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Contents

Page

I. Cases relating to the United Nations Sales Convention (CISG) 2

II Additional Information 19

INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1). CLOUT documents are available on the website of the UNCITRAL Secretariat on the Internet (http://www.uncitral.org).

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I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 268: CISG 1(1)(a); 8(1); 31
Germany: Bundesgerichtshof; VIII ZR 154/95
11 December 1996
Original in German
Published in German: 134 Entscheidungen des Bundesgerichtshofes in Zivilsachen 201; [1997] Neue Juristische Wochenschrift 870; [1997] Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis 519; [1997] Monatsschrift für Deutsches Recht 387; [1997] Recht der Internationalen Wirtschaft 421; [1997] Juristenzeitung 797; [1997] Praxis des Internationalen Privat- und Verfahrensrechts 348;[1997] Europäisches Wirtschafts- und Steuerrecht 105; [1997] Wertpapier-Mitteilungen 985;
http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/225.htm
Abstract published in German: [1997] Der Betrieb 572; [1997] Familie und Recht 122; [1997] Neue Juristische Wochenschrift - Rechtsprechungsreport 636; [1997] Entscheidungen zum Wirtschaftsrecht 455; [1998] Schweizerische Zeitschrift für Internationales und Europäisches Recht 87
Commented on in German: Mankowski, [1997] Wirtschaftsrechtliche Beratung 330; Geimer, [1997] Entscheidungen zum Wirtschaftsrecht 455; Huber, [1997] Juristenzeitung 799; Kronke, [1997] Praxis des Internationalen Privat- und Verfahrensrechts 350; Grunsky, [1997] Lindenmaier-Möhring: Nachschlagewerk des Bundesgerichtshofs in Zivilsachen ZPO § 256 No.195; Hess, Entscheidungssammlung zum Wirtschafts- und Bankrecht VII B Art 21 EuGVÜ 1.97

A German seller, plaintiff, delivered almond paste to a French buyer, defendant. The seller sought from the German court a declaration of non-obligation to pay damages and, thereafter, the buyer brought an action for damages in a French court. One of the issues for determination was whether the German court had jurisdiction.

The appellate court had stated that, under article 5(1) of the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, jurisdiction is based on the place of performance of the contract. Since both Germany and France were Contracting States to the CISG, it was applicable to determine the place of performance (article 1(1)(a) CISG), according to which the place of performance would have been at the seller's place of business in Germany (article 31 CISG). At issue was whether the parties had derogated from this general principle by various communiques in which the price had been quoted, "duty unpaid, untaxed, delivery being free to the door of the place of the buyer's business".

The appellate court had held that these descriptive statements, which had been made by the parties in conjunction with the price, could have been understood as related to transportation costs and allocation of risk and, having regard to the need for interpretation in accordance with the view and comprehension of the recipients, had not been intended by the parties to alter the place of performance (article 8(1) CISG). This ruling was upheld by the Supreme Court.

Case 269: CISG 1; 4
Germany: Bundesgerichtshof; I ZR 5/96
12 February 1998
Original in German
Published in German: http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/343.htm
Head Note published in German: [1998] Eildienst Bundesgerichtliche Entscheidungen 445; [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 199

An insurer, plaintiff, sued a carrier, defendant, for damages resulting from an accident. The claim involved rights which had been assigned to the plaintiff by a third party.

The court held that the provisions of the CISG were not relevant in this case. Although in general the Convention is applicable to sales of goods requiring shipment, the matters in dispute in this case concerned the contract of carriage, which as such fell outside of the scope of the Convention. The court also stated that, even if the Convention had been applicable to the contract in question, the matters in dispute, which concerned assignment of claims, assignment by operation of law and realization of third-party damages, were not matters governed by the Convention (articles 1 and 4 CISG).

Case 270: CISG 1(1); 8(2); 8(3); 38; 39
Germany: Bundesgerichtshof; VIII ZR 259/97
25 November 1998
Original in German
Published in German: [1999] Monatsschrift für Deutsches Recht 408; [1999] Neue Juristische Wochenschrift 1259; [1999] Der Betrieb 687; [1999] Wertpapier-Mitteilungen 868; [1999] Recht der Internationalen Wirtschaft 385; [1999] Aussenwirtschaftliche Praxis 176; [1999] Lindenmaier-Möhring: Nachschlagewerk des Bundesgerichtshofs in Zivilsachen CISG No. 5; [1999] Praxis des Internationalen Privat-und Verfahrensrechts 377; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/353.htm
Head Note published in German: [1999] Eildienst: Bundesgerichtliche Entscheidungen 105; [1999] Entscheidungen zum Wirtschaftsrecht 257
Commented on in German: Schlechtriem, [1999] Entscheidungen zumWirtschaftsrecht 257; Magnus, Lindenmaier-Möhring: Nachschlagewerk des Bundesgerichtshofs in Zivilsachen CISG No. 5; Otte, [1999] Praxis des Internationalen Privat- und Verfahrensrechts 352; Escher, [1999] Recht der Internationalen Wirtschaft 495

A German seller, defendant, delivered surface-protective film to an Austrian buyer, plaintiff, for use by the buyer's business partner. The buyer did not test the film, which had to be self-adhesive and removable. When the film was removed from polished high-grade steel products by the buyer's business partner, it left residues of glue on the surface. Upon being so advised, the buyer notified the seller the next day. However, this notice was given 24 days after the film had been delivered. The buyer paid the expenses of removing the glue residue and brought a claim for reimbursement of these expenses against the seller. The appellate court had dismissed the buyer's claim (see Case No. 230) and the buyer appealed further.

The Supreme Court reversed the appellate court's decision and allowed the buyer's claim. It confirmed that the CISG is applicable if the parties have chosen, even by means of standard contractual provisions, the law of a Contracting State to govern their contract (article 1(1)).

The court found that the seller had waived its right to rely on articles 38 and 39 of the CISG. It stated that a seller can waive its rights not only expressly but also in an implied manner. The preconditions for an implied waiver are specific indications that would cause the buyer to understand the seller's action as a waiver. The fact that a seller enters into negotiations over the lack of conformity of the goods need not necessarily be regarded as a waiver, but should be considered in conjunction with the circumstances of each case. In this case, negotiations as to the amount of damages and the manner in which damages should be paid had taken place between the parties over a period of 15 months, during which time period the seller had not reserved the right to rely on articles 38 and 39 of the CISG. Furthermore, at the buyer's request, the seller had paid the expenses of an expert. Moreover, the seller had offered damages amounting to seven times the price which the seller had received for the surface-protective film. The court held that, from the buyer's point of view (article 8(2) and (3) CISG), it could only be understood that the seller would not, at a later point of time, rely on articles 38 and 39 of the CISG.

