

CISG v. UCC: Key distinctions and applications

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Abstract

The UCC and CISG are two separate bodies of law that govern various elements of contracts, specifically from one trader to another. Over 80 countries have signed the CISG treaty with the intention of conducting business amongst each other with high efficiency. Since the specific terms of a contract can be tailored to suit the specific needs of the parties involved in such contract, the contract can be legally enforceable either under UCC or CISG, or under commercial law implemented by any country, as specifically mentioned in the contract. As CISG has relaxed regulations with respect to the formation of contracts, interpretations of such rules becomes crucial when multiple trade contracts between member countries are formed. Hence, it becomes crucial for businesses to analyze distinctions between the provisions of UCC and CISG.

Introduction

The Uniform Commercial Code (UCC) applies to the sale of goods, including property, within the United States. It was established in 1952 in order to ensure a uniform code for contracts in the United States, across all the 50 states. Most businesses follow the UCC while drawing up contracts with other businesses or non-merchants. The UCC is flexible and convenient to merchants to encourage commerce inside the country. The UCC is enforceable in merchant-merchant contracts as well as in merchant-non merchant contracts.

The Contracts for the International Sale of Goods (CISG) applies to the sale of goods, amongst parties whose countries have signed the convention. This allows the CISG to be implemented in contracts where both parties are citizens of signatory countries. However, it is essential to remember that in the United States, CISG preempts any state law for contracts. Unless businesses explicitly exclude CISG in contracts, those companies should ensure the contracts meet CISG standards. However, only merchant-merchant contracts are enforceable under CISG.

The UCC and the CISG both fill in gaps in any contract that does not specify the exclusion of either or both codes. CISG fills in for any contract between the merchant parties of the countries under the treaty, and the UCC fills in for any contract within the United States, across all 50 states. It is up to the parties' discretion to enforce the contract under UCC or CISG or neither; however, if the parties do not mention either and disputes between the parties must be settled, CISG fills in the gaps of the contract for companies from countries that are members of its convention. For countries that have not signed the treaty, the courts often decide case by case, and choose either one of the countries' commercial laws or an unbiased third country's commercial law.

For example, if a contract is formed between merchants of the United States and China, there are three possible ways the contract can be formed and interpreted. First, CISG can fill in the gaps of the contract, and the contract will be enforced under the provisions of CISG, as both the United States and China have signed the treaty. Second, the contract can be formed and legally enforced under UCC or under the commercial laws of China, based on the specific terms of the contract. Third, both merchants can pick another country, which would reasonably benefit this particular contract and enforce the contract under the commercial laws of the country.

The UCC and CISG have significant differences in a few aspects of contracts, such as the mirror-image rule, the statute of frauds, breach of contracts, and damages. This paper will analyze how these differences impact contracts for businesses, and when UCC or CISG is helpful for businesses when drafting contracts, either within the United States or with a company from a treaty country. Along with these differences, this paper will also look into the criticisms that are placed on the CISG. It is criticized on certain aspects such as interpretation due to some perceived vagueness in its wording, the implied good faith under CISG, its scope of application on issues such as validity, concurrent remedies allowing for competing suits to be filed, and various other issues. These issues will be discussed in the paper in further detail. While there are criticisms, it is important to note that they may not apply to all the contracts, depending on their wording.

Brief Histories

CISG

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a product of the United Nations Commission on International Commercial Law (UNCITRAL). UNCITRAL undertook the task of creating commercial laws that would unify the laws of the signatory countries. CISG is also the successor of two international commercial treaties, the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF) and the Convention relating to a Uniform Law for the International Sale of Goods (ULIS), which were both propagated under the International Institute for the Unification of Private Law (UNIDROIT) (Flechtner 1).

