

International Transactions in Goods

Global Sales in Comparative Context

Martin Davies

David V. Snyder

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide.

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumpur Madrid
Melbourne Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece Guatemala Hungary
Italy Japan Poland Portugal Singapore South Korea Switzerland Thailand
Turkey Ukraine Vietnam

Oxford is a registered trademark of Oxford University Press in the UK and certain other countries.

Published in the United States of America by
Oxford University Press
198 Madison Avenue, New York, NY 10016

© Oxford University Press 2014

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press, or as expressly permitted by law, by license, or under terms agreed with the appropriate reproduction rights organization. Inquiries concerning reproduction outside the scope of the above should be sent to the Rights Department, Oxford University Press, at the address above.

You must not circulate this work in any other form
and you must impose this same condition on any acquirer.

Library of Congress Cataloging-in-Publication Data

Davies, Martin, 1957- author.

International transactions in goods : global sales in comparative context / Martin Davies,
David V. Snyder.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-19-538818-3 ((hardback) : alk. paper)

1. Export sales contracts. I. Snyder, David V., author. II. Title.

K1030.D39 2014

343.08'78—dc23

2013047590

1 3 5 7 9 8 6 4 2

Printed in the United States of America on acid-free paper

Note to Readers

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)

<p>You may order this or any other Oxford University Press publication by visiting the Oxford University Press website at www.oup.com.</p>
--

International Transactions in Goods

To Jane
With whom all is not only possible but good
D.V.S.

And to all the unseen men and women who risk their lives carrying goods by sea
M.D.

Acknowledgments

This book has been long in the making, and our debts have grown as the years have gone by and the pages have stacked higher.

First, we want to acknowledge what we see as a deep intellectual debt. Despite our generally minimalistic approach to citations, we want to make clear that we have relied on gifted scholars whose work has influenced our views. Even from the Preface, the reader will see the influence of the great comparatists René David, Konrad Zweigert, and Hein Kötz, and we have made frequent use of their work not only for their grand visions but, particularly with respect to the latter two scholars, for their detailed work on the doctrines we explore, made accessible with great learning and insight by the late Tony Weir. *See* KONRAD ZWIEGERT & HEIN KÖTZ, *INTRODUCTION TO COMPARATIVE LAW* (Tony Weir trans., 3d rev. ed. 1998). On German law we have usually looked to *THE GERMAN LAW OF CONTRACT* by SIR BASIL MARKESINIS, HANNES UNBERATH, AND ANGUS JOHNSTON (2d ed. 2006) and to REINHARD ZIMMERMANN'S *THE NEW GERMAN LAW OF OBLIGATIONS: HISTORICAL AND COMPARATIVE PERSPECTIVES* (2005). Our constant sources on French law have been *PRINCIPLES OF FRENCH LAW* (2d ed. 2008) by JOHN BELL, SOPHIE BOYRON, and SIMON WHITTAKER, as well as other works by them and their coauthors, in addition to the less up-to-date but concise and penetrating classic by BARRY NICHOLAS, *THE FRENCH LAW OF CONTRACT* (1992). In addition, for French law itself, we have used standard references like the annotated *Code civil* and Philippe le Tourneau's *Droit de la responsabilité et des contrats* in their most recent Dalloz editions.

As to the CISG, we wish to acknowledge the historic work of John O. Honnold and Peter Schlechtriem, scholars who were there before the treaty and who not only witnessed but made much of the international law of sales. They have gone during the writing of this book, but their works have been with us—piled on our desks, usually—as is the work by their intellectual fellow travelers, Harry Flechtner and Ingeborg Schwenzer. *See* JOHN O. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (Harry Flechtner ed., 4th ed. 2009); SCHLECHTRIEM & SCHWENZER, *COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS*

(CISG) (Ingeborg Schwenzer ed., 3d ed. 2010). Aside from these works, we have often looked to the recent UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) edited by Stefan Kröll, Loukas Mistelis, and Pilar Perales Viscasillas (2011).

We also acknowledge the assistance we have gained from the work of Michael Bridge, whose scholarship covers both of the sometimes warring worlds of English law and the CISG, his *THE INTERNATIONAL SALE OF GOODS: LAW AND PRACTICE* (2d ed. 2007), being the preeminent example.

