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MASTERING INTERNATIONAL SALES LAW

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*To Jane Frances Lazerow née Goding
wife and best friend,
who sixty years ago accepted my proposal of a lifelong partnership,
and who continually renews and reinvigorates that partnership*

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Preface

This book is designed for the law student studying international sales contracts and for the many lawyers who want a quick introduction to the area.

The field is of growing importance. In 1960 and 1970, imports and exports of goods constituted 6% and 8% of U.S. gross domestic product. In 1980 and 1990, that percentage rose to 17% and 15%. In the last three decades, the export + import/gdp has hovered around 20%.

The number of countries adhering to CISG now stands at 95. It includes all of the top seven trading countries (China, United States, Germany, Netherlands, Japan, Hong Kong, and France) measured in total imports and exports, accounting for 44% of all such trade. The major outliers are the UK (#8, 3%), India (#15, 2%), Indonesia (#30, .85%), Ireland (#33, .8%), and South Africa (#37, .5%). Of the top 50 trading countries, accounting for 92% of world trade, only 12% of imports or exports are done by a country that has not ratified CISG.

In the limited number of pages the publisher has allowed me, I discuss the issues important to the study of international sales contracts, as illustrated in the following casebooks:

MARTIN DAVIES & DAVID V. SNYDER, *INTERNATIONAL TRANSACTIONS IN GOODS* (2014).

GEORGE DAWSON & JEFFREY HARRISON, *THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS* (2017)

JOSEPH F. MORRISSEY, *INTERNATIONAL SALES LAW AND ARBITRATION* (2018).

ELDON H. REILEY, *INTERNATIONAL SALES CONTRACTS* (2008).

INGEBORG SCHWENZER, CHRISTIANA FOUNTOLAKIS & MARIEL DIMSEY, *INTERNATIONAL SALES LAW* (3d ed. 2019).

JOHN A. SPANOGLE & PETER WINSHIP, *INTERNATIONAL SALES LAW* (2d ed. 2012).

Contrary to the civil law tradition, this book focuses on decided cases and the opinions of the CISG Advisory Council. While a civilist would put more emphasis on the writings of distinguished commentators, this book is intended primarily for persons from the common law tradition. In addition, my observation is that the commentators are generally in accord with each other in result (though not always in how they reach the result) and with the weight of the decided cases. This book spends little time on disputes that have neither manifested themselves in decided cases, nor seem likely to do so, despite having stirred scholarly controversy. It also does not try to present a comparative study of CISG and the Uniform Commercial Code, or any of the national legal regimes on sales law.

Readers should understand that a brief book cannot fully cover so large a subject. This book highlights important issues. For more detailed analysis, the volumes below are recommended.

The advent of the United Nations Convention on Contracts for the International Sale of Goods (1980) (called “CISG”) and its sister treaty, the United Nations Convention on the Limitation Period in the International Sale of Goods (1974, with its 1980 Protocol) (called “Limitation Treaty”) have loosed an avalanche of published works in many languages. For the English speaker, a good work that is more detailed than this is CLAYTON P. GILLETTE & STEVEN D. WALT, *THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS* (2d. ed. 2016). Those interested in CISG’s drafting history should consult JOHN O. HONNOLD & HARRY M. FLECHTNER, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (5th ed. 2021). Comprehensive English-language collections of authorities, including the writings of scholars (more later on why that might be important) are PETER SCHLECHTREIM & INGEBOG SCHWENZER, *COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS* (4th ed. 2016) and CHRISTOPH BRUNNER & BENJAMIN GOTTLIEB, *COMMENTARY ON THE UN SALES LAW (CISG)* (2019).

Article 7 of CISG calls on courts to be mindful of its international scope when interpreting CISG, and of the need for uniformity in interpretation. This has spurred UNCITRAL with its CLOUT (Case Law On UN Treaties) cases, the University of Bern with CISG-online, and Pace University’s Institute of International Commercial Law, to provide many case summaries and translations into English on the internet. I have given short references to cases in the text, with full citations to all three sources, where available, in the table of citations. United States cases are cited in abbreviated fashion in the text, and

in Bluebook form in the table of citations. The short references for U.S. cases use the first several words of the plaintiff's name and the level of the court; for non-U.S. cases, the short versions give the goods involved where mentioned, then employ the Distinguishing Signs Used on Vehicles in International Traffic authorized by the Vienna Convention on Road Traffic to designate the country; indicate the level of the court; and show the date of the case as YYYYMMDD.

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I have been blessed with helpful research associates. Hanna Ahmad, LLM USD 2022 and a student at Eberhard Karls University in Tübingen Germany, helped clarify many questions this non-German-speaker had about the precise meaning of case opinions from Austria, Germany, and the German-speaking part of Switzerland. Allison Harvey, USD JD expected 2024, read the entire text and provided both editorial alternatives and useful substantive suggestions.

The USD law library research librarians, spearheaded by David Isom and Liz Parker, procured everything I asked for, and are responsible for obtaining the precise settings for the new Pace website and the PURLs.

The University of San Diego Law School financed the activities of my research associates and our research librarians, and also provided a generous sabbatical grant that allowed me to complete the first draft of this book. I am also grateful to the UC Law School San Francisco for providing me with work space on my sabbatical.

The number of colleagues at USD, UC Law School SF, and throughout the legal academy whom I have pestered with questions where the subject of this book seems to intersect with their specialties is legion, and all have been generous with their time in responding. More than most, I have relied on the wisdom of David Brennan and the late Bill Lawrence.

Request

No book about law is ever complete. Law is a living organism that evolves. I hope that the readers of this volume will help prepare subsequent editions by e-mailing me their suggestions at lazer@sandiego.edu.

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