AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
22nd year, 2022-2023

ENTRANCE EXAM 1 – RULES

Dear American Law Program Candidate!

We are very happy with your willingness to join in the American Law Program. Also, we are impatiently looking forward to your participation!

At the same time, in order to let the American Law Program staff, assess your English language skills and abilities to actively participate and benefit from the regular courses, we kindly ask you to take our Entrance Exam. As the number of students willing to join the program exceeds the number of students who can be admitted, it serves also the selection of the best candidates in an objective manner.

To make the assessment and competition both fair and reasonable, we kindly ask you to obey the following rules. The usual rules have been adjusted to the online format of the exam.

During the exam **you are supposed** to:

1. have a reliable computer with a stable Wi-Fi connection, and a working camera;

2. stay connected to a Zoom meeting during which the exam takes place;

3. stay in front of your computer in a chosen working place in a daylight or equally effective artificial light, with a computer camera permanently switched on;

4. download the .pdf materials with exam questions and .doc answer files

5. within the time frame for a particular question send the filled-in answer files, saved as .doc or .docx to wojciech.banczyk@uj.edu.pl;

6. mark your answers with your PESEL only (in the title of the file as well as in the header of each page).

During the exam **you are not allowed** to:

7. consult anyone nor any materials, except for the texts that we distribute and an online/paper dictionary; you can use your e-mail application to send the answer files only;

8. use any other electronic device except from the computer used for the exam aims;

9. leave the working place you were using at the beginning of the exam without permission.

Remember that:

10. **any breach** or attempt to breach the rules as in 7-9, as well as **any disconnection or lack of camera operation** during the exam, leads to the termination of the exam, and a failing grade for a candidate, unless immediately reconnected and excused from legitimate reasons. Whenever such termination takes place from different reasons than breach or attempt to breach the rules as in 7-9 at candidate's fault, the candidate may retake the exam at a later occasion.

Also, participating in the exam confirms that the candidate agrees that his **personal data** will be collected and stored for the recruiting aims for the period of one year after the exam. The candidate's

image will be seen by the participants of the exam Zoom meeting, but will not be stored, and the meeting will not be anyway recorded.

The exam contains of two parts and **altogether lasts 95 minutes** and is taken according to rules as above.

The **first part**, is an **essay** part. Your task is to write an essay on the assigned topic, which is based on the text attached (.pdf) to inspire you. You are supposed to show us that you can discuss a general legal topic in an interesting manner and proper English. You may take notes on the computer, or on a separate sheet of paper. Your essay should not exceed two pages of the attached answer file (.doc). You have **50 minutes** to complete this part. After this time, you must turn in your essay in the form of an answer file. This part is graded for 0-30 points.

The **second part**, which you are supposed to take later, is a **reading** part. You should read the attached text (.pdf) carefully. You may take notes on the computer, or on a separate sheet of paper. After **30 minutes** you receive the questions and answer file (.doc). You are supposed to answer five questions in form of a short notice (1-2 sentences long, about 10-20 words), for which you have **another 15 minutes**. After this time, you must turn in your answers in the form of an answer file. This part is graded for 0-20 points (4 points per question).

The **results** should be available by July 15th, 2022. The results will be sent to you via e-mail and published on our website: http://www.okspo.wpia.uj.edu.pl/spa as well as on our Facebook: http://www.facebook.com/szkolaprawaamerykanskiego

Good luck!

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ENTRANCE EXAM 1 – ESSAY QUESTION

Read and comment (<u>especially</u> by answering questions below) the President of the US J. Biden's essay in New York Times, 31 May 2022: *What America Will and Will Not Do in Ukraine*:

The invasion Vladimir Putin thought would last days is now in its fourth month. The Ukrainian people surprised Russia and inspired the world with their sacrifice, grit and battlefield success. The free world and many other nations, led by the United States, rallied to Ukraine's side with unprecedented military, humanitarian and financial support.

As the war goes on, I want to be clear about the aims of the United States in these efforts.

America's goal is straightforward: We want to see a democratic, independent, sovereign and prosperous Ukraine with the means to deter and defend itself against further aggression. […]

That's why I've decided that we will provide the Ukrainians with more advanced rocket systems and munitions that will enable them to more precisely strike key targets on the battlefield in Ukraine.

