

# International Contracts and Sales

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## Overview

- 14 September 2009
  - International contracts and sales
- 16 September 2009
  - Electronic commerce law
  - Marketing law

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## International choice of law and forum

- Substantive law and procedural law
- Choice of forum
  - Brussels/Lugano System
    - Defendant's homecourt
    - Place of performance (characteristic obligation)
- Choice of law
  - Rome and Hague Convention
    - »Seller's law« if no choice
- National and international sales law

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## CISG

- 1980 Vienna Convention
  - Public International Law
    - Interpretation: Uniformity, good faith and trade-usage
  - Default rules (gap-filling)
    - Freedom to contract out (and in)
- Overview
  - Contract formation
  - Obligations of the parties
  - Passing of risk
  - Remedies for breach



## Field of Application

- International
  - Parties (place of business) in different CISG states
    - Or according to private international law
  - Nordic neighbor-state reservation
    - Denmark, Finland, Iceland, Norway and Sweden

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## Field of Application

- Goods
  - Transfer of rights in movable »things«
    - Not services
    - Software, goods to be produced and mixed contracts
- Not personal, family or household use

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## Formation of Contract

- Nordic reservation on Part II (art. 92)
  - Other parts of CISG still apply
  - Can apply based on choice of law
- CISG deals not with the validity of contracts
  - Determined by the applicable law
- Contracting
  - Offer, acceptance and invitation to treat

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## The Offer

- Addressed to specific person(s)
- Sufficiently definite
  - Indicates the goods and a price
    - Also implicitly (e.g. »market price« / range)
- Indicate the intention to be bound
- Effective upon arrival at the offeree
  - Withdrawal before that time

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## The Offer

- Revokeable until acceptance is dispatched
  - Unless the offeree acts in reasonable reliance
  - Can agree that the offer is irrevocable (time-limit)
- Terminated by rejection

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## Acceptance

- Silence is normally not an accept
  - Must indicate an intention to be bound
  - Acceptance by conduct
- Effective when it reaches the offeror
  - Must match the offer (no material-changes)
    - Otherwise: rejection and a counter-offer
    - »Battle of forms«
- Must arrive in time
  - Fixed or within a reasonable time

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## Case

- A German pencil company has detailed information on several types of pencils on their website. There are no prices indicated, but it is stated that the company has »the lowest price in Germany«.
- A Danish company sends a fax to the number indicated on the »contact info« on the website – ordering 10.000 type A pencils at a price no higher than .1 eurocent referring to a similar price indicated on a competitors website.
- The German company sends an order confirmation indicating a price of .2 eurocent and ships the pencils the same day.
- The Danish company sends an e-mail indicating that the price is unacceptable and pays only the price of .1 eurocent.
- The German Company sues the Danish company.
- Where?, which law? and which price shall apply?



## Obligations of the Parties

- The seller
  - Right goods (quantity/quality), time and place
    - Important to determine in the contract
      - Samples, warranties & »fit for specific purposes«
    - Oral agreements (procedural aspects)
    - Public law requirements (esp. when knowledge)

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## Obligations of the Parties

- The seller
  - If no clear specification
    - Delivery within reasonable time
      - When handling to the first (independent) carrier
  - Place of delivery and jurisdiction
    - Passing of the risk (accidental loss of the goods)

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## Obligations of the Parties

- Conformity is determined at the passing of risk
  - Also when discovered later
- The buyer
  - Timely and proper notice of breach
    - Must be specified properly
    - Two-year cut-off rule
      - Unless otherwise agreed (e.g. warranties)

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## Obligations of the Parties

- The buyer
  - Examination within as short a period as possible
    - Considering the nature of the goods
  - Payment performance and take delivery
    - Seller must preserve the goods if failure to take delivery

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## Remedies for breach

- Specific performance
  - (Complete) failure to perform
    - Unless avoidance is used or specific performance is not available under the court's law
- Re-delivery
  - Fundamental breach
    - Timely notice
- Repair
  - Any breach
    - Unless unreasonable



## Remedies for breach

- Avoidance of the contract
  - => No performance obligations
  - Requires fundamental breach
    - Foreseeable substantial detriment
      - Delivery of 5 out of 11 computer components (no avoidance)
  - Timely notice (reasonably time after realizing)
    - Dispatch (not necessarily reach)
- Seller's right to cure if not unreasonably inconvenience

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## Remedies for breach

- Nachfrist notice (only non-delivery)
  - Time is not of the essence by default
- Proportionate price reduction
  - Delivery not conforming with the contract
- Damages for breach
  - May be claimed for any breach
    - Both seller and buyer
    - The loss suffered (expectation interest)
      - Only foreseeable loss

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