 per bottle is accepted.

Best wishes

Gustav Friedensreich

**[EXHIBIT 5]**

St Fundus,

4 December 2014 Kaihari Waina Ltd 12 Riesling Street

Oceanside Equatoriana ‐

by email‐

Hello Mr Friedensreich,

I find your behaviour extraordinary!!! Uncooperative and rude!!! In all my years in the industry I have never experienced anything comparable. You are the only customer I have ever had which is unwilling to cooperate in finding a mutually acceptable solution to the problems created by the extremely low quantities of grapes harvested this year.

Instead, you accuse me of lying and misrepresenting the real reasons for our request as well as the outcome of my conversation with Ms. Buharit. You do not seem to understand the world of high end wine making. Our whole business is based on mutual trust and long lasting relationships. Already your insistence on a written framework contract and fixed quantities five years ago again was extremely unusual.

At the time, I ascribed that to your lack of experience in the field. Now I realize that this is just your way of doing business. Since that is, however, not my way of doing business, I consider our relationship terminated.

To avoid any doubts: there will be no delivery of any bottle of the 2014 harvest to you even if we have to drink them ourselves which I doubt given the interest in our quality product.

Goodbye

Werner Weinbauer

**[Statement of facts summary]**

**Kaihari Waina v. Vino Veritas**

**Kaihari Waina** Ltd 12 Riesling Street Oceanside Equatoriana ‐ CLAIMANT‐

**Vino Veritas** Ltd 56 Merlot Rd St Fundus Vuachoua Mediterraneo - RESPONDENT‐

1. Kaihari Waina Ltd (“Kaihari”), the CLAIMANT, is a wine merchant specialised in top quality wines for the collectors’ and high end gastronomy markets. Over recent years it has consistently increased its market share in a highly competitive market. Kaihari has developed a particular expertise in Mediterranean Mata Weltin wines from the Vuachoua region and has gained a reputation with its customers of being a particularly reliable source. Because of its high end customer base Kaihari only sells Mata Weltin wines of diamond quality. Diamond quality Mata Weltin has a minimum alcohol content of 12.5 vol% and has been judged as being on a par with the best white wines in the world.

2. The RESPONDENT, Vino Veritas Ltd (“Vino Veritas”), is one of the top vineyards in Mediterraneo. It is the only vineyard in the Vuachoua region that has won the Mediterranean gold medal for its diamond Mata Weltin in each of the last five years. RESPONDENT is a medium size high quality wine producer in Mediterraneo. It has an annual production of around 100.000 bottles per year which it sells to a number of selected customers including most of the leading restaurants in Mediterraneo. Some of them have been buying our wines for 40 years and numerous personal friendships have developed. Each of these restaurants only buys between 200 and 500 bottles a year. Irrespective of these small quantities they are crucial for the reputation of RESPONDENT’s wines and therefore for the price RESPONDENT can obtain on the market. The remaining 60 per cent of RESPONDENT’s wine production is sold to major foreign wine merchants for high end wines which distribute the wines to customers all over the world. Five years ago, RESPONDENT’s biggest customer was bought by a major conglomerate and shortly thereafter went insolvent. Consequently, RESPONDENT had to replace that customer at very short notice and selected CLAIMANT who had already tried to get into business with RESPONDENT for several years.

3. Kaihari has sold Vino Veritas diamond Mata Weltin wines for the last 6 years with great success. The base of the Parties’ economic relationship is a framework contract concluded between them on 22 April 2009 [Exhibit 1].[[1]](#footnote-1) The framework contract provides in essence that, every year, CLAIMANT would buy a certain minimum number of bottles from RESPONDENT which in return committed to deliver bottles up to a maximum amount of 10.000 bottles. The exact amount will be determined every year by orders placed by CLAIMANT at the end of the year and normally before negotiations with other customers start.

4. For CLAIMANT the certainty of supply is crucial and part of its business model and success. The selected group of collectors and high end restaurants around the world which form the majority of CLAIMANT’s customers want a quasi‐guarantee that they will be supplied with the high end Mata Weltin wines they order annually. Over the years, Kaihari has always ordered between 7.500 and 8.500 bottles with a general tendency to increase.

5. Following a series of prizes granted to RESPONDENT’s Mata Weltin wines from earlier vintages in the first months of 2014, by mid‐September 2014 there had been a considerable increase in pre‐orders from Claimant’s customers. Consequently, on 4 November 2014, Kaihari ordered from RESPONDENT the maximum amount of guaranteed bottles under the contract. Furthermore, it made clear that in addition to those 10.000 bottles of diamond Mata Weltin from the 2014 vintage it would be willing to buy more and expand the co‐operation with RESPONDENT further [Exhibit 2].