The court left open the issues of whether examination under article 38 of the CISG should have included a test treatment by the buyer and whether the buyer had had a reasonable excuse for failure to give notice within the required period of time (article 44 CISG). It also left open the issue of whether the seller had lost the right to rely on the provisions of articles 38 and 39 by means of article 40 of the CISG.

Case 271: CISG 7; 77; 79
Germany: Bundesgerichtshof; VIII ZR 121/98
24 March 1999
Original in German
Published in German: [1999] Neue Juristische Wochenschrift 2440; [1999] Der Betrieb 1442; [1999] Recht der Internationalen Wirtschaft 617; [1999] Wertpapier-Mitteilungen 1466; [1999] Juristenzeitung 791; [1999] Monatsschrift für Deutsches Recht 1009; [1999] Lindenmaier-Möhring: Nachschlagewerk des Bundesgerichtshofs in Zivilsachen CISG No. 6 and No. 7; Entscheidungssammlung zum Wirtschafts- und Bankrecht, IV F Art 79 CISG 1.99; [1999] Recht der Landwirtschaft 250; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/396.htm
Translated into English: http://www.cisg.law.pace.edu/cisg/wais/db/cases2/990324g1.html
Head Note in German: [1999] Eildienst: Bundesgerichtliche Entscheidungen (EBE/BGH), BGH-Ls 323/99
Commented on in German: Schlechtriem, [1999] Juristenzeitung 794; Stoll, [1999] Lindenmaier-Möhring: Nachschlagewerk des Bundesgerichtshofs in Zivilsachen CISG No. 6 and No. 7; Magnus, Entscheidungssammlung zum Wirtschafts- und Bankrecht, IV F Art 79 CISG 1.99;
Commented on in English: http://www.cisg.law.pace.edu/cisg/wais/db/cases2/990324g1.html

The seller, the unsuccessful party in Case No. 272, appealed to the Supreme Court.

The court confirmed the seller's liability without deciding whether or not article 79 was applicable, stating that even if it were applicable, it would not exclude the seller's liability since the

only exempt from liability under article 79 if the failure to perform is due to an impediment beyond the control of the seller and each of the seller's suppliers. Thus, the court left open the question of whether or not article 79 of the CISG can be raised as a defense against all kinds of non-performance, including the delivery of defective goods. The court also pointed out that the exemption provided under article 79 does not alter the allocation of risk. Liability of the seller resulted from its failure to comply with its obligation to deliver conforming goods; it made no difference whether the defect was the fault of the seller or its supplier.

However, since the appellate court had failed to consider whether there had been any failure on the part of the buyer to mitigate its loss, the Supreme Court set aside the judgement and remanded the case back to the appellate court. It noted that, as failure to mitigate by one party could lead to the total exclusion of liability of the other party, in such a case, German law would require that the matter be considered in conjunction with the decision on the merits and not in a separate proceeding concerning the amount of damages (article 77 CISG). As this was a question of procedural rather than substantive law, the court said that it was not governed by article 7 of the CISG but rather, by the relevant provisions of German law.

Case 272 : CISG 8(3); 35(1); 45(1)(b); 74; 79(1); 79(2)
Germany: Oberlandesgericht Zweibrücken; 8 U 46/97
31 March 1998
Original in German
Unpublished

A German seller, defendant, sold vine wax for the treatment of grapevine stocks to an Austrian buyer, plaintiff. When some plants were damaged after treatment with the wax, the buyer claimed lack of conformity of the goods and sued the seller for damages. The seller denied liability, arguing that it had acted purely as an intermediary and that the failure of the product was due to defective production by its supplier, an impediment that was beyond its control.

The court held that the buyer was entitled to claim damages according to article 45(1)(b) of the CISG; prerequisites for a claim under this article are failure of the seller to perform its obligation, causation and damage, which must be proven by the claimant. By contrast, if the seller seeks to rely on article 74 of the CISG, the seller must prove that it was unable to foresee the damage.

The court found that the goods delivered by the seller did not meet the demands of practice and were therefore not in conformity with the contract (article 35(1) CISG). It then considered whether the seller's liability was excluded by an exemption clause contained in the seller's general terms and conditions of sale. It held that, as the CISG does not provide specific requirements for the incorporation of standard terms and conditions into a sales contract, whether such terms have become part of the contract must be determined by the application of article 8 of the CISG. In this case, there had been no negotiations or established trade usage between the parties by which the terms and conditions might have become part of the contract (article 8(3) CISG). Apart from that question, the court also held that, as the CISG does not provide rules on the validity of an exemption clause, this must be decided by recourse to the national law that is found to be applicable according to private international law rules. The court found that, under German law, the complete exclusion of liability, irrespective of the degree of fault, would have been void.

The court noted that delivery of defective goods may constitute an impediment under article 79(1) of the CISG. It also noted that, in order to be exempted from non-performance, the seller would have to prove that the non-performance was due to an impediment beyond the seller's control, that the impediment was not taken into account at the time of the conclusion of the contract or that the impediment or its consequences could neither have been avoided nor overcome by a reasonable seller (article 79(1) CISG). The court held that, in the given circumstances, the defect had not been beyond the seller's control; despite the on-going business relationship, it was not reasonable for the seller simply to have relied on its supplier's product without tests, because it was a newly developed product. The court further held that, even if the seller had acted only as an intermediary, it was still liable for the lack of conformity of the goods. In such cases, the supplier of the intermediary could not be regarded as a third party according to article 79(2) of the CISG.

The seller appealed to the Supreme Court (see Case No. 271).

Case 273: CISG 8; 39; 44; 50; 53; 57(1)(a); 59; 62; 80
Germany: Oberlandesgericht München; 7 U 2070/97
9 July 1997
Original in German
Published in German: http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/282.htm

An Italian seller, plaintiff, made a series of deliveries of leather goods to a German buyer, defendant. The seller sued the buyer for the total, undiscounted, purchase price and charges for dishonoured cheques. The buyer disputed the amount of the claim, arguing that partial payment had already been made, that two invoices had not been received, and that the goods were defective. The buyer also claimed a set-off, on the grounds that certain goods had not been delivered to its client. The lower court granted the seller's claim and the buyer appealed.

The court dismissed the appeal, finding that the buyer's claim for the full purchase price was justified (articles 53 and 62 CISG). Although it was clear by ordinary interpretation that the parties had agreed to a discounted payment arrangement (article 8 CISG), because the buyer had not met the terms of that arrangement, none of the buyer's grounds to reduce the payment owed were acceptable. Moreover, the court stated that the buyer had the obligation to make payment of the purchase price at the seller's place of business and bore the burden of proof that it had been fulfilled (article 57(1)(a) CISG). Whether or not the buyer had received all of the invoices was not significant, since the purchase price had to be paid on the due date without further demand (article 59 CISG). The court found that, as the buyer had not given the seller notice sufficiently specifying the nature of the lack of conformity (article 39 CISG) and had no reasonable excuse for the failure to do so (article 44 CISG), the buyer was not entitled to reduce the purchase price (article 50 CISG). Furthermore, the court held that the buyer had to reimburse the seller for the cost of the dishonoured cheques and stated that payment obligations under article 57 of the CISG also include payment formalities.

