Academician E.A. Buketov Karaganda State University
European Association of Students and Businessmen

EDUCATION *and* SCIENCE *without borders*

Journal

volume 2

№ 3 (1/2011)

Karaganda, Republic of Kazakhstan
Prague, Czech Republic
MK ČR E 19362, ISSN 1804-2473

INCOTERMS AND BRAZILIAN LEGISLATION ON CONTRACTS

Frederico Eduardo Z. Glitz[1]
Lawyer. PHD candidate at Federal University of Paraná, Brazil (UFPR)

A fundamental question in contracts that involve the delivery of merchandise is the moment at which the risks inherent to it are transferred. In the international system, business customs consecrated standardized clauses by means of which the contracting parties define the time of that transfer. These are denominated as Incoterms. Typical of international business dealings, they ended up being admitted into Brazilian law not only in relations of a transnational character, but likewise in internal business dealings. Such a transposition, however, is not always explained, although the jurisprudential application of the Incoterms is similar to the international tradition. Understanding it, in short, will help to explain the new role of comparison in Brazilian Law.

I. Transfer of risk and Brazilian contractual law: a brief approach

One of the fundamental questions in contracts that involve the delivery of a movable is exactly the time at which the risks inherent to it are transferred. This point is especially important because in the Brazilian system, it would coincide with the transfer of ownership and with the fulfillment of obligation and consequent exoneration of the debtor. A great complexity comes into play when, to make delivery effective, transport of the object becomes necessary.

Moreover, an interesting fact to be taken into consideration is the double contractual unification brought about by the civil codification of 2002: the same regulation serves for internal and international contracts and the same regulation for contracts undertaken without business purposes and those for a clear business purpose. While this latter "unification" has influenced the interpretation of business dealings, the former has imposed greater concern on contracting parties with the legislation applicable to the contract (when it is not Brazilian) and its submission or not to international conventions.

Taking this into consideration comes to be extremely important for understanding not only the system of transfer of risks within the Brazilian juridical order, but also, the most routine provisions of international business traffic.

According to brazilian legislation, in the absence of provisions regarding transfer of risk, they would be under the responsibility of the seller until tradition that would occur at the location in which the object is found, unless agreed upon to the contrary (arts. 492 and 493 of the Brazilian Civil Code). When the buyer orders the shipment of the object to a diverse place, the delivery is equivalent to transfer of property[2].

The parties may thus negotiate the location of occurrence of tradition and, along with it, the transmission of the risks inherent to the object. There is, herein, the normative justification for the contracting of clauses by means of which the contracting parties define the transfer of business risks when involving the need for transport of goods.

A different question, furthermore, would be the costs involved in the business dealing. That is because in the absence of express provisions from the contracting parties, expenses for tradition would be under the responsibility of the seller (art. 490 of the Civil Code), since they would be the expenses necessary for performance of the obligation[3]. In this point arises a certain controversy, some authors understand that such expenses ("accessories of the price") may not be confused with possible elements included in the price (such as those present in CIF and FOB clauses)[4]. Other authors, nevertheless, do not differentiate them and enlist the same CIF and FOB clauses as examples of tradition cost negotiation[5].

In terms of international purchase, on the other hand, the absence of a law immediately applicable to these business dealings demands the contracting parties' capacity for adaptation of each contract specific conditions. That is because, there would not be a single solution to the risk transfer question since it would be common that different legislations work with distinct criteria[6].

In short, in these contracts, when the fulfillment of the obligation depends on transport, which is within the normal situation of these business dealings, the problem is in knowing exactly when delivery is considered to be performed, and the risks thus transferred.

Some international Conventions concerned themselves with the regulating of international contracts, such as the International Convention of the Hague in 1955 regarding law applicable to the purchase and sales of corporeal moveable objects; the Uniform Law of Vienna of 1964 (LUVI) regarding purchase and sale of corporeal movable objects, but its application did not come to be relevant.

The great international reference regarding the matter is precisely the Vienna Convention regarding the purchase and sale of goods of 1980 (CISG). Its standardizing relevance for Brazil appears, at first sight, to be indirect. That is because Brazil is not a signer, although various countries with which it habitually negotiates are. Thus, its provisions may come to be applied in national territory by way of competent connection (art. 9 of the Brazilian conflict law and art. 1, I, b of the CISG). As a source of international law and as a reference for comparative law, however, its importance is much more evident.