As will be apparent, these are hardly all of our main sources, but these have been so prominent as to influence our thinking in ways we perhaps barely recognize. We can only hope to tread the same path behind these scholars whom we acknowledge and follow.

Teachers and scholars have not been our only guides. Both of us have taught the law of international sales for a number of years, and countless colleagues and students have taught us even as we have taught them; some have helped with research, and many have helped with discussion, debate, and questions. Not all can be named, but we wish to acknowledge in particular the help of Rémi Auba Bresson, Sârra-Tilila Bounfour, Michael Tyler Brown, Shaleen Brunsdale, Bénédicte Fauvarque-Cosson, Robert Force, Michael Francel, Janette Hays, Jessica Marrero, Adeen Postar, Matthew Ribe, Benjamin Ross, David J. and Justin Snyder (amazingly, no relation to each other or to us), Lisa Spagnolo, and Diana Verm. These good friends and colleagues have saved us from many errors. We have no doubt that many remain, which are of course our own responsibility, and we would be grateful to readers who call them to our attention (gently, we hope). Both of us can easily be reached by e-mail.

We would also like to thank Patty Cooper for her excellent work in creating the sample documents reproduced in Chapter 1. We hope she does not put her skills to work in a future career as a forger.

Our editors at Oxford have shown us extraordinary good cheer and everlasting patience. We note our gratitude particularly to Alden Domizio, Jennifer Gong, Michelle Lipinski, Blake Ratcliff, Brooke Smith, and Lori Wood. And none of this would have been possible without the support of our deans, Claudio M. Grossman, David D. Meyer, and Lawrence Ponoroff, whose generous summer research grants have enabled us to devote the necessary time to this project.

Our time belongs to our families as well as to our work, and our families have been an indispensable support through this project. Our debt to them goes beyond what we can say, and we will not try to bound the boundless by hedging it about with words. On this score, we can only give our thanks.

In addition to these many debts, we gratefully acknowledge permission to use the excerpts and translations that appear in the text. In this regard, we wish to acknowledge these copyright holders for permission to use extracts from the following works:

American Law Institute for Restatement (Second) of Torts (Copyright 1965) and the Restatement (Third) of Torts: Products Liability (Copyright 1998).

American Law Institute and Uniform Law Commissioners for the Uniform Commercial Code (copyrights of various dates).

Columbia Law Review Association for E. Allan Farnsworth, *Precontractual Liability and Preliminary Agreements: Fair Dealing and Failed Negotiations*, 87 COLUM. L. REV. 217 (1987) (permission conveyed through Copyright Clearance Center, Inc.).

Harvard Law Review Association for Alan Schwartz & Robert E. Scott, *Precontractual Liability and Preliminary Agreements*, 120 HARV. L. REV. 661 (2007) (permission conveyed through Copyright Clearance Center, Inc.).

International Chamber of Commerce for the Incoterms 2010 and for UCP 600: Uniform Customs and Practice for Documentary Credits (2007).

Oxford University Press for Hans Stoll & Georg Gruber on Article 77 in SCHLECHTRIEM & SCHWENZER, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) ¶¶ 4-5, at 788-89 (2d English ed. 2005), and for Ingeborg Schwenzer on Article 77 in *id.* ¶¶ 4-5 at 1042-43 (3d English ed., Ingeborg Schwenzer ed. 2010).

Pace CISG Database at <http://www.cisg.law.pace.edu/>.

Temple Journal of International and Comparative Law for Lisa Spagnolo, *Opening Pandora's Box: Good Faith and Precontractual Liability in the CISG*, 21 TEMPLE INT'L & COMP. L.J. 261 (2008).

