

2023 INTERNATIONAL BUSINESS LAW MEMORANDUM

- Objectives
 - You are being tested on the following:
 - Your understanding of the materials covered in this course
 - Your ability to draft a concise, persuasive, clearly written memorandum that addresses the relevant issues
 - Your research skills (to the extent that you decide to go above and beyond the basics covered in the weekly readings)
- Submission
 - **Due Date: 7 April @ 5:00pm (Friday)**
 - Upload electronically via Canvas; and
 - Drop off a hardcopy into your tutor's mailbox as well (if you are in Emma's tutorial group, drop your hardcopy in Mark's mailbox, and if you're in Meggie's tutorial group, drop your hardcopy in Eleni's mailbox).
- Word Limit
 - **5000 words maximum** (not including footnotes)
 - Do your best not to circumvent the word limit by abusing the footnotes. When in doubt, apply good faith (whatever that means)
- Style & Format
 - Times New Roman (11 pt). Single spaced. Use "Moderate" margins.
 - Cover page containing: Name, student ID number, date of submission, name of your tutor, word count, *see* the "Honor Code" section below
- Structure
 - The case for the memorandum involves issues relating to sale of goods, carriage of goods, payment mechanisms, commercial arbitration, and so on. Treat each of these topics separately (i.e. analyze the sales issue from start to finish, then move on to carriage, then payment, etc.)
- Citation
 - The general rule is that if you cite to an external source, you must identify them in a manner that the graders will be able to find the source, but how you do so (i.e. MLA, Oscola, APA, etc.) is up to you
 - There is no need for a bibliography or a case list, but add them if you wish
 - The course reader will NOT be considered as a valid source
- Collaboration
 - You are allowed to discuss with your classmates about the substance of this case
 - However, you must draft your own answers (i.e. do NOT cut and paste or even paraphrase any part of anyone else's memorandum – including answers created through ChatGPT – as that will be considered cheating including)
 - Students are invited to ask questions/clarifications as necessary on the IBL Discussion Board via the Canvas
- Honor Code & Ethics
 - On the cover page, write "I did not cheat" and sign your name next to it (assuming you did not) prior to submitting your hardcopy

Good Luck & Have Fun!!

1 Currently, there are no Michelin starred restaurants in Cyprus. However, the world-renowned chef and
2 restaurateur, **Emre Brommatis** (aka Chef Em B) is determined to change the status quo. Chef Em B,
3 who is most known for his Michelin starred restaurant in Paris, **Maison Envy**, is planning to open up
4 **Maison Duo Envy** in Nicosia, Cyprus (which is where Chef Em B was born and raised to a Greek-
5 Cypriot father and a Turkish mother, who taught him how to cook when he was a young boy).

6 With Maison Duo Envy set for a soft open on **1 May 2023**, Chef Em B has been working frantically to
7 finalize his new menu, which would not only impress the locals, but appeal to the world at large, thus
8 putting Cyprus' culinary scene on the map. In addition to embracing both his Greek and Turkish
9 backgrounds and their often-entangled culinary affairs, Chef Em B cares very deeply about the problem
10 of food waste. So much so that he plans to make Michelin worthy courses out of offal, which are internal
11 organs and other bits of animals that often get discarded by most high-end restaurants even though they
12 are perfectly fit for human consumption.

13 Merging his two passions together, Chef Em B intends to serve up a very unique menu, starting with
14 the Turkish *beyin salatası*, a sheep brain salad, but with a twist (*i.e.*, the brain will be deep fried instead
15 of being boiled, which is the traditional way *beyin salatası* is prepared). The brain will be paired together
16 with deep fried octopus ink sack, which is a very rare and special delicacy offered only in remote parts
17 of the Greek island, Kalymnos. While most octopuses
18 have a venomous gland and their bites can be
19 poisonous, the ink itself is not only fit for human
20 consumption, but some claim that it is a superfood, as
21 it contains melanin and various amino acids that have
22 alleged health benefits.



23 Deep fried sheep brain – at least as prepared by Chef
24 Em B – is crispy and crunchy on the outside but soft
25 and almost custard-like on the inside. If one can get
26 over the discomfort of what they are consuming, it is a surprisingly flavorful gourmet dish that is more
27 impactful than Massimo Bottura's Five Ages of Parmigiano Reggiano and tastier than Eric Ripert's
28 Tuna Tartare Sea Urchin Toast. When paired together with lemon juice, pepper, and the deep-fried
29 octopus ink sacks, Chef Em B is convinced that this new signature dish will not only earn Maison Duo
30 Envy a star, but it will send a message to the world about how reducing food waste and first-class dining
31 experiences can be two sides of the same coin.

