

## INTRODUCTION TO LEGAL CASE-SOLVING AND MOOTING

concerning § 2 II History, importance and applicability of the CISG

## Diagram 1

### The applicability of the CISG<sup>1</sup> (examination scheme)

#### I. Contract within the material sphere of application of the CISG (art. 1 - 3)

- 1) *Contract of international sale of goods (art. 1(1))*
  - a) Contract of sale of goods
    - aa) Goods
      - moveable and tangible objects (DISPUTED for software)
    - bb) Sales contract
      - aaa) Contract
      - bbb) Obligation of the seller to deliver the goods and transfer the property in the goods
        - supply of labor or other services must not be the preponderant part of the obligation (art. 3(2))
      - ccc) Obligation of the buyer to pay the price and accept the goods
        - PREVAILING OPINION: "price" must be money (no countertrade agreements)
  - b) Between parties with places of business in different states
    - aa) Parties have their places of business in different states (art. 1(1))
      - in case of multiple places of business that one with the closest relationship to the contract is relevant (art. 10 lit. a)
    - bb) This fact is recognisable from an objective point of view (cf. art. 1(2))
- 2) *No excluded sector (art. 2)*
  - a) No consumer contract (art. 2 lit. a)
  - b) No sale by auction (art. 2 lit. b)
  - c) No sale by authority of law (art. 2 lit. c)
  - d) No sale of commercial papers or money (art. 2 lit. d)
  - e) No sale of (other) goods of an excluded type (art. 2 lit. e, f)

#### II. Contract within the temporal sphere of application of the CISG (art. 100)

#### III. Contract falling within one of the categories of application of the CISG

- 1) *Direct (autonomous) application, art. 1(1) lit. a*
  - both partners have their places of business in contracting states
- 2) *Indirect application (according to international private law), art. 1(1) lit. b*
  - a) Rules of international private law lead to the application of the law of a contracting state
    - usually because one partner has his place of business in that contracting state
  - b) No exclusion for the concerned states by a declaration under art. 95
- 3) *Application through the parties' choice of law (according to agreement)*
  - a) Choice of the CISG as applicable law by the contract parties
  - b) Admissibility of the choice of the CISG as applicable law according to the relevant international private law

#### IV. No exclusion of the application of the CISG by the parties (art. 6)

- Problem: exclusion of the CISG if parties choose "the law" of a contracting state?

<sup>1</sup> United Nations Convention on Contracts for the International Sale of Goods of 1980.