The CISG was finalized as a multilateral treaty at the United Nations Conference on Contracts for the International Sale of Goods in Vienna in 1980. There were eleven Contracting States that signed, adopting the CISG, on 1 January 1988. Currently, there are numerous advantages to signing the CISG, including that so many countries have already signed it. This fact has made it a truly global, uniform law that applies to 84 countries. This breadth of signatories gives the CISG network externalities that makes it easier to create commercial contracts between parties of countries that signed the treaty. The more countries that sign it, the easier it is to engage in standard contracts where the parties belong to signatory countries. It gives businesses that do international commercial a clearer picture of how contracts should be interpreted in the event of a dispute. It also establishes clearer parameters for the parties regarding what is expected of them (Flechtner 2).

If a company is operating from a country that has adopted the CISG and is trading internationally with a company from a country that has also adopted the CISG, the default law that would apply is the CISG unless the parties state an alternative law that they would like to use. In this sense, it is a more flexible law as it allows signatory countries to opt out of using it.

UCC

The Uniform Commercial Code (UCC) is a set of codes that govern commercial contracts in the United States. It was created by the National Conference of Commissioners on Uniform State Laws to simplify, clarify and modernize contract law within the United States. As a country with fifty separate states that all had unique contract law, it became apparent in the late 1940s and early 1950s that for interstate commerce to continue to spread, uniform laws were required to give parties more certainty regarding how contracts would be formed and interpreted regardless of the state.

Its history began in the formation of the National Conference of Commissioners on Uniform State Laws (NCCUSL), in 1889. The New York Bar Association appointed a committee that would work on the unification of laws, and the committee's mission was to "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states" (UNITED STATES: REPORT OF THE U.S. DELEGATION TO THE TWELFTH SESSION OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW 2). The first conference was held in 1892, and led to the development of the Uniform Commercial law, in a joint project with the American Law Institute (ALI). This would create a uniform law concerning commercial transactions such as contract formations and enforcements.

The first draft of the UCC was created in 1951, with Pennsylvania adopting it in 1953. The editorial board that wrote the draft was made up of representatives from the NCCUSL and the ALI. The first draft was revised in 1956, along with further revisions such as adding 2 more articles to the first nine articles (Braucher 804). After this, most states adopted the UCC as a whole. The state of Louisiana did not adopt all the articles, as it chose to opt out of some. The nine articles are as follows, 1 - General Provisions; 2 - Sales; 2A - Leases; 3 - Negotiable Instruments; 4 - Bank Deposits and Collections; 4A - Fund Transfers; 5 - Letters of Credit; 6 - Bulk Transfers and U.C.C.; 7 - Documents of Title; 8 - Investment Securities; 9 - Secured Transactions.

It is left to each state whether they want to adopt the new revisions or remain with their current version. In 2001, Article 2 which concerns the purchase and sale of goods was revised in order to accommodate electronic commerce.

Concerns with the CISG

Because the CISG is the default source of law for 84 signatory countries' companies when they engage in commercial, merchant-to-merchant contracts, we will first consider some alleged problems with the CISG.

These need to be understood before a company can decide whether it desires to submit its contracts to the CISG and its terms.

Interpretation

Interpretation is the key to solving contract disputes when the disputes make their way before a judge or arbitrator. When multiple countries and languages are involved, interpretation can be even more confusing. Therefore it is critical that the CISG be clear and easy to understand. However the treaty leaves several key terms open to interpretation. Common Law countries (and by extension lawyers and companies) are used to detailed statutory frameworks for aiding in the interpretation of contracts and terms (Swenzher, Hachem 468). Yet, the CISG does not necessarily follow this framework. The clauses in the CISG are not as detailed as laws of certain countries, and, therefore, if the two parties interpret the same term differently, this leads to problems that were meant to be avoided through uniform law.

Standard business terms are regulated by the CISG, but there are some instances where they are not and in those circumstances it is left to the domestic law to decide the meanings of standard terms. While some might say this is a benefit, it removes the uniformity and completeness the CISG was designed to preserve, as it leaves some clauses up to the interpretation of the applicable domestic law and there could be disputes over which domestic law should apply (Swenzher, Hachem 473).