The court held as admissible the buyer's claim for set-off because the monetary claims of both parties were subject to the CISG. The claim was dismissed, however, since the seller had no obligation to perform when the buyer did not pay the purchase price (article 80 CISG).

Case 274: CISG 1(1)(b); 57(1)(a)
Germany: Oberlandesgericht Celle; 9 U 87/98
11 November 1998
Original in German
Unpublished

A Portuguese seller of orange juice assigned its claim against a Dutch buyer, defendant, to a Panamanian company, plaintiff, which sued for the outstanding purchase price. The defendant sought set-off with a purchase money claim assigned to it by a German seller, which originated from a contract of sale with the Panamanian plaintiff. The court of first instance allowed the claim against the defendant, but denied having jurisdiction as to the set-off. The defendant appealed.

The court of appeal confirmed the judgement. According to article 5(1) of the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, jurisdiction is dependant upon the place of performance being in Germany. Under the sales contract that was the source of the set-off claim, private international law led to the application of German law, which included the CISG (article 1(1)(b) CISG). The court stated that, although the place of performance originally had been the place of business of the German seller (the assignor), as a result of the assignment, it had changed to the place of business of the Dutch assignee (article 57(1)(a) CISG). Although the purchase money claim itself remained unchanged when it was assigned, the change of the creditor changed the manner of discharge and led to a change in the place of performance. Consequently, a German court could not have jurisdiction to hear the set-off claim.

Case 275: CISG 25; 45(1)(b); 47(1); 49(1)(a); 49(1)(b); 51(1); 58(1); 71(1); 78
Germany: Oberlandesgericht Düsseldorf; 6 U 87/96
24 April 1997
Original in German
Published in German: [1997] Forum des Internationalen Rechts 161
Published in English: [1997] 2 The International Legal Forum [English Language Edition] 160
Commented on in German: Pasternacki, [1997] Forum des Internationalen Rechts 166
Commented on in English: Pasternacki, [1997] 2 The International Legal Forum [English Language Edition] 165

An Italian manufacturer, plaintiff, sold shoes to a German buyer, defendant, but failed to deliver the agreed quantity. The manufacturer claimed partial payment. The buyer sought set-off with damages arising from the non-performance and, secondly, claimed the right to suspend payment until delivery of the outstanding quantity of shoes.

The court allowed the manufacturer's claim (article 51(1) CISG). It stated that the buyer had no right to declare the contract avoided, a right that was essential to a damage claim. The prerequisite for declaring a contract avoided under article 49(1) of the CISG is either a fundamental breach of contract or non-delivery within the additional period of time fixed. It held that partial delivery did not lead to a fundamental breach of contract (article 49(1)(a) CISG). Non-delivery on the agreed date of performance will amount to a fundamental breach of contract only if the buyer has a special interest in delivery on time by which the seller can foresee that the buyer would prefer non-delivery instead of late performance (for example, in the case of seasonal merchandise) (article 25 CISG). The court also held that the buyer's telephone call, a reminder demanding prompt delivery

article 47(1) of the CISG. As the buyer failed to prove that it had fixed an additional period of time for delivery, it could not declare the contract avoided under article 49(1)(b) of the CISG.

Since the seller had made partial performance, partial payment was due under the first clause of article 58(1) of the CISG. Therefore, the buyer was not entitled to suspend partial payment with regard to the outstanding delivery under the second clause of article 58(1) or article 71(1) of the CISG. The seller was entitled to interest according to article 78 of the CISG, and, using the rules of private international law, the court applied Italian law to determine the rate of interest.

Case 276: CISG 9(2)
Germany: Oberlandesgericht Frankfurt am Main; 9 U 81/94
5 July 1995
Original in German
Published in German: http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/ text/258.htm
Abstract published in Italian: [1997] Diritto del Commercio Internazionale 742
Commented on in Spanish: Perales, [1997] Contratos y Empresas

A French producer of chocolates, plaintiff, and a German buyer, defendant, negotiated over the delivery of chocolate. The seller sent a letter of confirmation to which the buyer failed to reply. After delivery, the seller sued for the outstanding purchase price, arguing that a contract had been concluded because the buyer had failed to reject the letter of confirmation. When the court of first instance dismissed the claim, the seller appealed.

The court held that no contract had been concluded by means of a letter of confirmation followed by silence. Although there is an established trade usage which recognizes such a conclusion of contract by silence in the jurisdiction of the recipient's place of business, due to the international character of the CISG, regard is to be given only to trade usages that are known to the law both in the jurisdiction of the offeror and in the jurisdiction of the recipient (article 9(2) CISG). Moreover, the legal effects of the trade usage have to be known to both parties.

Despite that ruling, the court allowed the seller's appeal. It found that a contract already had been concluded between the parties prior to the letter of confirmation.

Case 277: CISG 7(1); 25; 47(1); 49(1)(a); 49(1)(b); 79(1)
Germany: Oberlandesgericht Hamburg; 1 U 167/95
28 February 1997
Original in German
Published in German: [1997] Oberlandesgerichts-Rechtsprechungsreport Hamburg 149; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/261.htm
Abstract in German: [1997] Entscheidungen zum Wirtschaftsrecht 791
Commented on in German: Mankowski, [1997] Entscheidungen zum Wirtschaftsrecht 791
Commented on in English: Koch, [1998] Pace Review of Convention on Contracts for International Sale of Goods 236 No. 203; 259 No. 269

An English buyer, plaintiff, and a German seller, defendant, entered into a contract for the supply of iron-molybdenum from China, CIF Rotterdam, delivery in October 1994. The goods were never delivered to the buyer, as the seller did not itself receive delivery of the goods from its own Chinese supplier. After expiry of an additional period of time for delivery, the buyer concluded a substitute transaction with a third party and sued the seller for the difference between the price paid and the price under the contract.

The court held that the buyer was entitled to damages under article 75 of the CISG. It found that the contract had been avoided under article 49(1) of the CISG, both under paragraphs (a) and (b). As to paragraph (a), it said that, although delay in time is not generally considered as a fundamental breach of contract, it can constitute a fundamental breach if delivery within a specific time is of special interest to the buyer, which must be foreseeable at the time of the conclusion of the contract (article 25 CISG). The incoterm "CIF" by definition determines the contract to be a transaction for delivery by a fixed date. As to paragraph (b), it found that the buyer had fixed an additional period of time for delivery (article 47(1) CISG) within which the seller had failed to deliver.