32 In order to make his vision a reality, Chef Em B has two potential suppliers in mind to supply the sheep
33 brains and the octopus ink sacks. For the octopus, he wants to work with ingredients offered by a
34 seafood exporter out in Athens called **Meludias Seafoods** because they advertise that they have a good
35 network of suppliers across the Aegean Sea, including a new and upcoming fishery on the island of
36 Kalymnos by the name of **Kalyptopus**. While Kalymnos is mostly famous for their sponges, it is also
37 a secret gem for seafood lovers, not to mention that this was the place where Chef Em B got his
38 inspiration for the deep-fried octopus ink sack.

39 For the sheep offal, the chef would like to have the brains sourced from the Lesbos sheep, as he knows
40 a small family-owned farm on the island of Lesbos, called **Provato Family Farms**. While the Lesbos
41 sheep are mostly dairy sheep, the chef believes that the free range, grass-fed sheep from this farm – not
42 only live happier lives – but taste better when they meet their untimely demise.

43 Chef Em B, contacts **Klappas Trading Company**, a Cyprus based importer/exporter of fine and
44 luxurious delicacies that the chef had already lined up to be one of the main suppliers for Maison Duo
45 Envy. The celebrity chef requests Klappas to make arrangements on behalf of Maison Duo Envy (as its
46 agent) with Meludias and Provato to have them deliver the sheep brains and the octopus ink sacks to be
47 made available at his restaurant in Nicosia in time for the soft opening.

48 Accordingly, Klappas reaches out to and enters into a contract with Meludias on 18 April for “50kgs of
49 octopus ink sacks sourced from octopuses caught around Kalymnos for €17,500.” Klappas also agrees
50 to Meludias’ standard terms and conditions, which was referenced in the contract that they signed
51 without having read through them as they were written in Greek and in size 8 font on Meludias’
52 corporate website. In relevant translated parts, they read:

53 *Article 1: “The parties agree that Greek law will be the applicable law governing this sales contract.”*

54 *Article 5: The parties agree that all disputes arising out of or in connection with the present contract shall be*
55 *finally settled under the Rules of Arbitration of the **International Chamber of Commerce** in accordance with the*
56 *said Rules at their offices in Athens, Greece in Greek.”*

57 Given the sensitive nature of the ink sacks and the relatively small size of the shipment, Meludias agrees
58 with Klappas to take care of the delivery via a special courier flying from Athens to Nicosia on 29 April
59 to hand delivery them to Chef Em B at Maison Duo Envy to “preserve its freshness and outstanding
60 quality”.

61 Klappas also engages with Provato and enters into a contract on 18 April for the sale of 500 Sheep
62 Brains for €12,600. The parties agree to “**INCOTERM CIF(Limassol)** with a delivery no later than 29
63 April 2023” stipulating that late delivery will “*automatically constitute a serious breach*” given the
64 sensitive nature of the soft opening and Chef Em B’s high demands. The parties further agree that the
65 payment will be arranged through a letter of credit in
66 accordance with UCP600 with **Piraeus Bank** nominated as
67 the advising/confirming bank by Provato and **Bank of**
68 **Cyprus** as the issuing bank selected by Klappas. A clean bill
69 of lading is specified as the necessary document to be
70 presented by Provato for payment.



71 On 20 April, Provato contracts with an Italian sea carrier,
72 **Aegean Transport Services**, based in Catania (but with
73 various offices located in port cities around the Aegean sea,
74 including, but not limited to Piraeus, Izmir, and Durrës) to arrange for the transport of the sheep brains
75 from Piraeus to Nicosia.¹ On 27 April, Provato delivers the sheep brains to the port in Piraeus from
76 Lesbos, where the vessel arranged by Aegean, the **Baleela**, captained by **Van Ness**² is docked. Captain
77 Ness inspects the boxes containing the brains and subsequently issues a clean bill of lading through
78 their blockchain based app and gets ready to depart on the 30 hour journey to Limassol. At this point
79 Provato, also using the same app, receives the digital bill of lading, electronically signed by Captain
80 Ness that they can present to Piraeus Bank.