Good Faith

The CISG tried to incorporate a good faith element which it implies. This is meant to establish a starting point for courts, which can be applied in many different situations, rather than having a definitive term that would only truly be applicable in certain circumstances. This allows for flexibility, which is needed in order to accommodate different situations that can arise, as it would be difficult to amend the CISG considering 84 countries would have to agree to the revisions. Although a lot of countries have chosen to sign the CISG, a notable country that has not signed is the United Kingdom. While there are many reasons for not signing, an important one that shows a difference between common law countries and the CISG is the issue of good faith. Article 7(1) of the CISG states that “the observance of good faith in international trade” must be considered in the interpretation of the Convention. Countries such as Germany already recognize good faith as an important aspect of contracts and law, however, countries such as the UK do not recognize good faith as a governing principle to contracts (Hofmann 165). The UCC 1-203 provides a clause that “imposes an obligation of good faith in its performance or enforcement.” Germany applies good faith as a governing concept, the United States treats it as important, while the UK does not treat it as a general principle. The issue is how this concept is applied. Each country then takes this concept and can apply it differently. It can then be seen that the CISG is flexible in its application, or, at least, that countries treat it as flexible, due to the very wording and often vague language that is used.

Concurrent Remedies

Concurrent Remedies can become an issue as the parties can sue under the CISG or the domestic law (Swenzher, Hachem 470). This allows for more than just contractual remedies, as tort law can come into play and many countries’ legal systems allow for both contractual and tort remedies. Due to the uncertainty of how much a company can be liable for, companies may see this as a potential issue as lawsuits may arise under both the CISG and the domestic law. In the case *Pamesa v. Mendelson*, the Israeli Supreme Court held Pamesa responsible under domestic tort law for negligence even though the claim was time-barred under the CISG (Lookofsky 154). It can then be seen that concurrent remedies do apply under the CISG, and a company may face both claims under the CISG and domestic law, even if under the CISG they would not win.

Validity

Article 4 of the CISG states that it is concerned with the formation of contracts and the rights and obligations of buyers and sellers, and, Article 4(a) states that it is not concerned with the validity of contracts. This means that the scope of application of the CISG is to do with the formation and rights and obligations rather than the validity of the contract itself. By not being concerned with the validity of contracts, this then leaves the domestic courts to apply domestic law in determining whether a contract is valid. (Bar, Har-Sinay 2)

Breach of Contract

The CISG almost guarantees that the contract will be followed, even if it has to be renegotiated due to a change in circumstances in one of the parties. This has the advantage that it makes the parties follow through on their intentions and forces them to renegotiate, depending on the circumstances. If the changes to the

contract are just and fair in light of the circumstances, the other party may be forced to accept the renegotiations, denying a breach of contract. The only way to avoid a contract is to fundamentally breach it, which will be further discussed.

Hypothetical

MOONCLORE is a large organization headquartered in the United States that aims to conduct business in a few major countries such as Germany, the United Kingdom (UK), China and Finland. The board of directors want the company to expand its influence to the United Kingdom. Because MOONCLORE is a large organization, most of the commercial contracts are concluded inter-departmentally, as there is no need for a supplier or a retailer. Thus, MOONCLORE is well versed with UCC provisions, as these transactions are conducted within the USA. However, with the potential expansion into the UK, the company must sell its supplier and respective departments, and choose a local supplier from UK in order to continue its business. Since this is the first outsider commercial contract, the board of directors consulted its legal team before offering a deal with a cost-effective and efficient local supplier.

MOONCLORE has the option of enforcing UCC, Common Law or CISG upon its contracts with the local suppliers in UK. Since the company has had no experience in CISG, the legal team has researched the different elements of contractual law under CISG, and decided to compare and contrast with those under UCC. Based on the analysis of the distinctions between the contracts formed under UCC and CISG, the board must choose between keeping the best interests of MOONCLORE in mind.