The court held that an explicit declaration of avoidance was unnecessary once the seller refused to perform its delivery obligation and that to insist on such a declaration would be contrary to the principle of good faith (article 7(1) CISG). Such a declaration is dispensable as long as the avoidance of the contract is possible in principle and it is certain that the seller will not perform its obligations at the time the substitute purchase is made. The court held that a substitute purchase within two weeks after the failure of performance was made in reasonable time.

The court held that the seller was not exempt from liability, neither under a force majeure clause of the contract, nor under article 79(1) of the Convention. The seller bears the risk of itself receiving delivery of the goods from its own supplier. Only if goods of an equal or similar quality were no longer available on the market would the seller be exempted from liability. Furthermore, the court held that it was incumbent upon the seller to bear the risk of increasing market prices at the time of the substitute transaction. Although the market price had risen to an amount triple the price that had been agreed at the time of the conclusion of the original contract, this did not amount to a sacrificial sale price, as the transaction was said to be highly speculative.

Case 278: CISG 6
Germany: Oberlandesgericht Hamm; 11 U 180/97
6 May 1998
Original in German
Published in German: [1999] Neue Juristische Wochenschrift-Rechtsprechungsreport 364;
[1999] Transportrecht-Internationales Handelsrecht, 40

During litigation concerning claims arising from an international contract of sale, the parties agreed to exclude application of the CISG.

The court held that parties to an international contract of sale may exclude application of the CISG by agreement and that such an agreement may be reached after conclusion of the contract, for example, during litigation. It also said that the CISG is clearly excluded when the parties agree on the law of a non-Contracting State (article 6 CISG).

Case 279: CISG 1(1)(b); 4; 4(a); 8(1); 8(2); 9(2); 39(2); 53
Germany: Oberlandesgericht Hamburg; 12 U 62/97
5 October 1998
Original in German
Published in German: [1999] Transportrecht-Internationales Handelsrecht, 37

A Chinese manufacturer of circuit boards, plaintiff, delivered an instalment of goods under an exclusive sales agreement to a German buyer, defendant. The buyer made a fraudulent statement to the manufacturer that the goods were essentially worthless and could not be sold. However, when the buyer did sell the goods for approximately three-fifths their stated price, the manufacturer sued for payment of the purchase price. The buyer argued that the claim was made outside of the limitation period and claimed set-off. The buyer also relied on a purported agreement between the parties to lower the price of these goods to zero.

The court found that as the parties had agreed "on the law as per European common market (EU)", this clearly excluded Chinese law. Since there is no uniform contract law within the European Union, the court held that what the parties had intended by this clause was that the law of the most closely related European State would govern the contract. As the parties therefore had made an implied choice of German law, the CISG was applicable (article 1(1)(b) CISG).

The court allowed the manufacturer’s claim (article 53 CISG). With the exception of the time limit in article 39(2) CISG, which was not applicable, the CISG does not provide limitation periods (article 4 CISG). Therefore, the court applied German domestic law, pursuant to which limitation was not a ground for exclusion of the claim.

Furthermore, the court held that the set-off claim was not admissible since the parties had agreed upon a contractual payment clause "net 40 days". This clause had to be construed by primarily having regard to the intent of the parties (article 8(1) CISG). As their intent could not be determined, when taking into account objective and international standards of interpretation, such a clause had to be understood as a reference to a trade usage that excludes set-off (articles 8(2) and 9(2) CISG). As authority for determining the international standard of interpretation of this contractual clause, the court cited both German and English case law and authorities. The court rejected the

principle is relevant in general in the application of the CISG, the circumstances of this case gave no reason to rely on this principle in favour of the defendant.

As to the purported agreement to lower the price to zero, the court held that, even if there had been such an agreement in the manner alleged by the buyer, it would have been annulled by the manufacturer. Since the CISG does not deal with the issue of annulment (article 4(a) CISG), the court applied German domestic law, pursuant to which the agreement would have been annulled by means of a declaration by the seller.

Case 280: CISG 1; [4]; 38(1); 39(1)
Germany: Oberlandesgericht Jena; 8 U 1667/97 (266)
26 May 1998
Original in German
Published in German: [1999] Oberlandesgerichts-Rechtsprechungsreport Jena 4

A Czech seller, plaintiff, claimed payment for living fish delivered to a German buyer, defendant. The buyer refused payment, arguing that the fish were infected with a virus. The buyer also claimed damages by way of set-off, as its own fish stock had been fatally infected by the transmitted virus.

The court found that the buyer had failed to examine the fish in time (article 38(1) CISG). The buyer argued that, as the virus was a latent defect, late examination did not adversely affect its rights. But the court held that the buyer must examine the goods or cause them to be examined within as short a period of time as is practicable under the circumstances, even in the case of a latent defect. The omission of an examination would be irrelevant only if the defect could only have been determined by an expert, which the buyer had failed to prove. The court found that, in the given circumstances, immediate inspection would have been appropriate and examination of random samples of fish would have been sufficient. Moreover, the court held that the buyer was not entitled to rely on the certificate of inspection that had been issued by a veterinarian in order to permit importation of the fish. It also held that the buyer's notice to the seller, given four weeks after discovery of the virus, was too late; notification within eight days would have been appropriate (article 39(1) CISG). Accordingly, the seller's claim was allowed.

As to the buyer's set-off claim, the court held that lack of sufficient notice within the scope of the CISG also extends to exclude a claim for tortious liability [article 4 CISG].

Case 281: CISG 1(1); 1(1)(b); [4]; 35; 39; 57(1)(a)
Germany: Oberlandesgericht Koblenz; 2 U 1230/91
17 September 1993
Original in German
Published in German: [1993] Recht der Internationalen Wirtschaft 934; [1993] Die Deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts No. 35; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/91.htm
Abstract in English: [1995] 15 Journal of Law and Commerce 234
Abstract in Italian: [1998] Diritto del Commercio Internazionale 451
Commented on in English: Cura, [1995] 15 Journal of Law and Commerce 183; Ferrari, [1995] 15 Journal of Law and Commerce 64 and 86; Karollus, [1995] Cornell Review of the CISG 56 and 73; Koneru, [1997] 6 Minnesota Journal of Global Trade 136
Commented on in French: Witz, [1995] Les premières applications jurisprudentielles du droit uniforme de la vente internationale 46

A French seller, plaintiff, and a German buyer, defendant, entered into a long-term contract which granted the buyer exclusive distribution rights in Germany for the seller's computer printers and computer chip. After the contractual relationship had been terminated, the seller sued for outstanding payments of invoices from 1988. The buyer disputed the applicability of the CISG and claimed a set-off. Alternatively, the buyer sought to pay damages in German currency.

The court held that the rules of private international law of Germany led to the application of French law. Since the CISG was in force in France as of 1 January 1988, even though Germany was not a Contracting State at that time, the CISG was held to be applicable (article 1(1)(b)). The court held that the CISG applied to the sale of the computer chip, since, within the meaning of the Convention, "goods" includes all tangibles and intangibles that might be the subject of an international sales contract, which would include computer software (article 1(1) CISG).

