

Chapter II

INTERNATIONAL BUSINESS TRANSACTIONS & CISG

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- **Definition:** contracts between firms or individuals located in **different countries**.
- **Applicable Laws:**
 1. **International law:** a body of law—formed as a result of international customs(usage of nations), treaties, and international organizations **WTO, EU**—that governs relations among or between nations.
 2. **National law:** the law of a particular nation, such as Egypt, USA, ...etc. It could be **common Law** or **Civil Law**.

International Transactions: Types

1. Exporting/Importing
2. Manufacturing: Licensing /franchise
3. Subsidiary OR joint venture

1. Exporting / Importing

- **Direct exporting/ Importing** : sales contract with a foreign purchaser.
- **Indirect exporting** : establish **business in foreign country** OR by appointing a **foreign agent** or a foreign **distributor**.

2.Manufacturing: Licensing /Franchise

- To **reduce costs**—particularly for labor, shipping, and raw materials—and be able to **compete more effectively in foreign markets.**

Licensing

- Walt Disney is the registered owner of cartoon characters popular around the world. There are many merchandises which bear these characters on it; like bags, caps, bottles etc.; now Walt Disney is not the sole manufacturer of these merchandises. Hence anyone apart from Walt Disney manufacturing these products enters into an agreement with the former to **gain a right to use these characters on its merchandise** for some consideration & sell the same. This kind of arrangement is referred to as **licensing**.

Franchise

- Pizza Hut, Dominos, etc. enjoy a market reputation when it comes to pizza. The brand value which is built after years of struggle is at stake for these niche companies. Hence they enter into a **franchising** agreement; wherein they **allow other individuals to not only use their name but also learn the technical know-how**, the art, skill & knowledge of making the product exactly **the same way as they themselves** would have **in exchange for the royalty**. This in return ensures Pizza hut that it can **penetrate different markets without a compromise in quality of service** and **the franchisee**, in turn, **is benefitted from** the economies of scale that comes **with an already established brand**.

Licensing

Franchising

Business Model

Deals with **Products & Goods**

Deals with **providing Services**

Ownership

Ownership of the ultimate **product** is with the **licensee**, he only **buys the right to use a certain patented / original product** of licensor **in exchange of royalty**

Ownership of the **business** is with the **franchisee**, he **purchases the right to run the same business on behalf of the franchisor in exchange of fees**

3.Subsidiary/Joint Venture

- **Subsidiary** is to establish a **wholly-owned** subsidiary firm in a **foreign country**.
- **joint venture**: the National company **owns only part of the operation**; the rest is owned by another foreign entity.

International transactions Risks

- **Expropriation** : which occurs when a **government seizes** a privately owned business or privately owned goods for a proper public purpose (**legal purpose**) and awards just **compensation**.
- **Confiscation** :When a **government seizes** private property for an **illegal purpose** and **without compensation**.

Special Provisions in International Transactions

- CHOICE OF LANGUAGE
- CHOICE OF FORUM (Court/ place of jurisdiction)
- CHOICE OF LAW
- FORCE MAJEURE CLAUSE:(**impossible or irresistible force**) **acts of God**, a number of other **eventualities** (*such as governmental orders or regulations, embargoes, or extreme shortages of materials*) may excuse a party from liability for nonperformance.

Convention
on Contracts for the International Sale
of Goods ("***CISG***")

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)



84 State parties: More than 75% of world trade

UNCITRAL

United Nations Commission on International Trade Law

Applicability of the CISG

- The CISG governs in case of:
 - 1. International / sale/ of goods contracts .**
 - 2. The countries of the parties to the contract have signed the CISG.**
 - 3. The parties have not agreed that some other law will govern their contract.**

Exclusion of CISG

- This Convention does not apply to:
 1. sale of **goods bought for 'for personal, family or household use'** (unless Seller is not aware that goods were bought for any such use at the time of sale contract). When deciding whether CISG is applicable you look at things like **the nature of the goods, the quantity ordered, and the delivery address.**
 2. **Sale by auction, or otherwise by authority of the law** of stocks, shares, investment securities, negotiable instruments or money;-of ships, vessels, hovercraft or aircraft; of electricity
 3. **Sale contracts excluding the CISG**

CASE

Anne is a business student. She ordered two bags from amazon usa website for her mother's birthday on February 12,2021. The bags had to be delivered on January 10,2021. It had been delivered on March 10,2021. She decided to sue Amazon based on the CISG. Ahmed , her colleague in business law class told her that the CISG is not applicable on the case and she can sue Amazon based on Contracts law. Both Egypt & USA are parties to the CISG.

- **Advise Anne with a justified legal opinion**

Answer

- I advise Anne to follow her colleague's opinion as the CISG is not applicable on sales of goods bought for personal, family or house-hold use. Ordering two bags is clear to any reasonable person in same position as her to be a sale for personal use.
- Anne can only sue Amazon based on contracts law as per her colleague's advice, because Amazon had committed a material breach of the sale contract made with Anne by delivering late the ordered bags. She can sue them for compensatory damages.

Formation of the contract under the CISG

- terms of the acceptance mirror those of the offer = Any alteration is material.
- an offer will be irrevocable if the offeror states orally that the offer is irrevocable or if the offeree **reasonably** relies on the offer as being irrevocable.
- **Not needed** to be written, not subject to any other requirements as to form & proved by any means, including witnesses.
- contract is created at the time the acceptance is received by the offeror.

Obligations of The Seller “S”:

1.Delivery obligations

- **Where?**

- As agreed in the contract
- if the **carriage is involved**: the **delivery** happens when the goods are **handed over to the carrier**.
- if nothing of these, the delivery takes place at the **Seller’s place of business**

- **When?**

- As per the **contract**, Otherwise, within a **reasonable time** after the conclusion of the contract

2.Obligations of the S for the quality of the goods

- Goods must be of **quantity, quality** and **description** and be **packaged** as required by contract.

Rights of the seller

- **Right to cure defective performance** up to time of contract delivery date, provided no unreasonable inconvenience or expense to B (buyer). **B can still claim damages**. S(seller) may also cure after the due date, but subject to the **B's right of avoidance**.
- **Right to receive his payment** for the goods supplied

Obligations & Rights of the Buyer

- a. **Obligation to examine the goods** within a short period as possible in the circumstances.
- b. **to notify the S for the non-conformity** of the goods within a reasonable period after discovery
- c. **Pay the price and take delivery** of the goods as per contract

Remedies

- ***Suspension of Performance***
- ***Fixing an Additional Period of Time***
- ***Specific Performance***
- ***Avoidance***
- ***Damages***
- ***Reduction in Price***

Case

- Cairo Music, Egyptian joint stock Company, is working in importing musical instruments from USA. They concluded a contract with American Music Corporation to deliver a number of different musical instruments. The contract stated that the CISG will apply in case of any dispute. Cairo Music discovered that 40% of the delivered instruments are defected extremely and cannot work properly. Both Egypt & USA are party to the CISG.

Advise Cairo Music with a justified legal opinion as per the CISG.

Answer

- The CISG is applicable on the present contract as it was chosen by both parties to be applicable on the contract, both countries(Egypt and USA) of the parties are members to the CISG and finally the contract is for international sales of goods.
- I advise Cairo Music to sue American Music based on the CISG for all types of remedies given by the CISG (refer to slide 24) noting that it has to notify American Music of the defected goods to cure the performance up to time of contract delivery date, provided no unreasonable inconvenience or expense to Cairo Music (buyer). American Music (seller) may also cure after the due date, but subject to the **Cairo Music (buyer) (right of avoidance)**.