

LECTURE SIX

FILLING THE GAPS IN INTERNATIONAL SALES CONVENTIONS

The inter-relationship between the substantive law of the contract under domestic law and the rules of the convention.

Few, if any, international conventions succeed in incorporating a complete code that governs all aspects of contracts. It is likely that on times a dispute will involve issues not provided for by the convention that need to be settled by an arbitrator or judge. When this occurs, the adjudicator must have recourse to the underlying principles of the law of agreement contained in the substantive law governing the dispute. The more complete a code is, the less likely it is that this will occur.

The general principles of law governing agreement are reasonably universal throughout the world, and international codes reflect this, to the extent that they cover such areas. However, there are also differences and the adjudicator needs to be fully conversant with the domestic law of agreement that he or she has to apply. English Law frequently provides the substantive law governing international trade agreements, often by express incorporation, and hence it is useful to be aware of the provisions of English Law governing the international sale of goods.

The lectures on Conflicts of Law will canvass which domestic law applies in any particular situation. This lecture by contrast considers the situation where the law of England and Wales applies and points to some of the domestic legal provisions under that jurisdiction that would apply to an international contract in addition to the provisions of any applicable international convention on sales of goods.

EXAM QUESTION

1. Consider, with examples, whether or not, when it comes to filling in the gaps between the international code for international trade transactions provided by the Vienna Convention and the terms of the contract, English Law offers a satisfactory substantive legal regime that traders should actively adopt or if not do their best to avoid.
2. Identify the relevant aspects of substantive law, if any, that the principal international convention regimes fail to provide for.

FURTHER READING