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UN Sales Law and International Arbitration

Date: Wednesday 18:00 (s.t.) – 19:30
Room: US-F 103

Syllabus

Part 1: Introduction

Chapters: **1.** Why this lecture? **2.** Patchwork of sources **3.** International Law **4.** National law **5.** *Lex mercatoria* **6.** Approaches of CISG and EU contract law compared **7.** What are the functions of freedom of contracts? **8.** What are the functions of contract law? **9.** Problems that the CISG solves **10.** Role of arbitration **11.** Is legal unification worth the effort?

Part 2: CISG – General Issues and Applicability

Chapters: **1.** Importance of the CISG **2.** Working tools **3.** Development of the CISG **4.** Connection with *lex mercatoria* **5.** Applicability and scope of the CISG **6.** Opting out of the CISG **7.** Opting into the CISG and further areas of party autonomy **8.** Interpretation of the CISG **9.** Limited role of good faith **10.** Gap-filling **11.** Interpretation of the parties' statements and conduct **12.** Trade usages **13.** Structure and major issues of the CISG

Part 3: CISG – Contract Formation, Obligations and Risk

Chapters: **1.** Overview: contract formation **2.** Offer **3.** Open price term **4.** Offer invitation **5.** Withdrawability of an offer **6.** Revocability of an offer **7.** Acceptance **8.** Late acceptance **9.** Counter-offer **10.** Contract conclusion **11.** Form **12.** Battle of forms **13.** Overview: dualistic obligations **14.** SELLER's obligations I: delivery **15.** Seller's obligations II: conformity of goods **16.** Excursus: comparison to EU sales law **17.** Buyer's obligations to examine goods and to give notice of non-conformity **18.** Two-year cut-off period for notice **19.** Seller's obligations III: handing over of documents and freedom of third-party claims **20.** Summary: seller's obligations **21.** BUYER's obligations I: payment **22.** Buyer's obligations II: take delivery and other duties **23.** Summary: buyer's obligations **24.** Passing of risk

Part 4: CISG – Contractual Remedies

Chapters: **1.** Kind of remedies available **2.** Role of fundamental breach **3.** Overview: dualistic obligations and remedies **4.** BUYER's remedies (for seller's breach): system **5.** Buyer's remedies I: specific performance (delivery, substitute delivery or repair) **6.** Buyer's remedies II: avoidance **7.** Buyer's remedies III: price reduction **8.** Buyer's remedies IV: damages **9.** Damages recoverable **10.** Buyer's duty to mitigate loss **11.** Interest **12.** Narrow excuse of impediment **13.** Summary: buyer's remedies **14.** SELLER's remedies (for buyer's breach): system **15.** Seller's remedies I:

(specific) performance **16.** Seller's remedies II: avoidance **17.** Seller's remedies III: damages **18.** Seller's duty to mitigate loss **19.** Interest **20.** Narrow excuse of impediment **21.** Summary: seller's remedies **22.** Overall system of buyer's and seller's remedies **23.** Comparison with the German BGB and HGB

Part 5: CISG – Case Solving

Chapters: **1.** Example case I: The not so perfect Italian fish **2.** Example case II: Sweet Polish apple juice **3.** Example case III: The wrong Beijing ducks **4.** Example case IV: Wheat for Panama **5.** Main issues for solving a CISG case

Part 6: Drafting International Commercial Contracts

Chapters: **1.** Managing the minefield of international contracts **2.** A model international sale contract analysed **3.** Force majeure and hardship clauses **4.** Best-reasonable-efforts clause **5.** ICC Incoterms 2020 **6.** Contract of carriage of goods by sea and bill of lading **7.** Further transport law **8.** Payment by documentary credit (UCP 600) **9.** UNIDROIT Principles of International Commercial Contracts **10.** Further commercial contracts **11.** Limits to party autonomy

Part 7: International Arbitration – Overview

Chapters: **1.** Paths to justice compared: negotiation, mediation, arbitration and litigation **2.** Major arbitration organisations **3.** ICC Rules of Arbitration 2021 **4.** UNCITRAL Model Law on Arbitration 1985 and national followers (e.g. German ZPO) **5.** Drafting an arbitration clause **6.** Governing law **7.** New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

Please note:

A **bilingual version** of the **UN Sales Law = CISG (German/English)** can be downloaded from https://www.wiwi.uni-siegen.de/rechtswissenschaften/roesler/lehre. This text will be handed out **in the exam**. The website also offers a bilingual version of the New York Convention 1958.
A **glossary** of key terms will be provided during the lecture.