Preface

This is a book for learning in an international and commercial context. It is written with the assumption that students of international sales will come from many backgrounds, with varying knowledge and experience of common law, civil law, international law, and the world of commerce. All four aspects are crucial, but because some students may have no background in one or more of these areas, we try to explain all four. And because students with different backgrounds are often used to different styles of teaching and learning, we have tried to accommodate different habits of thought. The book includes extensive textual explanation (ordinary for many civil law students but unusual for US students) along with case excerpts to show how the law is put into action in the context of litigation (ordinary for US students but unusual for civil law students) and a plethora of problems, the vast majority of which are based on actual cases (to give further knowledge of how the rules work in real life, and to make sure everyone can use what has just been learned). Everyone, including students, teachers, and ordinary readers, should find much that is familiar along with much that will allow expansion into unfamiliar methods of learning, analysis, and thinking—which is of course part of the goal.

Running through all of this is a belief that there is nothing more interesting and nothing more important than what happens in the real world, and that law is itself interesting and important because it must operate in the real world. Although this is a law book, it is meant to be oriented to commercial practice. Understanding the “real world” of business is as much a part of understanding the law as knowing the provisions of a commercial code or the articles of a treaty. This approach is animated by three simple ideas. First is that the reader will want to practice law in the world of international sales. Second, the law is much easier to understand in context. The rules are often designed for particular commercial problems, and even if the rules were not designed that way, they have evolved that way. A similar point is worth making in the international context: the principles and policies underlying the rules are aimed at particular international goals. Once the reasons behind the rules are clear, the rules usually fall neatly into place. (Most of the time. When they do not, then there

is a problem to be solved, and that is one of the central callings of a successful lawyer.) The international and commercial context of the transactions and disputes makes sense of most of the rules.

Third, putting the law together with commercial and international dynamics—always changing, with different aspects acting on each other, leading to further changes in law, business, and the world—is among the most attractive and exciting parts of law practice in international commerce. This is not abstract stuff. This is about the law needing to resolve problems when goods move from one country to another, which may involve different languages for negotiation and documentation, weeks of ocean carriage, and varying expectations and understandings. This will not be about mere exposition or idle debate (“Oh, isn’t it interesting!” or “Let us discuss the role of international institutions!”). In the problems and cases in this book, there will often be winners and losers, and the amount of the win or the loss can generally be measured in money. This is the real world. Helping the client win—a lot—is part of the job. Knowing when a loss is in prospect and that it is time to settle is also part of the job. At the same time, particularly on the transactional rather than the litigation side, there may be winners and winners. That is the idea of the transaction: both parties think that they will be better off for the transaction, and often they will both be right. Helping clients achieve these goals, good for them, good for the economy, and good for society, is also part of the lawyer’s job. This book is meant to help the reader become that lawyer in the context of international sales.

This approach has practical and theoretical implications, some of which we have tried to indicate in the title. The book is about international sales, but there is much more to the transaction than the law of sales. Perhaps most apparent are questions of payment and credit. In the international context, transportation of the goods is a close second. We have tried to view a sale as a holistic transaction, addressing all of its commercial aspects, from the negotiation and conclusion of the contract to the arrangements for payment and transport, including legal and commercial sources of leverage, as well as remedies for reaching solutions, or at least resolutions, when the transaction goes wrong. For example, the book covers not only the legal default rules on delivery but also of course the Incoterms. Even so, the Incoterms are just more rules. We also try to explore the dirty (and not coincidentally, interesting) details, like how it works to put the goods into containers (those big metal shipping boxes), how the containers enable multimodal transport (moving the container from truckbed to rail car to container yard to the deck of a ship, perhaps covering hundreds of miles before the goods even leave the country of origin), and how this current practice fits poorly with traditional shipping terms, but how newer ones are designed to solve the problem. In short, our task has been to write a book about the law governing the commercial transaction, not just the law of sales.¹

Similarly, although the book is about the law of international sales, the book is not just about the United Nations Convention on Contracts for the International Sale of Goods

1. This approach has limits. Although the book endeavors to cover the law of the “commercial transaction,” public law remains outside the scope of this volume. Matters of customs law, free trade agreements, countervailing duties, and so on are a different area of law and often a different area of law practice.