The court allowed the seller's claim. It held that the buyer had not alleged any lack of conformity of the goods (article 35 CISG), notwithstanding that any such notice would not have been given to the seller in time (article 39). The claim was awarded in French Francs. Permission to make payment in German currency pursuant to the German Civil Code was not granted, as this was dependent upon the place of performance of the contract being in Germany. According to article 57(1)(a) of the CISG, the seller's place of business in France was the proper place of performance. The court also awarded interest under article 74 of the CISG and stated that the rate of interest was to be determined by the law otherwise applicable, which in this case was French law. This damage award of interest was a legal consequence of the buyer's non-performance (article 61(1)(b) CISG).

As the Convention does not address the matter of set-off, the court applied French law under its rules of private international law and found that the set-off claim was inadmissible.

Case 282: CISG 25; 35(1); 39(1); 48(1); 49(2)(b)(i); 50; 53; 78; 80
Germany: Oberlandesgericht Koblenz; 2 U 31/96
31 January 1997
Original in German
Published in German: [1997] Oberlandesgerichts-Rechtsprechungsreport Koblenz 37;
http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/256.htm

A Dutch seller, plaintiff, delivered acrylic blankets to a German buyer, defendant. The buyer gave notification of the lack of quality of the goods and claimed that five reels of blankets were missing. The buyer also argued that the sale was conditional upon an exclusive distributorship agreement between the parties, which had been violated by the seller. The seller brought an action for the outstanding purchase price and the buyer claimed set-off.

The court held that the seller's claim was justified (article 53 CISG). Lack of conformity includes lack of both quality and quantity (article 35(1) CISG), but the buyer had lost its right to rely on the lack of conformity under the Convention. Although the buyer gave notice that five reels of blankets were missing, it did not specify of which design. As the seller had delivered blankets in different designs, the notice did not enable the seller to remedy the non-conformity. Therefore, the notification was said to lack sufficient specification (article 39(1) CISG).

As to the sale being conditional upon compliance with an exclusive distributorship agreement, the court stated that, if any such condition existed, which the buyer had failed to prove, the buyer had lost its right to declare the contract avoided as it failed to do so within a reasonable time (article 49(2)(b)(i) CISG). The period of time considered reasonable must be determined in the light of the seller's interest in certainty and whether the seller has to arrange for alternative use of the goods. Even taking into account the time required for consideration, to obtain legal advice, and for negotiations between the parties, eight weeks was held to be unreasonable. These considerations also would apply to the time period within which the buyer could declare the contract avoided due to the lack of conformity of the goods.

Moreover, since the seller had made an offer to deliver new goods, which was refused by the buyer, the lack of quality did not amount to a fundamental breach of contract (article 25 CISG). In considering a breach to be fundamental, account has to be taken not only of the gravity of the defect, but also of the willingness of the party in breach to provide substitute goods without causing unreasonable inconvenience to the other party (article 48(1) CISG). Thus, in the given case, even a serious lack of quality was said not to constitute a fundamental breach as the seller had offered to furnish additional blankets (article 49(1) CISG). Therefore, the buyer was not entitled to damages as it had rejected the seller's offer for new delivery without justification (article 80 CISG). It thereby also lost its right to reduce the price (article 50 (second clause) CISG). The seller was entitled to interest (article 78 CISG), determined according to Dutch law.

The decision is under appeal to the Supreme Court.

Case 283: CISG 1(1); 58(1); 61(1); 62; 67(1)
Germany: Oberlandesgericht Köln; 2 U 175/95
9 July 1997
Original in German
Unpublished

A Spanish seller, defendent, concluded a dealer agreement with a German buyer, a company in which the plaintiff was a shareholder. As part of its security for payment, the seller held a mortage on land owned by the plaintiff. According to the agreement, the seller was obliged to deliver goods at "list price ex works". The buyer denied having received one of the shipments that was to have been made under the agreement, which consisted of some hundred video cameras and equipment, and refused payment. The matter came before the court as an action to oppose the seller's foreclosure of this mortgage.

Noting that the parties had agreed that German law would govern, the court held that the CISG was applicable, even though the parties had concluded the dealer agreement in 1988 and the CISG only became part of German law in 1991. The court found that the material time for the determination of the law applicable to the purchase money claim was not the conclusion of the dealer agreement, but rather, the moment of the purchase order in 1992. A choice of law clause in a contract, which governs future trading relations between two parties, must be construed in such a way so as to refer to the national law at the time of the conclusion of the contract and to all relevant changes in the law during the period of time that is governed by the contract. The court described this as a "dynamic reference" to a national law, as opposed to a "static reference" (article 1(1) CISG).

The court stated that, unless the parties had agreed upon another time, the seller can require the buyer to pay the price only after the goods or the documents controlling disposition of the goods are placed at the buyer's disposal (articles 58(1) and 62 CISG). According to the seller's interpretation, "list price ex works" meant that delivery and the passage of risk took place in Japan, at the production factory of the goods. According to the buyer, the terms were to be interpreted as referring only to the price and not to passage of risk. The court found that there was no inconsistency between the terms and the provisions of article 67(1) of the CISG, according to which the risk passes to the buyer when the goods are handed over to the first carrier. It found that the seller had been unable to discharge its burden of proof that delivery to the first carrier had been made. A bill of lading which indicated that a container said to contain the specified brand name and number of goods had been delivered to a freight forwarder, but which did not indicate the name of the buyer as recipient, was not sufficient proof of delivery (article 67(1) CISG).

The court held that, as the seller had no right to claim payment of the purchase price under article 61(1) of the CISG, it had no right to foreclose on the mortgage against the land.

Case 284: CISG 35; 38(1); 39(1); 77; 81(1)
Germany: Oberlandesgericht Köln; 18 U 121/97
21 August 1997
Original in German
Published in German: [1998] Oberlandesgerichts-Rechtsprechungsreport Köln 2; [1998] Versicherungsrecht 1513; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/290.htm
Commented on in French: Witz, [1998] Recueil Dalloz, 34ème Cahier, Sommaires Commentés 311

A German seller, plaintiff, made several deliveries of aluminium hydroxide to a French glass manufacturer, defendant. The buyer stored the chemicals in a silo, adding new material to that from previous deliveries. Due to the lack of quality of the aluminium hydroxide, the glass produced was defective. On the day after the second of the two deliveries in question, the buyer notified the seller that the goods received in two previous deliveries had been defective. The seller contested the lack of quality of the goods in the said deliveries and sued for the purchase price. The court of first instance allowed the claim.

