

# **International Contracts and Sales (1/2)**

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# Overview

30 September 2005

Lookofsky, p. 7-12 and 51-102

4 October 2005

Lookofsky, p. 117-149

7 October 2005

Distance Selling Directive, articles 1-6, 12 and 14

E-Commerce Directive, articles 3, 5-6 and 9-11

# 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

# 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

# Field of Application

## International

Parties (place of business) in different CISG states  
Or in accordance with private international law

Scandinavian neighbour-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

# Formation of Contract

Scandinavian reservation on Part II (art. 92)

- Other parts of CISG still apply

- Can apply in accordance with choice of law

CISG deals not with the validity of contracts

- Determined by the applicable law

Contracting

- Offer, acceptance and invitation to treat

# The Offer

Addressed to specific person(s)

Sufficiently definite

- Indicates the goods and a price (also implicitly)

  - Pelts of middle or better quality priced between DM 35 and 65

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

# 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

# Case

A German pencil company have 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 ship 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?

# Thank you for your attention!

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