



## **South Asian University**

### **Faculty of Legal Studies**

#### **LLM/MPhil/PhD**

#### **Monsoon Semester (3)**

#### **Course Information**

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##### **Part I**

Course Title:	International Commercial Law
Course instructor:	Dr Sai Ramani Garimella <a href="mailto:ramani@sau.ac.in">ramani@sau.ac.in</a>
Credit Units:	4 (MSE/TPW/ESE)

##### **Part II**

##### **Course Aims**

“Commercial law occupies in some sense the ground zero of the onslaught of globalization.”  
Winn JK, ‘Book review: Dalhuisen on Commercial, Financial and Trade Law’  
(2002) 50 *American Journal of Comparative Law* 445

Pluralism characterizes the explanation of the legal systems touching upon a transnational commercial contract, founded upon the principle of party autonomy as the primordial choice of law rule. There is a diversity of law, in fact a buffet to choose from that could be applied to these contracts. This diversity is populated at various levels with national and international instruments, transnational law, soft law instruments, and such touching upon the various stages of the contract – formation, validity, performance, remedies, and enforcement. The complexity is further enhanced by the lurking choice of a purely domestic law as the governing law or applicable law for the contract. There also exists the possibility of transnational law, also known as non-State law, as the choice of law in the contract. There is a further possibility of parties negotiating a plurality of laws for various clauses in the contract, also known as the practice of *depeçage*.

South Asian region is, as yet, an underdeveloped region for transnational law regimes. The content of this domain area still remains the derivation of the colonial laws – Contract Act, 1872 and Sale of Goods Act, 1930. With little variation, the nations of this region have largely adopted these laws into their legal system, and they have continued ever since. However, the trade and commerce pattern of these nations has developed beyond their former colonial authority, and now the largest contributing region to their external commerce earnings come from nations of the region that have harmonized legal platforms for transnational commerce. Therefore, indirectly though, these nations are forced to negotiate for a governing law/applicable law that is foreign to their legal system and yet is governing their contractual relations.

### **Objective of the Course**

The modules will examine international transactions involving the sale and shipment of goods and payment for such goods. It will focus on international conventions and privately promulgated rules (chiefly INCOTERMS and the Uniform Customs and Practices for Documentary Credits) dealing with these matters, and not on national law, although at some points it will be necessary to look to national law, and where that is needed referenced with the law existing in English law, India and other South Asian nations, which largely share their regulatory antecedents in this space with the English law. It will also discuss the evolution of the principal international conventions in those areas and the tensions arising out of the need to secure agreement from countries with varying legal traditions and goals. The Course is broadly arranged around four themes

- international commercial and sales contracts
- international sales financing - letters of credit, etc.
- carriage of goods by sea
- marine insurance

### **Individual Modules Description**

#### **Weeks 1 - 6 - Law on international commercial and sales contracts**

The lectures would address the basic concepts of international commerce and the practices that form part of the contracts negotiation and regulation, which have now become the standard practices of international commerce, with regard to the fixation of terms, applicable laws, INCOTERMS and Uniform Customs and Practice for Documentary Credits (UCP 600)

#### ***Weeks 1-2***

CISG – formation of the Contract, Rights and Obligations of the Buyer and Seller, Remedies

- The important issues with regard to a transnational contract of sales
- Interpretation clause of the CISG – the unique feature of autonomous interpretation of the CISG by domestic courts Article 7 ‘gap filling’ clause
- Formation of Contract – offer, acceptance, Article 55 – price and conditionalities Rectification of the terms of the Contract

- Dispute Resolution – Advisory Council

### Readings

Ulrich G. Schroeter, 'Contract validity and the CISG' (2017) 22 *Uniform Law Review* 47

Camilla Andersen, The Global Jurisconsultorium of the CISG Revisited (2009) 13 *Vindobona Journal of International Commercial Law & Arbitration* 43-70

Michael Joachim Bonell, 'General provisions: Article 7' in Massimo C. Bianca and Michael Joachim Bonell (eds.), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè: Milan, 1987) 72.

John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation', in *Pace Review of the Convention on Contracts for the International Sale of Goods (CISG)*, (Kluwer Law International, 2000-2001) 115-265, also available at <<http://www.cisg.law.pace.edu/cisg/biblio/felemegas.html#ch3>>

Sai Ramani Garimella, "CISG, Article 42 - Third Party IPR Claims in Transnational Commerce – Addressing the Indeterminacy" in Poomintr Sooksripaisarnkit & Sai Ramani Garimella (eds) *CISG 30 Years On: Multidisciplinary Perspectives (A Commemorative Volume Celebrating 30 Years Of The CISG)* (Sweet & Maxwell, 2019)

Joshua D.H. Karton and Lorraine de Germiny, 'Has the CISG Advisory Council Come of Age?' (2009) 27(2) *Berkeley Journal of International Law* 448.