81 The Baleela and Captain Ness have always been reliable assets for Aegean and they were sure that
82 nothing could go wrong with this simple voyage, just like all of their previous carriages. The
83 Mediterranean Sea constitutes about 15% of global shipping activity and has many busy commercial
84 lines, but more recently, these lanes have encountered an influx of civilian vessels carrying migrants
85 escaping various global conflicts and turmoil. The influx of migrants seeking safe passage to Europe
86 by crossing the Mediterranean Sea (including but not limited to the Aegean, Adriatic, Tyrrhenian and
87 Levantine Seas) reached its peak back in 2015, but ever since the end of Operation Sophia, the number
88 has slowly been creeping up once again. In 2022 alone, there were more than 2,000 cases of recorded
89 migrant deaths while they were attempting to cross the Mediterranean Sea from Africa to Europe. Some
90 of these vessels not only carry migrants seeking refuge from the horror that they face back in their home

¹ Provato paid Aegean Transport Services €700 for the transport, which included their basic insurance coverage that did not include piracy, and that cost was reflected in the sales contract between Klappas and Provato.

² Captain Ness identifies as a gender neutral person with the preferred pronouns “they/their”.

91 country, but some of them are victims of human trafficking, where they are kidnapped in places like
92 Sudan and Libya and smuggled into Europe to serve as indentured servants.

93 While the Baleela was travelling off the southeastern coast of Crete, the vessel encounters a small boat
94 carrying over two dozen dehydrated, starving migrants fleeing Libya. Captain Ness instructed their crew
95 to help the migrants onboard the Baleela. While they was aware of the risk, they believed that saving
96 the lives of these people were more important than an on-time delivery of some lavish foods “to some
97 entitled posh snobs”. After spending about an hour rescuing them boarding the vessel, the Baleela
98 attempts to proceed on towards Limassol when tragedy strikes.

99 Unbeknownst to the captain and their crew, it turns out that three of the men that they helped onboard
100 were actually human traffickers who were smuggling the rest of the people into Europe. They were
101 carrying concealed firearms with them and once they were all loaded on board the Baleela, they turned
102 their weapons against Captain Ness and their crew and ordered them to turn the ship around and to head
103 for any European soil. Captain Ness attempted to inform them that Cyprus is part of the European
104 Union, but the hijackers demand with their weapons a safe passage to the European continent. Captain
105 Ness and their crew reluctantly complies with this order and turn the vessel around towards Greece, but
106 they are also able to secretly send an SOS signal informing the Hellenic Coast Guard that they have
107 been hijacked. The unsuspecting hijackers rummage through
108 the vessel searching for food and drinks and stumble upon the
109 sheep brains, which they take out of the refrigeration unit, boil,
110 and serve to the starving people on board the vessel.



111 The Hellenic Coast Guard makes a valiant rescue on 28 April
112 and the three hijackers arrested. The rest of the refugees are
113 taken in for processing facing an uncertain future. Less
114 importantly, about 60 of the sheep brains have been completely consumed and the remainder of the
115 sheep brains have been spoiled due to the refrigeration unit being kept open by the hijackers. Captain
116 Ness insists that they genuinely believed that were trying to do the right thing by saving the people on
117 the drifting boat and that being taken hostage was something that was completely outside of their
118 control. Therefore, they is of the opinion that they, their crew, and Aegean cannot be held liable for any
119 losses suffered by Klappas.

120 Frustrated, Klappas immediately contacts Bank of Cyprus on 28 April to inform them that there has
121 been a serious issue in the underlying sales contract and request that Provato not be paid given that
122 Klappas did not receive the goods at all. While Provato has yet to seek for payment from Piraeus Bank,
123 Bank of Cyprus informs Klappas that if presented with the clean bill of lading, the banks will have to
124 pay.