The Convention establishes that the main obligation of the seller is delivery of the goods (art. 31). It foresees that "if there is no determination of the place of delivery by the parties and if the hypothesis is not subsumed by paragraphs a [if the contract involves transport] or b [making available to the buyer at the location in which the goods are found] of art. 31, then the seller must make the goods available to the buyer in its establishment (at the time of conclusion of the contract)."[7]

It furthermore establishes that the risk transfer in the contracts that involve transport occurs when the delivery

of the goods to the first Carrier (art. 67). It's the dissociating of the transfer of risks from transfer of ownership. It clarifies that the loss or deterioration of the object after the transfer of risk does not exonerate the debtor from payment of the price (art. 66). If the goods are in transit, transfer of risk will occur with establishment of the contract (art. 68). For the cases in which this rule is not applicable, the Convention establishes that the transfer of risk would occur upon delivery of the goods to the buyer or when they are available to him (art. 69).

If this ruling were not enough, based on the principle of objective good faith, one of the underlying principles of the Convention, it would be possible to affirm the creation of certain additional duties attached to the contracting parties. In this sense, one may, for example, provide for the duty of diligence on the part of the seller in allowing for transport (art. 32,2), duty of information regarding the conditions of contracting insurance (art. 32,3), duty of adequate packing of the goods (art. 35, 1 and 2, "d"); duty of guarantee (arts. 35.3 and 36.1 and 2); duty of providing information regarding the risk of loss, deterioration or perishing of the goods (art. 68).

The Vienna Convention, however, foresees the possibility of the contracting parties excluding, annulling or modifying the application of parts of it in concrete cases (art. 6). This supplemental character would authorize the convention regarding, for example, the risks transfer (art. 31, head of the article, for example).

The Convention did not establish specific conditions such as those identified by the ICC, not having done this for various reasons: its text is compact, as the terms are mutable, the text could become out-of-date and the ICC would be the most adequate stage for its definition[8].

Thus, commercial practice preferred to adopt clearer rules of transfer of risks, adapting them to the business needs. That way, along with the Vienna Convention, arise the Incoterms, which would appear as viable and useful instruments for regulation of the transfer of risk in international purchase contracts in a more detailed way[9]. The system that arises, therefore, would be complementary between the Convention and the Incoterms[10].

II. Incoterms: very brief approach

By the abbreviation "Incoterms" should be understood what is otherwise known as International commercial terms. Actually, they are standard contractual conditions for international trade. They refer to international purchase and sale contracts in which, in the absence of specific regulation, identification of the time of transfer of risks (and therefore costs) in regard to the goods, is indispensable. Oberman rightly indicates that the details provided by the Incoterms, in definition of the time at which transfer of risk occurs, ends up being extremely practical and would result in avoiding faults in understanding[12].

This is a task carried out by the International Chamber of Commerce of Paris (ICC) which published the first version in 1936 (with later alterations in 1953, 1967, 1976, 1980, 1990, 2000 and 2010). Such initiative would obey a certain international trend for uniformity of contractual rules and would have the purpose of facilitating interpretation of business conditions.

Its binding power would arise from the exercise of private autonomy[13], although its "authority" is highly recognized within international trade, the reason for which in spite of the innumerable occasions in which there is no specific reference to its regulations, they may serve as rules for interpretation.

Some authors understand the incoterms as linked to the notion of price (for they would influence its definition) and as such they would be price clauses[14]. Not all accept this position, principally through the fact that the Incoterms regulate not only the cost of the goods, but responsibility for risks[15], for contracting (transport and insurance, for example), for provision of licenses and for customs clearance. It comes to be stated that the main function of the Incoterms resides in the definition of the time at which the risks are transferred[16].

It may be perceived, on the other hand, that this is a quite simple way of establishing the domains transfer, delivery of the object and responsibility for risks. That is because the provisions concerning the risks applicable to the object to be delivered are not of a public order nature and, therefore, may be the object of negotiation between the parties[17]. In addition, they would serve as a common (uniform) definition[18] of the of the most usual business conditions in the international trade, avoiding questions[19] and repetitions[20].

