

**INHOLLAND UNIVERSITY**



## **LAW OF INTERNATIONAL CONTRACT**

**Convention on Contracts for the International Sale of Goods**

**LAW OF INTERNATIONAL CONTRACT**

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1. A seller and a buyer are located in different countries. Both countries are CISG members. The deal between the seller and buyer is done by a simple telephone call; nothing is arranged in detail apart from the goods in question. What law will govern the sales contract?

## **Chapter I**

### **Sphere of Application**

#### **Article 1**

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

In this case, the buyer and the seller both are located in different countries, and both countries in which they are located are members of CISG. The CISG will apply to the contract.

#### **Contract Provision**

Under French Civil Code and United States Uniform Commercial Code, a sales contract must be memorialized in a writing signed by the party against whom it is being asserted. Under United Nations CISG, this contract provision is not necessary. Simple telephone call can be categorized as sales contract under CISG.

#### **Choice of Law Clause**

Both buyers cannot use choice of law clause to opt out CISG regulation, because both the buyer and the seller arranged nothing in detail apart from the goods in questions. Choice of law clause is contractual provision that identifies the law to be applied in the event of a dispute over the terms or the performance of the contract.

2. A retailer in state A wants to go into business in state B. The retailer obtains a list with names and area codes of high income potential customers, who are sent a catalogue with accompanying letter, addressed in person to the potential customer. A potential customer is impressed by the catalogue and contacts the retailers, stating that he accepts the offer made on page 13 of the catalogue. Is there a binding contract between the customer and the retailer?

Yes, there is a binding contract between the customer and the retailer. It is because both of them have conducted practices with intention of having a deal.

#### **Negotiations**

Article 8(3) of CISG directs that “due consideration” be given “to all relevant circumstances,” including (a) the negotiations leading up to the contract, (b) the practices that the parties have established between them selves, and (c) the parties’ conduct after agree to the contract.

**General Provision****Article 9**

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

Both Article 8(3) and Article 9(1) of CISG state that parties are bound by “any practices which they have established between themselves. We can conclude that there is a binding contract between customer and the retailers in this case.

3. A Belgian oil trader buys oil in Saudi Arabia and ships it to Rotterdam. While on sea the cargo is sold to a German firm. Upon inspection by the German buyer the oil appears to be contaminated with chemicals. Suppose CISG applies, which party bears the risk of transaction?

**In-Transit Contracts**

Sometimes goods are sold after they already aboard a carrier. In such a case, the risk of loss passes to the buyer at the time the contract is concluded. However, if at the time the contract was made, the seller knew or ought to have known that goods had been lost or damaged and he did not disclose this to the buyer, the risk will remain with the seller

If Belgian oil trader which is the owner of crude oil being transported on a tanker from Saudi Arabia to Rotterdam, the Netherlands, contracts to sell the oil to a buyer, the risk will pass to the buyer at the time the contract is made. If, however, the Belgian oil trader knew that the oil had been contaminated and did not tell the German buyer, the risk of loss will not pass.

4. As mentioned in question three, parties agree the CISG is applicable on their conflict. If a dispute about the provision of CISG arises, what techniques can be applied by courts to interpret CISG?

Article 7(2) of the Convention directs court to interpret the CISG in the following order: the Convention, the general principles on which the Convention is based, and the rules of private international law.

- I. The Convention, as Article 7 (1) says: *“In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and observance of good faith in international trade.”* So courts can use the plain meaning of the language in the Convention.
- II. The general principles of the Convention still need to be made. The following two principles can be refer to: (1) A party to a contract has the duty to communicate information needed by the other party, and (2) parties have the obligation to mitigate damages resulting from a breach.

- III. Only when CISG itself can't directly solve the case, the third source—Private International Law can be applied. This allows courts to avoid the possibility of adopting interpretive aids on too specific situation.
5. A seller sends a letter to a buyer stating “this offer is valid, binding and irrevocable until January 1, 2004”. On December 15th, prior to the buyer's receipt of the letter, seller wants to withdraw the offer, calls the buyer and leaves a message in the answering machine of the buyer, stating: “ignore my letter of December 10th; I have to withdraw my offer”. On December 21, after listening to the answer machines and reading the letter that arrives the same day, buyer then sends an e-mail to the seller stating “ I accept your offer of December 10th”. Is there a valid contract under CISG?

**Offer** is a proposal by one person to another indicating an intention to enter into a contract under specific terms.

#### **Effectiveness of an Offer**

An offer becomes effective only after it reaches the offeree. Thus, offers including offers that promise that they are irrevocable can be withdrawn prior to their reaching the offeree.

#### **Revocation**

Offers that do not state that they are irrevocable can be revoked any time before the offeree dispatches an acceptance.

#### **Article 15**

- (1) An offer becomes effective when it reaches the offeree.  
(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

According to article 15(1) the letter reaches the buyer first, then the offer can be considered as a valid contract under CISG. If withdrawal message on the answering machine reaches the buyer first, the offer is not valid under CISG according to article 15(2).

6. Buyer and seller agree on the purchase of a sophisticated computer. Agreed is date of delivery, which is January 10th. On this date nothing is delivered. Buyer contacts the seller who states he had had some problems, but now the computer is well on its way. Buyer responds by mail and says in its letter: “I desperately need it on February 1st. I hope it arrives on February 1st.” finally the computer arrives on February 5th. Buyer now refuses to accept it, and declares the contract is voided because seller failed to supply the computer on February 1st. is buyer able to avoid contract, and if so, on what grounds from the CISG?

**Seller's Obligations (Time for Delivery)****Article 33 of CISG**

- (a) *"The seller must deliver the goods on the date fixed in the contract, or, if not date is fixed, within a reasonable time after the conclusion of the contract"*
- (b) *"If the time period is provided, the seller may deliver at any time within that period unless the contract expressly says that the buyer is to choose the time"*

The seller still disobeys the letter; it is clearly that the seller can't fulfil his obligations. Hence, buyer has the right to avoid the contract.

7. Seller sends a letter to buyer which lists prices and delivery time for certain items, of which seller knows buyer is interested to buy. Seller ends his letter with the following sentence: "If I hear no objections, I will assume we have entered into a contract for the sale of 1000 pieces of item X for a price as mentioned above in this letter". Buyer does not respond. Is there a valid sales- contract between the buyer and the seller?

There is no valid sales contract between them according to Article 18(1)

**Article 18**

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

The fact that the buyer does not respond will not create a contract because in this situation the seller tried to force acceptance on the buyer.