Differences between UCC and CISG

There are a significant number of differences between UCC and CISG with respect to the terms of contracts for the sale of goods and the various elements of contract law. From formation of contracts to damages due to breach of contracts, both UCC and CISG implement elements diversely. Such implementation is generally followed by criticisms and limitations. A comparison will be outlined under each element of the contracts formed between MOONCLORE and the local suppliers of UK and Finland. Although commercial contracts in the UK are traditionally implemented under Common Law, the main focus shall remain on the definitions and explanations of the various elements of contract formations concerning the UCC and CISG. Since USA is a member country of CISG, any contracts between USA firms and parties of another country can be legally enforceable under CISG. However, as MOONCLORE is only well versed with UCC, it is fair to assume there is no previous experience in dealing with contracts legally enforceable under CISG.

A table provided at the end of the section will demonstrate the differences between UCC, Common Law and CISG. This table shall serve as a quick reference for these distinctions in the formations and applications of both UCC and CISG in commercial contracts.

Formation of Contracts

Under UCC § 2-204: Formation in General, a contract for the sale of goods might be established in any manner, as long as there is sufficient agreement of both parties, that constitutes the existence of such a contract. Even if a few terms of the contract are not specified, as long as the parties have shown clear intent to form such a contract and have provided reasonable measures for remedies, the contract for the sale of goods is deemed definite. The UCC then steps in to fill the gaps between the stated terms of the contract and the missing terms.

Article 14 under CISG states that if a proposal to conclude the contract is addressed to one or more specific parties and such proposal is definite, it constitutes an offer as there is evidence of intention of the offeror to be bound by such acceptance. A proposal is considered definite when the goods and the price and quantity of such goods are clearly indicated. If the offeror intends that the proposal serves the purpose of invitation only, such intent must be clearly specified; hence the offeree may not misinterpret the proposal as an offer.

The proposal provision under Article 14 create room for miscommunication and errors by both parties. MOONCLORE may draw up a proposal to the local suppliers, and the suppliers might intend to accept MOONCLORE's proposal as an acceptance to the offer. Even if MOONCLORE has drawn up a definite proposal, the intention of the proposal might not constitute an offer; MOONCLORE might send multiple proposals to various local suppliers, in order to calculate an estimate of the cost of suppliers. This proposal provision can immediately create an environment of bad faith around MOONCLORE and this confusion might discourage local suppliers to conduct business with MOONCLORE.

Contract Offers and Acceptance

Under UCC § 2-206: Offer and Acceptance in Formation of Contract, an offer to initiate a contract is viewed as an invitation open to acceptance in any manner and medium deemed reasonable. An offer to purchase prompt or current shipment is interpreted as invitation for acceptance either via a prompt promise to ship the goods or through the action of prompt shipping. However the shipment of nonconforming goods is not construed as acceptance if a party is notified that such shipment is merely an accommodation i.e. shipment without any consideration. In certain cases where acceptance is construed reasonably as the beginning of a performance, if the offeror does not receive notice of the acceptance (through the start of the performance), the offeror can consider the offer to be expired before acceptance.

Article 16 under CISG states that an offer can be revoked any time before the contract is concluded as the offeror can inform the offeree of the revocation before the offeree accepts the offer. However, an offer cannot be revoked if it indicates the contract is concluded and acceptance is acknowledged by the passing of a specific time; or if it was reasonable for the offeree to rely on the irrevocable nature of the offer, and the offeree has shown reliance on this interpretation of the offer.

Article 18 under CISG further states that in certain circumstances, the offeree may accept the offer through partial performance or complete performance, without delivering the official notice of acceptance to the offeror. Performance such as payment of goods is considered effective acceptance the moment the offeree performs the act of paying for the goods. The offeror must notify the offeree via official notice that such (part) performance shall not be construed as acceptance, until a notice of acceptance is received by the offeror.

