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Book Review

The CISG After a Generation

Franco Ferrari (ed), *Contracts for the international sale of goods: applicability and applications of the 1980 United Nations Sales Convention* (Martinus Nijhoff Publishers, 2012), 282 pp., ISBN: 9789004201699

A reference work

Contracts for the International Sale of Goods, by Franco Ferrari,¹ is a well-conceived and executed reference work that is a valuable addition to scholarship focused on the 1980 United Nations Convention on the Law Applicable to Contracts for the International Sale of Goods (CISG), which entered into force at the beginning of 1988.² The book is concise (282 pages), yet exhaustively supported by citations (1,461 footnotes) and usefully indexed. Divided into nine chapters, the organization of the book is logical and clear. The coverage progresses from a brief history of the development and ratification of the CISG,³ through a careful consideration of the Convention's sphere of applicability,⁴ its exclusions,⁵ and its broad deference to party autonomy.⁶ The text then addresses two issues of recurring importance, namely those arising from disputes relating to the nonconformity of goods with contract

obligations⁷ (including the 'exhaustive set of rules' governing the notice of nonconformity⁸) and the calculation of interest on sums in arrears.⁹

The cohesiveness of the book derives from its unified voice. *Contracts for the International Sale of Goods* is a monograph, not a collection of papers by diverse authors. As a result, there is no redundancy in the coverage or change of style from chapter to chapter. Moreover, because the author is a respected authority on the CISG and an elegant writer, the text is smooth, efficient, and enlightening.

Analysis informed by comparative jurisprudence

The analysis offered in *Contracts for the International Sale of Goods* is nicely balanced. The author gives appropriate attention to the text of the CISG, the decisions construing it, and pertinent legal scholarship. Ferrari also considers the drafting proposals that failed to be embodied in the final text of the Convention as well as the international agreements that preceded the reform efforts leading to the CISG. The latter category includes, but is not limited to, the Convention Relating to a Uniform Law on the International Sale of Goods and the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods.¹⁰

The views that Ferrari expresses about the CISG's scope and application are supported

¹ Franco Ferrari, *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention* (Martinus Nijhoff Publishers 2012).

² Convention on the Law Applicable to Contracts for the International Sale of Goods 24 ILM 1575 (1985) [CISG].

³ Ferrari (n 1) 1–23, 31–6.

⁴ Ibid 31–57 (internationality requirement), 51–95 (legal applicability), 97–127 (substantive sphere of application).

⁵ Ibid 132–49.

⁶ Ibid 151–82.

⁷ Ibid 182–248.

⁸ Ibid 183.

⁹ Ibid 249–75.

¹⁰ Ibid 4–7 n 29, 31–6, 41–2, 49–50, 183. Convention Relating to a Uniform Law on the International Sale of Goods, 834 UNTS 107 (1964); Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, 834 UNTS 169 (1964).

with authorities drawn from around the world as well as insights about the civil law and common law legal systems.¹¹ Thus, the book resonates with comparative law traditions. Some of the citations are taken from decisions of Chinese,¹² New Zealand,¹³ Australian,¹⁴ Russian,¹⁵ and Chilean¹⁶ tribunals, but, by far, most of the references are to Western European decisions and, less frequently, American decisions.

Contracts for the International Sale of Goods is a guide to the CISG's language and related developments, which is designed to further the Convention's objective of harmonizing the law of import-export transactions. This is one of Ferrari's stated justifications for his book.¹⁷ As he explains, he examines 'specific issues of the CISG in light of both recent court decisions as well as scholarly writings from many countries in order to thus provide the tools for a possible uniform interpretation and application of the CISG'.¹⁸

