

BOOK REVIEWS

International Sales Law: A Guide to the CISG BY INGEBOURG SCHWENZER, CHRISTIANA FOUNTOLAKIS AND MARIEL DIMSEY, 3d ed [Oxford: Hart Publishing, 2019. iii + 862 pp. Softcover: USD67.95]

This is the third edition of this excellent casebook on the *United Nations Convention on Contracts for the International Sale of Goods* (“CISG”). It is a very useful teaching tool, which is its main purpose. It comes, for example, with questions for the students on each article of the CISG, with 140 pages of answers to these questions at the end of the book. This casebook could also be very useful to the practitioner unfamiliar with the CISG as it provides edited cases on the CISG from many jurisdictions, some comparisons to other international instruments and to some domestic laws, and some views from the CISG Advisory Council and some doctrinal authors.

The format of the book is that of the CISG itself—an article by article analysis. This is different from the format followed by most American or common law casebooks which are usually organised by themes rather than by the order of the sections or articles of a statute or treaty. In a way, the book’s format may be revealing a more civil law approach, one which focuses first on the code, statute or treaty and goes through it comprehensively.

This approach has its advantages, the most important being that no articles of the CISG are omitted from the book, with the exception of the final provisions (articles 89–101) which are omitted even though some of these articles, such as article 95 (the reservation to article 1(1)(b) of the CISG), have been mentioned in quite a few cases. I note, however, that article 95 has been discussed at article 1(1)(b) (at p 10), even though it does not have its own entry with a cross-reference to article 1(1)(b). The other advantage of this article-by-article format is that one can go directly to what one needs—if one needs a case on article 55, one can find it very quickly.

Sometimes, however, this format might not be the best way to give the students an overview of a given topic. For example, the remedies available under the CISG are all over the place: remedies of the buyer at articles 45–52, remedies of the seller at articles 61–65, remedies common to both at articles 71–84, and some general provisions relating to remedies at articles 25, 26 and 28. Not putting together the study of these articles might be confusing and might prevent a comprehensive approach to, and discussion of, remedies under the CISG. The book alleviates this problem as best as possible, given its format, by cross-referencing to other articles in the introduction of each article. For example, at article 61 on the remedies of the seller, the authors write “[this article] mirrors article 45, which lists all of the buyer’s remedies” and

note that the article itself refers to articles 74–77 (at p 511). Similarly, a link is drawn between articles 14 and 55 and the authors explain well their relationship (at pp 112, 113). I nonetheless find it useful in class to give the students an overview of the remedies under the CISG and only then go through all the relevant articles all at once, rather than in the order in which they appear in the CISG. In that respect, when used in class with a proper pedagogical introduction by the teacher to the main issues (formation of contract, remedies, *etc*), and with proper reference to the relevant articles, this casebook can work very well in my experience.

The entry for each article starts with a short overview of the article, including, when relevant, its drafting history, followed by a comparison with other legal provisions either from domestic law (*eg*, the English *Sale of Goods Act*, the United States (“US”) *Uniform Commercial Code*, the German *Civil Code [BGB]*) or from international documents (*eg*, UNIDROIT *Principles on International Commercial Contracts [PICC]*, *etc*). The study of the article is often divided into sub-topics, each with their relevant cases and some questions for the students.

The provisions of domestic laws reproduced for comparison are particularly helpful when an article of the CISG is trying to achieve a compromise between the civil law and the common, as is often the case. For example, article 16 tries to find a compromise between the common law position that an offer (without consideration) is not binding until accepted even if the offeror has promised not to revoke it, with the civil law position which binds the offeror to its offer. Therefore, short extracts of an English case and of the US *Restatement (Second) of Contracts* (1981) are contrasted with provisions from the *BGB* and from the People’s Republic of China’s *Contract Law* to illustrate the gap that the CISG is trying to fill. (Note: This book was published in 2019, before the adoption of the People’s Republic of China *Civil Code* which will replace its *Contract Law* on 1 January 2021.)