Literature and Materials

Official legal texts

- **United Nations Convention on Contracts for the International Sale of Goods (CISG)** 1980 https://uncitral.un.org/en/texts/salegoods; further translations https://iicl.law.pace.edu/cisg/page/texts-cisg
- **UNIDROIT Principles of International Commercial Contracts** 2016 https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016
- **INCOTERMS** 2020 https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020; German version in Hopt (Hrsg.), *HGB*, 43. Aufl., München 2024 https://beck-online.beck.de/Bcid/Y-400-W-BauHoKoHGB-G-IntVICT2020-GL-B
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (**New York Convention**) https://uncitral.un.org/en/texts/arbitration
- **ICC Arbitration Rules** 2021 https://iccwbo.org/publication/arbitration-rules-and-mediation-rules

Online resources (CISG cases and literature)

- CLOUT database https://www.uncitral.org/clout/#legislativeText
- UNILEX database on CISG and UNIDROIT Principles https://www.unilex.info
- Pace database https://iicl.law.pace.edu/cisg/cisg
- bibliography of recent writings related to the work of UNCITRAL https://uncitral.un.org/en/library/bibliography
- status of the CISG https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status
- digests https://uncitral.un.org/en/case_law/digests
- thesauri https://uncitral.un.org/en/case_law/thesauri
- https://cisg-online.org
- https://www.trans-lex.org
- Social Science Research Network (SSRN) https://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm

Textbooks

- Bridge, *The International Sale of Goods*, 5th ed., Oxford 2023
- Dalhuisen, *Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law*, 7th ed., Oxford 2019
- Goode, Kronke & McKendrick, *Transnational Commercial Law* – Texts, Cases and Materials, 2nd ed., Oxford 2015
- Hay & Rösler, *Internationales Privat- und Zivilverfahrensrecht*, 5. Aufl., München 2016
- Huber & Mullis, *The CISG – A new textbook for students and practitioners*, München 2007
- **Schlechtriem & Butler, *UN Law on International Sales – The UN Convention on the International Sale of Goods*, Heidelberg 2009**
- **Schroeter, *Internationales UN-Kaufrecht*, 7. Aufl., Tübingen 2022**
- Schwenzer, Fountoulakis & Dimsey, *International Sales Law – A guide to the CISG*, 3rd ed., Oxford 2019 (article-by-article casebook)
- Wolff, *The Law of Cross-Border Business Transactions – Principles, Concepts, Skills*, 2nd ed., 2017

Commentaries

- Brunner & Gottlieb (eds.), Commentary on the UN Sales Law, Alphen aan den Rijn 2019 https://www.kluwerarbitration.com
- **Kröll, Mistelis & Perales Viscasillas, *UN Convention on Contracts for the International Sale of Goods (CISG)*, 2nd ed., München 2018** https://beck-online.beck.de/Bcid/Y-400-W-KroeMiViCISG
- Mankowski (ed.), *Commercial Law – Article-by-Article Commentary*, München, Baden-Baden, Oxford 2019 (e.g. on CISG, UNIDROIT Principles, Incoterms)
- **Schwenzer & Schroeter (eds.), Schlechtriem & Schwenzer: *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th ed., Oxford 2022**

- Brödermann, *UNIDROIT Principles of International Commercial Contracts – An Article-by-Article Commentary*, 2nd ed., Baden-Baden 2023
- Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*, 2nd ed., Oxford 2015

