

**DiMatteo / Janssen / Magnus / Schulze**

# **International Sales Law**

**Contract, Principles & Practice**

**C.H.BECK · HART · NOMOS**

DiMatteo / Janssen / Magnus / Schulze  
International Sales Law

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## Contract, Principles & Practice

edited by

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## Preface

This treatise and practitioner guide is the outcome of a meeting of international sales law scholars held 27–28 September 2013. The purpose of the meeting was to provide a foundation for writing a comprehensive book that would be useful to teachers, scholars, and students of international sales law, as well as to act as a single volume reference guide for the international transactional lawyer. The group members set out the ambitious goal of providing a comprehensive and practical treatise on the complex and broad area of international sales law. The contributors come from numerous countries and include in alphabetical order the following international sales law scholars: Orkun Akseli (Durham University Law School), Michael Bridge (London School of Economics and Political Science), Petra Butler (Victoria University of Wellington), Michel Cannarsa (Catholic University of Lyon), Giuditta Cordero-Moss (University of Oslo), Larry A. DiMatteo (University of Florida), Sieg Eiselen (University of South Africa), Edoardo Ferrante (University of Turin), Harry M. Flechtner (University of Pittsburgh), Christian Fleischmann (University of Bayreuth), Claire M. Germain (University of Florida), Rafael Ilescas Ortiz (Carlos III University of Madrid), André Janssen (City University of Hong Kong), Sörren Kiene (Brandi Rechtsanwälte), Qiao Liu (University of Queensland and Xi'an Jiaotong University), Ulrich Magnus (University of Hamburg), Burghard Piltz (Ahlers & Vogel), Willibald Posch (University of Graz), Séverine Sainter (University of Exeter), Martin Schmidt-Kessel (University of Bayreuth), Reiner Schulze (University of Münster), Lisa Spagnolo (Monash University), Bruno Zeller (University of Western Australia), and Wentong Zheng (University of Florida).

For the civilians, a restatement or digest is generally a clarification of existing legal rules and principles. However, restating and clarifying existing case law has also been the goal of private law codification in common law countries. Examples include the United Kingdom Sale of Goods Act 1979 and the Real Property Law Statutes found in American state laws. These statutes intended purpose is to clarify an often expansive and chaotic case law. This book, however, follows the lead of the American *Restatements of Law*, which provides a descriptive summary of existing law while at the same time reaching normative conclusions on divergent approaches or interpretations found across nation states and international legal instruments. The book attempts to transcend divergences in national and supranational sales laws in providing alternative and practical solutions to the issues most relevant to international sales transactions.

This restatement of international sales law, by necessity, employs a comparative law approach. But, the comparative analysis goes beyond the traditional nation-to-nation or legal tradition versus legal tradition analyses. Globalization and

regionalization in the marketplace has resulted in the production of numerous regional and international hard and soft law instruments. Thus, the book's work is not so much that of harmonization as it is of synthesis of a plurality of sources.

The current undertaking samples legal rules from various legal systems and international instruments. At the same time, the legal analysis in the book is placed in the context of international sales practice. It seeks to educate on alternative legal approaches to sales contract issues in order to provide practical advice on how the international transactional lawyer should address these issues in their contracts.

In the end, the book's immersion of various legal instruments—United Nations Convention on Contracts for the International Sale of Goods (CISG), UNIDROIT Principles of International Commercial Contracts (PICC), Principles of European Contract Law (PECL), the proposal for a Common European Sales Law (CESL), German Bürgerliches Gesetzbuch (BGB), Spanish Código Civil, French Code Civil, United Kingdom Sale of Goods Act 1979, American Restatement (Second) of Contracts, Uniform Commercial Code (UCC), and Chinese Contract Law—provides the base knowledge needed to understand the nuances of international sale law and to best represent business clients.

We would like to thank the sponsors that provided the funding for this endeavor: Levin College of Law (University of Florida), Warrington College of Business Administration (University of Florida), University of Florida Center for International Business Education and Research (CIBER), University of Florida Division of Research, and the Department of Management and Legal Studies at the Warrington College of Business. Finally, we kindly thank Aleksandra Socik and Jonathon Watson for their support in the preparation of this guide.