CISG-AC Opinion No.16, Exclusion of the CISG under Article 6, Rapporteur: Doctor Lisa Spagnolo, Monash University, Australia. Adopted by the CISG Advisory Council following its 19<sup>th</sup> meeting, in Pretoria, South Africa on 30 May 2014

[http://www.cisgac.com/file/repository/CISG\\_AC\\_Opinion\\_no\\_16.pdf](http://www.cisgac.com/file/repository/CISG_AC_Opinion_no_16.pdf)

CISG-AC Opinion No.19, Standards and Conformity of the Goods under Article 35 CISG.

Rapporteur: Professor Djakhongir Saidov, King's College London, United Kingdom.

Adopted by the CISG Advisory Council following its 25<sup>th</sup> meeting, in Aalborg Denmark, on 25 November 2018

[https://www.cisgac.com/file/repository/CISG\\_Advisory\\_Council\\_Opinion\\_No\\_19b.pdf](https://www.cisgac.com/file/repository/CISG_Advisory_Council_Opinion_No_19b.pdf)

### ***Week 3 – Remedies for Breach & Damages***

#### *Remedies for Breach of Contract by the seller*

- CISG - Articles 45-52 - Damages for non-delivery, Remedy for breach of warranty & Specific Performance

#### *Remedies for Breach of Contract by the buyer*

- CISG – Article 61-65 - Suit for Price & Damages for non-acceptance

### Readings

John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (Kluwer Law International, 1999), pages 472-495.

Bruno Zeller, *Damages under the convention on contracts for the International sale of goods* (OUP, 2018).

Camilla B. Andersen, FG Mazzotta, F. G., & Bruno Zeller, *Practitioner's Guide to the CISG*. (New York: Juris, 2018)

Peter Schlechtriem, Non-Material Damages - Recovery under the CISG?, (2007) 19 *Pace International Law Review* 89. <http://iicl.law.pace.edu/cisg/cisg>

H. Allen Blair, 'Hard Cases under the Convention on the International Sale of Goods: A Proposed Taxonomy of Interpretative Challenges' (2011) 21 *Duke Journal of Comparative & International Law* 269

### **Public database(s) on case law on CISG**

<http://www.unilex.info/instrument/cisg>  
<https://iicl.law.pace.edu/cisg/cisg>

### **Weeks 4-5**

## **UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS**

- UPICC – formation and validity of the Contract

### Readings

Michael Bridge, The CISG and the UNIDROIT Principles of International Commercial Contracts <http://eprints.lse.ac.uk/60473/>

Ralf Michaels, The UNIDROIT Principles as Reference for the Interpretation of U.S. Law (2018) 66(1) *The American Journal of Comparative Law* 31–65.

Klaus Peter Berger, UNIDROIT Principles of International Commercial Contracts, An Article-by-Article Commentary, (2018) 34(3) *Arbitration International* 469–471.

- Performance of the contract and consequences for non-performance, Termination, Damages, Set-off and Assignment

Maren Heidemann, *Methodology of Uniform Contract Law - The UNIDROIT Principles in International Legal Doctrine and Practice* (Springer, 2007)

Joseph Perillo, Force Majeure and Hardship Under the UNIDROIT Principles of International Commercial Contracts, (1997) 5 *Tulane Journal of International and Comparative Law* 5.

[https://ir.lawnet.fordham.edu/faculty\\_scholarship/783](https://ir.lawnet.fordham.edu/faculty_scholarship/783)

Giuditta Cordero-Moss & Daniel Behn, 'The relevance of the UNIDROIT Principles in investment arbitration' (2014) 19 *Uniform Law Review* 1.

[https://folk.uio.no/giudittm/UPICC\\_in\\_IA.pdf](https://folk.uio.no/giudittm/UPICC_in_IA.pdf)

### **Caselaw Database on UNIDROIT**

<http://www.unilex.info/instrument/principles>

### **Week 6**

Trade Terms – Trade terms, as in INCOTERMS for shipping of goods - from seller's cost perspective and Buyer's Cost perspective

## Readings

Larry Di Matteo, André Janssen, Ulrich Magnus, Reiner Schulze, *International Sales Law - Contract, Principles & Practice* (Bloomsbury, 2016)

Jan Ramberg, *ICC Guide to Incoterms 2000: Understanding and Practical Use* (ICCwebstore, 2000) <http://halleycables.com/img/cms/INCOTERMS%202010%20Guide.pdf>

William P. Johnson, 'Analysis of Incoterms as Usage Under Article 9 of the CISG' (2013) 35(2) *University of Pennsylvania Journal of International Law* 379.  
<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1862&context=jil>

