In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

Legal questions


None of them are party to the Convention.


None of them are party to the Convention though, as noted in Procedural Order No. 1, para. 7, Articles 1 through 15 of the Convention have been adopted by Oceania as the Conflicts of Law in the International Sale of Goods Act.

3. What is the period of limitations (prescriptive period) for contracts of sale in Danubia?

Three years.

4. Is the period of limitations (prescriptive period) considered to be one of substance or one of procedure in Danubia, Oceania and Mediterraneo?

It is considered to be a matter of substance in all three countries.
5. What commences the running of the period of limitations (prescriptive period) in a contract for sales of goods in Danubia, Oceania and Mediterraneo and are there any provisions for suspending the running of the period?

In all three countries the period commences when the event giving rise to the claim occurs. There are events that might suspend the running of the period but none of the possible reasons for suspending the running of the period have occurred.

6. What is the choice of law rule in Danubia?

The supreme court of Danubia has decided on two occasions that the choice of law rules of Danubia that are applicable in litigation in the courts of Danubia and in domestic arbitration are not applicable to international commercial arbitration held in Danubia where neither party is from Danubia. In those situations the choice of law rules are those in its law governing international commercial arbitration.

7. Is Danubia, Mediterranio or Oceania a member of the European Union?

No.

In regard to the qualities expected of the Magiprint Flexometix Mark 8 machine

8. Did the website of McHinery Equipment Suppliers Pty give any specifications as to the performance capabilities of the Magiprint Flexometix Mark 8 machine?

As indicated in the Statement of Claim and of Defense, McHinery Equipment Suppliers Pty is a seller of new and used industrial equipment generally. The website did not list the specific machines that might be available or their performance capabilities.

9. Did the contract give any information about the item sold other than the name of the machine?

No.

10. Was the Magiprint Flexometix Mark 8 machine produced in Mediterraneo?

No. The machine in question has never been in the country of Mediterraneo.

11. What did the words “Mark 8” in the name of the machine signify?

This was the eighth model in the series of this machine.

12. When Mr. Butter visited the plant of the previous owner of the machine, did he observe any actual printing with the machine?
No, once the machine had been sold to McHinery Equipment Suppliers Pty, the previous owners no longer used it.

13. When Mr. Butter visited the plant of the previous owner of the machine, did he inquire about the operation of the machine? Did he have an opportunity to inspect the operating manual or other technical documentation? Was he knowledgeable about such machines or have a technical expert with him?

Yes, he did inquire of the previous owners whether they had been satisfied with it or whether they had had any problems with it. He was assured that the machine had worked well. The question had been phrased in a general way and the answer had also been phrased in a general way. Mr. Butter had not inquired specifically whether the previous owner had printed on 8 micrometer foil.

The operating manual would have been available for his inspection, but it was not offered to him and he did not request to see it. Mr. Butter was generally knowledgeable about printing machines, but not especially about flexoprint machines. He did not have a technical expert with him.

14. Why did the machine need to be refurbished by McHinery Equipment Suppliers Pty?

The refurbishing was simply the general servicing that a dealer in second-hand equipment gives to the equipment before delivering it to its own customer. It does not imply that there was anything wrong with the machine.

15. When the personnel of McHinery Equipment Suppliers Pty tested the machine after it had been installed at the premises of Oceania Printers S.A., did they test it on foil?

The testing was done on the full range of products for which the machine was designed. This included foil of 10 micrometers. Even though foil of 8 micrometer thickness was available from Oceania Printers S.A., none was used for testing purposes. Oceania Printers’ personnel were not involved in the testing and were seldom present.

16. Did the personnel of McHinery Equipment Suppliers Pty demonstrate the use of the machine to the personnel of Oceania Printers?

Yes. They ran several print runs to demonstrate how to set up the machine for various materials and various widths on which it would print. They did not use 8 micrometer foil and were not asked to do so. Mr. Butter was not present at the demonstration.

17. Were the multiple color runs on the foil badly out of register only when printing on 8 micrometer foil or was it a more general problem?
It occurred only when printing on 8 micrometer foil.

18. What did Mr. Swain say to Mr. Butter or other personnel of Oceania Printers when he saw the defective printing and what did he attempt to do in trying to make it possible to print on 8 micrometer foil?

As soon as he saw the foil they had been attempting to print on he told them that the machine was not designed for 8 micrometer foil. Mr. Swain then pointed out to Mr. Butter the specification page in the manual. At Mr. Butter’s request he attempted to change the settings so that the printing could be done. However, at the very beginning he told Mr. Butter that it was unlikely that he would be able to do it. Later that day Mr. Butter asked him to do his best because he had contacted several sellers of such machines and it would not be possible for him to purchase and have delivered another machine that could print on 8 micrometer foil in time to service the Oceania Confectionaries contract.

19. How large is the instruction manual and where were the specifications?

The instruction manual is 25 pages long. The specifications are in pages 22 and 23.