February 2016,

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## Abbreviations

AC	Appeal Cases (England & Wales)
AcP	Archiv für die civilistische Praxis
affd	affirmed
AG	Amtsgericht
AGB	Allgemeine Geschäftsbedingungen
AH	Appelationshof
AJ	Actualité Juridique
ALI	American Law Institute
All ER	All England Law Reports
ALJR	Australian Law Journal Reports
ALR	Australian Law Reports
Am Bar Ass'n	American Bar Association Journal
Am Bus LJ	American Business Law Journal
Am J Comp L	American Journal of Comparative Law
Am Rev Int'l Arb	American Review of International Arbitration
AMJUR	American Jurisprudence
Anglo-Am L Review	Anglo-American Law Review
App Cas	Law Reports Appeal Cases (England & Wales)
Arb Int'l	Arbitration International
Arizona J Int'l & Comp L	Arizona Journal of International and Comparative Law
Art.	Article
Aust	Australia
Aust Fed Ct	Federal Court of Australia
B&Ald	Barnewall & Aldersons King's Bench Reports (England & Wales)
B&S	Best & Smith's Queen's Bench Reports (England & Wales)
B2B	Business-to-Business
B2C	Business-to-Consumer
BB	Betriebsberater
BCC	British Company Law Cases
Beav	Beavan's Roll Court Reports (England & Wales)
BeckRS	Beck online Rechtsprechung
Begrade L Rev	Belgrade Law Review
BG	Bundesgericht (Switzerland)
BGB	Bürgerliches Gesetzbuch (Germany)
BGBI	Bundesgesetzblatt
BGer	Bundesgerichtshof (Switzerland)
BGH	Bundesgerichtshof (Germany)

## Abbreviations

BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
Bing	Bingham's Common Pleas Reports (England & Wales)
Bing NC	Bingham's New Cases (England & Wales)
BLR	Building Law Reports (England & Wales)
BR	Bankruptcy Reporter
Brooklyn J Int'l L	Brooklyn Journal of International Law
Building LR	Building Law Review
BUL Rev	Boston University Law Review
Bull Civ	Bulletin des arrêts de la Cour de cassation, Chambres Civiles
Bus Law	Business Lawyer
Bus LR	Business Law Review
C&F	Clark & Finnelly's House of Lords Cases (England & Wales)
CA	Court of Appeal (England & Wales)/Cour d'appel (France)
Cal. App	California Appellate Reports
Cal. Rptr	California Reporter
California L Rev	California Law Review
Carolina J Int'l L & Com Reg	Carolina Journal of International Law and Commercial Regulation
Case W Res J Int'l L	Case Western Reserve Journal of International Law
Cass Civ	Cour de cassation, Cambre civile (France)
Cass Comm	Cour de cassation, Cambre civile, Section Commerciale (France)
CBNS	Common Bench Reports, New Series
CC	Civil Code
CCL	Contract Law of the People's Republic of China
CESL	Common European Sales Law
cf	confer
CFR	Cost and Freight (INCOTERMS)
Ch	Law Reports, Chancery Division (England & Wales)
Chap.	Chapter
Chinese J Comp L	Chinese Journal of Comparative Law
CIETAC	China International Economic and Trade Arbitration Commission
CIF	Cost, insurance, freight (INCOTERM)
CIP	Carriage and insurance paid to (INCOTERM)
Cir.	Circuit
CISG	United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980
CISG-AC	CISG Advisory Council
CJJA	Civil Jurisdiction and Judgments Act 1982 (UK)
CLC	Australian Company Law Cases
CLJ	Cambridge Law Journal

