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# Law for international trade and its challenges

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**Abstract**
Many developing country memberships in the World Trade Organization have risen rapidly in recent years but this has not resulted in marked increased influence in law for international trade. Many developing countries do not have the resources to support having any or more than very few, and possibly underequipped representatives. As a result, the rules of the international trade continue to be set by the better-represented developing countries and on the basis of developed country models, which can be prohibitively expensive for poor countries to abide by and implement.

**Keywords:** international trade, developing, country, law

## Introduction
The International sale of goods has always assumed an important position in the growth of international trade. This proposition is borne out by the existence of Lex Mercatoria in the middle ages. Much of this law derived from the Roman law of sale, but much of it, such as the creation of bills of exchange and similar credit instruments, was created by merchants in response to the difficulties of trading at a distance. There is further agreement that this law prized freedom of choice and speed of enforcement. There is yet further agreement that it had a distinct international cast in that a large number of transactions that fell within the scope of the Law Merchant involved trade between merchants from two or more nations [1]. The central arrangements in International sale of goods are setting a legal context known as international commercial law. It is the international counterpart of various domestic legislations dealing with commercial laws such as Uniform Commercial Code in USA, Sale of Goods Act in Britain, and Code de Commerce in France [2].

## Relation with International Trade law
The study of international business transactions is distinct from what is referred to as international trade in the sense that international trade today usually encompasses treaty-based systems of free trade such as the World Trade Organization (WTO) or the North American Free Trade Agreement (NAFTA). These treaties have created self-contained regimes of international law with their own rules and systems of dispute settlement. With few exceptions, these regimes do not apply directly to individual conduct. International business transactions do apply to private transactions, however, and this applicability becomes a central theme in this course, in particular because it gives rise to a second major issue: whether it is fair/proper for a court to take jurisdiction and, if necessary, enforce a contract? This is a question that rarely – if ever – arises in international trade law where jurisdiction and the competence of a tribunal to hear a matter are plenary and presumed.

There is no single treaty that governs international business transactions in toto. Rather, a range of both hard and soft law instruments apply and have to be kept in mind. This is because what is being examined here is private behaviour, and it is varied and complex in ways that public behaviour by governments is not. Individuals occasionally break contracts or fail to pay, behaviour that is normally not contemplated by public actors like governments which must deal in "good faith" and dislike defaulting on their debts.

## Hard and Soft Law
An important distinction that is often made between domestic and international law is that domestic law is hard law, that is, law with sanctions or "teeth", whereas international law is traditionally soft, tending more to cooperative and consensus-building than mandatory obligation. In part, the traditional dichotomy between hard and soft law retains favour because there has been, until recently, no real international police. This has tended to colour thinking about the effectiveness of international law in much the same vein as Jeremy Bentham must have thought when he famously wrote that "a law with no penalty is merely advice [3]."

More recently, the neat distinction between domestic and international law has been eroded by developments nationally and internationally. In India itself there is greater awareness of international law and an increasing tendency on the part of courts to interpret Indian legislation in light of, and consistent with, unimplemented treaties [4]. At the same time, internationally there has been a proliferation of various instruments of international law, many with obligations that go well beyond simple border delimitation or the exchange of diplomatic personnel and therefore with the potential to deeply affect the internal workings of the state. The boundary between what is national and what is international is becoming blurred.

Along with the progressive hardening of international law, there is also clear evidence that "the international system

appears to be evolving a rather sophisticated normative structure without police enforcement [5]." In other words reasons other than compulsion must explain adherence to international law. Some of the reasons that have been suggested include efficiency, self-interest and adherence to higher principles. Whatever the exact motive, the wide coverage of international law today suggests a different facet to international law - and perhaps to law generally - in the fact that much law is adhered to for reasons other than coercion and that we must begin to see law as both a system of voluntary association and of compelled norms.

**International sale of goods**

The typical international sale of goods involves at least four inter-related contracts:

a. Agreement of Sale: The first is an agreement of purchase and sale for the goods. A party in one country must agree to buy the goods from the seller in another. Very often, this contract makes provision for three other related contracts, giving rise to the idea of "four in one".
b. Finance Agreement: Second, it is customary for the buyer to arrange financing through a bank in the form of a letter of credit opened in favour of the seller. The letter of credit is a promise by the buyer's bank to pay the seller upon the satisfaction of certain conditions, usually proof that the goods have been shipped. Such an arrangement is common in international sales, principally because few sellers have the luxury of waiting for payment until the goods arrive at the buyer's destination.
c. Transportation Agreement: Third, a contract of transportation is created to move the goods from the seller to the buyer. If the goods are being transported by marine cargo, the contract is normally referred to as a bill of lading.
d. Insurance Agreement: Fourth, a contract of insurance is created to ensure that there is some remedy if the goods are damaged in transit.

**Suggestions**

Because of the greater complexity of an export transaction, contracts of sale used for these transactions may incorporate terms not frequently used in domestic trade. These trade terms have evolved over a long period of international commerce from customs universally accepted and used, and have, to some extent at least, simplified and standardized transactions for the international sale of goods. Parties entering into negotiations involving an international sale should be aware that more than one contract will be necessary. The contract that is the prime focus for initial negotiations is, of course, the contract for the sale of goods. The contracting parties in this central or primary contract will be the seller, exporter and the purchaser-importer. Other contracts will be necessary to deal with transportation, insurance, and financing and these contracts will likely be with third parties. Remembering the principle of privity of contract, it is most important that the obligations of the two main contracting parties for matters such as transportation, insurance, and financing be clearly stated in the central or primary contract as the failure of any of these responsibilities may be just as serious to the parties as a breach of the sale of goods obligations.

Some matters that should be considered in drafting general terms and conditions for the parties are:

a. A general statement to the effect that every contract of sale will not be subject to the seller's/buyer's general conditions.
b. A provision that title to the goods will be retained by the seller until the purchase price is paid in full in cash. In addition to this protection, there should be a provision that, if the buyer sells the goods (for which payment in full has not been received), such sale is made only as agent for the seller.
c. Provision for price escalation based on increased prices of raw materials, components, or labour.
d. Provision that any amounts owing to the seller shall bear interest at a specified rate (usually tied to bank prime).
e. A force majeure clause to protect the seller from liability for delays or failures beyond its control should always be included.
f. Provision for settlement of any disputes between the parties. Arbitration should be specified, if this is desired, and the law applicable to the contract should be specified, usually the law of the seller's own jurisdiction. It should be noted in this context that many organizations have developed standardized terms appropriate to specific types of contracts and it may well be that such a standardized set of general conditions is available and will greatly ease the conduct of international transactions.

**Conclusion**

An import or export transaction is simply a contract for the sale of goods. Because goods are being transported over longer distances and across national boundaries, certain unfamiliar considerations may become just as significant in negotiations as the usual questions of price, quality, date of delivery, and payment terms. It is of paramount importance to address and answer all these questions in an international sales transaction as the likelihood of problems increases with the longer distances involved, the different business customs, practices, and local laws of the countries. These problems can be complicated by communication problems. It is also more likely in an international transaction that the parties do not know each other, either by previous dealings or by reputation in the local business community, and this may contribute to lack of trust, which can exacerbate problems that do arise. The significance of these risks becomes even greater when you consider the difficulties of enforcing your rights against a contracting party in another jurisdiction.

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