(Vienna 1980), generally called the CISG. To be sure, the CISG is often at the center of each topic in the book, and plenty of space is given to international law. But while the Convention governs many international sales, many are governed by domestic law. For that reason, quite a lot of the book is about domestic law. As one volume hardly can cover the domestic sales laws of the whole world, the book instead includes the most important and exemplary systems. On the common law side, the domestic sales law of the United States and of England receive attention. Both are important commercially, and sales contracts are often governed by the law of England or the law of New York, for instance. London and New York are also frequent venues for litigation and arbitration. On the civil law side, the book covers French and German domestic law, not only because of the commercial and legal markets in those countries but also because most civil law systems around the world are descended from, or based on, one or the other of those systems.

As will be apparent now, this book is as much a work of comparative law as it is of international law. We emphasize, though, that comparative law here is a strategic subject, not an abstract one. Generally the parties will be able to choose which law will govern their transaction. The lawyer must ask, "Which law will be better for my client?" And of course the lawyer for the other party must be asking similar questions. This is an issue of concrete comparison with particular trade-offs in light of negotiating moves by the other party: an intensely strategic decision that must be made with knowledge of multiple legal systems. That knowledge must include not only the differences between alternative rules but also enough nuance to see how those rules may move toward each other under commercial pressure, even as differing cultural and legal attitudes may prevent them from converging entirely. This book aims to expose the differing rules, to explore them in enough depth to see that they are rarely diametrically opposed, to understand the commercial impetus to convergence, and to appreciate the differing outlooks that may keep them apart.

Although it may seem curious, the practical orientation employed here makes theory no less important, particularly in an international context. Most immediately for the reader and the student, the rules are overwhelming without understanding the theories that hold them together. The theories that thread through the rules, like the business realities that instigate those same rules, help to make sense of the rules so they are easier to understand and remember. Further, since the book cannot hope to cover the law of the whole world, knowing the theory behind the exemplary domestic laws (the United States and England on the one hand and France and Germany on the other) will allow a lawyer to grasp the laws of other countries quickly: they will fit within a framework already understood and assimilated, and even where particular rules may differ, those differences can be identified, appreciated, and exploited more readily because of the systematic knowledge already acquired. So we have tried to pay attention to theory at the same time as we retain our commitment to a practical approach.

All of this is a large task. Not everyone will have time for it all. For that reason, the book is designed for adaptation to different scales. A short, quick course may take on only the international law of sales—just the CISG. More time would allow treatment of matters like choice of law or letters of credit or both. A full course in law school can cover the whole

book. It is a matter of priority and time, left to the interests and desires of the reader or the teacher.

Because this is meant to be a coursebook that makes the law as plain as possible, we have tried to keep citations to a bare minimum. In our explanations of what the law is, we have not included citations to the many treatises discussing each of the issues. Usually only primary sources are cited—the CISG, for example, or the Uniform Commercial Code or the French *Code civil*. The text may occasionally cite a particular secondary work that could prove difficult to find without a citation, but otherwise we generally have not cited secondary sources. Further, in keeping with the convention for casebooks, most citations and footnotes within excerpted materials are omitted without ellipsis. Each excerpt is headed by a citation so a researcher can find the original source with full text and full internal citations. Footnotes that are retained are renumbered to fit within the numbering of the chapter.

Along similar lines, we have not cited in the text the cases on which so many of the problems are based. It is tendentious to suggest that students look up all of those cases. If the problem is posed, students should have from the reading all they need to answer it or, more likely, to make the arguments for both sides and to reach an informed, if not entirely certain, conclusion. Citations to the cases on which the problems are based are given in the Teacher's Manual.

There are two main exceptions to our very light use of citations. When one of us has written on a subject and may for that reason be thought inclined to a particular view, we have tried to include citations to our own work, and where relevant, work by leading opposing scholars. Second, in the section on the performance remedy, we have included fuller citation because we believe some of the ideas and arguments are relatively new, and support for our views is therefore given. Even so, we have foregone the usual lengthy citations that weigh down the page with notes, explanations, and qualifications.

Clarity is our goal. Simplicity aids clarity, but law is not always simple. International law is simple even less often, and comparative law is no simpler. Still, we have thought throughout that if we can be clear about what is clear and can also be clear about what is unclear, then we, and other students of the law of international transactions, can move forward efficiently in ways that will be useful and realistic in a globalizing marketplace permeated by law.