125 At least the container carrying the octopus ink sacks are safely delivered without any complications or
126 problems by Meludias’ courier on 29 April. It is later discovered, however, that the octopus supplied to
127 Meludias by Kalyptopus was actually not caught in the Aegean Sea off the islands of Kalymnos, but
128 from a brand-new octopus farm owned and operated by Kalyptopus located on the island. This fact only
129 came to light on 30 April, when the BBC reported about the cruelty of octopus farming. Until now,
130 Meludias was sourcing their octopus from fisheries that were catching them the old fashioned way (*i.e.*,
131 using pots, lines, and traps) but since the fast-spreading blight – a disease triggered by the rise in the
132 seabed temperature – severely damaged the sponges back in February, the entire marine ecosystem
133 around Kalymnos has been devastated. In short, it has been very difficult to keep supplying seafood to
134 meet the increasing demands as a result. Not only have octopuses been more and more difficult to catch,
135 but this situation has been exacerbated by the increasing demand for high quality seafood from the
136 global market. For example, compared to about a half a century ago, we are demanding 10 times more
137 octopus today with the staggering number of 350,000 tonnes of octopus being caught just last year. In

138 sum, combined with the warming of the ocean and the triggering of related events like the blights
139 destroying the sponges, there is a very serious scarcity problem.

140 To remedy these emerging concerns, Kalyptopus started growing their octopus in their own farm. Until
141 very recently, octopuses were considered impossible to raise in a farm (as they require live feedings
142 and a carefully controlled environment to survive). However, Kalyptopus made a breakthrough earlier
143 this year by figuring out a way to do so successfully. This development has not been without some
144 controversy though as documented by the BBC expose that came out on 30 April. Since its airing, there
145 has been a slew of social media campaigns with the hashtag #savethepus trending #1 globally with both
146 activists and slacktivists going up in arms about this cruel practice. Their outcry is in part due to the
147 fact that the octopuses in the farm are killed through a technique called the ice slurry, which causes a
148 slow and stressful death to the creatures who have very high intelligence and, as some would argue,
149 feelings. While octopus farming is not yet regulated or banned anywhere in the world, there is mounting
150 pressure that it should be prohibited even before it becomes mainstream.

151 Meludias believes that they've done nothing wrong. They are both *octopus vulgaris* belonging in the
152 class *cephalopoda*. To the naked eye, there is no way of deciphering a farm grown octopus from one
153 caught at sea and the ink sacks did indeed come from octopuses "*sourced in Kalymnos*" as the farm is
154 located on the island. Even if the chef may claim that there may be some latent differences, Meludias
155 also claims that this was an adequate substitute given concerning levels of forever chemicals found in
156 seafood these days, which Kalyptopus argues is becoming a very serious, unavoidable catastrophe. As
157 a matter of fact, the levels of Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) found in marine
158 life – not just around the Aegean Sea but in all of our oceans – are not only damaging the ecological
159 balance and the circle of life, but the consumption of seafood with such high levels of PFAS can have
160 serious health effects from cancer, liver damage,
161 decreased fertility and so on. According to Meludias,
162 considering these factors, a farm-sourced octopus and
163 their ink sacks are the healthier – if not safer – option
164 than the octopus caught in the sea.

165 Chef Em B, while very understanding of this plight, is
166 quite disappointed nevertheless because according to his
167 highly refined palate, there is indeed a subtle difference
168 in how the ink tastes with the octopus ink from the sea
169 having a slightly "gamier taste" relative to the farmed
170 octopus that he needed for his special dish, not to mention that he does not want to be associated with
171 cruelty to animals. Not wanting to draw negative attention to his new restaurant, Chef Em B informs
172 Klappas that he believes that the octopus ink that Meludias supplied to him was not in conformity with
173 the order placed and wants to be reimbursed with damages paid for loss of profit and loss of reputation
174 as he will have to postpone his soft open indefinitely. Upon informing Meludias of this, they insist that
175 there is no breach here for the aforementioned reasons that even if Klappas wants to litigate over the
176 issue, they will have to go to an arbitration in Greece, conducted in Greek.

177 Klappas must now deal with an assortment of issues, including but not limited to: 1) Meludias' potential
178 breach of contract and whether they actually have to go to arbitration in Greece, supposedly under Greek
179 law in Greek; 2) Aegean's failure to provide safe carriage of the sheep brains from Piraeus to Limassol
180 and whether their excuse will actually exempt them from liability; and, 3) the fact that Bank of Cyprus
181 has refused to not honor the payment even though Provato failed to deliver the goods, thus seemingly
182 breaching the underlying contract. You are a newly hired junior associate for the prestigious firm
183 **Ciquetjesman LLP** (congratulations) and a senior associate has assigned you to draft an internal memo
184 addressing the various legal issues that Klappas must now deal with, your recommendation on how to
185 proceed on each of the matter, and the likelihood of their success on these matters.

