
PUPILLAGE INTERVIEW PROBLEM 2022

1. Easy Freight Ltd (“Easy Freight”) is a freight forwarding company based in Seatown, Eastlandia.
2. Mrs Gardener is a landscape architect, born in Eastlandia, but living in Westlandia. She operates her landscape architecture business out of her Dodge Truck. She, along with her husband and four children, plan to relocate to Eastlandia. She looks on Google for a way to transport her Dodge Truck across the sea to Eastlandia.
3. Mrs Gardener finds a link to Easy Freight’s website. She sends the following email to Easy Freight on 28th July 2021:

Hi there,

I am currently living in Westlandia but am planning to relocate with my (large!) family to Eastlandia. Could you arrange for the shipping of my Dodge Truck from Quayside, Westlandia, to Seatown, Eastlandia on 10 August 2021 please? My truck is quite large I’m afraid (I’m a landscape architect!), and it has a camper shell attached to it. Together they weigh 2000 kilos.

Look forward to hearing from you,

Susan Gardener

4. On 1 August 2021, Easy Freight reply to Mrs Gardener’s email:

Hi Mrs Gardener

Of course, that won't be a problem. Please drop your truck off at our offices at Quayside at 6am on 10 August 2021. Sorry for the early start, the waters around Quayside get choppy later in the day! Please be ready to pick up your truck from Seatown at around midday on 12 August 2021. See payment details in the attached document together with the EIFA terms.

Best of luck with your move.

All the best,

Easy Freight Ltd

5. Attached to Easy Freight's email were two documents. One was the document containing the payment details. Mrs Gardener duly paid the £4,500 due. The other document was a document containing the Eastlandia International Freight Association (EIFA) Standard Trading Conditions.
6. The EIFA terms include the following provisions:

Definitions

1. In these conditions the following words shall have the following meanings:-

<i>"Company"</i>	<i>the EIFA member trading under these conditions</i>
<i>"Customer"</i>	<i>any Person at whose request or on whose behalf the Company undertakes any business</i>
<i>"Goods"</i>	<i>the cargo to which any business under these conditions relates</i>
<i>"Person"</i>	<i>natural person(s) or any body or bodies corporate</i>
<i>"SDR"</i>	<i>are Special Drawing Rights as defined by the International Monetary Fund</i>

The Company

2.(a) The Company shall be entitled to procure any or all of the services as an agent of the Customer, or, to provide those services as a principal.

(b) When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or, to subcontract on any terms whatsoever, the whole or any part of such services.

(c) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions.

...

10(a) Should the Customer of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.

...

The Customer

...

20 The Customer shall save harmless and keep the Company indemnified from and against:-

(a) all liability, loss, damage, costs and expenses whatsoever arising out of the Company (or its agents) acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any term in these conditions, or from the negligence of the Customer, and

(b) without derogation from sub-clause (a) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party.

Liability and Limitation

23. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

24. The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-

(a) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or

(b) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.

25. (a) The Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed

(i) the value of any loss or damage, or

(ii) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged whichever shall be the lower.

...

For the purposes of clause 25(a), the value of the Goods shall be their value when they were, or should have been shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.

...

Jurisdiction and Law

28 These conditions and any act or contract to which they apply shall be governed by the law of Eastlandia and any dispute arising out of any act or contract to which these conditions apply shall be subject to the exclusive jurisdiction of the Eastlandia courts.

7. On 5 August 2021, Easy Freight enter into a contract with Smooth Shippers Ltd (“Smooth Shippers”) for the carriage of the Dodge Truck from Quayside to Seatown commencing on 10 August 2021. The contract is signed by Smooth Shippers, and “*Easy Freight Ltd (the goods belong to Mrs Susan Gardener)*”. This contract contains a clause which limits Smooth Shippers’ liability to its counterparty to £300 per package.