The court dismissed the buyer's appeal. It held that the buyer was not released from its obligations under article 81(1) of the CISG, since the buyer was not entitled to declare the contract avoided. As to the first delivery in question, the court held that the buyer had failed to prove that the unusable aluminium hydroxide derived from this particular delivery. During the relevant time period, several deliveries had been made by the seller. Although the silo only contained chemicals delivered by the seller, if the defect had arisen from a different delivery, the buyer would have failed to notify the seller (article 39(1) CISG). As to the second delivery in question, the court found that, as defective glass already had been produced prior to the date of this delivery, the buyer had failed to prove any lack of quality of this particular delivery (article 35 CISG).

Moreover, the court held that the buyer had failed to examine the goods in time. Under normal circumstances, examination within a period of one month would have been reasonable. However, where delivered goods are mixed with previous deliveries, immediate inspection was said to be incumbent, since the defect would have been revealed even by means of simple tests (article 38(1) CISG).

The court held that, by mixing the aluminium hydroxide without prior examination, the buyer had failed to take due care of its own goods; consequently, it also failed to mitigate its loss (article 77 CISG). Thus, the buyer was not entitled to set-off with damages.

Case 285: CISG 38(1); 39(1); 40; 44
Germany: Oberlandesgericht Koblenz; 2 U 580/96
11 September 1998
Original in German
Published in German: [1999] Oberlandesgerichts-Rechtsprechungsreport Koblenz 49

A Moroccan buyer, plaintiff, purchased raw material for manufacturing plastic PVC tubes (dryblend) from a German seller, defendant. When the buyer discovered that the dryblend was not suitable for use in its manufacturing facilities, the buyer claimed lack of quality and sued for damages.

The court dismissed the claim. It held that the buyer had lost its right to rely on the lack of conformity according to article 39(1) of the CISG. Giving notice to the seller three weeks after delivery was held as being too late. The court said that, if trial processing was necessary to examine the quality of the goods, a period of one week for examination and another week for giving notice would have been reasonable. As to the buyer's argument that it had been unable to examine the goods any earlier because the manufacturing facilities were still under construction, the court held that this did not constitute a reasonable excuse (article 44 CISG). Such an excuse demanded that the buyer acted with reasonable care in providing for prompt examination of the goods, which included the timely supply of machinery necessary for trial processing. The buyer failed to provide particulars that it had acted with such due care. Moreover, disorganisation on the part of the buyer was not an aspect to be considered in determining the period practicable in the circumstances (article 38(1) CISG).

Since the seller was found not to have been aware of the fact that the dryblend was not suitable for producing plastic tubes in the buyer's manufacturing facilities, as the buyer had failed to inform the seller of the kind of equipment in use, the seller did not lose its right to rely on late notification (article 40 CISG). The court said that, although there would be a loss of the right to rely on late notification if the seller had had a duty to warn the buyer or provide additional information about the goods delivered, in this case there had been no such obligation.

Case 286: CISG 1(1); 3(1); 31(a); 31(b); 57(1)(a)
Germany: Oberlandesgericht München; 23 U 3750/95
22 September 1995
Original in German
Published in German: [1996] Recht der Internationalen Wirtschaft 1035; [1995] Die Deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts Nr.152, 307
Commented on in German: Klima, [1996] Recht der Internationalen Wirtschaft 1036

A German manufacturer of fork lifts, plaintiff, brought an action for a declaratory judgment that the French buyer, defendant, had no right to distribute the manufacturer's fork lifts in France. The buyer argued that it had the right to do so according to an exclusive distribution contract between the parties. The court of first instance allowed the manufacturer's claim. On appeal, the buyer objected to the jurisdiction of the German court.

The appellate court held that it had jurisdiction. Under article 5(1) of the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, jurisdiction is based on the place of performance of the contract and, in this case, the place of performance was the manufacturer's place of business in Germany (articles 31(a), 31(b) and 57(1) CISG).

The court found that the CISG was applicable even though, in general, the CISG applies to contracts of sale and not to agency contracts. In this case, although the dispute was not over a contract of sale, the question for determination was whether the manufacturer was obliged to deliver the goods to the buyer. Such an obligation does not only provide the other party with the right to distribute the goods, it also includes the general obligation by the manufacturer to supply the goods to the other party under certain conditions. This general obligation to supply goods constitutes the basis

be answered according to the Convention (article 1(1) CISG). As the buyer had failed to provide particulars as to the alleged exclusivity arrangement, the manufacturer's claim was allowed.

Case 287: CISG 1(1)(a); 3(2); 57(1)(a); 57(1)(b)
Germany: Oberlandesgericht München; 7 U 2246/97
9 July 1997
Original in German
Published in German: [1997] Der Betriebsberater 2295; [1998] Oberlandesgerichts-Recht-sprechungsreport München 22

A German seller, plaintiff, and a French buyer, defendant, concluded a dealer agreement according to which the buyer was to act as the seller's appointed dealer in the sale of fitness equipment. Pursuant to that agreement, the buyer made several equipment purchases. When the seller sued for unpaid purchases, the buyer objected to the jurisdiction of the German court.

The appellate court confirmed the ruling of the court of first instance that, under article 5(1) of the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, jurisdiction is based on the place of performance of the contract. Since both Germany and France were Contracting States to the CISG, and since the parties had agreed on the application of German law, the CISG was applicable to determine the place of performance. The court found that the parties had not agreed upon a place of payment other than at the seller's place of business (article 57(1)(a) CISG) and had not agreed on payment to be made against the handing over of goods or documents (article 57(1)(b) CISG). Neither the contractual clause requiring payment to be made by irrevocable letter of credit nor the contractual provisions altering the passing of risk had changed the place of performance. As this was the place where the seller had its business in Germany, the court held that it had jurisdiction.

The court found that the dealer agreement provided that the seller "sells" goods to the buyer; any subsequent contract entered into thereunder for the purchase of equipment was a contract of sale to which the Convention applied (article 1(1)(a) CISG). Although the buyer acted as an intermediary, application of the Convention was not excluded by article 3(2) of the CISG.

Case 288: CISG 4; 53; 74; 81(2)
Germany: Oberlandesgericht München; 7 U 3771/97
28 January 1998
Original in German
Published in German: [1998] Recht der Internationalen Wirtschaft 559

An Italian seller, plaintiff, sued a German car dealer, defendant, for the outstanding purchase price of a car under the first contract and restitution of money paid without obligation under a second contract for the purchase of additional cars. The buyer had paid for the first contract with a cheque, which was dishonoured. When the second contract was cancelled by the parties, the seller made a cash reimbursement of the advance payment that had been made by the buyer with another cheque, which later was also dishonoured. The buyer claimed set-off.

The court allowed the seller's claim under the first contract and held that the buyer was obliged to pay for the car (article 53 CISG). The award included damages for the costs of the dishonoured cheque (article 74 CISG).