James E. Byrne and Lee H. Davis, 'New Rules for Commercial Letters of Credit Under UCP600' (2008) *Annual Survey of Letter of Credit Law & Practice*

<https://iiblp.org/wp-content/uploads/2018/08/New-Rules-for-Commercial-LCs-Byrne-and-Davis.pdf>

## **Weeks 7-8**

### International Sales Financing

- trade risks and the need for finance options in the context of international sale of goods
- bills of exchange, documentary letters of credit, demand guarantees, and other financing methods
- private international law issues surrounding international payments and finance

## Readings

Roy Goode and Ewan McKendrick, *Goode on Commercial Law* (Penguin, UK, 2017)

Atiyah, P.S., *The Sale of Goods*, 12 ed. (Pearson Education Canada, 2010)

Michael Bridge, *Benjamin's Sale of Goods* (10 ed.) (Thomson Reuters, 2017)

John O. Honnold, Harry M. Flechtner, *Uniform Law of International Sales* (Kluwer, 2009)

Sealy & Hooley (et al) *Commercial Law - Text, Cases and Materials* (OUP, 2017)

Anders Mollman, *Delivery of Goods under Bills of Lading* (Routledge, 2017)

Poomintra Sooksripaisarnkit, "Bills of Lading Law" in Justice Barra JA and Mary Thomson (eds), *Maritime Law and Practice in Hong Kong* (Sweet & Maxwell 2015) 55

(the last two readings in this module specifically address comparative law position)

## **Law related to Carriage of Goods and Marine Insurance**

## **Week 9**

- Carriage of Goods by Sea – carrier’s liability – Warsaw Conventions, COGSA, Merchant Shipping Act, Hague-Visby Rules, Hamburg Rules

### Readings

Paul Todd, *Principles of the Carriage of Goods by Sea* (Routledge, 2016)

Michiel Spanjaart, *Multimodal Transport Law* (Routledge, 2018)

Michael F. Sturley, ‘The History of the COGSA and the Hague Rules’ (1991) 22 *Journal of Maritime Law and Commerce* 1.

Alan Nakazawa and B. Alexander Moghaddam, ‘COGSA and the Foreign Law Clauses in Bills of Lading’ (1992) 17(1) *Tulane Maritime Law Journal* 1.

### **Week 10**

- International Shipping and multiple carriers – the legal concerns from multi-modal transport and the Rotterdam Rules – carrier’s liability for goods wholly or partly shipped by sea.

### Readings

Assefa Aregay Sefara (2016) The structure of carrier’s liability and burden of proof under the United Nations Convention on Contracts for the International Carriage of Goods wholly or partly by sea (2009) 8(3) *Australian Journal of Maritime & Ocean Affairs* 199.

Poomintr Sooksripaisarnkit, Enhancing of Carriers’ Liabilities in the Rotterdam Rules – Too Expensive Costs for Navigational Safety? (2014) 8(2) *TransNav : International Journal on Marine Navigation and Safety of Sea Transportation* 309.

<https://yadda.icm.edu.pl/baztech/element/bwmeta1.element.baztech-c050a787-992d-4664-8a5e-6509f09bc209>

- Liability for shipping of goods in other modes – UN Convention on the Contract of Carriage of Goods by Road (CMR), 1956

### Readings

Cécile Legros. ‘Relations Between the Rotterdam Rules and the CMR’ (2012) 36 *Tulane Maritime Law Journal* 725.

### **Weeks 11-12**

Marine Insurance – features of a marine insurance contract, insured risks – perils at sea.

- a) Types of marine insurance – hull, cargo, freight and liability
- b) Insurance Policy – subject-matter, assignment
- c) Types of marine insurance policies – voyage, time, mixed, valued, open or un-valued policy, floating policy
- d) Principles of marine insurance – good faith, insurance interest, indemnity, subrogation

## **Select List of Important Cases**

*Bank of England v Vagliano Brothers* (1891) A.C. 107, 144 H.L.  
*Richards v Forest Land, Timber and Railway Co. Ltd* [1941] 3 All ER 62, HL  
*M.V. Elisabeth And Ors vs Harwan Investment And Trading* 1993 AIR 1014  
*Sea Glory Maritime Co and Another Company v Al Sagr National Insurance Co* [2013] EWHC 2116 (Comm)  
*Starlight Shipping Company v Allianz Marine & Aviation Versicherungs AG and Others (ALEXANDROS T)* [2013] UKSC 70  
*Amlin Corporate Member and Others v Oriental Assurance Corporation (PRINCESS OF THE STARS)* [2013] EWCA 2380 (Comm)  
*Venetico Marine SA v International General Insurance Company Limited and Nineteen Others* [2013] EWHC 3644 (Comm)  
*Liverpool & London S.P. & I Association Ltd. v MV Sea Success I and Another*, Appeal (civil) 5665 of 2002 with Appeal (civil) 5666 of 2002, 20 November, 2003.  
*Surajmull Nagoremull v Triton Insurance Co.Ltd.* AIR 1925 PC 0083  
*Union of India v Sri Sarada Mills Limited* AIR 1973 SC 281  
*Oberai Forwarding Agency v New India Assurance Co. Ltd.* 2000 AIR (SC) 855

