

BUSINESS LAW

Contracts for the international sale of goods

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Readings (obligatory)

Zoltan Vig: International Business Transactions, BME,
Budapest, 2023, Chapter II



Contracts in the law of international business transactions

- (1) independent contracts (like contracts for the international sale of goods)
- (2) accessory contracts
 - (i) contracts related to the marketing of goods
 - (ii) contracts related to transport of goods
 - (iii) contracts related to international payments

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

- international treaty which contains universally applicable substantive law
- deals with two issues:
 - (1) formation of the sale contract
 - (2) rights and obligations of the parties
- for other issues conflict of law rules of the forum

CISG – material scope

- **material scope** reflects that the contract is about sale of goods
- negative definition
- excluded because of the nature of the transaction:
 - goods bought for personal, household use
 - goods bought on auction
 - goods bought on execution
- excluded because of the nature of the object of the transaction:
 - negotiable instruments, stocks, shares, money
 - ships, aircrafts
 - electricity
- all other movables fall under the material scope of the Convention

CISG – personal, territorial scope

- **personal scope** reflects that it is about international sale of goods, between parties whose places of business are in different countries
- **territorial scope** means that
 - (1) either their places of business are in contracting states or
 - (2) rules of private international law lead to the application of the law of a contracting state

CISG - interpretation

- parties are free to **exclude** the application of the Convention (art. 6)
- **interpretation of the Convention** (art. 7)
 - (1) the international character of the Convention,
 - (2) the need to promote uniformity in its application, and
 - (3) the principle of good faith.
- **interpretation of the statements of the parties** (art. 8)
 - (1) subjective approach: statements should be interpreted based on the intent of the party making the statement, but only where the other party knew or could not have been unaware of the speaker's intent.
 - (2) objective approach: statements made by a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances

CISG – written usages

- written usages if the parties did not exclude them expressly, they are applicable to their contract
- conditions for this:
 - (1) the parties knew or ought to have known about these usages,
 - (2) they are widely known in international trade, and
 - (3) regularly observed in the particular trade concerned

CISG – formation of the contract

- the contract is concluded with the acceptance of the offer
- valid offer:
 - (1) addressed to one or more specific persons,
 - (2) with the intention to conclude the contract, and
 - (3) sufficiently definite (goods, quantity, price)
- acceptance of an offer can be express statement or performance of an act
- silence or inactivity is not acceptance
- substantial alteration of the offer is considered a counter-offer
- contract is concluded when the acceptance reaches the offeror
- no formal requirement

CISG - obligations of the seller

- deliver the goods required by the contract
- transfer the property in the goods
- hand over the documents related to the goods

CISG – obligations of the seller

- **place of delivery**
 - autonomy of the parties,
 - seller's place of business at the time of the conclusion of the contract
 - carriage of goods involved: the place of handing over to the first carrier
- **time of performance**
 - if it is a fixed date
 - period of time
 - within a reasonable time

CISG – obligations of the seller

conformity of the goods

- seller must deliver goods which are of the quantity, quality, description, package required by the contract
- if not stipulated:
 - (1) fit for the purpose for which goods of the same description would ordinarily be used
 - (2) fit for particular purpose that was made known to the seller
 - (3) have the same qualities as the sample had, if there was a sample provided by the buyer

CISG - obligations of the buyer

- (1) to take the delivery (art. 60), which means, that the buyer has to
 - (i) do all the acts which could reasonably be expected of him in order to enable the seller to make delivery,
 - (ii) take over the goods, during which the buyer has the right and obligation to examine the goods (within as short a period as is practicable in the circumstances) (art. 38); and have to give a notice within a reasonable time (subjective deadline, but there is two years objective (final) deadline as well) if the goods are not conforming.
- (2) to pay the price
 - price generally charged:
 - (i) at the time of the conclusion of the contract,
 - (ii) for such goods sold under comparable circumstances,
 - (iii) in the trade concerned

CISG – breach of contract

- **fundamental breach** (art. 25): it is a breach which results in such detriment to the other party as substantially to deprive him [or her] of what he [or she] is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result
- legal consequence
 - fundamental breach
 - avoidance with one-sided statement immediately
 - require substitute goods
 - ordinary breach
 - price reduction
 - repair of the goods
 - exceptionally avoidance

CISG - damages

If a party to the contract suffers damages due to the breach of the contract by the other party, he or she is entitled to damages (art. 74)

sum equal to the **loss + loss of profit**

limitation > such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract

CISG – passing of risk

passing of risk related to the goods

If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale.

If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place

For goods in transit: when/where the contract is concluded, in any other case: where/when the buyer takes over the goods

Unless otherwise agreed, loss or damage to the goods after the risk has passed to the buyer does not discharge him or her from his or her obligation to pay the price (unless it is due to an act or omission of the seller)

Thank you!



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