



**United Nations Commission on
International Trade Law**
**CASE LAW ON UNCITRAL TEXTS
(CLOUT)**
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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). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/Rev.1). CLOUT documents are available on the UNCITRAL website: (<http://www.uncitral.org/clout/showSearchDocument.do>).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references.

The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these. The abstracts are prepared by National Correspondents designated by their Governments, or by individual contributors; exceptionally they might be prepared by the UNCITRAL Secretariat itself. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

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**CASES RELATING TO THE UNITED NATIONS CONVENTION ON
CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG)**

Case 904: CISG 6

Switzerland: Cantonal Court of the Jura; Ap 91/04

3 November 2004

Original in French

Published in French: CISG-online.ch, No. 965

English translation: <http://cisgw3.law.pace.edu/cases/041103s1.html>

<http://www.globalsaleslaw.com/content/api/cisg/urteile/965.pdf>

Abstract prepared by Thomas M. Mayer

The case under consideration concerned the delivery, by a French company, of building materials to a Swiss farm. The seller instituted an action in the lower court, seeking payment of the sale price.

Referring to its general conditions of sale, the seller sought to apply French domestic law. The court acknowledged a choice of law in favour of French law, but without excluding the application of the CISG within the meaning of its article 6, since the parties had not stated their position on the matter in their correspondence. Nevertheless, the jurisdiction of the lower court before which the case had been brought was contested, pursuant to the law of the forum, since the amount in dispute exceeded 20,000 Swiss francs.

Case 905: CISG 25; 26; 35; 39(1); 45(1); 49(1); 49(2); 74; 81(2)

Switzerland: Cantonal Court of the Canton of Valais; C1 04 162

21 February 2005

Original in German

Published in German: CISG-online.ch, No. 1193

English translation: <http://cisgw3.law.pace.edu/cases/050221s1.html>

Abstract in German: Swiss Review of International and European Law (SRIEL) 1/2006, pp. 208 ff.; Internationales Handelsrecht (IHR) 4/2006, pp. 155 f.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1193.pdf>

Abstract prepared by Thomas M. Mayer

The judgement in question, given by default, dealt with the sale of a production plant by a German company (the defendant) to a limited company from Valais (the plaintiff). On delivery of the plant in October 2003, the plaintiff realized that the ordered goods were totally rusted. The defects were immediately reported to the defendant, even prior to assembly. After laying out the equipment and commencing assembly, the erectors discovered that the plant was not in operating condition. The defendant was offered the possibility of carrying out the assembly itself, against the provision of a security. It did not take up that offer and thereafter gave no further news. In a letter dated 25 November 2003, the plaintiff invited the defendant to take back the plant by mid-December 2003.

The court held that the plaintiff, by its letter of 25 November, had declared the contract avoided within the meaning of article 49 CISG. It deemed the requirements for such avoidance to have been met. The fact that the plant was unfit for operation and the defendant, in violation of its obligations, had failed to put the plant into

service constituted, in the court's view, a fundamental breach of contract within the meaning of articles 49(1)(a) and 25 CISG. The court deemed the declaration of avoidance to have been made in timely fashion with the meaning of article 49(2)(b)(i) CISG. It was admittedly difficult to determine the exact day in October when delivery had actually taken place but, given that the defendant had had the possibility of carrying out itself the assembly of the plant following discovery of the defects and that the plaintiff had had survey reports prepared by different persons prior to avoidance of the contract, that time limit had in any event been observed. By giving notice immediately following delivery, the plaintiff had also observed the time limit provided for in article 39 (1) CISG.

Since the defendant, despite a further invitation, had never taken back the plant, the plaintiff requested, in addition to the court's cancellation of a bank guarantee in favour of the defendant, authorization to discard the plant. That second request was rejected by the court on the basis of article 81 (2) CISG. The plaintiff had a duty to make restitution of the plant to the defendant but the defendant had an obligation to take back the plant at the principal place of business of the plaintiff.

A claim for damages by the plaintiff was also rejected since the plaintiff had not sufficiently detailed the loss.