## Abbreviations

CLOUT	Case Law on UNCITRAL Texts
CLR	Commonwealth Law Reports (Australia)
CMLR	Common Market Law Review
Cmnd	Command
cmt	Comment
Co.	Company
Colum L Rev	Columbia Law Review
Colum J Transnat'l L	Columbia Journal of Transnational Law
COM	Communication
Comparative LJ	Comparative Law Journal
Computer LJ	Computer Law Journal
Con LR	Construction Law Reports
Cornell Int'l LJ	Cornell International Law Journal
Corp.	Corporation
CPA	Civil Procedure Act (Spain)
CPL	Civil Procedure Law
CPT	Carriage paid to (INCOTERM)
CUP	Cambridge University Press
D/A	Documents against acceptance
D/P	Documents against payment
DAP	Delivered at place (INCOTERM)
DAT	Delivered at terminal (INCOTERM)
DB	Der Betrieb
DCA	District Court of Appeal (US)
DCFR	Draft Common Frame of Reference
D.C.N.D.	District Court, Northern Division (US)
DDP	Delivered duty paid (INCOTERM)
DEQ	Delivered ex quay (INCOTERM)
DES	Delivered ex ship (INCOTERM)
Doc	Document
DOCDEX Rules	Rules for Documentary Instruments Dispute Resolution Expertise
DP	Recueil périodique et critique
DS	Recueil Dalloz-Sirey
EC	European Communities
ECJ	European Court of Justice
ECR	European Court Report
E.D.	Eastern District
Ed(s)	Editor(s)
EDI	Electronic Data Interchange
edn	Edition
EEC	European Economic Community
e.g.	for example

## Abbreviations

Electronics Convention	UN Convention on the Use of Electronic Communications in International Contracts
ELI	European Law Institute
ELR	European Law Review
Emory J Int’L Disp Res	Emory Journal of International Dispute Resolution
Emory LJ	Emory Law Journal
EP	European Parliament
ER	English Reports
ERPL	European Review of Private Law
et al	and others
etc.	etcetera
et seq.	and the following
EU	European Union
EuLR	European Union Law Reporter
European J Law & Econ	European Journal of Law and Economics
EWCA Civ	England and Wales Court of Appeal (Civil Division)
EWHC (Ch)	England and Wales High Court (Chancery Division)
EWHC (TCC)	England and Wales High Court (Technology and Construction Court)
Ex	Law Reports, Exchequer Cases
EXW	Ex Works (INCOTERM)
F.	Federal Reporter
F.2 d	Federal Reporter, Second Series
FAS	Free alongside ship (INCOTERM)
FCA	Free carrier (INCOTERM)
Fed.Appx	Federal Appendix
FOB	Free on board (INCOTERM)
Fordham Int’l LJ	Fordham International Law Journal
Fordham L Rev	Fordham Law Review
FS	Festschrift
FSR	Fleet Street Reports (England & Wales)
F. Supp	Federal Supplement
Global Jur Adv	Global Jurist Advances
Hag Con	Haggard’s Consistorial Reports (England & Wales)
Hamburg Rules	United Nations Convention on the Carriage of Goods by Sea
Harvard L Rev	Harvard Law Review
H BI	Henry Blackstone’s Common Pleas Reports
HCA	High Court of Australia
HG	Handelsgericht
HGB	Handelsgesetzbuch (Germany)
H/L	Heavy lift
HL	House of Lords
HLC	Clark and Finnelly’s House of Lords Reports

L

## Abbreviations

HO	Hovioikeus (Appellate Court) (Finland)
Houston J Int'l L	Houston Journal of International Law
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
id.	the same place
i.e.	that is
IEHC	High Court of Ireland
IHR	Internationales Handelsrecht, Zeitschrift für das Recht des internationalen Warenkaufs und Warenvertriebs
ILR	International Law Reports
ILSU	Italian Legal Scholar Unbound
Inc.	Incorporated
INCOTERMS	International Commercial Terms of the ICC (revised in 2010)
Ind L Rev	Indiana Law Review
Int Arb LR	International Arbitration Law Review
International Business LJ	International Business Law Journal
Int'l & Comp LQ	International and Comparative Law Quarterly
Int'l L	International Lawyer
Intro	Introduction
IR	Irish Reports
J	Justice
JBL	Journal of Business Law
JCL	Journal of Contract Law
JCP	Juris Classeur Périodique
J du Droit Intl	Journal du droit international
JIBL	Journal of International Business Law
J Int'l Arb	Journal of International Arbitration
J L & Com	Journal of Law and Commerce
JW	Juristische Wochenschrift
KB	King's Bench Division (England & Wales)
KG	Kantongericht (Switzerland)
Law Com	Law Commission
LCIA	London Court of International Arbitration
LG	Landgericht
LJ	Lord Justice
LJ Ch	Law Journal Reports, Chancery (England & Wales)
LJKB	Law Journal Reports, King's Bench New Series (England & Wales)
Lloyd's LR	Lloyd's Law Reports
LMCLQ	Lloyd's Maritime and Commercial Law Quarterly
LQR	Law Quarterly Review
LR	Irish Law Recorder

