



Overview

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International contracts and sales

17 September 2008
Electronic commerce 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
- International sales law (CISG)
- National sales law

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CISG

1980 United Nations Convention on Contracts for the International Sales of Goods (Vienna)

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

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Field of Application

International

Parties (place of business) in different CISG states

Or in accordance with private international law

Scandinavian neighbor-state reservation

Denmark, Finland, Iceland, Norway and Sweden

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

Scandinavian 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« or range

Indicate the intention of the offeror to be bound

Become effective upon arrival at the offeree

Withdrawal before that time

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 is it a rejection and a counter-offer

»Battle of forms«

Must arrive in time (risk of transmission)

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?

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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)

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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Some Incoterms (2000)

EXW EX WORKS (...named place)

FAS FREE ALONGSIDE SHIP (...named port of shipment)*

FOB FREE ON BOARD (...named port of shipment)

CFR COST AND FREIGHT (...named port of destination)

CIF COST, INSURANCE AND FREIGHT (...named port of destination)

CPT CARRIAGE PAID TO (...named place of destination)

DES DELIVERED EX SHIP (...named port of destination)

DEQ DELIVERED EX QUAY (...named port of destination)

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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)

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 (non-conform delivery)

Timely notice

Repair

Any breach

Unless unreasonable

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Remedies for breach

Avoidance of the contract

=> No performance obligations

Requires fundamental breach

Foreseeable substantial detriment

E.g. Non-conforming goods

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

Anticipatory breach

Avoidance if clear indication of total repudiation

Suspension of performance

Not performing substantial part

Immediate notice

Avoidance => released from obligations

Subject to damages

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Remedies for breach

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

Not necessarily actually foreseen

Obligation to preserve goods

No recovery for avoidable loss

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Case

A UK company gets from a Danish company an offer to buy 500 tons apples at 5 EUR per kilo to be delivered 17 December 2004. It is indicated that the offer must be accepted within a week.

The UK company sends an accept by mail after 5 days. The accept arrives after 9 days. The Danish company ships the apples after receiving the accept.

The apples arrive on 23 December 2004. The UK company informs that they will only pay 3 EUR per kilo due to the late delivery.

The Danish company offers to sell the apples at 4 EUR per kilo, but gets no response until 4 January, where the UK company informs that the apples are not in good condition («useless»). The UK company refuses to pay anything for the apples.

The Danish Company sues the UK company.

Where?, which law? what can be claimed?

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Thank you for your attention!

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