M. D.

D. V. S.

January 2014

Contents

<i>Acknowledgments</i>	xiii
<i>Preface</i>	xvii
1. An Introduction to International Sales Transactions and the Laws Governing Them	1
I. International Sales Transactions: Goods, Payments, and Businesses	1
A. The Goods	2
B. Payment	3
C. Business Models	7
II. A Sample Transaction	8
A. Introduction	8
B. The Transaction Continues (Part 1)	10
C. The Transaction Continues (Part 2)	12
D. A Variation to the Transaction	19
E. Possible Future for the Transaction	21
III. Commodity Trading	22
IV. Different Sources of Law, Different Legal Methods, and Different Legal Cultures	26
A. Public Law and Private Law	26
B. Comparative Law	27
C. International Law	32
V. Public Law Issues	35
2. Governing Law	39
I. Introduction	39
II. When Does the CISG Apply?	42
A. The Location of the Parties	42
1. General	42
<i>McDowell Valley Vineyards, Inc. v. Sabaté USA Inc.</i>	43
2. Hong Kong and Macau, Two Special Cases	47

B.	What Are Goods?	48
1.	Goods in General	48
2.	Intangible Items and Software	48
3.	Crops, Timber, and Mineral Resources	50
4.	Hybrid Service Contracts	51
5.	Framework and Distributorship Contracts	52
	<i>Amco Ukrservice v. American Meter Co.</i>	52
C.	What Is a Sale?	54
D.	Applying National Law Even When the CISG Governs	55
1.	Filling the Gaps in the CISG	55
2.	The Validity Exception	57
	<i>Norfolk Southern Ry. Co. v. Power Source Supply, Inc.</i>	59
3.	Preemption and Domestic/National Law Claims Not Based on Contract	61
	<i>Electrocraft Arkansas, Inc. v. Super Electric Motors Ltd.</i>	61
III.	Contracting Out of the CISG	64
	<i>BP Oil International Ltd. v. Empresa Estatal Petroleos de Ecuador</i>	64
IV.	Application of the UCC to International Sales	66
	<i>MWL Brasil Rodas & Eixos Ltda v. K-IV Enterprises LLC</i>	67
V.	Neutral Third Country Law	68
3.	Negotiation, Formation, Terms, and Interpretation	73
I.	Introduction	73
II.	Negotiation	74
III.	Formation	89
A.	Reaching Agreement through Offer and Acceptance	90
1.	The Offer	90
	<i>Standard Software Case</i>	96
	<i>Eastern Air Lines, Inc. v. Gulf Oil Corp.</i>	101
2.	Firm Offers	104
3.	Acceptance	111
B.	Beyond Offer and Acceptance	118
1.	Battle of the Forms	118
	<i>Filanto, S.p.A. v. Chilewich International Corp.</i>	125
	<i>Powdered Milk Case</i>	133
2.	Commercial Letters of Confirmation	138
IV.	Modifications of the Sales Contract	139
	<i>Chateau des Charmes Wines Ltd. v. Sabaté USA Inc.</i>	142
V.	Formal Matters	145
A.	Writing Requirements (or Not): The (Anti) Statute of Frauds	145
	<i>Forestal Guarani S.A. v. Daros International, Inc.</i>	146
B.	Writings and Their Electronic Equivalents	154
C.	Consideration	155

