

Panel 6: Excluding the CISG by express or implied choice

Members of the panel:

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Topical legal provisions

Article 1 CISG

“(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) [...]

(3) [...]”

Article 6 CISG

“The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.”

Relevant topics

1. Exclusion of the CISG in individually negotiated contracts
2. Exclusion of the CISG by way of standard terms
3. Exclusion of the CISG in the course of the proceedings



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First question:

**Exclusion of the CISG in
individually negotiated contracts**

Exclusion of the CISG in individually negotiated contracts

1. What law governs the exclusion of the CISG?
2. Must the exclusion be explicit, or can it be implicit?
3. What wording or conduct counts as an implicit exclusion?
 - a) Choice of the law of a non-contracting state (what if that choice is invalid?)
 - b) Choice of the law of a contracting state?
 - c) Burden of proof?



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Second question: Exclusion of the CISG by way of standard terms



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Third question: Exclusion of the CISG in the course of the proceedings

OLG Celle 1995, CISG-online 152

Here, too, there was no subsequent choice of law through procedural conduct. It is true that, according to the established case law of the Federal Court of Justice, such a choice can be assumed if the parties agree on the application of a certain legal system during the course of a legal dispute, in particular by referring to its provisions (Federal Court of Justice NJW 1991, 1292, 1293

OLG Celle 1995, CISG-online 152

However, such behaviour must always be an expression of the common intention to subsequently change the original contractual law. It is not sufficient for the parties to believe that a certain law is not applicable for legal or other reasons. In the present case, the appeal proceedings showed that the plaintiff had either not realised until then that the application of German sales law was questionable or had thought that the parties had opted for German sales law when concluding the contract. His litigation behaviour is therefore not based on a conscious choice of German sales law, but on the legal opinion that it was applicable anyway.



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Summary