Some authors identify its genesis with what is known as the lex mercatoria, which would include consuetudinary international law[21]. Eduardo Grebler, for example, expressly declares them as examples of the application of the lex mercatoria.

The idea itself of the Incoterms, however, may appear paradoxical. That is because if, on the one hand, it promotes the typical dynamic nature of trade, on the other hand, its repeated use may end up halting negotiating activity. That is the reason for which the contracting of adaptations is ever more common (for example, EXW loaded or CIF unloaded)[22].

Such a situation is even more unusual since the Incoterms did not foresee the possibility of such adaptations until recently (2010), when ICC recognized the possibility of incoterms use to national trade. This is, once more, contractual freedom adapting the negotiating instruments to the needs of the operators. In this same sense, one may furthermore highlight the complete inadequacy, at least for those that see the Incoterms in a pure form when they are used in relation to internal contracts[23] or even apart from purchase and sales[24]. The fact is, however, that such adaptations have occurred[25] and that they needed definition on the part of jurisprudence.

III. Concluding notes

As has already been affirmed, the Incoterms are still unknown to a large part of Brazilian doctrine and jurisprudence. Even though their foundations, characteristics, purposes and limits are debated by foreign doctrine, reflections of the discussion still appear to be very distant from national reality. There is in fact a problematic state of affairs which only emphasizes the preoccupying situation of observing the existence of so many conflicts being judged by our national courts without adequate concern for the

theoretical base of the decisions.

In a general way, the Brazilian courts, when entreated to resolve situations involving such negotiated conditions, even if in an intuitive manner, end up giving the customary interpretation to each one of them. Thus, simpler cases that involve mere discussion regarding composition of the price (duty of indemnification, for example), (un)due protest through responsibility for payment of freight and discussion regarding the time as of which the risk of loss of the goods is passed end up being adequately treated.

Greater complexity, however, is in basing a given interpretation provided to business dealings that are outside the customary cases: the binding nature of the condition to third parties, intervention of third parties, and the moment of concrete fulfillment of transfer of risk in dealing with non-maritime contracts, for example.

Such situations demand more than more affirmation that in condition X the responsibility is of the contracting party Y for the loss of goods or for payment of freight. In these cases, discussion regarding the nature of this type of clause or of the manner that the creative alterations made by the parties must be interpreted is indispensable. Clearly, not all the negotiated solutions may be indicated by the Incoterms, as emphasized by Oberman and Valioti[26], for even though they may be a guide that has been broadly tested in practice, their range is limited. It is at this point that creativity in negotiation needs theoretical support. In this aspect, Comparative Law may help to discover a solution; after all, as the research showed (even if only through a quick glance), we are not the only ones who confront this same phenomenon.

Go beyond the time in which simplistic solutions are sufficient for serving a wide range of situations. This affirmation must be weighed against a secondary item of data from the research undertaken: the Incoterms are not a problem only pertinent to professionals in foreign trade. More and more they are entering into openings in daily life, whether through freight paid for a "move", in the discussion carried out in one of the brazilian state Courts regarding civil responsibility of the carrier for environmental damages or through discussion regarding establishment of the price of certain goods (up to the limits of public invitation to bid, for example).

It is, therefore, within this perspective that a new role for comparative contractual law is proposed: from mere curiosity and juridical filigree to promoter of creativity in negotiating supported by deepened theoretical research. The truth, whether we like it or not, is that we need to find comparative solutions to problems that transcend[27] the traditional concerns of Brazilian law. This is the role that the contemporary operator must take on.