Case 906: CISG 7(2); 53; 58; 59; 78

Switzerland: Kantonsgericht Nidwalden (Cantonal Court of Nidwalden); ZK 04 26
23 May 2005

Original in German

Published in German: www.cisg-online.ch, No. 1086

English translation: <http://cisgw3.law.pace.edu/cases/050523s1.html>

Abstract in German: Internationales Handelsrecht (IHR) 6/2005, pp. 253 f.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1086.pdf>

Abstract prepared by Thomas M. Mayer

A German supplier delivered used agricultural machinery and spare parts to a Swiss trader. The buyer subsequently made several instalment payments. The dispute related to the balance of the price still owed to the seller. The latter referred the case to the Cantonal Court of Nidwalden.

Relying on the general principles of the CISG, the court placed the onus of proving payment of the sale price on the buyer. The latter was unable to furnish sufficient proof of an alleged cash payment of 10,000 Swiss francs; the court accordingly allowed the main claim. It also acknowledged the seller's entitlement to interest on arrears as from the due date of payment of the price (article 78 CISG), the rate of interest being fixed in conformity with national law as determined by Swiss private international law.

The court examined in the light of Swiss civil law the question whether, as alleged by the defendant, the plaintiff's claim was statute-barred.

Case 907: CISG 4; 7(2); 53; 78

Switzerland: Cantonal Court of the Canton of Valais; C1 04 33

27 May 2005

Original in French

Published in French: www.cisg-online.ch, No. 1137;

www.unilex.info/case.cfm?pid=1&do=case&id=1083&step=FullText

Abstract in German: (SRIEL) 1/2007, pp. 150 ff.

Abstract in English:

www.unilex.info/case.cfm?pid=1&do=case&id=1083&step=Abstract

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1137.pdf>

Abstract prepared by Thomas M. Mayer

The judgement in question concerned an action brought by a Genoese company against a company having its headquarters in Valais. The former asserted a claim for payment of the sale price of welding products. The latter, however, maintained that it had never received the goods at issue.

The court first examined the extent to which the defendant could be held accountable for acts by persons who had negotiated with the plaintiff on the defendant's behalf. That question was resolved on the basis of the law applicable under Swiss private international law. In accordance with article 4(a) CISG, the Vienna Sales Convention did not apply to issues of representative authority.

The court assessed the question of the burden of proving actual receipt of the goods in accordance with the general principles of the CISG (article 7(2)), in line with previous decisions of the Swiss Federal Court. However, on the matter of the applicable foreign currency with regard to payment of the sale price, the court again applied national law as determined by Swiss private international law, i.e., in the present case, Italian law. It applied that same law for the purposes of converting the amount of the debt in Lire to euros and fixing the rate of interest on arrears.

Case 908: CISG 7(2); 14 ff.; 53; 74; 78

Switzerland: Handelsgericht des Kantons Zürich (Commercial Court of the Canton of Zurich); HG040374

22 December 2005

Original in German

Published in German: www.cisg-online.ch, No. 1195

English translation: <http://cisgw3.law.pace.edu/cases/051222s1.html>

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1195.pdf>

Abstract prepared by Thomas M. Mayer

The dispute in the present case related to various deliveries made by a German clothing business to a garment store in Zurich. The German plaintiff asserted claims arising from unpaid invoices. With regard to two of those invoices, the defendant disputed that the contract had been concluded. With regard to others, it asserted a right of set-off against other debts.

The court found that, in accordance with the general principles within the meaning of article 7(2) CISG, the burden of proving the existence of a contract lay with the plaintiff. It concluded that no such proof had been furnished since the plaintiff had documented only the delivery of the goods.

The court assessed the question of the right of set-off, as invoked by the defendant, in accordance with national law as determined by Swiss private international law, i.e., in the present case, German law. In the court's opinion, that law did not allow any right of set-off in the situation described. Also, it already denied any possibility of set-off since the defendant had failed to prove the legal ground of its set-off claim for damages (existence of loss, infringement by the plaintiff of its obligations, causal link). In the case at issue, the question of the burden of proof was also assessed in accordance with the general principles of the CISG.

The plaintiff's claim was partly allowed. The amount awarded yielded interest on arrears at a rate determined in conformity with German law.