MOONCLORE might misinterpret Article 18, and assume that part performance might not be construed as acceptance, as stated in UCC § 2-206, where partial performance does not construe as acceptance when the performance serves as an accommodation only. There is confusion between when performance is viewed as an accommodation and when the performance is an addition to the acceptance of the offer. The local suppliers might be confused by MOONCLORE's approach to such accommodation, and may not understand why such an accommodation would exist, instead of part performance.

Article 21 under CISG states the acceptance of the offer is not effective if the offeror does not receive the acceptance by the date mentioned in the offer. After this date has passed, neither the offeror nor the offeree are bound to the offer, even if the offeree had full intention to accept the offer.

Sections (1) and (2) of Article 21 provide exclusions to the provision previously listed. Under Article 21(1), the acceptance could be considered effective by the offeror, despite the late submission of the acceptance by the offeree, if a formal (preferably, written) notice is given to the offeree regarding the late acceptance. Under Article 21(2), the late acceptance is considered valid by the offeror if the delay was caused by a third-party, and the acceptance would have been delivered within the date if not for the delay.

However, the offeror exercises ultimate authority in both sections (1) and (2) as covered by this article, and can still consider the offer to be lapsed by sending an official notice to offeree, and thus acceptance could be deemed invalid irrespective of these provisions. This could potential create uncertainty amongst MOONCLORE and the local suppliers. If the suppliers send an offer to MOONCLORE, and due to delay in the mailing system, the acceptance is received well past the deadline, if the suppliers had already sent the notice that the offer had lapsed, irrespective of the delay, then MOONCLORE would no longer be in a contract with the supplier, despite the intentions to form a contract with them.

Battle of the Forms

Under UCC §2-207: Additional Terms in Acceptance or Confirmation, a definite expression of acceptance or confirmation is rendered as acceptance if sent within a reasonable time. Even if the confirmation states changes in the original offer, as long as there is no condition on assent, this written confirmation is enforced as acceptance. These additional terms are enforced as additional factors into the contracts amongst merchants with few exceptions. There is no enforceable contract if the original meaning or intent of the offer is substantially changed, or if the offer has been revoked within a reasonable period of time before acceptance via written confirmation. Since merchants usually have past dealings with one another, the terms of the contracts are often acknowledged by conduct of both parties, irrespective of the written contracts between these parties.

§2-207 is confusing for all parties involved as there is no standard contract at any given period of time; the original contract has been modified various times and each party has a different interpretation of what they assume of the current contract that exists. For parties who have had no prior dealings, this might discourage business as it creates mistrust amongst the parties. In the hypothetical, MOONCLORE wishes to expand to either UK or Finland. UK has not signed the CISG treaty, thus it can be assumed that the contracts with the

local suppliers would be written under UCC or Common law. MOONCLORE might lose out on potential suppliers as it might try to keep modifying supplier contracts in order to get the best deal in the short and long run, and this might discourage the supplier to conduct any business with MOONCLORE.

Article 19 under the CISG states that any acceptance that contains limitations or modifications to the original terms of the offer does not constitute an acceptance, but rather a rejection and a counter-offer. However, an acceptance is observed when the reply to the offer has not changed any significant terms or the original intent of the offer, unless the offeror objects orally or identifies the discrepancy in the contract. If there is no objection, the modified terms of the offer constitute the new contract that legally binds both parties. Substantial alterations to the contract include price, payment, quality and quantity of goods, place and time of delivery, extent of one party's liability of the other and settlements of disputes.

Article 19 is reasonably relaxed compared to UCC §2-207, as it only permits modifications that do not change the complete intent or understanding of the contract. Since Finland and the US signed the CISG treaty, any contracts formed between MOONCLORE and the local suppliers in Finland are automatically enforced by CISG, unless specifically stated otherwise in the contracts. Under Article 19, both MOONCLORE and a local supplier can modify the contract as long as there are no substantial alterations to the contract such as price or settlement of disputes. This will encourage trust between the parties and via negotiations, both MOONCLORE and the local supplier can form a contract that mutually benefits each in the short and long run. In the case of disputes amongst MOONCLORE and the local suppliers in the UK, there might be more legal complications as opposed to any dispute between MOONCLORE and the local supplier in Finland.

