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0521849802 - International Sales Law: A Critical Analysis of CISG Jurisprudence

Larry A. DiMatteo, Lucien J. Dhooge, Stephanie Greene, Virginia G. Maurer and Marisa Anne Pagnattaro

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INTERNATIONAL SALES LAW

This book is the product of extended research by five scholars working in the area of private international law. It provides a comprehensive review and analysis of the jurisprudence surrounding the United Nations Convention on Contracts for the International Sale of Goods (CISG). As of February 15, 2005, sixty-four countries have adopted the CISG as their international sales law. Given its importance as the world's preeminent sales law, the authors believe that a fresh analysis of the evolving case and arbitral law is needed at this time. It has been fifteen years since the adoption of the CISG, and in those years a critical mass of interpretive jurisprudence has developed. The analysis in the book is undertaken at two levels – the practical interpretation of the CISG and the theoretical limits of interpreting of supranational conventions.

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*To Colleen and Ian Griffith DiMatteo,
and to friends old and wise: Jeffery and Janet Barat, Lucy DiVirgilio,
Pat and Anne Dooley, Nadim and Christine Habib, Jeffrey and Marcie LePine,
Michael Meagher, Robert and Ann Marie Morrow, Joseph and Rita Zinni*

LAD

To Julia

LJD

To Tom, Tucker, Natasha, and Melissa Greene

SG

To the guys – Ralph Gerald, Ralph Emmett, and William Edward Maurer

VGM

To Marian and Peter Pagnattaro

MAP

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Critics have argued that the benefits of uniform international business law are minimal and that national courts will inevitably be the conscious or sub-conscious victims of *homeward trend* or *domestic gloss* analysis. In responding to this criticism, the authors address the following four questions:

- How has the CISG in fact been interpreted and applied by the various national courts?
- Is there evidence of convergence or divergence among the national courts in interpreting the CISG?
- Is the current level of disharmony associated with divergent national interpretations acceptable from the perspective of the CISG's mandate of uniformity?
- How does divergence in national interpretations impact the effectiveness or functionality of the CISG?

The book concludes that despite the problem of diverging interpretations, there are signs that courts are taking more seriously their role in applying CISG

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interpretive methodology. There is evidence of a coalescing of the different interpretations through the formulation of more specific default rules and the recognition of factors to be used in applying CISG articles.

This book provides an analysis of those provisions of the CISG that have been applied in a “critical mass” of court and arbitral decisions. In doing so, the book assesses the state of international sales law. The book is timely given the maturing state of CISG jurisprudence.

INTENDED AUDIENCE

The book presents some theoretical themes but is mostly a descriptive work. It reviews case law and arbitral decisions in order to gain insight into the various interpretations rendered on the general and often ambiguous provisions of the CISG. Cases are described and analyzed to determine interpretive trends such as evolving default rules and factors analyses. The authors believe that the book’s ultimate character is as a general reference work aimed at practitioner and scholarly researchers. It is not meant to compete with the more comprehensive volumes currently in existence. It is meant to add to that literature by providing a fresh analysis of CISG jurisprudence. Legal cases, arbitral decisions, and the secondary literature are listed in the Table of Authorities and Cases, which is segmented by areas and CISG articles. Finally, the text of the CISG and a list of signatory countries are provided in the Appendices.

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(2007) (Huber&Mullis) 5. International Sales Law, edited by Ingeborg Schwenzer and Christiana Fountoulakis (2007) 6. UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sales of Goods (2016 ed.), available at http://www.uncitral.org/pdf/english/clout/CISG_Digest_2016.pdf. 7. Redfern and Hunter on International Arbitration (6th ed., 2015). Recommended materials Be Explicit: Drafting Choice of Law Clauses in International Sale of Goods Contracts. Thomas J. Drago, Esq. and Alan F. Zoccolillo, Esq. [*] Introduction. Contracts covering the sale of goods will generally include "governing law" or "choice of law" provisions. These provisions are intended to determine the laws which will apply to any dispute respecting the interpretation of the contract. 1. Rules of private international law shall be excluded for the purposes of the application of the present Law, subject to any provision to the contrary in the said Law. Article 3. The parties to a contract of sale shall be free to exclude the application thereto of the present Law either entirely or partially. Such exclusion may be express or implied. Article 4.