## Abbreviations

LT	Law Times Reports
Ltd.	Limited
Memphis L Rev	Memphis Law Review
Michigan Bar J	Michigan Bar Journal
Mich J Int'l L	Michigan Journal of International Law
Mich LR	Michigan Law Review
Minnesota L Rev	Minnesota Law Review
Minn J Global Trade	Minnesota Journal of Global Trade
MLR	Modern Law Review
Moo PCC	Moore's Privy Council Cases
MoU	Memorandum of Understanding
MünchKommBGB	Münchener Kommentar zum Bürgerliches Gesetzbuch
MünchKommHGB	Münchener Kommentar zum Handelsgesetzbuch
N	Note
NCPC	Nouveau Code de Procédure Civile (France)
N.D.	US District Court, Northern District
N.E.	North Eastern Reporter (US)
New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
NIPR	Netherlands Internationaal Privaatrecht
N.J.	New Jersey Reports (US)
NJW	Neue Juristische Wochenschrift
NJW-RR	Neue Juristische Wochenschrift – Rechtsprechungsreport Zivilrecht
N Kentucky LR	Northern Kentucky Law Review
No.	Number
No Carolina J Int'l L & Com Reg	North Carolina Journal of International Law and Commercial Regulation
NOM	No Oral Modification
NSWLR	New South Wales Law Reports
N.W.	North Western Reporter (US)
N.Y.	New York Reports
NYU Ann Survey Am L	New York University Annual Survey of American Law
NZ	New Zealand
NZLR	New Zealand Law Reports
ODC	Over dimensioned cargo
OGH	Oberster Gerichtshof (Austria)
OH	Outer House
OHADA	L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires
OJ	Official Journal of the European Union
OLG	Oberlandesgericht
OR	Official Records
ÖstJBl	Juristische Blätter

## *Abbreviations*

OUP	Oxford University Press
p./pp.	Page(s)
P&CR	Property and Compensation Reports
Pace Int'l L Rev	Pace International Law Review
Para(s)	Paragraph(s)
PC	Privy Council
PCI	Pre-contractual Instrument
PCL	Pre-contractual Liability
PECL	Principles of European Contract Law
PEL MC	Principles of European Law (Mandate Contracts)
PICC	UNIDROIT Principles of International Commercial Contracts
PIL	Private International Law
PL(S)	Public law(s)
PRC	People's Republic of China
Pt	Part
Pub	Publication
QB	Queen's Bench Division (England & Wales)
RabelsZ	Rabels Zeitschrift für ausländisches and internationales Privatrecht
Rb	Arrondissementsrechtsbank (Netherlands)
Reg	Regulation
Rev crit	Revue critique de droit international privé
Rev dr unif	Revue de droit uniform
RFID	Radio Frequency Identification
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen (Germany)
RIW	Recht der internationalen Wirtschaft
RJDA	Recueil general de jurisprudence de droit administratif et du conseil d'etat
Rotterdam Rules	UN Convention on Contracts for The International Carriage of Goods Wholly or Partly by Sea
Russ	Russell's Chancery Reports (England & Wales)
Rutgers Computer & Technology	Rutgers Computer and Technology Law Journal
s(s)	Section(s)
SC	Session Cases (Scotland)
Sched	Schedule
SCR	Supreme Court Reports (Canada)
S.CT	Supreme Court Reporter (US)
S.D. Fla.	US District Court, Southern District of Florida
S.D.N.Y.	US District Court, Southern District of New York
Sect.	Section
Sent.	Sentence