8. The shipping goes ahead as planned, and the Dodge Truck is unloaded at Quayside at 22:30 on 12 August 2021. Mrs Gardener arrives at Quayside on 13 August to pick up the Dodge Truck. She is informed by a man called Ian, who is wearing a high-vis jacket with the words “*Smooth Shippers Ltd*” on it, that the Dodge Truck has a flat battery. He says that the engineer is busy on the other side of the port with a large shipment of Tesla vehicles. But he offers to jump-start the vehicle himself.
9. Ian connects the jump leads the wrong way round. The negative lead goes where the positive lead should go, and vice versa. There is a loud bang, and smoke issues from the engine. He apologises to Mrs Gardener and calls the engineer. The engineer arrives and assesses the Dodge Truck. He states that there is nothing he can do and suggests that Mrs Gardener calls a specialist.
10. Mrs Gardener calls her breakdown cover and an engineer arrives later that day. The engineer states that she needs to take the Dodge Truck to the workshop to have a look at the internal wiring.
11. Two days later, the engineer sends an email to Mrs Gardener:

Dear Mrs Gardener

We have had a further look at the engine, in particular the inlet and outlet valves on the top of the engine (Tappets) which we readjusted to the correct lash settings. Once we completed the adjustment, the engine still runs with several diesel knocks, we have been able to narrow the knocking in Pistons 4, 6 and 1. It is our opinion that the engine has suffered a catastrophic failure certainly on the lower bearings but we also suspect that the piston rings have also been breached due to a back pressure incident caused by the accelerant that was introduced into the engine whilst it was trying to be started. We wish also to confirm that there is a significant amount of metal filings / dust present in the engine oil taken from the engine, which also depicts that the engine has been running metal to metal and is a sign of engine failure.

We have had a look within the bounds of Eastlandia for a new engine, and have been told the below: “Part number for reconditioned Long Block 494310900RX has been obsoleted with no replacement and also factory would not build any as parts supply for obsolete engine has been stopped”.

With the above in mind, this is very narrowing in our avenue of what we can do in Eastlandia. There are parts available in the aftermarket, but nowhere near to the extent of items in Westlandia, this is totally due to the Dodge Rams historically have been and are an imported vehicle to Eastlandia and because of this there is just not the aftermarket support “part” wise.

We have run a check on the availability of a new engine in Eastlandia. Our normal engine supply routes have said no, which led us to eBay, where there is one correct engine for sale, but from the looks of the state of the engine it is just simply a no.

We then switched our search to eBay (the Westlandia version) where there are multiple engines fully prepared and warranted, which are ready to be fitted with minimal intervention required to get the vehicle back on the road again.

In short, a refurbished engine is the way forward, however due to availability this would be best served being purchased and imported to Eastlandia, or the vehicle being re-exported to Westlandia to have the works performed.

We look forward to hearing from you in due course.

*Kind regards,
Louise Scorey
Service Advisor*

12. On 14 February 2022, Mrs Gardener brought a claim against Easy Freight in contract and negligence. The claim included the following Particulars of Loss:

Engineer’s inspection

£300.00

<i>Total Loss value (replacement new Dodge Truck plus camper)</i>	<i>£31,500.00</i>
<i>Storage costs</i>	<i>£525.00</i>
<i>SUV hire costs</i>	<i>£15,000.00</i>
<i>Hotel costs</i>	<i>£10,000.00</i>
<i>Loss of business</i>	<i>£10,000.00</i>

Advise Easy Freight as to its legal position. The value of one SDR is £1.

EXCERPTS FROM EASTLANDIA CONTRACT CODE

EASTLANDIA CONTRACT CODE

Art 7 Express terms

13. Express contractual terms may be oral or in writing.
14. If a contract is in writing, it is presumed that there are no terms other than the terms that are in writing. That presumption is rebuttable.
15. Contractual terms are distinct from statements that are not incorporated as part of a contract.
16. Whether a statement is incorporated as a term of a contract is dependent upon the contracting parties' intention.
17. Standard conditions of contract drawn up by one party may be "incorporated" into a contract and will be effective as against the other party to the contract if the other party (a) has knowledge of the conditions or (b) could have had knowledge of them at the time the contract was concluded by using ordinary diligence and (c) the party whose terms they are gave reasonable notice of the condition or conditions in question. Whether notice is reasonable depends on all of the circumstances, including the nature and effect of the term, and whether the other party to the contract acts as a consumer or in the course of their business.