6. On 1 December 2014, CLAIMANT received a letter from RESPONDENT stating that it would only deliver 4.500 – 5.000 bottles of the ordered wine [Exhibit 3]. The RESPONDENT claimed that because of the 2014 harvest having yielded a much smaller than usual quantity of diamond Mata Weltin wines, it was not able to fulfil the CLAIMANT’S entire order. Vino Veritas stated that it had opted to fulfil its contractual obligation with its customers on a pro rata basis in order to maintain business relationships with all of them. [[2]](#footnote-2)

7. The CLAIMANT, while not denying that the 2014 harvest had yielded less than the normal quantity has, however, received information that the real reason for the RESPONDENT’s breach of contract was not the shortfall in yield; information from industry sources suggests that the real reason for not delivering the entire 10.000 bottles has been that the RESPONDENT has contracted with its competitor SuperWines, thereby exceeding its available capacity. The RESPONDENT, rather than honouring its long standing contract and business relationship with CLAIMANT, tried to work with SuperWines, an international wine wholesaler which has recently started to expand into the high end market by delivering the sought‐after quantity of its high end wine on demand without delay.

However, not only did RESPONDENT want to establish a new business relationship, RESPONDENT also used the opportunity to make a larger profit. Reports published in industry journals around that time suggest that SuperWines paid a premium for the wine.

8. The RESPONDENT’s letter received on 1 December 2014 came as an unpleasant surprise to CLAIMANT. In a meeting on 25 November 2014, Ms Buharit, Claimant’s development manager, had made clear to Mr Weinbauer, Respondent’s CEO at the time, that CLAIMANT needed as a minimum the full quantity of bottles ordered but preferably more. Mr Weinbauer had left no doubts that no quantity larger than the 10.000 bottles Claimant had asked for could be delivered. However, he had created the impression that RESPONDENT would honour its contractual delivery commitments, even if that meant delivering fewer bottles to other customers. These other customers normally only place their binding orders in December or January. Consequently, at the time of RESPONDENT’s letter there were no existing contractual obligations to such customers, even if they were long standing ones.

CLAIMANT had pointed that out in its email of 2 December 2014 and had demanded the delivery of 10.000 bottles of diamond Mata Weltin 2014. It had stated clearly that it was not interested in any future compensation for the non‐delivery of 5500 bottles but would instead insist on performance.

9. Mr Weinbauer completely overreacted to this reasonable request for contractual performance. He accused CLAIMANT of outrageous behaviour and purported to terminate the contract, threatening that no delivery would be made at all.

10. At that time CLAIMANT had already received a considerable number of orders for diamond Mata Weltin 2014, some of which it had already accepted. Consequently, CLAIMANT had to protect its interest and its business reputation. Given Mr Weinbauer’s temper and the reduced quantity harvested it could not be guaranteed that RESPONDENT would actually deliver the 10.000 bottles. Consequently, CLAIMANT immediately started to contact other top vineyards and managed to make substitute arrangements for the 5.500 bottles RESPONDENT had already refused to deliver.

12. Later on RESPONDENT’s new management finally offered to deliver up to 4.500 bottles, as “a sign of their goodwill and to terminate all legal/court proceedings.” It was, however, not willing to reimburse CLAIMANT for the costs and the damages incurred due to the unreasonable behaviour by Mr Weinbauer.

1. In fact, CLAIMANT insisted on entering into a framework contract, deviating from the ordinary industry practice. Due to the special situation at the time and believing that any problems that might eventually arise would be resolved amicably RESPONDENT was willing to enter into such a contract giving CLAIMANT the option to purchase up to around 10% of RESPONDENT’s annual production. That made CLAIMANT the RESPONDENT’s second biggest customer. The framework contract provided for a range within which CLAIMANT could annually order bottles from the new vintage. Claimant originally wanted the option to order a larger quantity but RESPONDENT resisted that request. It wanted to ensure that even in bad years CLAIMANT’s demands could be met by the bottles RESPONDENT normally reserved for itself without affecting the delivery to other customers too much. Given the amicable relationship with all its customers and industry practice there was, however, an expectation that in bad years, the parties would jointly find a solution which allowed RESPONDENT to keep a certain minimum of bottles. [↑](#footnote-ref-1)
2. Until early August, it seemed that the 2014 vintage would be excellent. During the last two weeks of August and in September it rained so much that nearly half of the grapes rotted on the vine. As a consequence, the amount of grapes available to RESPONDENT for wine production dropped to an all‐time low, leaving only a production of about 65.000 bottles in 2014. Quality‐wise the remaining grapes were excellent and promised an absolutely extraordinary year. 10. On 3 November 2014, a few days after the vintage had been brought in, RESPONDENT immediately informed its customers by fax about that extraordinary drop in quantity. It announced that one would try to negotiate with the customers quantities available for each of them within the next weeks. All other customers showed understanding our difficult situation and entered into negotiations resulting in reduced quantities all round. Only CLAIMANT proved completely uncooperative. The day after the fax was sent notifying RESPONDENT’s customers of the reduced quantity available CLAIMANT made, for the first time, an order at the top end of the agreed range and ordered 10.000 bottles [↑](#footnote-ref-2)