

Comparative International Sale of Goods Law

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4 (Four) Law Credits

Pre-requisite Courses: Law of Contract

Course Description

International trade forms the catalyst for the development of the law on the transnational sale of goods. A contract for the sale of goods is considered international when it consists of a transnational element – namely, when the parties belong to different nationalities or when the performance (in terms of the delivery or the payment of goods) must occur overseas. In this context, international trade forms the primary driving force for the development of the law on the global sale of goods.

While national governments have attempted to create suitable free trade conditions where merchants may exchange goods, international trade has been burdened with conflicting regulatory mechanisms. For this reason, legal scholars have justified the creation of a framework that varies from that prevailing at the national level to regulate transactions on the international sale of goods. Domestic law must be restricted to regulating internal matters with no international element. As such, the principles of domestic law are not naturally formulated to resolve disputes with international characteristics, which must essentially be governed by agreement among sovereign nations. This is because the rules and principles differ depending on the peculiarity of the legal system within which they are based – for instance, in a jurisdiction following the common law (the United Kingdom, Australia, India) or the civil law (the European Union, India's BRICS partners – Brazil, Russia and China). This phenomenon, in turn, explains why the principles on the international sale of goods have been at the forefront regarding the harmonization and unification of various aspects of the law of contract. The focus in recent times has shifted from the application of domestic law at the international level to the formulation of international instruments based on generally accepted standards to regulate disputes arising in such matters. While some legal systems, such as India, have strongly resisted these transformations, the rationale for this paradigm shift (in favour of unification) in other jurisdictions has been two-fold. Firstly, to promote general and widely accepted international practices where interested parties are ensured that disputes are adjudicated according to the

highest commercial standards. Secondly, to drastically reduce the costs involved in the enforcement of the law and increase predictability in the application of the rules.

The attempts to regulate the international sale of goods involve treaties and conventions that are binding by nature. The United Nations' Convention on the International Sale of Goods, also called the Vienna Convention or the CISG, is the most popular example. Among the non-binding instruments (also known as soft law), the efforts of the UNIDROIT in framing the Principles of International Commercial Contracts (PICC), the UNCITRAL in formulating the Model Law on International Commercial Arbitration and Arbitration Rules and the Hague Principles on Choice of Law in International Commercial Contracts deserve mention. The International Chamber of Commerce's INCOTERMS is also a valuable addition to the international sale of goods law. Lastly, the law relating to the international sale of goods has been regulated via *lex mercatoria*, which may be defined as autonomous rules operating individually from any national legal system.

Set against this backdrop, this course, "*Comparative International Sale of Goods Law*", explores the intricacies of international trade law, specifically focusing on analysing the legal frameworks governing the transnational sale of goods. It delves into the complex web of legal principles, treaties, and conventions that form the foundation of international sales of goods law. Examining the contrast between domestic laws and the international legal framework highlights the need for a distinct set of rules to govern international transactions. This exploration is crucial for comprehending the transition from laws applied within a country to internationally recognised instruments that provide a unified approach to resolving disputes arising from international sales contracts.

Course Vision

This course seeks to cultivate a comparative and critical understanding of the law governing international sales of goods. Students will explore the tensions between domestic legal systems and global frameworks, the role of harmonisation and unification efforts (CISG, UNIDROIT, Hague Principles, INCOTERMS), and the interaction between hard law and soft law in shaping international commercial practice.

The vision is to prepare students to:

- i. Navigate conflicts between domestic and international rules with confidence.

- ii. Develop the ability to predict legal outcomes across jurisdictions.
- iii. Critically evaluate how courts and arbitral tribunals balance party autonomy, public policy, and mandatory rules.
- iv. Gain practical tools for drafting, negotiating, and enforcing cross-border sales contracts.
- v. Appreciate how comparative perspectives shape law reform, particularly in emerging economies.

By the end of the course, students will not only understand the theoretical foundations of international sales law but also acquire practice-oriented skills in dispute resolution, contract drafting, and comparative legal reasoning.

Pedagogical Approaches

To meet these objectives, the course adopts a student-centred and comparative pedagogy:

1. Socratic and Case-Based Teaching

- Each class will engage with leading judgments, arbitral awards, and doctrinal commentaries.
- Students will be encouraged to critique how different jurisdictions interpret similar provisions.

2. Comparative Frameworks

- Systematic comparison between common law (UK, Canada, India) and civil law (EU, China, Russia) traditions.
- Exploration of “legal families” to show diversity and convergence.

