

INTERNATIONAL LAW

Case studies 3

Case 1

Case 1-1

Court: Supreme Court of Western Australia

Parties: Summit Chemicals Pty Ltd v Vetrotex Espana SA

IMPLIED DUTY TO SUPPLY GOODS FIT FOR THE PURPOSE AND OF MERCHANTABILITY QUALITY – OBLIGATIONS SET FORTH IN ART. 35 CISG

An Australian producer of swimming pools bought from another Australian company fibreglass “gun rovings”, which were said to be faulty. The Australian company (hereinafter: “the buyer”) sought to pass on the claim of non-conformity to its supplier, a Spanish manufacturer (hereinafter: “the seller”). The buyer applied to amend its statement of claim against the seller. It sought, inter alia, to introduce a claim for breached of implied obligations pursuant to Australia’s Sales of Goods (Vienna Convention) Act and Art. 35 CISG, namely an implied obligation to supply goods fit for the purpose and of merchantable quality, and an implied obligation that the product was packaged in a manner adequate to preserve and protect it.

Case 2

Case 1-3

Court: Cour d'Appel de Grenoble

Parties: Thermo King v. CIGNA Insurance Company of Europe SA-NV, Transports Norbert Dentressangle S.A., Frappa S.A., Sorhroid SARL

SCOPE OF CISG - CONTRACT OF SALE OF GOODS - GUARANTEE FOR LACK OF CONFORMITY GRANTED BY A PRINCIPAL CONSTITUTING REASON FOR QUALIFYING THE CONTRACT AS A CONTRACT OF SALE

LACK OF CONFORMITY OF GOODS - GOODS UNFIT FOR ORDINARY USE (ART. 35(2)(A) CISG) - SELLER'S LIABILITY - BURDEN OF PROOF (ART. 36 CISG)

A French company, acting as sole distributor on behalf of a U.S. company, sold a freezer to another French company, which in its turn sold it installed on a thermostatic truck trailer to a French transport company. The transport company carried a load of nuts and fish which thawed during carriage. The consignee refused to take delivery. The transport company commenced a legal action against the U.S. company, claiming damage. At first instance the Court decided in favor of the transport company, without applying CISG.

Case 3

Case 1-4

Court: Tribunal de Grande Instance de Colmar

Parties: Soc. Romay AG v. Soc. Behr France, S.a.r.l.

CONTRACT OF SALE - LACK OF A DEFINITION IN CISG

CONTRACT OF SALE - NECESSARY ELEMENTS - SELLER'S OBLIGATION TO DELIVER THE GOODS (ART. 30 CISG) - BUYER'S OBLIGATION TO PAY THE PRICE (ART. 53 CISG).

REQUIREMENT CONTRACT - QUANTITY OF GOODS TO BE DELIVERED ACCORDING TO NEEDS OF BUYER - NO CONTRACT OF SALE.

A Swiss seller and a French buyer entered into a framework agreement whereby the latter undertook to purchase a certain quantity of goods according to the needs of its customer. A dispute arose when the buyer refused to take delivery of the goods. The seller brought an action to recover damages based on Art. 74 CISG. The seller objected to the application of the CISG, arguing that the framework agreement did not constitute a contract of sale.

Case 4

Case 1-8

Court: Oberlandesgericht Koblenz

Parties: Unknown

APPLICATION OF CISG - CHOICE BY PARTIES OF LAW OF CONTRACTING STATE AS GOVERNING LAW OF THE CONTRACT (ART. 1(1)(B) CISG)

SCOPE OF CISG - DISTRIBUTION AGREEMENT NOT CONTRACT OF SALE (ART. 1 CISG) - CISG APPLICABLE TO EACH SEPARATE CONTRACT OF SALE CONCLUDED UNDER THE DISTRIBUTION AGREEMENT