We will continue cooperating with our allies and partners on Russian sanctions, the toughest ever imposed on a major economy. We will continue providing Ukraine with advanced weaponry […]. We will work with our allies and partners to address the global food crisis that Russia's aggression is worsening. And we will help our European allies and others reduce their dependence on Russian fossil fuels, and speed our transition to a clean energy future. We will also continue reinforcing NATO's eastern flank with forces and capabilities from the United States and other allies. […]

We do not seek a war between NATO and Russia. As much as I disagree with Mr. Putin, and find his actions an outrage, the United States will not try to bring about his ouster in Moscow. So long as the United States or our allies are not attacked, we will not be directly engaged in this conflict, either by sending American troops to fight in Ukraine or by attacking Russian forces. […]

My principle throughout this crisis has been "Nothing about Ukraine without Ukraine." I will not pressure the Ukrainian government — in private or public — to make any territorial concessions. It would be wrong and contrary to well-settled principles to do so. […]

Standing by Ukraine in its hour of need is not just the right thing to do. It is in our vital national interests to ensure a peaceful and stable Europe and to make it clear that might does not make right. If Russia does not pay a heavy price for its actions, it will send a message to other would-be aggressors that they too can seize territory and subjugate other countries. It will put the survival of other peaceful democracies at risk. And it could mark the end of the rules-based international order and open the door to aggression elsewhere, with catastrophic consequences the world over. […]

Americans will stay the course with the Ukrainian people because we understand that freedom is not free. That's what we have always done whenever the enemies of freedom seek to bully and oppress innocent people, and it is what we are doing now. […]

Do you agree with the strategy presented by J. Biden? Is the level of support offered by the United States adequate, considering political, legal, economic, social, as well as moral concerns? Should the politics of the United States be different than of Poland, or of other NATO countries?

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ENTRANCE EXAM 1 – READING PART – TEXT

Read the text of the New York United District Court judgment in: *Frigaliment Importing Co. v. B.N.S. Int'l Sales Corp.*, 190 F. Supp. 116 (1960), in which the Court interpreted the word "chicken" to establish the contract infringement. When reading you may take notes, underline excerpts and make comments. After 30 minutes you will receive short open questions to this text.

FRIENDLY, Circuit Judge.

The issue is, what is chicken? Plaintiff says "chicken" means a young chicken, suitable for broiling and frying. Defendant says "chicken" means any bird of that genus that meets contract specifications on weight and quality, including what it calls "stewing chicken" and plaintiff pejoratively terms "fowl". Dictionaries give both meanings, as well as some others not relevant here. To support its, plaintiff sends a number of volleys over the net; defendant essays to return them and adds a few serves of its own. Assuming that both parties were acting in good faith, the case nicely illustrates Holmes' remark "that the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs not on the parties' having *meant* the same thing but on their having *said* the same thing." The Path of the Law, in Collected Legal Papers, p. 178. I have concluded that plaintiff has not sustained its burden of persuasion that the contract used "chicken" in the narrower sense.

The action is for breach of the warranty that goods sold shall correspond to the description, New York Personal Property Law, McKinney's Consol. Laws, c. 41, § 95. Two contracts are in suit. In the first, dated May 2, 1957, defendant, a New York sales corporation, confirmed the sale to plaintiff, a Swiss corporation, of "US Fresh Frozen Chicken, Grade A, Government Inspected, Eviscerated 2½-3 lbs. and 1½-2 lbs. each, all chicken individually wrapped in cryovac, packed in secured fiber cartons or wooden boxes, suitable for export, 75,000 lbs. of 2½-3 lbs per $33.00 per 100 lbs. and 25,000 lbs. of 1½-2 lbs. per $36.50 per 100 lbs., scheduled May 10, 1957 pursuant to instructions from Penson & Co., New York."[1]

The second contract, also dated May 2, 1957, was identical save that only 50,000 lbs. of the heavier "chicken" were called for, the price of the smaller birds was $37 per 100 lbs., and shipment was scheduled for May 30. The initial shipment under the first contract was short but the balance was shipped on May 17. When the initial shipment arrived in Switzerland, plaintiff found, on May 28, that the 2½-3 lbs. birds were not young chicken suitable for broiling and frying but stewing chicken or "fowl"; indeed, many of the cartons and bags plainly so indicated. Protests ensued. Nevertheless, shipment under the second contract was made on May 29, the 2½-3 lbs. birds again being stewing chicken. Defendant stopped the transportation of these at Rotterdam.