20. Could the machine have been used for other purposes in Oceania?

In 2002 the total value of the potential contracts for which the machine could be used in Oceania did not exceed $10,000 per year, rendering a gross profit of perhaps $2,000 before depreciation of the machine. There had been rumors at the time that a large foreign pharmaceutical might create a subsidiary company, Oceanic Generics, to build a plant producing generic pharmaceuticals. Such a plant would need foil of 10 micron or thicker for its bubble pack containers. The plant is currently under construction and is expected to be in operation in early 2007. The contract for printing the foil should generate profits of about $300,000 per year.

21. Is 8 micrometer foil a standard thickness for confectionary purposes?

Fine chocolates are often wrapped in such thin foil, but it could not be called an industry standard. In fact, the contract with Oceania Confectionaries called for some of the printing to be done on 10 micrometer foil, which was the foil used when the machine was being tested. However, Oceania Confectionaries was particularly interested in prompt delivery of 8 micrometer foil and terminated the contract when that could not be delivered by Oceania Printers.

22. How was Reliable Printers able to purchase and have installed a machine so quickly?

In the hopes of procuring the contract with Oceania Confectionaries they had entered into a preliminary agreement to purchase an appropriate machine. When they learned that Oceania Printers had purchased the Magiprint machine, they were told by their supplier that it would not print on 8 micrometer foil. Therefore, they made the arrangements to
have their machine in place in the hope of securing the Oceania Confectionaries contract after all.

Business relationships

23. What has been the nature of Oceania Printers’ business?

Oceania Printers has been engaged in general printing activities. All of its previous activities have been on various types of non-specialized forms of paper stock. The reference to “Specialist Printers” in its letterhead indicates that there business tended towards small printing contracts rather than the larger contracts of the nature of the one with Oceania Confectionaries. Use of the flexoprint machine would have constituted a significant extension of its previous line of activities.

24. Does McHinery Equipment Suppliers Pty sell only flexoprint machines?

No, it sells a wide range of new and used industrial equipment. It does not sell any new flexoprint machines. Sales of used flexoprint machines constitute five to ten percent of its total business.

25. Was there any previous business relationship between Oceania Printers S. A. and McHinery Equipment Suppliers Pty?

No. The letter of 17 April 2002 (Claimant’s Exhibit No. 1) was the first contact there had ever been between them.

26. What is the general business reputation of the two firms?

Both have generally good reputations.

27. Was the machine used by Oceania Printers S. A. prior to its sale to Equatoriana Printers on 14 October 2003?

No. The machine had been purchased in order to service the contract with Oceania Confectionaries.

28. Was the CIF term in the contract meant to be interpreted according to INCOTERMS 2000?

Yes,
Calculation of damages

29. How was the estimated profit of $400,000 arrived at?

At this stage of the arbitration (i.e. during the Moot) the estimated profit of $400,000 per year will be accepted. If the tribunal decides that the claim is not barred by a period of limitations or period of prescription prescriptive period and if the tribunal decides that McHinery Equipment Suppliers Pty is responsible for having delivered a machine that could not print on 8 micrometer aluminium foil, it would be necessary for Oceania Printers S.A. to prove the estimated lost profit.

When Procedural Order No. 1 specifies that the parties should, at this stage of the proceedings, discuss whether the claim for lost profits was appropriately calculated, it was referring to the fact that the claim was for $3,200,000, arrived at by multiplying the estimated annual lost profits of 400,000 by eight years.

30. Was the price of $22,000 for which Oceania Printers S. A. sold the machine to Equatoriana Printers a reasonable price?

What is a reasonable price is very much a matter of judgment. The price of $22,000 was more than McHinery Equipment Suppliers Pty had offered for it. The difference between the $42,000 price of the machine when sold to Oceania Printers and the $20,000 offered by McHinery Equipment Suppliers Pty reflected the cost of refurbishing the machine, shipment to Oceania and gross profit. Oceania Printers S. A. informed McHinery Equipment Suppliers Pty that it intended to sell the machine and no objection was raised.

31. What is the life expectancy of the flexoprint machine?

In normal use and proper maintenance it could be expected to last for at least another 20 years.

32. Is it expected that Oceania Confectionaries will renew its printing contract with Reliable Printers when it expires in the summer of 2006?

At the present time (2 November 2005) there is no reason to believe that it will not renew the contract since there is no other firm that could print the foil that they need. However, Oceanic Generics will probably need printed foil for the blister packs of medicine they will produce beginning in early 2007. That introduces the possibility that another printer in Oceania, including Oceania Printers, might purchase a flexoprint machine for that contract. If so, there may be competition for the Oceania Confectionaries account at the time the current contract with Reliable Printers is up for renewal in the summer of 2006.

33. What were the prevailing inflation rates and interest rates in Oceania?

For the past five years the inflation rate has fluctuated around 2 percent per annum. There are various interest rates for different purposes. They have been unusually low as
compared with historical trends during the entire period of time. The official discount rate maintained by the central bank has fluctuated around 3 percent. The prime lending rate to first class borrowers has been around 6 percent. The average return on investment has been around 11 percent.

(Signed)
Mr. Arbitrator 3
Presiding Arbitrator

2 November 2005