Many of the topics addressed by Ferrari have been tackled by other writers. What this book adds is not merely a judicious review of such scholarship but, rather, the weight of tribunal authority. At many junctures, Ferrari explains how courts and arbitrators have ruled on questions where there was once substantial room for a difference of opinion. Thus, the book is something of a status report, carefully explaining the issues where there is a now consensus as well as the issues that are still disputed.¹⁹ Consequently, *Contracts for the International Sale of Goods* presents a detailed portrait of where the CISG stands after a generation in

force. However, Ferrari is careful not to confuse professional consensus with his own personal opinion. At numerous junctures, he clearly points out what he personally believes is the best path in dealing with unsettled questions or confusing issues.²⁰

A broad audience

It is likely that Ferrari's treatise will find a broad audience. The text is clear and succinct in a way that will appeal to both novices and experts. On the one hand, the book offers a streamlined guide to key features of the CISG, while, on the other hand, it distills from a mass of decisions and commentary an understanding of the Convention that rises above the clutter and confusion of a multitude of voices. The concise text of *Contracts for the International Sale of Goods* is accompanied by citations so abundant that the book has the appearance of a heavily footnoted American-style law review article.²¹ This assemblage of primary and secondary authorities will make the book a valuable resource to scholars and tribunals.

Useful guidance for lawyers

Many of Ferrari's explanations are both richly detailed and useful. For example, in illuminating the vague CISG requirement that a buyer must inspect the goods in 'as short a period as is practicable',²² the author states that the 'short' period for inspection may be 'longer where the goods to be examined are—from a technological point of view—more sophisticated,' but 'shorter when the goods brought are perishable,' and that among the circumstances that may be taken into account are

¹¹ See eg Ferrari (n 1) 101 (discussing views of the Italian, French, and Germanic legal systems).

¹² See eg *ibid* 105 n 494, 176 n 892, 181 n 925, 269 n 1426; see also 63 (discussing whether Hong Kong is a contracting state).

¹³ See eg *ibid* 12 n 50, 198 n 1034.

¹⁴ See eg *ibid* 116 n 565, 121 n 585, 124 n 609, 198 n 1034.

¹⁵ *Ibid* 147 n 762, 164 n 844, 167 n 852, 176 n 894, 260 n 1378, 262 n 1379.

¹⁶ *Ibid* 176 n 891.

¹⁷ *Ibid* 8 (citing the need for a uniform application of the CISG).

¹⁸ *Ibid* 23.

¹⁹ See eg *ibid* 103: 'As far the CISG's applicability to *distribution agreements* ... no uniform solution has yet been found' (emphasis in original).

²⁰ *Ibid* 87–92.

²¹ It is unclear whether the book originated as an article. *Contracts for the International Sale of Goods* contains no preface, and the work occasionally refers to the book as a 'paper.' *Ibid* 8, 23, 249. It is also unclear when the various parts of the book were written. At one juncture, the text says that 'only twenty years have passed since the CISG's coming into force on 1st January 1988 (23).

²² CISG (n 2) art 38.

'the difficulty of effecting the examination, the existence of legal holidays, the way the goods are packaged, the seasonal character of the goods, and the like.'²³ Further, 'where a large quantity of goods is delivered,' the author explains, 'it is not necessary to inspect all the goods; rather it is sufficient that the buyer performs spot checks, by inspecting an adequate number of goods.'²⁴ This discussion of the duty to inspect is followed by an equally vivid explanation of just how clear a buyer must be in giving a seller notice of nonconformity.²⁵ These types of guidance are eminently practical. They provide useful information to lawyers and their clients.

Conclusion

The widely adopted CISG is a key source of the legal principles that shape business-to-business transactions around the globe. Ferrari's

Contracts for the International Sale of Goods tracks the most important features of the CISG and the issues that have arisen under this Convention during the more than 25 years since it entered into force. It is an important scholarly work. The book combines a rich trove of source materials with careful analysis and makes a valuable contribution to the law of international business transactions. Ferrari succeeds in 'pointing out ... how important foreign case law and scholarly writing are to reach the CISG's ultimate goal ... [namely] the creation of a uniform law for the international sale of goods.'²⁶

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²³ Ferrari (n 1) 213–15.

²⁴ Ibid 218.

²⁵ Ibid 235–6.

²⁶ Ibid 277.