Statute of Frauds

Under UCC § 2-201: Statute of Frauds, the contract for the sale of goods over \$500 is not legally enforceable unless written and signed by the party against whom enforcement is sought or by an authorized agent/broker. In contracts formed amongst merchants, the written form is sufficient even if one of the terms is not specified or mentioned correctly, but the contract is not enforceable beyond the quantity of goods shown in such writing. Unless a written revocation is given within 10 days of receiving the offer, the contract would have satisfied the requirements of the written form. A contract can still be valid under these conditions if the goods are specifically produced for a party, and the seller has already started the performance of production and has indicated that the goods are to be sold to the specific party. If the payment has been made and the party has already accepted the goods, the contract is enforceable even if the quantity of goods is not mentioned. UCC § 2-606 states that partial acceptance of any commercial unit is interpreted as complete acceptance of the entire unit.

Article 11 under CISG states that contracts are not required to be in writing, irrespective of sales over \$500, and the writing does not serve the purpose of evidence. Instead of a writing, other means can be adopted in order to prove the existence of the contract, such as witnesses and other parol evidence. This provision is vague and confusing for any business to implement efficiently. For any sales contracts over \$500, if there is no history of past dealing between the parties, there is room for mistrust and probable bad faith by the parties. Although witness testimony can be considered as evidence, a statement from the witness has a strong potential to be biased toward one party, and thus does not provide the factual evidence a written contract provides. Since MOONCLORE is accustomed to the provisions under UCC, where a written contract is present under the statute of frauds, the company might not be willing to conduct business with local suppliers if the contract is interpreted under the CISG. Any witness presented will likely be more biased toward the local suppliers than a foreign company that has started conducting business within a short period of time. MOONCLORE itself could misuse the clause of Article 11, and engage in bad faith by failing to deliver the products on time.

Breach of Contract

UCC Article 2 - Part 6: Breach, Repudiation and Excuse deals with Breach of Contract. The UCC permits rejection of non-conforming goods with no requirement of fundamental breach, as the CISG does. This is based in the perfect tender rule, which lets the buyer assume perfect tender of the goods that they have ordered from the seller. The non-conforming goods usually constitute a breach of contract (unless otherwise stated in the contract). The buyer has the right to reject the goods either as a whole or in part, if they deem them to be non-conforming. Under the UCC, non-conforming goods are goods that are not precisely as stipulated in the contract. If the buyer does deem the goods non-conforming, they may reject these goods within a reasonable time and inform the seller of this rejection. A failure to reject good leads to acceptance under the UCC.

Article 25 of the CISG states there is a fundamental breach in contract if there is substantial deprivation of what is expected from the contract, and the one causing the breach could not have reasonably foreseen this breach. Unlike the UCC, the CISG does not recognize rejection of goods, but rather, recognizes when the seller has substantially moved from the expectations of the other party. There is no way to reject the goods apart from either not entering into contract or creating a fundamental breach. The focus is more on the aggrieved party, and what their expectations were from the contract. In order for there to be a fundamental breach, there are certain conditions which are not very clear as they are expressed in rather vague terms.

The structure of Article 25 is very complex, as there are multiple conditions that need to be met, and most of these conditions contain vague words (Graffi 339). The first condition is that one party needs to deprive the other in a substantial way, with the vague term here being "substantial". The next condition is that the substantial deprivation needs to be from the expectation of the deprived party to the contract. This is not necessarily exactly what is stated in the contract, but rather what the party expected from the contract (for example, the use of the goods can be taken into consideration). The vague term in this condition is "expectation", as it can be hard to know what was expected from the contract if it is not exactly what was written in the contract (Graffi 340). The other condition that needs to be met is that the party that is depriving the other should have known that they were doing so, and it was not accidental, or that a person in the same circumstances would have reasonably expected the same outcome of a substantial deprivation.