---

[1] Lawyer. PHD candidate at Federal University of Paraná, Brazil (UFPR). Specialist in Law and International Business (UFSC) and Business Law (IBEJ), Professor of contractual Law and international private Law at UNIBRASIL Law School (www.unibrasil.com.br). Professor of contractual Law at Positivo Law School (www.up.edu.br). Member of QUIS (Research Group on Sustainability) of UNIBRASIL and studies of Co-Extra (Co-existence and Traceability) in Brazil. Member of the Lawyer's Institute of Paraná (IAP). Member of the Board of Foreign Trade of the Commercial Association of Parana. fglitz@gmail.com

[2] GOMES, Orlando. Contratos, 6. Ed., Rio de Janeiro: Forense, 1977, p. 270. In this sense it is prediction of the Preliminary Draft European Code of Contracts (Art. 46)

[3] In this sense, for instance, is the art. 6.1.11 of the Unidroit Principles.

[4] TEPEDINO, Gustavo; BARBOZA, Heloisa Helena; MORAES, Maria Celina Bodin de. Código Civil interpretado: conforme a constituição da República. Rio de Janeiro: Renovar, 2006. Vol. II, p. 151.

[5] WALD, Arnoldo. Curso de Direito Civil Brasileiro: Obrigações e contratos, 17. Ed., São Paulo: Saraiva, 2006, p. 335; CAMILLO, Carlos Eduardo Nicoletti; TALAVERA, Glauber Moreno; FUJITA, Jorge Shiguemitsu; SCAVONE JR., Luiz Antonio (Coord.). Comentários ao Código Civil. São Paulo: RT, 2006, p. 497.

[6] BASTOS, Celso Ribeiro; KISS, Eduardo Amaral Gurgel. Contratos internacionais. São Paulo: Saraiva, 1990, p. 21.

[7] GOULART, Monica Eghrari. A Convenção de Viena e os Incoterms. In Revista dos Tribunais, Vol. 856. São Paulo: RT, fevereiro de 2007, p. 85.

[8] VALIOTI, Zoi. Passing of risk in international sale contracts: a comparative examination of the rules on risk under the United Nations Convention on contracts for the international sale of goods (Vienna 1980) and Incoterms 2000. Disponível em: http://www.njcl.fi/2_2004/article3.pdf.

[9] FONSECA, Patrícia Bezerra de M. Galindo da. Anotações pertinentes à regulamentação sobre transmissão de risco: Convenção da ONU de 1980, Incoterms e Código Civil brasileiro. In Revista de Informação Legislativa, n°139. Brasília, jul/Set 1998, p. 48.

[10] See also: OBERMAN, Neil Gary. Transfer of risk from seller to buyer in international commercial contracts : a comparative analysis of risk allocation under the CISG, UCC and Incoterms. http://www.cisg.law.pace.edu/cisg/thesis/Oberman.html. On the other hand, Philippe Fouchard when summarizing the work of the Colloquium on the CISG and Incoterms even states that the Convention itself leave open space to complementation, since it considers the usage hierarchly superior (art. 9) and by adopting an inaccurate statement when referring to risk transfer (DERAINS, Yves; GHESTIN, Jacques (Direc.). La convention de Vienne sur la vente internationale et les incoterms: actes du colloque des 1er et 2 décembre 1989. Paris : LGDJ, 1990, p. 164-169).

[11] Some authors perceive the Incoterms as special contracts of sale (MARTINS, Op. Cit., p. 33) or standard contracts (DERAINS; GHESTIN, Op. Cit., p. 39; KASSIS, Antoine. Théorie générale des usages du commerce: droit compare, contrats et arbitrage internationaux, lex mercatoria. Paris : LGDJ, 1984, p. 274). Most of the doctrine, however, understand incoterms as special conditions of sale (FONSECA, Op. Cit., p. 47).

[12] OBERMAN, Neil Gary. Transfer of risk from seller to buyer in international commercial contracts : a comparative analysis of risk allocation under the CISG, UCC and Incoterms (http://www.cisg.law.pace.edu/cisg/thesis/Oberman.html).

