

## Lecture 2

# International sales contracts



§ 1

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**United Nations Convention on  
Contracts for the International  
Sale of Goods**

The layout of the CISG is divided into four parts

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graph TD; A[The layout of the CISG is divided into four parts] --> B[PART I – Sphere of Application and General Provisions]; A --> C[PART II – Formation of the Contract]; A --> D[PART III – Substantive Rules for the Sale of Goods]; A --> E[PART IV – Final Provisions];
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PART I – Sphere of Application and General Provisions

PART II – Formation of the Contract

PART III – Substantive Rules for the Sale of Goods

PART IV – Final Provisions

# SPHERE OF APPLICATION

This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

*(a)* when the States are Contracting States; or

*(b)* when the rules of private international law lead to the application of the law of a Contracting State.

As of 27 September 2019, 92 states have ratified, acceded to, approved, accepted, or succeeded to the Convention. Among them:

- Austria;
- Belgium;
- Bulgaria;
- Canada;
- China;
- Cyprus;
- France;
- Poland;
- Ukraine;
- United States of America;
- Etc.

**There are three situations in which the CISG (either in its entirety or a portion of its provisions) would cease to apply:**

1

the scope of the CISG can be limited is where the parties A and B themselves, expressly or impliedly, choose to derogate from some or all of the provisions (Article 6 CISG);

2

even if the parties chose the CISG as the appropriate law, the Convention itself may limit its applicability. For example, Article 2 CISG outlines certain types of sales contracts where the Convention would not apply (like sales contracts for ships, Article 2(e) CISG);

3

the liability of the seller for any death or personal injury caused by the goods will not be covered under the Convention (Article 5 CISG).

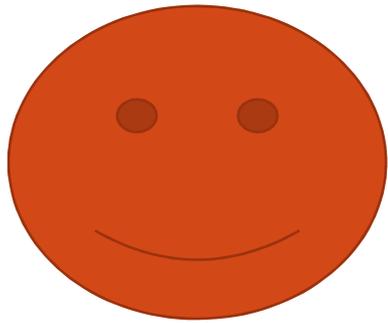
# This Convention does not apply to sales (Article 2 CISG ):

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

§ 2

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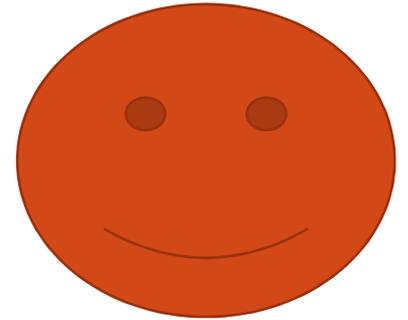
# Formation of the international sale contract



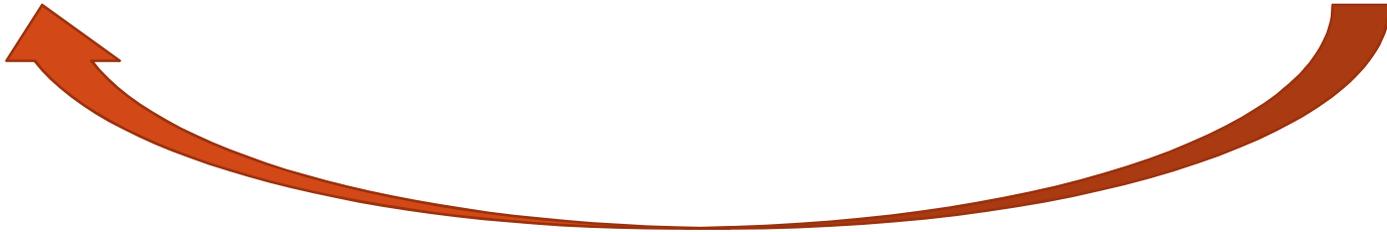
offeror



offer



offeree



acceptance

**Formation of the  
contract**

A proposal for concluding a contract constitutes an offer if, -

- it is sufficiently definite

and

- indicates the intention of the offeror to be bound in case of acceptance.