SCOPE OF CISG - CONTRACT OF SALE OF COMPUTER HARDWARE COMPONENT/CHIP - CISG APPLICABLE

PAYMENT OF PRICE - CURRENCY - CURRENCY OF PLACE OF PAYMENT

SET-OFF - MATTER EXCLUDED FROM SCOPE OF CISG (ART. 4 CISG) - DOMESTIC LAW APPLICABLE

INTEREST (ART. 78 CISG) - INTEREST RATE DETERMINED BY DOMESTIC LAW OTHERWISE APPLICABLE

A French producer of printers (seller) and a German company concluded a contract granting the German company the exclusive right to distribute the printers in Germany. The German distributor failed to pay the price of a chip which the French seller had delivered to a client in Germany. The German distributor alleged that the sale of the chip was not concluded under the distribution contract and that the French seller and the German client had concluded an autonomous contract of sale. The seller commenced an action against the distributor claiming payment of the price. The distributor requested that in the case of the court finding for the seller there would be a set off of the standing credits between the parties.

Case 5

Case 1-10

Court: Landesgericht Flensburg

Parties: Unknown

SCOPE OF CISG – LIVING ANIMALS UNDER THE CONCEPT OF SALE OF GOODS (ART. 1 (1) CISG)

EXAMINATION OF THE GOODS WITHIN AS SHORT A PERIOD AS IS PRACTICABLE (ART. 38 (1) CISG)

CONFORMITY OF GOODS - BUYER'S OBLIGATION TO GIVE NOTICE WITHIN A REASONABLE TIME (ART. 39 (1) CISG) – GOODS FOR WHICH TIME IS OF THE ESSENCE

CONFORMITY OF GOODS - NOTICE OF LACK OF CONFORMITY - PRECISE SPECIFICATION OF LACK OF CONFORMITY (ART. 39 (1) CISG)

SELLER'S KNOWLEDGE OF LACK OF CONFORMITY (ART. 40 CISG) – BURDEN OF PROOF ON THE BUYER

A German seller and a Danish buyer concluded a contract concerning the sale of living sheep delivered for slaughter. The sheep were delivered on time and were examined by the buyer the day after their nightly delivery. Four days after the delivery the buyer gave notice

to the seller claiming lack of conformity, as he did not accept the condition of the sheep and that he subsequently refused to pay the purchase price. The seller commenced legal actions claiming payment of the full purchase price due according to the contract with interest.

The buyer submitted that he was not bound by the contract as he had given the seller timely notice of the lack of conformity of the sheep. The buyer argued that upon examination of the sheep it had made a phone call to seller in which the buyer had stated that it did not agree with the quality of the sheep. Furthermore, the buyer submitted that the seller had lost his right to rely on Art. 38 and 39 CISG as the seller knew or could not have been unaware of the lack of conformity (Art. 40 CISG).

Case 6

Case 1-11

Court: Oberlandesgericht Köln

Parties: Unknown

APPLICATION OF CISG - COMMISSION CONTRACT AND SALES CONTRACT

MATTERS EXCLUDED FROM SCOPE OF CISG (ARTS. 1 AND 4 CISG)

An Italian seller delivered from 1995 until 1998 clothing and other accessories for motorcyclists to a German buyer. The contract between the parties consisted of an ongoing correspondence over a few months in 1995. The Italian seller sent a draft agreement to the buyer containing the conditions for future co-operation, according to which the buyer was to act as sole distributor for the seller in Germany, the buyer would buy the textile goods and sell them for a price determined by the buyer itself. A part of the goods were to be sold on the seller's account in return for a commission paid to the buyer. After additional correspondence the parties agreed on a contract, which was finally drafted by the seller and sent to the buyer. Though the parties never signed the contract, the deliveries continued until the seller in 1998 gave notice to terminate the contract.

The plaintiff in the case, a successor to the Italian seller, claimed payment of the purchase price with interest for three deliveries of leather clothing. The buyer argued for a dismissal of the case on the grounds that it had received the goods on commission, which was in fact mentioned in several places of the contract. The buyer also filed counter claims for the payment of an agreed compensation and a lost commission deriving from seller's deliveries of leather clothing to another German company during the time of notice??.

