



# Key Differences Under the CISG

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**CISG Applicability**

## CISG Applicability

A sales transaction is governed by CISG if:

- The parties are from different countries
  - based on place of business apparent at time of deal
- and both countries are CISG signatories
- but the CISG does not apply to goods bought for personal, family, or household use, so long as seller ought to have known that

## CISG Applicability

Choice-of-law provisions of contracts and the applicability of CISG:

- If CISG would apply, how do you prevent application of the CISG and have UCC govern instead?
- The parties must not only choose a certain UCC jurisdiction (e.g., New York) but also expressly state CISG does not apply (since New York is part of USA, a CISG signatory!)

## CISG Applicability

Know at least the following:

- These countries are in the CISG:
  - USA
  - Canada
  - Mexico
  - China
  - Japan
- This country is not:
  - United Kingdom

## CISG: Formation

### CISG: Formation

- Parol evidence: There is no parol evidence rule under the CISG.
  - Article 8(3): "In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations ..."

### CISG: Formation

- You can presumably bargain for a parol evidence rule:
  - Article 6: "The parties may exclude the application of this Convention or ... derogate from or vary the effect of any of its provisions."
- But you cannot exclude parol evidence from the determination of whether the parties meant to exclude parol evidence!

### CISG: Formation

- Statute of frauds: There is no statute of frauds rule under the CISG.
  - Article 11: "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses."
- You can't get around this by bargaining (that's logically impossible!).
  - Article 12 would allow the United States to declare out of Article 11 of the CISG, but the US has not.

### CISG: Formation

- Firm offers: The CISG provides for the enforceability of irrevocable offers without consideration and without being capped by law as to duration.

# International Warranties

## International Warranties

- CISG Article 35 is essentially the same as the UCC in terms of providing for express warranties, implied warranties of fitness for a particular purpose, and implied warranties of merchantability
- Except:
- There are no privity-jumping provisions.
  - Where the UCC frequently allows warranty suits by persons not parties to the contract of sale, the CISG does not.
  - (Theme: The CISG is not very consumer-friendly.)
- CISG implied warranties are easier to disclaim, because the CISG lacks formality requirements. (Disclaiming warranties covered in Topics 12 & 13.)

# Risk of Loss with CISG

## Risk of Loss with CISG

- CISG has detailed default rules.
- They can be varied by agreement.
- Many international agreements include the standardized “Incoterms,” which use standardized three-letter terms to call up shipping and risk-of-loss terms.
  - You need familiarize yourself with Incoterms if you are doing import/export.

# Performance and Breach with CISG

## Performance and Breach with CISG

- There is no perfect-tender rule.
- To avoid the contract, the non-breaching party must provide reasonable notice of the non-conformity and it must be the case that
  - The non-conformity amounts to “fundamental breach,” or
  - The breaching party has failed to perform within the nachfrist period after getting a nachfrist notice