- BeckOK BGB, *CISG*, 75. Edition, München 2025 https://beck-online.beck.de/Bcid/Y-400-W-BECKOKBGB-G-UNKAUFRUE
- Ferrari/Kieninger/Mankowski et al., *Internationales Vertragsrecht*, 3. Aufl., München 2018 https://beck-online.beck.de/Bcid/Y-400-W-FerrKieManKoIntVertrR-G-CISG

- *jurisPK-BGB*, 10. Aufl., Saarbrücken 2023, Bd. 6: CISG https://www.juris.de/r3/document/jpk-BGBPK6JSR0174
- *Münchener Kommentar zum BGB*, Bd. 4/1, 9. Aufl., München 2024 https://beck-online.beck.de/Bcid/Y-400-W-MuekoBGB-G-UNKaufRUe
- *Münchener Kommentar zum HGB*, Bd. 5, 6. Aufl., München 2025 https://beck-online.beck.de/Bcid/Y-400-W-MuekoHGB-G-UNKaufRUe
- Schlechtriem, Schwenzer & Schroeter (Hrsg.), *Kommentar zum Einheitlichen UN-Kaufrecht*, 8. Aufl., München 2025 https://beck-online.beck.de/Bcid/Y-400-W-SchlechtriemSchwenzerKoUNKaufR
- Soergel, *Kommentar zum Bürgerlichen Gesetzbuch*, Bd. 11: CISG, 14. Aufl., Stuttgart 2021
- Staudinger BGB, *Wiener UN-Kaufrecht*, Berlin, Neubearbeitung 2025 https://www.juris.de/r3/document/samson-sdg283TITEL_T0000

Journals

- IHR – Internationales Handelsrecht https://www.degruyter.com/view/j/ihr
- IWRZ – Zeitschrift für Internationales Wirtschaftsrecht https://beck-online.beck.de/Bcid/Y-300-Z-IWRZ
- Journal of Law & Commerce https://jlc.law.pitt.edu
- RabelsZ – Rabels Zeitschrift für ausländisches und internationales Privatrecht https://www.mohrsiebeck.com/zeitschrift/rabels-zeitschrift-fuer-auslaendisches-und-internationales-privatrecht-rabelsz
- RIW – Recht der Internationalen Wirtschaft https://online.ruw.de/suche/riw
- RdTW – Recht der Transportwirtschaft https://beck-online.beck.de/Bcid/Y-300-Z-RDTW
- TranspR – Transportrecht
- ULR – Uniform Law Review/Revue de droit uniforme https://academic.oup.com/ulr

Resources especially on arbitration

- Born, *International Commercial Arbitration*, 3rd edition, Alphen aan den Rijn 2020
- International Council for Commercial Arbitration, *ICCA's Guide to the Interpretation of the 1958 New York Convention*, 2011, available in many languages https://www.arbitration-icca.org/iccas-guide-interpretation-1958-new-york-convention
- Schütze & Thümmel, *Schiedsgericht und Schiedsverfahren*, 7th ed., München 2021
- Schütze (ed.), *Institutional Arbitration*, München, Baden-Baden, Oxford 2013
- Wolff (ed.), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards – Article-by-Article Commentary*, 2nd ed, München, Baden-Baden, Oxford 2019

- SchiedsVZ https://beck-online.beck.de/Bcid/Y-300-Z-SCHIEDSVZ
- Journal of International Arbitration https://kluwerlawonline.com/Journals/Journal+of+International+Arbitration/4

- cases on New York Convention 1958 and Model Law on International Commercial Arbitration 1985 https://www.uncitral.org/clout/#legislativeText
- guide https://newyorkconvention1958.org
- blogs https://arbitrationblog.kluwerarbitration.com; https://www.globalarbitrationnews.com
- Arbitration Law Database https://arbitrationlaw.com/library

All PowerPoints and further material for each part of the lecture

- are available on https://moodle.uni-siegen.de. The password will be announced in the lecture.