The UCC and CISG take different approaches to breach of contract. There are advantages and disadvantages to both approaches. The UCC has the benefit of being more clear and precise in what is expected of the seller and buyer, making it more predictable. This predictability may help parties know what to expect when issues arise regarding breach, and in knowing how to avoid issues with it. A perfect tender is required and therefore can be criticized as being geared toward the buyer, making it easier for them to reject goods if perfect tender is not achieved. The CISG favors performance, and is therefore vaguer in order to be more flexible for different circumstances. However, by using vague terms in the language of Article 25, it can be hard to predict how a court would rule in issues such as breach of contract. It can be difficult to say what substantial deprivation is and what the expectations of a contract are. The only way to breach a contract is to fundamentally breach it, making it very hard for the parties to breach under the CISG. This on one hand is good because it encourages economic activity and following through with contracts, but on the other hand, makes it easier for the seller to get away with more, as it does not recognize rejection of goods.

If MOONCLORE would apply the UCC instead of the CISG, it would have the right as the buyer to reject the goods from the supplier if it were not a perfect tender. Under the CISG, it could not do so, and the supplier could potentially supply goods that would not be quite what MOONCLORE had in the contract, but would not be substantially depriving MOONCLORE. The breach would need to be fundamental, and the contract would continue if the breach is not fundamental. Therefore, it would be in MOONCLORE's interests to use the UCC with regards to the issue of breach of contract, as it would have the advantage of being the receiving party and the ability to reject goods.

Damages

UCC § 2-715: Buyer's Incidental and Consequential Damages states that incidental damages that occur from the seller's breach of contract includes costs incurred in inspection, receipt, transportation, care and custody (of goods rightfully rejected). Consequential damages, resulting from the seller's breach of contract, include any loss resulting from a particular or general requirement essential to the terms of the contract, which the seller was aware of and which could not be easily prevented or covered otherwise. Consequential damages also deal with injury to persons and/or property resulting from the breach of contract or breach of warranty.

Article 74 of the CISG states damages incurred from a breach of contract by one party are the amount of loss incurred, including the loss of profit, by the other party, as caused by this breach. Such damages may not exceed the amount of loss incurred, if the party in breach of the contract knew or should have known, at the time of the conclusion of the contract, the possible consequences of the breach of the contract. This indicates that the aggrieved party who was unduly affected by the breach of contract has the burden of proof and must provide substantial evidence that indicates the extent of the loss.

It is apparent from Article 74 that MOONCLORE would be at risk entering a contract, if the contract is breached by a local supplier. MOONCLORE would not only have the burden of proof regarding the amount of loss incurred and its detrimental reliance on the completion of the contract (without the breach), but will also be disadvantaged against the party in breach, if the evidence of damages provided is insufficient. The local suppliers are almost at an advantage if they were aware of the possible consequences of the breach at the

conclusion of the contract. This would place MOONCLORE at a high risk of being injured by damages via breach of contract, if the breach is caused by the suppliers.

Remedies

Under the CISG, there are different remedies that are available. Article 46 allows for specific performance, assuming that the domestic law of the binding party's country permits this. Article 48 gives a right to cure, meaning a right to fix the problem. Article 49 allows for the rescission of a contract on the basis of a fundamental breach of contract, which has been discussed in detail earlier in the paper. Article 50 gives a right to price reduction. Specific performance is the first remedy that is listed under the CISG, and allows for it if the seller has failed to perform, unless if it is inconsistent with the contract.

This is different from the UCC, as the UCC is much stricter with how and in what circumstances it allows for specific performance as a remedy. §2-716 of the UCC states that specific performance is allowed for "unique goods" or "other proper circumstances". The CISG is much more permissive than the UCC in this respect, as the only condition that it offers for specific performance is that it not be inconsistent with the contract. The drafters of the UCC wanted commercial laws to benefit from specific performance, which was limited in its use under common law, so they included the phrase "other proper circumstances" to widen the usage (Choudhury 59). However, the CISG is still more permissive regarding specific performance than the UCC.