## *Abbreviations*

SGA	Sale of Goods Act 1979 (UK)
SGCA	Singapore Court of Appeal
SGHC	Singapore High Court
SI	Statutory Instrument
SIAC	Singapore International Arbitration Centre
SJZ	Schweizerische Juristenzeitung
SLR	Scottish Law Reporter
SLT	Scots Law Times
SME	Small and Medium-sized Enterprise
South Carolina L Rev	South Carolina Law Review
SPC	Supreme People's Court (China)
Stat.	United States Statutes at Large
St Thomas L Rev	St. Thomas Law Review
Supp.	Supplement
Sydney L Rev	Sydney Law Review
SZIER	Schweizerische Zeitschrift für interationales und europäisches Recht
Temp Int'l & Comp LJ	Temple International and Comparative Law Journal
Tex. App.	Court of Appeal, Texas
Tex. Civ. App.	Texas Civil Appeals Reports
Tex Int'l LJ	Texas International Law Journal
TLR	Times Law Reports
TR	Durnford & East's Term Reports, King's Bench
Tr A	Tribunale d'appello (Switzerland)
Tr LR	Trading Law Reports (UK)
Tulane J Int'l Comp L	Tulane Journal of International and Comparative Law
UCC	Uniform Commercial Code (US)
UCC LJ	Uniform Commercial Code Law Journal
UCC Rep Serv	Uniform Commercial Code Reporting Service
U Chi L Rev	University of Chicago Law Review
UCP 600	Uniform Customs and Practice
UETA	Uniform Electronic Transactions Act 2000 (US)
U Ill L Rev	University of Illinois Law Review
UK	United Kingdom
UKHL	United Kingdom House of Lords
UKPC	United Kingdom Privy Council
ULIS	Convention relating to a Uniform Law on the International Sale of Goods 1964 (Hague Convention)
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	Institute for the Unification of Private Law
UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts
Unif L Rev	Uniform Law Review

## Abbreviations

Uniform Commercial Code LJ	Uniform Commercial Code Law Journal
UNILEX	International Case Law, UNIDROIT
UNSW LJ	University of New South Wales Law Journal
UNTS	United Nations Treaty Series
U of Texas Law, Law and Econ Research Paper	University of Texas, School of Law, Law and Economics Research Paper
U Penn L Rev	University of Pennsylvania Law Review
URC 552	Uniform Rules for Collections, 1995 revision, ICC Publication No. 522
US	United States of America
U.S. App.	United States Court of Appeals
U.S.C.	United States Code
U.S.C.A.	United States Code Annotated
USD	United States Dollar
USDC	United States District Court
UTSA	Uniform Trade Secrets Act (US)
v	versus
VJTL	Vanderbilt Journal of Transnational Law
VAT	Value Added Tax
VersR	Versicherungsrecht
Ves Sen	Vesey Senior's Chancery Reports (England & Wales)
Vindobona J of Int'l Com L & Arb	Vindobona Journal of International Commercial Law and Arbitration
Vol	Volume
VR	Victorian Reports (Australia)
VUWLR	Victoria University of Wellington Law Review
WAR	Western Australia Law Reports
W.D.	Western District
William & Mary L Rev	William and Mary Law Review
WL	West Law, Database
WLR	Weekly Law Reports
WM	Wertpapier-Mitteilungen
WTO	World Trade Organization
Yale J Int'l Law	Yale Journal of International Law
Yale LJ	Yale Law Journal
YB PIL	Yearbook Private International Law
YBCom Arb	Yearbook Commercial Arbitration
Ybk Arb	Yearbook Arbitration
ZEuP	Zeitschrift für europäisches Privatrecht
ZPO	Zivilprozessordnung (Germany)
ZR	Zivilrecht
ZVertriebsR	Zeitschrift für Vertriebsrecht

