

## UN Sales Law and International Arbitration

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

### Syllabus

#### Part 1: Introduction – Subjects, Methods and Purposes of Legal Unification

*Chapters:* ∘ 1. Why this lecture? ∘ 2. Patchwork of sources, actors and instruments: the transnational business law mix ∘ 3. Links between freedom of contract, the market and the rule of law ∘ 4. What are the functions of freedom of contracts? ∘ 5. What are the functions of contract law? ∘ 6. Transaction governance according to law and economics ∘ 7. Diverging concepts of national contract law ∘ 8. Approaches of CISG and EU contract law ∘ 9. Problems that the CISG solves ∘ 10. Interplay with procedural law and private international law ∘ 11. Role of arbitration ∘ 12. 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. UNIDROIT Principles of International Commercial Contracts ∘ 7. Practical use of the UNIDROIT Principles ∘ 8. Applicability and scope of the CISG ∘ 9. Opting out of the CISG ∘ 10. Opting into the CISG and further areas of party autonomy ∘ 11. Interpretation of the CISG ∘ 12. Role of good faith ∘ 13. Gap-filling ∘ 14. Interpretation of the parties' statements ∘ 15. Trade usages ∘ 16. Structure and contents of the CISG ∘ 17. How to become a CISG contracting state ∘ 18. Reservations by contracting states ∘ 19. Relationship with EU contract law

#### 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. Excursus: ICC Incoterms 2020 ∘ 16. Excursus: contract of carriage of goods by sea and bill of lading ∘ 17. Seller's obligations II: conformity of the goods ∘ 18. Excursus: comparison to EU sales law ∘ 19. Buyer's obligations to examine goods and to give notice of non-conformity ∘ 20. Two-year cut-off period for notice ∘ 21. Seller's obligations III: handing over of documents and freedom of third-party claims ∘ 22. Summary: seller's obligations ∘ 23. BUYER's obligations I: payment ∘ 24. Excursus: payment by documentary credit (UCP 600) ∘ 25. Buyer's obligations II: take delivery and other duties ∘ 26. Summary: buyer's obligations ∘ 27. Passing of risk ∘ 28. Overview of issues excluded from the CISG

## Part 4: CISG – Contractual Remedies

*Chapters:* ∘ 1. Kind of remedies available ∘ 2. Definition 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 and Contractual Risk Allocation in Practice

*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 ∘ 6. Managing the minefield of international contracts ∘ 7. A model international sales contract with a critical analysis ∘ 8. Force majeure and hardship clauses ∘ 9. Further boilerplates

## Part 6: Arbitration – Overview

*Chapters:* ∘ 1. Paths to justice compared ∘ 2. Major arbitration organisations ∘ 3. ICC Rules of Arbitration 2021 ∘ 4. UNCITRAL Model Law on Arbitration 1985 ∘ 5. 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 <http://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** in 41 languages <https://iicl.law.pace.edu/cisg/page/texts-cisg>
- **UNIDROIT Principles of International Commercial Contracts 2016** in several languages <https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>
- **INCOTERMS 2020** <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020>; German version in Hopt, *HGB*, 41. Aufl., München 2022 <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)** [http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII\\_1\\_e.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf)
- **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 <http://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](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)  
[http://www.uncitral.org/uncitral/en/case\\_law/thesauri.html](http://www.uncitral.org/uncitral/en/case_law/thesauri.html)
- <https://cisg-online.org>
- <http://www.trans-lex.org>
- Social Science Research Network (SSRN) <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>

### Textbooks

- Bortolotti, *Drafting and Negotiating International Commercial Contracts*, 3rd ed., 2017
- Bridge, *The International Sale of Goods*, 4th ed., Oxford 2018
- 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**
- Schwenger, 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  
<http://www.kluwarbitration.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)
- **Schlechtriem & Schwenger (eds.), *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 4th ed., Oxford 2016**
- Brödermann, *UNIDROIT Principles of International Commercial Contracts – An Article-by-Article Commentary*, Baden-Baden 2018
- Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*, 2nd ed., Oxford 2015
- BeckOK BGB, *CISG*, 62. Edition 2022  
<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>
- *Münchener Kommentar zum BGB*, Bd. 4, 8 Aufl., München 2019  
<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, Schwenger & Schroeter (Hrsg.), *Kommentar zum Einheitlichen UN-Kaufrecht*, 7. Aufl., München 2019  
<https://beck-online.beck.de/Bcid/Y-400-W-SlechtriemSchwengerKoUNKaufR>
- Staudinger BGB, *Wiener UN-Kaufrecht*, Berlin, Neubearbeitung 2018, via [juris](https://www.juris.de)

### 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 <http://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>
- 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, Model Law on International Commercial Arbitration 1985  
<https://www.uncitral.org/clout/#legislativeText>
- guide <http://www.newyorkconvention1958.org>
- blog <http://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.