Art 9 Interpretation

1. A term is to be interpreted by asking what the term, viewed in light of the contract as a whole, would mean to a reasonable man or woman who has all of the relevant background

knowledge that was reasonably available to the parties at the time they concluded the contract.

2. When applying Article 9(1) one must take into account:

2.1. the natural and ordinary meaning of the words used;

2.2. the purpose of the term;

2.3. the purpose of the contract;

2.4. the facts and circumstances that were known to or assumed by the parties when the contract was made;

2.5. commercial common sense.

Of these factors, (a) carries the most weight.

Art 32 Agents

1. Definitions

1. “Principal” means any person acting via an agent.

2. “Agent” means any person acting on behalf of a principal.

3. “Third party” means any person dealing with the principal via an agent.

2. How the agency relationship arises

1. The relationship of principal and agent may be constituted:

- 1.1. by the conferring of authority by the principal on the agent, which may be express, or implied from the conduct or situation of the parties, and may or may not involve a contract between them; or
- 1.2. retrospectively, by subsequent ratification by the principal of acts done on the principal's behalf.

3. Liability of agents and principals

1. The general rule is that: (i) a person who makes a contract as an agent cannot afterwards sue or be sued upon it; and (ii) the principal can sue or be sued under a contract concluded between its agent and a third party.
2. The general rule also applies to causes of action closely connected with the relevant contract.
3. The general rule is displaced where:
 - 3.1. the agent has not made it sufficiently clear that it is acting as agent;
 - 3.2. if there is a custom of the trade that an agent is personally liable on the contracts that it makes;
 - 3.3. where the agent enters into a contract as agent, but is in fact acting on its own behalf;
or
 - 3.4. where the agent does not disclose that it is acting as agent, and the third party elects to enforce the contract against the agent.

Art 40 Damages for breach of contract

1. In the case of breach of contract, the party in breach is liable for the loss which is the consequence of the breach, subject to the provisions of this code.

2. The objective of damages under this article is, insofar as financial compensation can do so, to place the “innocent party” in the situation which would have existed if the other party had complied with the relevant contractual obligation/s.
3. To succeed in a claim for damages, the claimant must prove its loss on the normal civil standard of proof (balance of probabilities).

Art 41 Limits on recoverable damages - remoteness

1. An innocent party is not entitled to recover damages for loss that is too remote from the breach.
2. Loss is not too remote if it naturally arose in the usual course of things from the breach, or if it may reasonably be supposed to have been in the reasonable contemplation of both parties at the time they made the contract as the probable result of the breach of it.

Art 42 Limits on recoverable damages - mitigation

1. An innocent party is not entitled to recover damages for loss that it could, acting reasonably have avoided.
2. An innocent party is entitled to recover losses incurred in the course of reasonable actions to avoid its loss.

Art 50 Limitation

1. No claim for breach of contract (or a claim connected with a contract) can be brought more than six months after the date on which the cause of action accrues.
2. A cause of action accrues on the latest of either: (i) the date of the breach, or (ii) the date on which the innocent party could reasonably have discovered the breach (or the extent of the damage caused by the breach).

Art 65 Consumers

1. Where Art 65 applies

1. This Article applies where there is an agreement between a trader and a consumer for the trader to supply goods, digital content or services, if the agreement is a contract.
2. It applies whether the contract is written or oral or implied from the parties' conduct, or more than one of these combined.

2. Key definitions

1. "Trader" means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.
2. "Consumer" means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
3. A trader claiming that an individual was not acting for purposes wholly or mainly outside the individual's trade, business, craft or profession must prove it.

3. Service to be performed with reasonable care and skill

1. Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

4. Liability that cannot be excluded or restricted

1. A term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under Article 65(3) (service to be performed with reasonable care and skill).
2. A term of a contract to supply services is not binding on the consumer to the extent that it would restrict the trader's liability arising under Article 65(3) if it would prevent the consumer in an appropriate case from recovering the price paid or the value of any other consideration.

5. Requirement for contract terms to be fair

1. An unfair term of a consumer contract is not binding on the consumer.
2. This does not prevent the consumer from relying on the term if the consumer chooses to do so.
3. A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

6. Limitation

4. Nothing in this Article affects a person's rights or obligations under Art 50 (Limitation).