After this short introduction to the article, the book introduces the cases which are of course the most important part of any casebook. The cases selected are very relevant (more below, however, on their lack of geographical distribution) and this third edition has made interesting additions. All the cases are properly edited so that the focus be only on what the case has to say about the relevant article of the CISG which it interprets or illustrates. Most cases, even common law cases (which tend to be longer than civil law ones), are reduced to a page or two, at least with respect to what they have to say about a particular article. Some cases are understandably used under many different articles of the CISG, and for each article the relevant part of the case is reproduced.

Most of these cases are available online either at CISG-online: <<http://www.cisg-online.ch>>; at the CISG website of Pace University: <<https://iicl.law.pace.edu/cisg/cisg>>; at CLOUT: <https://uncitral.un.org/en/case_law> or elsewhere, although sometimes they are not available in full or in English. One advantage of this book is that the authors provide many additional translations (including some provisions of domestic legislation) which are very helpful and for which we are all very grateful. Another advantage of this textbook is that it zooms in on the relevant part of the decision in addition to saving the reader from having to navigate multiple websites to try to find one with an English version of an often long and unedited version of a decision.

There is no doubt in my mind that this casebook is the best casebook available on the CISG and I can testify that it is an excellent teaching tool and would recommend it without hesitation.

If I could however express a wish to the authors, let me say that, as someone teaching the CISG in Singapore, I would prefer if the sources reproduced in the casebook, both cases and legislation, were not almost exclusively focused on Western jurisdictions. The Preface to the second edition, reproduced in the book, states:

The cases are accompanied by a comprehensive overview of parallel provisions in domestic [. . .] legal instruments, including the German, French, Austrian, Swiss, and Italian Civil Codes, the Contract Law of the People's Republic of China, the English Sale of Goods Act, the US Uniform Commercial Code. . . (at vii–viii)

The only non-Western domestic law mentioned in this preface, and indeed often mentioned in the book, is the *Contract Law* of the People's Republic of China. It is commendable to include Chinese examples, but this is, sometimes, of limited comparative interest since, in many instances, the Chinese *Contract Law* has adopted the very wording of some CISG provisions. The civil codes of Japan or of the Republic of Korea which are more classical pre-CISG (by which I mean, not influenced by, and not incorporating part of, the CISG) civil codes, for example, are not mentioned.

When it comes to international instruments, the Preface mentions the UNIDROIT *PICC* and the book also sometimes refers to the Commission of European Contract Law, Ole Lando, *Principles of European Contract Law* (2000) which are often very similar. However, neither of these are truly international instruments as they are essentially European or at most Western documents. The Working Group for the preparation of the UNIDROIT *PICC* was made up entirely of Europeans and other Westerners (4 Europeans, 1 Canadian, 1 American, 1 Australian and 1 British) and did not include anyone from Asia, Africa or South America (see UNIDROIT *PICC* 2016 at x). More than half of humanity lives in Asia alone, so these documents cannot be considered to be truly international, in the sense of global, instruments.

When it comes to domestic cases, the focus is again on Europe and a few other Western countries. There are only two domestic court cases from Asia: one from mainland China and one from the Republic of Korea. If one considers Australia and New Zealand as part of Asia as opposed to part of the Western world, one could add one Australian case and two New Zealand case to the count. But all other court cases are from Western countries including 55 from Germany, 31 from the USA, 21 from Switzerland and 21 from Austria, *ie* an overwhelming representation from the German-speaking world. Of course, the main reason for this is that there are many more cases available in English (or in a language familiar to the authors, such as German) from these Western jurisdictions than there are from Asia for example. There are nevertheless more than 90 Chinese domestic cases translated into English at the Pace University CISG database, and more than 400 cases if we include the China International Economic and Trade Arbitration Commission (“CIETAC”) awards (see <<http://www.cisg.law.pace.edu/cisg/text/casecit.html#china>>). While this book does reproduce three of the numerous CIETAC awards available in English, I would recommend that a few more cases from China be added as examples coming from Asia.

It remains that this is the best textbook on the CISG and that I highly recommend it without hesitation.

GARY F BELL
Associate Professor
Faculty of Law, National University of Singapore