This action followed. Plaintiff says that, notwithstanding that its acceptance was in Switzerland, New York law controls ***118** under the principle of Rubin v. Irving Trust Co., 1953, 305 N.Y. 288, 305, 113 N.E.2d 424, 431; defendant does not dispute this, and relies on New York decisions. I shall follow the apparent agreement of the parties as to the applicable law.

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[1] The Court notes the contract provision whereby any disputes are to be settled by arbitration by the New York Produce Exchange; it treats the parties' failure to avail themselves of this remedy as an agreement eliminating that clause of the contract.

Since the word "chicken" standing alone is ambiguous, I turn first to see whether the contract itself offers any aid to its interpretation. Plaintiff says the 1½-2 lbs. birds necessarily had to be young chicken since the older birds do not come in that size, hence the 2½-3 lbs. birds must likewise be young. This is unpersuasive, a contract for "apples" of two different sizes could be filled with different kinds of apples even though only one species came in both sizes. Defendant notes that the contract called not simply for chicken but for "US Fresh Frozen Chicken, Grade A, Government Inspected." It says the contract thereby incorporated by reference the Department of Agriculture's regulations, which favor its interpretation; I shall return to this after reviewing plaintiff's other contentions.

The first hinges on an exchange of cablegrams which preceded execution of the formal contracts. The negotiations leading up to the contracts were conducted in New York between defendant's secretary, Ernest R. Bauer, and a Mr. Stovicek, who was in New York for the Czechoslovak government at the World Trade Fair. A few days after meeting Bauer at the fair, Stovicek telephoned and inquired whether defendant would be interested in exporting poultry to Switzerland. Bauer then met with Stovicek, who showed him a cable from plaintiff dated April 26, 1957, announcing that they "are buyer" of 25,000 lbs. of chicken 2½-3 lbs. weight, Cryovac packed, grade A Government inspected, at a price up to 33¢ per pound, for shipment on May 10, to be confirmed by the following morning, and were interested in further offerings. After testing the market for price, Bauer accepted, and Stovicek sent a confirmation that evening. Plaintiff stresses that, although these and subsequent cables between plaintiff and defendant, which laid the basis for the additional quantities under the first and for all of the second contract, were predominantly in German, they used the English word "chicken"; it claims this was done because it understood "chicken" meant young chicken whereas the German word, "Huhn," included both "Brathuhn" (broilers) and "Suppenhuhn" (stewing chicken), and that defendant, whose officers were thoroughly conversant with German, should have realized this. Whatever force this argument might otherwise have is largely drained away by Bauer's testimony that he asked Stovicek what kind of chickens were wanted, received the answer "any kind of chickens," and then, in German, asked whether the cable meant "Huhn" and received an affirmative response. Plaintiff attacks this as contrary to what Bauer testified on his deposition in March, 1959, and also on the ground that Stovicek had no authority to interpret the meaning of the cable. The first contention would be persuasive if sustained by the record, since Bauer was free at the trial from the threat of contradiction by Stovicek as he was not at the time of the deposition; however, review of the deposition does not convince me of the claimed inconsistency. As to the second contention, it may well be that Stovicek lacked authority to commit plaintiff for prices or delivery dates other than those specified in the cable; but plaintiff cannot at the same time rely on its cable to Stovicek as its dictionary to the meaning of the contract and repudiate the interpretation given the dictionary by the man in whose hands it was put. See Restatement of the Law of Agency, 2d, § 145; 2 Mecham, Agency § 1781 (2d ed. 1914); Park v. Moorman Mfg. Co., 1952, 121 Utah 339, 241 P.2d 914, 919, 40 A.L.R.2d 273; Henderson v. Jimmerson, Tex.Civ.App.1950, 234 S.W.2d 710, 717-718. Plaintiff's reliance on the fact that the contract forms contain the words "through the intermediary of: ", with the blank not filled, as negating agency, is wholly unpersuasive; ***119** the purpose of this clause was to permit filling in the name of an intermediary to whom a commission would be payable, not to blot out what had been the fact.

Plaintiff's next contention is that there was a definite trade usage that "chicken" meant "young chicken." Defendant showed that it was only beginning in the poultry trade in 1957, thereby bringing itself within the principle that "when one of the parties is not a member of the trade or other circle, his acceptance of the standard must be made to appear" by proving either that he had actual knowledge of the usage or that the usage is "so generally known in the community that his actual individual knowledge of it may be inferred." 9 Wigmore, Evidence (3d ed. 1940) § 2464. Here there was no proof of actual knowledge of the alleged usage; indeed, it is quite plain that defendant's belief was to the contrary. In order to meet the alternative requirement, the law of New York demands a showing

that "the usage is of so long continuance, so well established, so notorious, so universal and so reasonable in itself, as that the presumption is violent that the parties contracted with reference to it, and made it a part of their agreement." Walls v. Bailey, 1872, 49 N.Y. 464, 472-473.