3. Problem-Solving & Drafting Exercises

- Weekly short problems on jurisdiction, choice of law, non-performance, and enforcement.
- Drafting of INCOTERMS clauses, choice-of-law provisions, and arbitration agreements.

4. Role-Play & Simulations

- Students will simulate negotiating contracts and litigation/arbitration disputes, acting as counsel, arbitrators, or judges.

5. Research-Led Teaching

- Integration of scholarly writings (Tripodi, DiMatteo, Bonell, Khanderia, Schwenzer) alongside primary sources.
- Students are encouraged to evaluate academic debates on harmonisation/unification.

6. Capstone Reflection (Week 13)

- Students propose reform models or case strategies, drawing from comparative insights and soft law instruments.

13-Week Course Design

Week	Topic & Description	Linked Module(s)
1	<i>Introduction to Comparative Sale of Goods Law</i> – Defining an “international” sale, distinction from services, the rationale for harmonisation/unification.	Module 1
2	<i>Jurisdiction & Adjudication of International Disputes</i> – When do courts have jurisdiction? Comparative approaches (EU, UK, BRICS (India focused)).	Module 2
3	<i>Choice of Law & Party Autonomy</i> – Right to select governing law, enforceability of clauses, Hague Principles on Choice of Law (2015), Rome I Regulation on Contractual Obligations.	Module 2
4	<i>Applicable Law in the Absence of Choice</i> – Proper law doctrine, connecting factors, role of CISG, even for non-signatories.	Module 2
5	<i>Public Policy & Overriding Mandatory Rules</i> – When domestic law displaces foreign law; limits on party autonomy.	Module 3
6	<i>Consequences of Non-Performance I</i> – Force majeure, frustration, and hardship doctrines compared.	Module 4
7	<i>Consequences of Non-Performance II</i> – Breach, termination, damages, renegotiation. Comparative insights.	Module 4
8	<i>Product Liability in International Sales</i> – Non-contractual obligations and Rome II Regulation; cross-border liability challenges.	Module 5
9	<i>Letters of Credit & Commercial Credits</i> – UCP 600 framework, Indian Banking Regulation Act, role of banks in sales disputes.	Module 6
10	<i>Harmonisation & Unification I</i> – CISG’s scope and application and its relationship with domestic law.	Module 7
11	<i>Harmonisation & Unification II</i> – Interpretation of CISG, reservations, comparative application across jurisdictions.	Module 7

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| 12 | <i>Soft Law in International Sales – Role of UNIDROIT Principles, Hague Principles, INCOTERMS; courts using soft law to fill gaps.</i> | Module 8 |
| 13 | <i>Synthesis & Reform Proposals – Student-led presentations on reform suggestions or dispute strategy simulations. Wrap-up discussion.</i> | Capstone |

Indicative List of Compulsory Readings

- i. Franco Ferrari, 'Fundamental Breach of Contract under the UN Sales Convention: 25 Years of Article 25 CISG' (2006) 25 *Journal of Law and Commerce* 489.
- ii. Ingeborg Schwenzer and Peter Schlechtriem (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022).
- iii. Ingeborg Schwenzer, 'Force Majeure and Hardship in International Sales Contracts' (2008) 39 *Victoria University of Wellington Law Review* 709.
- iv. JHC Morris, 'The Proper Law of a Contract: A Reply' (1950) 3 *International Law Quarterly* 197.
- v. Larry A DiMatteo, *International Sales Law: A Critical Analysis of CISG Jurisprudence* (CUP 2005).
- vi. Louis C James, 'Effects of the Autonomy of the Parties on Conflict of Laws Contracts' (1959) 36 *Chicago-Kent Law Review* 34.
- vii. Michael Joachim Bonell, 'International Investment Contracts and General Contract Law: A Place for the UNIDROIT Principles of International Commercial Contract' (2012) 17 *Uniform Law Review* 141.
- viii. Saloni Khanderia, 'Commercial Impracticability under the Indian Law of Contract: The UNIDROIT Principles as the Way Forward?' (2018) 7(2) *Journal of Law and Jurisprudence*.
- ix. Sarah Howard Jenkins, 'Exemption for Non-performance: UCC, CISG, UNIDROIT Principles—A Comparative Assessment' (1998) 72 *Tulane Law Review* 2015.
- x. Symeon C Symeonides, 'Choice of Law', in *Product Liability* (Oxford Scholarship Online 2016).