Concerning the claim for restitution, the court stated that it was not governed by the CISG (article 4 CISG). It held that a claim for restitution is governed by the CISG only if payment is made under the original contract (article 81(2) CISG). If, after cancellation of a contract the seller redeems the purchase price which the seller, in fact, has never received, this cannot be considered as payment made under the contract. The seller performed a non-existing obligation with no connection to a contract of sale. However, the court held that, under the rules of German private international law, Italian law was applicable to justify the claim for restitution.

Similarly, as the CISG does not deal with set-off (article 4 CISG), the court held that, under the rules of German private international law, Italian law was applicable such that the claim for set-off was inadmissible.

Case 289: CISG [4]; 39(1); 53
Germany: Oberlandesgericht Stuttgart; 5 U 195/94
21 August 1995
Original in German
Published in German: [1996] Praxis des Internationalen Privat- und Verfahrensrechts 139; [1995] Recht der Internationalen Wirtschaft 934; [1995] 42 Die Deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts 78; http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/150.htm
Commented on in German: Kronke, [1996] Praxis des Internationalen Privat- und Verfahrensrechts 139

An Italian seller, plaintiff, claimed payment for a machine delivered to a German buyer, defendant, under a contract of sale. The buyer argued that the machine was defective and refused to pay the full purchase price.

The court allowed the seller's claim. It held that the buyer had not given notice of the lack of conformity to the seller within a reasonable time. Taking into account different national legal traditions, "within a reasonable time" would have meant about one month. Moreover, the buyer had not given notice that sufficiently specified the lack of conformity (article 39(1) CISG). The court held that the buyer had failed to give notice of the lack of conformity as required by the Convention and was therefore obliged to pay the purchase price (article 53). Furthermore, the court said that the matter of set-off is not covered by the CISG.

Case 290: CISG 38; 39; 53
Germany: Oberlandesgericht Saarbrücken; 1 U 703/97-143
3 June 1998
Original in German
Published in German: [1998] Oberlandesgerichts-Rechtsprechungsreport Saarbrücken 398;
[1999] Neue Juristische Wochenschrift-Rechtsprechungsreport 780;
[1999] Transportrecht-Internationales Handelsrecht 41

A German buyer, defendant, purchased flowers from an Italian seller, plaintiff. Upon collecting the flowers at the site of the seller's business, the buyer's driver commented upon their "miserable" state. After receiving the goods, the buyer informed the seller of the "miserable" state of the flowers and refused to pay the purchase price.

The court found that the buyer had not complied with the obligation to specify the lack of conformity; the notice given to the seller did not contain an exact description of the non-conformity and could have referred to the size and appearance of the flowers rather than their inferior condition. The court also stated that, where international trade in flowers is involved, the buyer can be expected to act immediately on the day of the delivery (articles 38 and 39 CISG). As the buyer had lost its right to rely on the lack of conformity, the buyer was obliged to pay the purchase price (article 53 CISG).

II. ADDITIONAL INFORMATION

Addenda/Corrigendum

Document A/CN.9/SER.C/ABSTRACTS/22

(Arabic, Chinese, English, French, Russian, Spanish)

Case 238

Published in German: [1999] Zeitschrift für Rechtsvergleichung 65
The reference to the publication in the caption *should read* "Abstract published in German: [1998] Zeitschrift für Rechtsvergleichung 158"

Case 240

Published in German: [1990] Zeitschrift für Rechtsvergleichung 63

Corrigenda

Document A/CN.9/SER.C/ABSTRACTS/24

(Spanish Text Only)

The reference in the statement as to copyright *should read* "Secretary, United Nations Publications Board, United Nations Headquarters"

Case 247

First paragraph: delete "'C.F.R.' y 'F.O.',"

Unreported cases on the CISG

NOTE: The following compilation of unreported cases has been prepared by the Secretariat based on information that was available as of November 1, 1999. The list incorporates information from the list that had previously been published in A/CN.9/SER.C/ABSTRACTS/8 and consequently replaces that list in its entirety. Cases are listed by jurisdiction, the order of citation being the name of the court, the date of the decision, the decision court number, followed by a single reference to the published decision, if one is known to the secretariat, and, for those jurisdictions where this is provided, the party names are also included. References to websites on the internet have not been included.[1] For a list of CISG cases with references to the journals in which they were published and the CISG article which they are applying, see Michael R. Will, International Sales Law under the CISG, The First 555 or so decisions, Geneva 1999.

[1] Abstracts or full texts of some of the unreported cases that have been listed may be found at the following websites on the internet.
http://www.cisg.law.pace.edu/network.html http://www.cisg.law.pace.edu/cisg/search_cases.html
http://www.jura.uni-freiburg.de/cgi-bin/urteile/public/urtstart.idc
http://www.jura.uni-sb.de/FB/LS/Witz/cisginh.htm
http://www.uc3m.es/uc3m/dpto/PR/dppr03/cisg/index.html
http://soi.cnr.it/~crdcs/crdcs/case_law.htm
http://cisgw3.law.pace.edu/galindo-da-fonseca/brasil-uff/construcao.html
http://www.utu.fi/oik/tdk/cisg/cisg.htm

A. Cases on which no abstracts will be prepared[2]

1. Australia

Court of Appeal, New South Wales, 12.03.1992, N.S.W. Law Rep. 1992, 234, Renard v. Minister.

2. Mexico

Comisión para la Proteción del Comercio Exterior de Mexico, 04.05.1993, M/66/92, Diario Oficial 27.05.1993, 17.

3. Switzerland

Tribunal Cantonal Vaud, 29.04.1992, SZIER 1993, 664;
Handelsgericht Zürich, 09.04.1991, SZIER 1993, 644.

4. U.S.A.

U.S. Court of International Trade, 24.10.1989, 726 F.Supp. 1344, Orbisphere v. U.S.;
U.S. District Court, Southern District of New York, 06.04.1994, 1994 U.S. Dist. Lexis 4114, Braun v. Alitalia.

5. Arbitral Awards

Iran-U.S. Claims Tribunal, 28.07.1989, Yb. Comm. Arb. 1990, 220, Watkins-Johnson v. Iran.

B. Cases that have been appealed[3]

1. Argentina

Juzgado Nacional de Primera Instancia en Lo Comercial (JNPILC) no. 18 de Buenos Aires, 20.10.1989, Quilmes Combustibles, SA c. Vig SA (No. 22);
JNPILC no. 11 de Buenos Aires, 18.03.1994, Bedial, SA c. Paul Müggenburg GmbH (No. 191).

2. Austria

Oberlandesgericht Wien, 07.11.1996, 2 R 107/96m-29 (No. 189);
Landesgericht (LG) Feldkirch, 29.03.1994, 5 Cg 176/92y-64 (No. 107);
LG Graz, 04.03.1993 (No. 106).

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[2] These are cases which, in the view of the National Correspondents, are not relevant to the interpretation or application of an UNCITRAL text. They are listed, however, with a reference to the journal in which they appear, so that CLOUT-users may have a chance to read them, if they so wish.