Plaintiff endeavored to establish such a usage by the testimony of three witnesses and certain other evidence. Strasser, resident buyer in New York for a large chain of Swiss cooperatives, testified that "on chicken I would definitely understand a broiler." However, the force of this testimony was considerably weakened by the fact that in his own transactions the witness, a careful businessman, protected himself by using "broiler" when that was what he wanted and "fowl" when he wished older birds. Indeed, there are some indications, dating back to a remark of Lord Mansfield, Edie v. East India Co., 2 Burr. 1216, 1222 (1761), that no credit should be given "witnesses to usage, who could not adduce instances in verification." 7 Wigmore, Evidence (3d ed. 1940), § 1954; see McDonald v. Acker, Merrall & Condit Co., 2d Dept.1920, 192 App.Div. 123, 126, 182 N.Y.S. 607. While Wigmore thinks this goes too far, a witness' consistent failure to rely on the alleged usage deprives his opinion testimony of much of its effect. Niesielowski, an officer of one of the companies that had furnished the stewing chicken to defendant, testified that "chicken" meant "the male species of the poultry industry. That could be a broiler, a fryer or a roaster", but not a stewing chicken; however, he also testified that upon receiving defendant's inquiry for "chickens", he asked whether the desire was for "fowl or frying chickens" and, in fact, supplied fowl, although taking the precaution of asking defendant, a day or two after plaintiff's acceptance of the contracts in suit, to change its confirmation of its order from "chickens," as defendant had originally prepared it, to "stewing chickens." Dates, an employee of Urner-Barry Company, which publishes a daily market report on the poultry trade, gave it as his view that the trade meaning of "chicken" was "broilers and fryers." In addition to this opinion testimony, plaintiff relied on the fact that the Urner-Barry service, the Journal of Commerce, and Weinberg Bros. & Co. of Chicago, a large supplier of poultry, published quotations in a manner which, in one way or another, distinguish between "chicken," comprising broilers, fryers and certain other categories, and "fowl," which, Bauer acknowledged, included stewing chickens. This material would be impressive if there were nothing to the contrary. However, there was, as will now be seen.

Defendant's witness Weininger, who operates a chicken eviscerating plant in New Jersey, testified "Chicken is everything except a goose, a duck, and a turkey. Everything is a chicken, but then you have to say, you have to specify which category you want or that you are talking about." Its witness Fox said that in the trade "chicken" would encompass all the various classifications. Sadina, who conducts a food inspection ***120** service, testified that he would consider any bird coming within the classes of "chicken" in the Department of Agriculture's regulations to be a chicken. The specifications approved by the General Services Administration include fowl as well as broilers and fryers under the classification "chickens." Statistics of the Institute of American Poultry Industries use the phrases "Young chickens" and "Mature chickens," under the general heading "Total chickens." and the Department of Agriculture's daily and weekly price reports avoid use of the word "chicken" without specification.

Defendant advances several other points which it claims affirmatively support its construction. Primary among these is the regulation of the Department of Agriculture, 7 C.F.R. § 70.300-70.370, entitled, "Grading and Inspection of Poultry and Edible Products Thereof." and in particular § 70.301 which recited:

"*Chickens.* The following are the various classes of chickens: (a) Broiler or fryer . . . (b) Roaster . . . (c) Capon . . . (d) Stag . . . (e) Hen or stewing chicken or fowl . . . (f) Cock or old rooster . . .

Defendant argues, as previously noted, that the contract incorporated these regulations by reference. Plaintiff answers that the contract provision related simply to grade and Government inspection and did not incorporate the Government definition of "chicken," and also that the definition in the

Regulations is ignored in the trade. However, the latter contention was contradicted by Weininger and Sadina; and there is force in defendant's argument that the contract made the regulations a dictionary, particularly since the reference to Government grading was already in plaintiff's initial cable to Stovicek.