Case 909: CISG [7(2)]; 39(1); 58(1); 78

Switzerland: Kantonsgericht von Appenzell Ausserrhoden (Cantonal Court of Appenzell Ausserrhoden); ER3 05 231

9 March 2006

Original in German

Published in German: www.cisg-online.ch, No. 1375

English translation: <http://cisgw3.law.pace.edu/cases/060309s1.html>

Abstract in German: Swiss Review of International and European Law (SRIEL) 1/2007, pp. 150 f.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1375.pdf>

Abstract prepared by Thomas M. Mayer

The dispute in the present case concerned the sale of a moving walkway to a physiotherapy practice in Switzerland. The buyer, claiming that at the time of delivery the goods sold were damaged, refused to pay the sale price. The seller, a company having its headquarters in Germany, sought payment, alleging that the defects had been reported belatedly.

The seller's legal action was successful. The court held that notice of non-conformity had to be given within a reasonable time after discovery (article 39 (1) CISG) and that a period of one week was usually sufficient. In the present case, however, notification had occurred more than ten days after discovery and was therefore belated.

The court granted to the seller the payment of the sale price plus interest on arrears as from the date of delivery, in conformity with articles 78 and 58 (1) CISG. In line with prevalent judicial opinion, the rate of interest was determined in accordance with the national law applicable to the contract within the meaning of Swiss private international law.

Case 910: CISG 4

Switzerland: Kantonsgericht des Kantons Obwalden (Cantonal Court of the Canton of Obwalden); Z 03/039

16 August 2005 / 11 May 2006

Original in German

Published in German: CISG-online, No. 1727

Abstract in German: Swiss Review of International and European Law (SRIEL) 1-2/2008, pp. 204 ff.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1727.pdf>

Abstract prepared by Thomas M. Mayer

The subject-matter of the judgement in question was the sale of a horse. The Swiss buyer brought an action against the foreign seller (probably German), seeking reimbursement of the sale price. To that end, it relied on a warranty clause in the contract of sale.

In that clause it was agreed that, with regard to any defect discovered at the time of a preliminary veterinary examination of the horse, the sale price had to be refunded if the horse was still unfit for the equestrian sport stated (eventing) at the end of a warranty period of one and a half years. In the court's opinion, that clause was not part of the contract of sale within the meaning of the CISG but formed a distinct agreement to be considered separately. Owing to the close link with the contract of sale, the court held that the warranty agreement was subject to the same law, i.e. Swiss law. However, it applied only private domestic law and not the CISG.

Case 911: CISG 7(2); 8; 53; 78

Switzerland: Court of Justice of Geneva; ACJC/524/2006

12 May 2006

Original in French

Published in French: CISG-online, No. 1726

Abstract in German: Swiss Review of International and European Law (SRIEL) 1-2/2008, pp. 197 ff.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/1726.pdf>

Abstract prepared by Thomas M. Mayer

The judgement concerned a dispute between a German manufacturer of office furniture and a trader whose place of business was in the Canton of Geneva, the parties having had a business relationship of several years' standing. The lower court ordered the buyer to pay a total sum of approximately 25,000 euros to the seller by reason of outstanding invoices. The buyer lodged an appeal, acknowledging solely a debt of approximately 400 euros. It maintained that it had already paid the balance. The seller stated that it had used those payments to collect older debts.

In its deliberations, the court indirectly asserted that the question of the allocation of a buyer's payments in the case of multiple debts arising from different orders was determined in the light of the CISG and not of domestic law. The court held that any agreement between the parties was in the first instance applicable to resolve the issue. In that context, it considered at length the question of interpreting statements made by the parties, in accordance with article 8 CISG.

The seller had continually assigned the buyer's payments to meet the oldest debts and had sent detailed advices thereof to the buyer. The buyer had never objected to that procedure and the court thus accepted the existence of an agreement between the parties. The fact that the buyer, at the time of its payments, indicated on some of its cheques the most recent invoice numbers was hardly taken into account by the court, especially since the amounts never corresponded exactly with those entered on the invoices and also since, in the court's opinion, the buyer had to assume that the seller would suspend its deliveries in the event of non-payment of the oldest invoices.

The court ordered the buyer to pay an amount in the region of that awarded to the seller by the lower court and, like the lower court, it made that amount subject to interest on arrears calculated in accordance with national law as determined by Swiss private international law.