3. Germany

Oberlandesgericht (OLG) Düsseldorf, 18.11.1993, 6 U 228/92 (No. 124);
OLG Düsseldorf, 13.09.1996, 17 U 18/96 (No. 235);
OLG Frankfurt/M., 15.03.1996, 25 U 100/95 (BGH, 23.07.1997, VIII ZR 130/96, infra);
OLG Frankfurt/M., 15.03.1996, 25 U 187/95 (BGH, 23.07.1997, VIII ZR 134/96, infra);
OLG Hamburg, 14.12.1994, 5 U 224/93 (No. 171);
OLG Nürnberg, 20.09.1995, 12 U 2919/94 (No. 229);
OLG Schleswig, 27.04.1995, 11 U 191/93 (No. 268);
Landgericht (LG) Aachen, 19.04.1996, 43 O 70/95 (OLG Köln, 08.01.1997, 27 U 58/96, infra);
LG Arnsberg, 12.10.1994, 2 O 217/94 (No. 125);
LG Augsburg, 12.07.1994, 2 HK O 5024/93 (OLG München, 06.07.1995, 27 U 798/94, infra);
LG Baden-Baden, 13.01.1992, 4 O 63/91 (OLG Karlsruhe, 20.11.1992, 15 U 29/92, infra);
LG Berlin, 06.10.1992, 103 O 70/92 (No. 80);
LG Bielefeld, 18.01.1991, 15 O 201/90 (No. 227);
LG Darmstadt, 22.12.1992, 14 O 165/92 (No. 123);
LG Dortmund, 15.10.1992, 16 O 66/91 (OLG Hamm, 27.01.1995, 11 U 19/93, infra);
LG Dortmund, 14.07.1993, 10 O 167/92 (No. 132);
LG Düsseldorf, 09.07.1992, 31 O 223/91 (No. 124);
LG Düsseldorf, 04.12.1992, 40 O 91/91 (No. 81);
LG Düsseldorf, 22.03.1993, 37 O 169/92 (No. 82);
LG Düsseldorf, 05.03.1996, 36 O 178/95 (No. 275);
LG Frankfurt/M., 09.12.1992, 3/3 O 37/92 (No. 79);
LG Frankfurt/M., 02.05.1990, 3/13 O 125/89 (No. 2);
LG Frankfurt/M., 06.07.1994, 2/1 O 7/94, Unilex (No. 276);
LG Frankfurt/M., 13.07.1994, 3/13 O 3/94 (OLG Frankfurt/M., 23.05.1995, 5 U 209/94, infra);
LG Gießen, 22.12.1992, 6 O 66/92 (No. 121);
LG Hamburg, 05.11.1993, 404 O 175/92 (No. 171);
LG Hamburg, 23.10.1995, 419 O 85/95 (No. 277);
LG Heidelberg, 02.10.1996, O 37/96 KfH II (No. 230);
LG Kassel, 14.07.1994, 11 O 4279/93 (No. 135);
LG Kassel, 02.05.1995, 12 O 4366/94 (BGH 23.07.1997, VIII ZR 130/96, infra);
LG Koblenz, 29.11.1995, 3 HO 188/94 (No. 282, BGH still pending);
LG Köln, 14.02.1992, 90 O 288/90 (OLG Köln, 16.10.1992, 19 U 118/92, infra);
LG Köln, 11.11.1993, 86 O 119/93 (No. 122);
LG Köln, 16.11.1995, 5 O 189/94 (No. 168);
LG Krefeld, 18.03.1992, 11 O 159/91 (No. 48);
LG Krefeld, 28.04.1993, 11 O 210/92, (No. 130);
LG Krefeld, 19.12.1995, 12 O 160/93 (No. 235);
LG Lübeck, 17.08.1993, 8 O 200/91 (No. 268);
LG Lüneburg, 01.07.1994, 8 O 415/93 (No. 136);
LG Mönchengladbach, 22.05.1992, 7 O 80/91 (OLG Düsseldorf, 12.03.1993, 17 U 136/92, infra);
LG München I, 24.05.1993, 15 HKO 19978/91 (No. 83);
LG München I, 08.11.1993, 15 HKO 12117/93 (No. 133);
LG München I, 07.03.1994, 14 HKO 23317/93 (No. 167);
LG München I, 02.08.1994, 13 HKO 17330/93 (No. 134);
LG München I, 09.12.1996, 14 HKO 3315/96 (No. 287);

LG Münster, 05.03.1992, 22 O 217/91 (OLG Hamm, 25.11.1992, 11 U 92/92, infra);
LG Nürnberg-Fürth, 26.07.1994, 5 HKO 10824/93 (No. 229);
LG Oldenburg, 06.07.1994, 12 O 3010/93 (No. 165);
LG Saarbrücken, 23.03.1992, 9 O 4084/89, (OLG Saarbrücken, 13.01.1993, 1 U 69/92, infra);
LG Saarbrücken, 18.07.1997, 7 III O 25/96 (No. 290);
LG Schwerin, 30.06.1994, 4 O 160/94 (No. 228);
LG Waldshut-Tiengen, 16.01.1992, 3 HO 34/90 (OLG Karlsruhe, 11.02.1993, 4 U 61/92, infra);
Amtsgericht (AG) Mayen, 06.09.1994, 2 C 1005/92 (LG Koblenz, 07.07.1995, 14 S 358/94, infra);
AG Ludwigsburg, 21.12.1990, 4 C 549/90 (LG Stuttgart, 13.08.1991, 16 S 40/91, infra).

4. Hungary

Fováros Bíróság Budapest, 10.01.1992

5. Netherlands

Gerechtshof (Gh) Arnhem, 12.06.1990, 596/89, NIPR 1991, No. 130 (Hoge Raad (HR), 25.09.1992, 14566, infra);
Gh's-Hertogenbosch, 20.05.1996, 467/94/HE (HR, 20.02.1998, 16442, infra);
Arrondissementsrechtbank (Rb) Almelo, 21.06.1989, NIPR 1989, No. 468 (HR, 25.09.1992, 14566, infra);
Rb Haarlem, 18.02.1992, H 2358/90, NIPR 1993, 461 (Gh Amsterdam, 08.04.1993, 495/92, infra);
Rb's-Hertogenbosch, 04.02.1994, 1369/92 (HR, 20.02.1998, 16442, infra);
Rb Roermond, 27.02.1992, 910110, NIPR 1995, 244 (Gh 's-Hertogenbosch, 14.12.1994, infra);
President Rb Breda, 23.09.1991, KG 350/91, Unilex (Gh 's-Hertogenbosch, 26.02.1992, 856/91/BR, infra);
President Rb Utrecht, 16.04.1992, KG 0.4.21.223-224/92, NIPR 1992, 712, (Gh Amsterdam, 16.07.1992, 550/92 SKG, infra).

C. Cases to be reported on[4]

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