Defendant makes a further argument based on the impossibility of its obtaining broilers and fryers at the 33¢ price offered by plaintiff for the 2½-3 lbs. birds. There is no substantial dispute that, in late April, 1957, the price for 2½-3 lbs. broilers was between 35 and 37¢ per pound, and that when defendant entered into the contracts, it was well aware of this and intended to fill them by supplying fowl in these weights. It claims that plaintiff must likewise have known the market since plaintiff had reserved shipping space on April 23, three days before plaintiff's cable to Stovicek, or, at least, that Stovicek was chargeable with such knowledge. It is scarcely an answer to say, as plaintiff does in its brief, that the 33¢ price offered by the 2½-3 lbs. "chickens" was closer to the prevailing 35¢ price for broilers than to the 30¢ at which defendant procured fowl. Plaintiff must have expected defendant to make some profit certainly it could not have expected defendant deliberately to incur a loss.

Finally, defendant relies on conduct by the plaintiff after the first shipment had been received. On May 28 plaintiff sent two cables complaining that the larger birds in the first shipment constituted "fowl." Defendant answered with a cable refusing to recognize plaintiff's objection and announcing "We have today ready for shipment 50,000 lbs. chicken 2½-3 lbs. 25,000 lbs. broilers 1½-2 lbs.," these being the goods procured for shipment under the second contract, and asked immediate answer "whether we are to ship this merchandise to you and whether you will accept the merchandise." After several other cable exchanges, plaintiff replied on May 29 "Confirm again that merchandise is to be shipped since resold by us if not enough pursuant to contract chickens are shipped the missing quantity is to be shipped within ten days stop we resold to our customers pursuant to your contract chickens grade A you have to deliver us said merchandise we again state that we shall make you fully responsible for all resulting costs."[2] Defendant argues. ***121** that if plaintiff was sincere in thinking it was entitled to young chickens, plaintiff would not have allowed the shipment under the second contract to go forward, since the distinction between broilers and chickens drawn in defendant's cablegram must have made it clear that the larger birds would not be broilers. However, plaintiff answers that the cables show plaintiff was insisting on delivery of young chickens and that defendant shipped old ones at its peril. Defendant's point would be highly relevant on another disputed issue whether if liability were established, the measure of damages should be the difference in market value of broilers and stewing chicken in New York or the larger difference in Europe, but I cannot give it weight on the issue of interpretation. Defendant points out also that plaintiff proceeded to deliver some of the larger birds in Europe, describing them as "poulets"; defendant argues that it was only when plaintiff's customers complained about this that plaintiff developed the idea that "chicken" meant "young chicken." There is little force in this in view of plaintiff's immediate and consistent protests.

When all the evidence is reviewed, it is clear that defendant believed it could comply with the contracts by delivering stewing chicken in the 2½-3 lbs. size. Defendant's subjective intent would not be significant if this did not coincide with an objective meaning of "chicken." Here it did coincide with one of the dictionary meanings, with the definition in the Department of Agriculture Regulations to which the contract made at least oblique reference, with at least some usage in the trade, with the realities of the market, and with what plaintiff's spokesman had said. Plaintiff asserts it to be equally plain that plaintiff's own subjective intent was to obtain broilers and fryers; the only evidence against this is the material as to market prices and this may not have been sufficiently brought home. In any event it is unnecessary to determine that issue. For plaintiff has the burden of showing that "chicken" was used in the narrower rather than in the broader sense, and this it has not sustained. […]

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[2] These cables were in German; "chicken", "broilers" and, on some occasions, "fowl," were in English.

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ENTRANCE EXAM – ESSAY QUESTION – ANSWER FILE

Based on the read texts of the New York United District Court judgment in: *Frigaliment Importing Co. v. B.N.S. Int'l Sales Corp*., 190 F. Supp. 116 (1960), including your notes, underlined excerpts, made comments, as well as your understanding to the text, answer the questions briefly (each answer should be 1-2 sentences long, about 10-20 words). You have 15 minutes to complete this part of the exam.

1. **What is the meaning of the Holmes' *The Path of the Law* excerpt cited by the court for this case? How does it affect the adjudication?**

   …

2. **What was the role of Mr Stovicek in the transaction (in particular, what were his tasks, which party did he represent and what was his scope of representation, if any)?**

   …

3. **What is the meaning of the trade usage to interpret the contractual term used (in general; not in this case)?**

   …

4. **What is the importance of the market price of different kinds of poultry for interpretation of the contractual term "chicken" in this case?**

   …

5. **What is the meaning of the burden of proof in this case?**

   …