## **Readings**

Poomintr Sooksripaisarnkit, “Marine Insurance Law” in Justice Barma JA and Mary Thomson (eds), *Maritime Law and Practice in Hong Kong* (Sweet & Maxwell 2015) 269

Ozlem Gurses, *Marine Insurance Law* (Routledge, 2015)

Sabine Christa Go, ‘Marine Insurance in the Netherlands 1600-1870 A comparative institutional approach’, UBVU <https://research.vu.nl/en/publications/marine-insurance-in-the-netherlands-1600-1870-a-comparative-insti>

Gaurangi Patil, ‘Reeling Back In History To Understanding Marine Insurance/ Protection & Indemnity Clubs (P&I)’, BRUS <http://www.brus.in/publications/shipping/MI.pdf>

## **Further Readings**

Poomintr Sooksripaisarnkit & Sai Ramani Garimella (eds.) *Contracts For The International Sale Of Goods: A Multidisciplinary Perspective (A Commemorative Volume Celebrating 30 Years Of The CISG)* (Sweet & Maxwell, 2019)

Franco Ferrari & Clayton P. Gillette, *International Sales Law* (Vols I & II) (Elgar, 2017)

Indira Carr, *International Trade Law* (Routledge 2014)

Maren Heidemann, *Does International Trade Need a Doctrine of Transnational Law? Some Thoughts at the Launch of a European Contract Law* (Springer briefs in Law, 2012)

Clayton P Gillette & Steven Walt, *The UN Convention on Contracts for the International Sale of Goods* (CUP, 2016)

Michael Bridge, *The International Sale of Goods* (OUP, 2017)

Roy Goode, Herbert Kronke & Ewan McKendrick, *Transnational Commercial Law, Text, Cases and Materials* (OUP, 2015)

Ingeborg Schwenzer (ed.), *Schlechtriem & Schwenzer Commentary on the UN Convention on the International Sale of Goods (CISG)* (OUP, 2016)

Petra Butler and Peter Schlechtriem, *UN Law on International Sales* (Springer, 2009)

Peter Winship, 'Private International Law and the U.N. Sales Convention' (1988) 21 *Cornell International Law Journal* 487.

Bruno Zeller, *Four-Corners - The Methodology for Interpretation and Application of the UN Convention on Contracts for the International Sale of Goods* (2003)

<http://www.cisg.law.pace.edu/cisg/biblio/4corners.html>

Stefan Vogenauer and Jan Kleinheisterkamp (Eds), *Commentary on the UNIDROIT Principles of International Commercial Contracts* (OUP, 2009)

David Attard, Malgosia Fitzmaurice, Norman Martinez, Ignacio Arroyo, Elda Belja, *The IMLI Manual on International Maritime Law Volume II Shipping Law* (OUP, 2016)

Legal and Documentary Aspects of a Marine Insurance Contract, UNCTAD

[https://unctad.org/en/PublicationsLibrary/tdbc4ISL27Rev.1\\_en.pdf](https://unctad.org/en/PublicationsLibrary/tdbc4ISL27Rev.1_en.pdf)

Richard Williams, *Gard Guidance on Maritime Claims and Insurance*

[http://www.gard.no/Content/20823111/Gard%20Guidance%20on%20Maritime%20Claims\\_final.pdf](http://www.gard.no/Content/20823111/Gard%20Guidance%20on%20Maritime%20Claims_final.pdf)

Johanna Hjalmarsson, 'Maritime Law in 2016: A Review of Developments in Caselaw'

[https://maritimeintelligence.informa.com/~media/informa-shop-window/mnl/files/law/maritime\\_law\\_2016\\_review.pdf](https://maritimeintelligence.informa.com/~media/informa-shop-window/mnl/files/law/maritime_law_2016_review.pdf)

Christopher Kingston, 'Marine Insurance in Britain and America, 1720-1844: A Comparative Institutional Analysis' <http://www.ehs.org.uk/dotAsset/332686ee-2db9-4f09-abc6-cb900150d473.pdf>

Christopher J. Boggs, Six Reasons the Loss is Excluded, MY NEW MARKETS

<http://www.mynewmarkets.com/articles/99788/six-reasons-the-loss-is-excluded>

V. Subramanian (Kumar), 'Shipping/Maritime Law in India', PAND INDIA,

<http://www.pandiindia.com/ShippingMaritimeLaw.htm>