With regards to remedies, MOONCLORE needs to consider what kind of remedy it would be looking to get if the issue were to come up. If they would be looking for specific performance, the CISG is more permissive, so it would be to their advantage to use it. These distinctions in remedies delve into more details, and MOONCLORE must further analyze the benefits of remedies under CISG to that of the remedies under UCC.

Conclusion

Although the provisions under CISG are relaxed, they are incorporated into different contracts amongst companies from signatory countries unless those companies specifically exclude use of the CISG. Countries such as Finland and Spain have implemented this treaty in its various trade contracts as has the USA. With respect to the differences in Common Law and UCC, trade contracts between the UK and USA contain the least amount of difficulties in the formation and conclusion of such contracts. There is a vast amount of case law and precedents for common law in both the USA and the UK, which can enhance clear communication of mutual assent of both the parties in the formation of the contract. Provisions under CISG such as modification of the terms of offer and counter-offers are much relaxed and practical to apply, which would be a tremendous benefit for MOONCLORE entering into a new territory of outside suppliers. However, it is still a wise idea for companies to specify which law will apply to each contract.

MOONCLORE must review the comparisons between UCC and CISG and Common Law and deduce that moving its business to the UK is ideal for its situation. Since MOONCLORE previously had never formed contracts with outside suppliers and distributors, entering contracts with the local suppliers in the UK may prove to be risky, if the contracts are legally enforced under CISG, considering the vague regulations stated under CISG. MOONCLORE would start the business with little to no trust with the suppliers, and this could create mistakes and an air of bad faith amongst the local suppliers and MOONCLORE. Perhaps, after a couple years of experience dealing with the contracts in the UK following Common Law, the company can venture into other CISG member countries and form contracts under CISG.

There is a tremendous amount of scope for further research in this subject. The vast amount of case law history in breach of contracts, damages and remedies have demonstrated the vagueness of the applications of CISG's provisions, and opinions provided by learned scholars from various member and non-member countries. For instance, both UCC and CISG calculate damages differently from one another, which can be further researched and considered into account for companies such as MOONCLORE, that intend to thoroughly pursue the formation of contracts under CISG. An immense study of case law is an absolute necessity in order to wholly understand the position of binding party; without this, there will be confusion between the parties involved due to the various interpretation of the articles under CISG.

Summary

The below shall summarize the key differences in contract formations and applications between UCC, CISG and Common Law. This is intended to provide a quick reference.

UCC	Common Law	CISG
Acceptance may have changes that do not materially change the contract	Mirror Image Rule – requires acceptance to exactly replicate the offer	Acceptance through partial/complete performance or official notice, unless stated otherwise by the offeror
Required terms are the quantities of goods	Required terms include quantity, price, performance timing, and nature of work	No specific requirements for a contract
Contract may be modified without providing additional consideration	Any modification of the contract requires fresh consideration	Modification via mutual agreement by parties, unless otherwise stated in the written contract
Statute of Limitations is 3 years	Statute of Limitations is different from state to state and country to country	Statute of Limitations uncertain; no definite amount of time specified
Damages that pertain to the buyer are consequential and incidental; only incidental apply to the seller	Expectation and Consequential damages are most commonly used in calculations, with main purpose of assuring fairness and making parties 'whole' again	Loss incurred to the damaged party; party in breach foresaw or should have foreseen circumstances
Statute of Frauds pertains to written contracts, sale of goods over \$500	Statute of Frauds pertains to written contracts over 1 year, such as marriage contracts and sale of land	No writing requirement necessary, evidence is granted through witnesses
Breach of Contract need not be fundamental	Breach of Contract can be fundamental	Breach of contract must be fundamental

Table 1: Differences between UCC, Common Law, CISG**References**

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