A proposal  
is sufficiently  
definite if

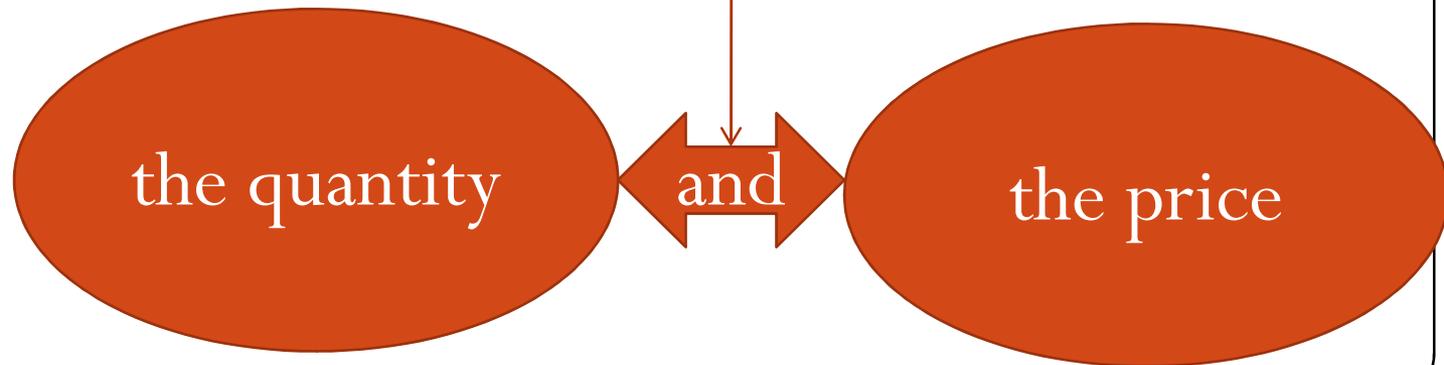
it indicates the goods

it fixes or makes  
provision for  
determining

the quantity

and

the price



## An acceptance

- is a statement made by or other conduct of the offeree indicating assent to an offer.

Silence or inactivity does not in itself amount to acceptance.

An acceptance of an offer becomes effective at the moment



the indication of assent reaches the offeror

within the time

the offeror has fixed

within a reasonable time (if no time is fixed)

immediately unless the circumstances indicate otherwise (when offer is oral)

The offeree may indicate assent by performing an act, without notice to the offeror

- one relating to the dispatch of the goods
- or**
- payment of the price

*At this case the acceptance is effective at the moment the act is performed !!!*

A counter-offer, -

a reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications and is a rejection of the offer .

§3

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# Form of the contract

# Features CISG

1. The Convention does not subject the contract of sale to any requirement as to form.
2. Article 11 provides that no written agreement is necessary for the conclusion of the contract
3. If the contract is in writing and it contains a provision requiring any modification or termination by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement.
4. In order to accommodate those States whose legislation requires contracts of sale to be concluded in or evidenced by writing, article 96 entitles those States to declare that neither article 11 nor the exception to article 29 applies where any party to the contract has his place of business in that State.

§ 4

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# Obligations of the seller

## **The seller must:**

1. deliver the goods,
2. hand over any documents relating to them and
3. transfer the property in the goods.

# *Delivery of the goods and handing over of documents*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;
- (c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

## *Conformity of the goods and third-party claims*

- (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

- The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.
- The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
- The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

## ***Remedies for breach of contract by the seller***

If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

- (a) exercise the rights provided in articles 46 to 52 Convention;
- (b) claim damages as provided in articles 74 to 77 Convention.

*The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.*

# The buyer may declare the contract avoided

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

§ 5

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# Obligations of the buyer

## **The buyer must:**

1. pay the price for the goods and
2. take delivery of them.

*The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.*

If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

*(a)* at the seller's place of business; or

*(b)* if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

The buyer's obligation to take delivery consists:

*(a)* in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery;

And

*(b)* in taking over the goods.

## *Remedies for breach of contract by the buyer*

If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.