VI.	Terms of the Contract and Contract Interpretation	156
	A. The Effect of Writings: The (Anti) Parol Evidence Rule	157
	B. Subjective and Objective Intent	161
	<i>MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova</i>	
	<i>D'Agostino, S.P.A.</i>	162
	<i>ECCEM European Chemical Marketing B.V. v. Purolite Co.</i>	170
	C. Interpretation: Understanding What the Parties Understand	174
	D. Interpretation: Filling True Gaps in the Parties' Agreement	178
VII.	Standard Terms (<i>da capo al fine</i>)	180
	<i>Golden Valley Grape Juice & Wine, LLC v. Centrisys Corp.</i>	180
4.	The Goods	185
	I. Introduction: Four Key Terms about the Goods Themselves	185
	II. The Express Requirements of the Contract	188
	A. The Truly Express Term	188
	B. An Assurance through Custom and Practice	190
	C. An Assurance by Sample or Model	190
	<i>Delchi Carrier SpA v. Rotorex Corporation</i>	191
	III. Suitability of the Goods	194
	A. The Basic Concept: Fitness for the Ordinary Purpose	194
	B. Marketable, Average or Reasonable Quality? And What about the Buyer's Purpose?	195
	<i>Condensate Crude Oil Mix Case</i>	196
	C. Territorial Fitness: Suitable for Use Where?	206
	<i>The Mussels Case</i>	206
	<i>Medical Marketing International, Inc. v. Internazionale Medico Scientifica, S.R.L.</i>	207
	IV. Products Liability	209
	V. Notice of Nonconformity	212
	A. Reasonable Notice	213
	<i>CME Cooperative Maritime Etaploise S.A.C.V v. Bos Fishproducts</i>	
	<i>URK BV (The Rotten Fish Case)</i>	213
	<i>Chicago Prime Packers, Inc. v. Northam Food Trading Co.</i>	214
	<i>Shuttle Packaging Systems v. INA Plastics Corp.</i>	218
	<i>Beijing Light Automobile Co., Ltd. v. Connell Limited Partnership</i>	220
	<i>Condensate Crude Oil Mix Case</i>	227
	B. Burden of Proof	228
	<i>Schmitz-Werke GmbH & Co. v. Rockland Industries, Inc.</i>	228
	C. Failure of Notice: Bar, Absent Buyer's "Reasonable Excuse" or Seller's Knowledge or Waiver	231
	<i>Acrylic Blankets Case</i>	231
	VI. Buyer's Lack of Reliance	232
	VII. Disclaimer of Warranties and Other Assurances, with Comparative Notes on Domestic Laws	233

VIII. Beyond the Goods, beyond the Statutes, beyond the Treaty: Quality Assurance Processes, Human Rights Protections, Environmentalism, and Other Issues	236
5. Delivery and the Passing of Risk	245
I. Introduction	245
II. Contractual Delivery and the Passing of Risk	248
A. Incoterms 2010® and the Passing of Risk	248
<i>BP Oil International Ltd. v. Empresa Estatal Petroleos de Ecuador</i>	249
B. Default Provisions in the CISG on Delivery and the Passing of Risk	254
<i>Chicago Prime Packers, Inc. v. Northam Food Trading Co.</i>	254
<i>Case No. VIII ZR 67/04 (The Frozen Pork Case)</i>	255
C. Default Provisions in the UCC on Delivery and the Passing of Risk	257
<i>Pestana v. Karinol Corp.</i>	257
<i>Larsen v. A.C. Carpenter, Inc.</i>	260
<i>Buenger v. Pruden</i>	261
D. Foreign Domestic Law: The Example of the United Kingdom	263
<i>Stora Enso Oyj v. Port of Dundee</i>	263
III. Physical Delivery to the Buyer	265
<i>Allied Chemical International Corp. v. Companhia Navegacao Lloyd Brasileiro</i>	266
6. Payments, Credit, and Performance Guarantees	271
I. Introduction	271
II. Documentary Collections	273
<i>Inox Wares Pvt. Ltd. v. Interchange Bank</i>	277
III. Letters of Credit	281
A. How the Credit Works, UCP 600, and UCC Article 5	281
B. Strict Compliance and Strict Preclusion	286
<i>Beyene v. Irving Trust Co.</i>	290
<i>Boston Hides & Furs, Ltd. v. Sumitomo Bank, Ltd.</i>	292
<i>Voest-Alpine Trading USA Corp. v. Bank of China</i>	295
C. The Independence or Autonomy Principle and the Fraud Exception	298
<i>Mid-America Tire, Inc. v. PTZ Trading Ltd.</i>	300
D. Standby Letters of Credit as a Means of Securing Performance	311
IV. Deferred Payment	313
A. Time Drafts, Bills of Exchange, and Deferred Payment Letters of Credit	313
B. The Fraud Exception and Deferred Payment	317
7. Excused Performance When Circumstances Change	321
I. Introduction	321
<i>United Aluminum Corp. v. BOC Group, Inc.</i>	323