Case 7

Case 1-12

Court: Tribunale di Rimini

Parties: Al Palazzo S.r.l. vs Bernardaud s.a.

UNIFORM INTERPRETATION AND APPLICATION OF CISG (ART. 7(1) CISG)- RELEVANCE OF INTERNATIONAL CASE LAW - IMPORTANCE OF DATABASES SUCH AS UNILEX

LACK OF CONFORMITY OF GOODS - TIME OF NOTICE (ART. 39(1) CISG) -REASONABLENESS DEPENDS ON CIRCUMSTANCES OF CASE AND NATURE OF GOODS - NOTICE GIVEN AFTER SIX MONTHS AFTER DELIVERY IN ANY CASE NOT TIMELY

BURDEN OF PROOF - MATTER GOVERNED BUT NOT EXPRESSLY SETTLED BY CISG (ART. 7(2) CISG) - RECOURSE TO GENERAL PRINCIPLE UNDERLYING CISG - PRINCIPLE THAT A PARTY MUST PROVE THE ASSERTIONS IT MAKES ONE OF THE GENERAL PRINCIPLES UNDERLYING CISG

An Italian restaurant purchased porcelain tableware from a French manufacturer. The parties agreed that the price would be paid in two instalments, the first at the moment of the conclusion of the contract and the second within ninety days after delivery of the goods. A few days after delivery the buyer unpacked the goods and discovered that many of the items were defective.

According to the buyer it immediately informed a sales person of the seller who promised to have the defective goods replaced but in fact the goods were never replaced. Consequently the buyer, who had already paid the first instalment, refused to pay the second instalment.

The seller claimed that it was entitled also to the full price as the buyer had not given timely notice of the defects: in fact the buyer had only given notice in a letter sent six months after delivery.

The seller obtained from the Tribunale di Rimini an injunction for payment of the second instalment, which the buyer challenged before the same Court.

Case 8

Case 1-13

Court: Tribunale di Padova - Sez. Este

Parties:

UNIFORM INTERPRETATION AND APPLICATION OF CISG (ART. 7(1) CISG)- RELEVANCE OF INTERNATIONAL CASE LAW

GOOD FAITH AS A GENERAL PRINCIPLE AND AS AN AID IN INTERPRETING THE CONVENTION (ART. 7(1) CISG)

APPLICATION OF CISG - IMPLIED EXCLUSION - REFERENCE BY PARTIES IN PLEADINGS TO DOMESTIC LAW NOT SUFFICIENT

APPLICATION OF CISG - ART. 1(2) CISG NOT APPLICABLE

SCOPE OF CISG - DEFINITION OF "SALE" (ARTS. 30 AND 53 CISG)

PAYMENT OF PRICE - TIME - IF NO EXPRESS PROVISION IN CONTRACT, UPON DELIVERY OF GOODS (ART. 58(1) CISG)

PAYMENT OF THE PRICE - NO NEED FOR FORMAL REQUEST BY SELLER (ART. 59 CISG)

ADDITIONAL PERIOD OF TIME FIXED BY THE SELLER (ART. 63(1) CISG) - NOT NECESSARY

SET OFF - MATTER EXCLUDED BY CISG - RECOURSE TO DOMESTIC LAW

An Austrian seller and an Italian buyer entered into a contract for the sale of winter potatoes. As the buyer did not pay the purchase price, the seller obtained from the Tribunale di Padova an injunction for payment plus expenses and interest, which the buyer challenged before the same court. The buyer also requested set-off against the seller's claim.

In its judgement the Court relied for each issue on a number of decisions on CISG that had already been rendered by foreign courts and arbitral tribunals, in order to promote uniformity in the interpretation and application of CISG (Art. 7(1) CISG).