[13] WALD, Op. Cit., p. 370; BASTOS; KISS, Op. cit., p. 21; BARBI FILHO, Celso. Contrato de compra e venda internacional: abordagem simplificada de seus principais aspectos jurídicos. In Revista do Curso de Direito da Universidade Federal de Uberlândia, vol. 25. Uberlândia: Universidade Federal de Uberlândia, dez. 1996, p. 30; CALIENDO, Op. Cit., p. 119; RODRIGUES, Waldemar. Condições internacionais de exportação e importação -INCOTERMS. In DIAS, Reinado; RODRIGUES, Waldemar (Org.). Comércio exterior: teoria e gestão. São Paulo: Atlas, 2004, p. 313; AMARAL, Antonio Carlos Rodrigues do (Coord.). Direito do comércio internacional: aspectos fundamentais. São Paulo: Aduaneiras/Lex, 2004, p. 241; PINHEIRO, Luís de Lima. Estudos de Direito Civil, Direito Comercial e Direito Comercial Internacional. Coimbra: Almedina, 2006, p. 317; DERAINS; GHESTIN, Op. Cit., p. 38-39; GRANZIERA, Maria Luiza Machado. Incoterms. In RODAS, João Grandino (Coord.). Contratos internacionais, 2. Ed.. São Paulo: RT, 1995, p. 153.

[14] RODRIGUES, Op. Cit., p. 316. Granziera believes that they would have also the nature of price clauses since "the reference to each word to determine the compositional elements of the price of the goods, but not limited to it since it also defines some other obligations" (GRANZIERA, Op. Cit., p. 156).

[15] PINHEIRO, Op. Cit., p. 320; FONSECA, Op. Cit., p. 47.

[16] DERAINS; GHESTIN, Op. Cit., p. 39.

[17] GOMES, Op. cit., p. 271; GONÇALVES, Carlos Roberto. Direito Civil brasileiro: contratos e atos unilaterais. São Paulo: Saraiva, 2004,

p. 206; WALD, Op. Cit., p. 334; COELHO, Fábio Ulhoa. Manual de Direito Comercial, 9. Ed. São Paulo: Saraiva, 1997, p. 412; LÔBO, Paulo Luiz Netto. Comentários ao Código Civil: parte especial, das várias espécies de contratos. São Paulo: Saraiva, 2003, Vol. 6, p. 74;

[18] MARTINS, Op. Cit., p. 33; STRENGER, Irineu. Contratos Internacionais do Comércio, 4. Ed., São Paulo: LTr, 2003, p. 282.

[19] CAMARA, Bernardo Prado da. O contrato de compra e venda internacional de bens. In Revista de Direito Privado, n° 27. São Paulo: RT, Jul/Set 2006, p. 19; BARBI, Op. Cit., p. 30; GUIMARÃES, Antônio Márcio da Cunha; SILVA, Geraldo José Guimarães da. Manual de Direito do Comércio Internacional: contrato de câmbio. São Paulo: RT, 1996, p. 251; AMARAL, Op. Cit., p. 267; GOULART, Op. Cit., p. 73; STRENGER, Op. Cit., p. 284-285. It should, however, be noted that the Incoterms are not the only consolidated contractual conditions of international trade. Beside them are widely used the Revised American Foreign Trade Definitions. Although very similar, have substantial differences, for example, the clause FOB with six different meanings (MARTINS, Op. Cit., 34).

[20] VENOSA, Op. Cit., p. 74-75.

[21] BOITEUX, Op. cit., p. 34; GONÇALVES, Op. Cit., p.193; VENOSA, Sílvio de Salvo. Direito Civil: contratos em espécie, 5. Ed., São Paulo: Atlas, 2005, Vol. III, p. 74-75; CALIENDO, Op. Cit., p.123; BAPTISTA, Luiz Olavo. A boa-fé nos contratos internacionais. In Revista de Direito Bancário, do Mercado de Capitais e da Arbitragem, n° 20. São Paulo: RT, abril/junho 2003, p. 24-46; GOULART, Op. Cit., p. 69; ARAUJO, Nadia. A cláusula de hardship nos contratos internacionais e sua regulamentação nos Princípios para os contratos comerciais internacionais do UNIDROIT. In POSENATO, Naiara (Org.). Contratos internacionais: tendências e perspectivas. Ijuí: Editora Unijuí, 2006. p. 322. As of custom coding, and therefore formal source of the Lex mercatoria: OSMAN, Filali. Les príncipes généraux de la lex mercatoria: contribution à l□étude d□un ordre juridique anational. Paris: LGDJ, 1992, p. 280-281.

[22] LUNARDI, Angelo Luiz. