

Organisers



Some Key Features of the CISG

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Validity of the Contract and the CISG

Article 4(a) of the CISG: Validity Exception

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. **In particular, except as otherwise expressly provided in this Convention, it is not concerned with: (a) the validity of the contract or of any of its provisions or of any usage.**

01

Some validity issues clearly not covered by the CISG

- Legal limits on who to sell to or to purchase from
- Legal limits on what to sell
- Legal limits on how to sell

Some validity issues clearly covered by the CISG

- Formal validity (Articles 8, 11 and 29)
- Open-price contracts (Article 14(1))

Controversial issue

Agency

The Parol Evidence Rule and the CISG

02

The Parol Evidence Rule has not been incorporated into the CISG

- Article 11: A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by **any means, including witnesses**.

- Article 29:
 - 1) A contract may be modified or terminated by the **mere agreement** of the parties.
 - 2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

The Parol Evidence Rule has not been incorporated into the CISG (cont'd)

- Article 8:
 - 1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
 - 2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.
 - 3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to **all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.**

Avoidance of the Contract on the Ground of Fundamental Breach under the CISG

03

The definition of 'fundamental breach' under Article 25 of the CISG

A breach of contract committed by one of the parties is fundamental if it results in such **detriment** to the other party as **substantially** to deprive him of what he is **entitled to expect** under the contract, unless the party in breach **did not foresee** and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Thanks