

## UN Sales Law and International Arbitration

Date: Wednesday 18:00 (s.t.) – 19:30  
Room: US-F 308

### Syllabus

#### Part 1: Introduction

*Chapters:* ↗ 1. Why this lecture? ↗ 2. Patchwork of legal sources ↗ 3. What are the functions of freedom of contracts? ↗ 4. What are the functions of contract law? ↗ 5. Diverging concepts of national contract law ↗ 6. Approaches of CISG and EU contract law ↗ 7. Problems that the CISG solves ↗ 8. Role of arbitration ↗ 9. 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 the historic *lex mercatoria* ↗ 5. Today's *lex mercatoria* ↗ 6. Applicability and scope of the CISG ↗ 7. Opting out of the CISG ↗ 8. Opting into the CISG and further areas of party autonomy ↗ 9. Interpretation of the CISG ↗ 10. Limited role of good faith ↗ 11. Gap-filling ↗ 12. Interpretation of the parties' statements and conduct ↗ 13. Trade usages ↗ 14. 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 requirements ↗ 12. Battle of forms ↗ 13. Overview: dualistic obligations ↗ 14. SELLER's obligations I: delivery ↗ 15. Seller's obligations II: conformity of the 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. Litigation costs as recoverable damages ↗ 11. Buyer's duty to mitigate loss ↗ 12. Interest ↗ 13. Narrow excuse of impediment ↗ 14. Summary: buyer's remedies ↗ 15. SELLER's remedies (for buyer's breach): system ↗ 16. Seller's remedies I: (specific) performance ↗ 17. Seller's

remedies II: avoidance ↗ **18.** Seller's remedies III: damages ↗ **19.** Seller's duty to mitigate loss ↗ **20.** Interest ↗ **21.** Narrow excuse of impediment ↗ **22.** Summary: seller's remedies ↗ **23.** Overall system of buyer's and seller's remedies ↗ **24.** 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.** Practical use of the UNIDROIT Principles ↗ **11.** Further boilerplates

## 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 ↗ **5.** Criteria for drafting arbitration agreements ↗ **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)

- CLOUD database <https://www.uncitral.org/clout/#legislativeText>
- UNILEX database on CISG and UNIDROIT Principles <https://www.unilex.info>
- Pace database <https://iiclaw.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](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status)
- digests [https://uncitral.un.org/en/case\\_law/digests](https://uncitral.un.org/en/case_law/digests)
- thesauri [https://uncitral.un.org/en/case\\_law/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*, 71. Edition, München 2024  
<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, 5. Aufl., München 2021  
<https://beck-online.beck.de/Bcid/Y-400-W-MuekoHGB-G-UNKaufRUE>
- Schlechtriem, Schwenzer & Schroeter (Hrsg.), *Kommentar zum Einheitlichen UN-Kaufrecht*, 7. Aufl., München 2019 (8. Aufl. announced)  
<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 2018,  
[https://www.juris.de/r3/document/samson-sdg155TITEL\\_T0000](https://www.juris.de/r3/document/samson-sdg155TITEL_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>
- blog <https://arbitrationblog.kluwerarbitration.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.