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UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods*

Article 2

This Convention does not apply to sales:

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

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.



1. This provision sets out those sales that are excluded from the Convention's sphere of application. The exclusions are of three types, those based on the purpose for which the goods were purchased, those based on the type of transaction and those based on the kinds of goods sold.¹

Consumer sales

2. According to Art. 2 (a), a sale falls outside the Convention's sphere of application if it relates to goods which at the time of the conclusion of the contract are intended to be used personally, in the family or in the household. The buyer's intention before or at the conclusion of the contract is relevant,² rather than the real use of the goods.³ Thus, the sale of a car⁴ or a recreational trailer⁵ bought for personal use falls outside the Convention's sphere of application.⁶

3. If the goods are purchased by an individual for a commercial or professional purpose, the sale does not fall outside the Convention's sphere of application. Thus, the following situations are governed by the Convention: the purchase of a camera by a professional photographer for use in its business; the purchase of a soap or other toiletries by a business for the personal use of its employees; the purchase of a single automobile by a dealer for resale.⁷

4. If the goods are purchased for the aforementioned "personal, family or household use" purposes, the Convention does not apply "unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use".⁸ This narrows down the applicability of the exception and leads to the possibility of a conflict between domestic law and the Convention in those cases where the domestic law does not require that the seller either knew or ought to have known of the personal use.⁹

Other exclusions

5. The exclusion of sales by auction covers both auctions resulting from authority of law as well as private auctions. Sales at commodity exchanges do not fall under these categories, as they merely constitute a particular way of concluding the contract.

¹ United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 16 (hereinafter "Official Records").

² See Bundesgerichtshof, Germany, 31 October 2001, *Internationales Handelsrecht*, 2002, 16.

³ See CLOUT case No. 190 [Oberster Gerichtshof, Austria, 11 February 1997].

⁴ See CLOUT case No. 213 [Kantonsgericht Nidwalden, Switzerland, 5 June 1996]; CLOUT case No. 190 [Oberster Gerichtshof, Austria, 11 February 1997].

⁵ See Rechtbank Arnhem, 27 May 1993, *Nederlands Internationaal Privaatrecht*, 1994, No. 261.

⁶ See, however, Landgericht Düsseldorf, 11 October 1995, available on the Internet at <http://www.jura.uni-freiburg.de/ipr1/cisg>, applying the Convention on the sale of a generator destined for personal use.

⁷ For these examples, see Official Records, *supra* note 1, at 16.

⁸ See Bundesgerichtshof, Germany, 31 October 2001, *Internationales Handelsrecht*, 2002, 16.

⁹ Id.

6. The sale on judicial or administrative execution or otherwise by authority of law is excluded from the Convention's sphere of application as such sales are normally governed by mandatory laws of the State under whose authority the execution is made.

7. The exclusion of sales of stocks, investment securities, and negotiable instruments is due to the intention to avoid a conflict with mandatory rules of domestic law.¹⁰ Documentary sales are not covered by this exclusion.

8. The sale of ships,¹¹ vessels, aircraft,¹² and hovercrafts is not covered by the Convention either. However, the sale of parts of ships, vessels, aircraft, and hovercrafts falls under the Convention's sphere of application, even where these are essential, such as engines,¹³ since the exclusions from the Convention's sphere of application have to be interpreted restrictively. According to one arbitral tribunal, the sale of a decommissioned military submarine does not fall within the scope of the article 2 (e) exclusion.¹⁴

9. Although the sale of electricity is excluded from the Convention's sphere of application, the Convention has been applied by a court in the sale of gas.

¹⁰ For decisions excluding the Convention's applicability to the sale of shares, see CLOUT case No. 260, Switzerland, 1998; Zurich Chamber of Commerce Arbitral Tribunal, ZHK 273/95, *Yearbook Commercial Arbitration*, 1998, 128 ff.

¹¹ For cases of inapplicability of the Convention to contract for the sale of ships, see Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, award No. 236/1997, available on the Internet at <<http://cisgw3.law.pace.edu/cases/980406r1.html>>; Yugoslav Chamber of Economy Arbitration Proceeding 15 April 1999, award No. T-23/97, available on the Internet at <<http://cisgw3.law.pace.edu/cases/990415y1.html>>.

¹² For the inapplicability of the Convention to a contract for the sale of an aircraft, see Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, award, No. 255/1996, available on the Internet at <<http://cisgw3.law.pace.edu/cases/970902r1.html>>.

¹³ See CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992].

¹⁴ See Russian Maritime Commission Arbitral Tribunal, 18 December 1998, available on the Internet at <http://cisgw3.law.pace.edu/cisg/text/draft/981218case.html>.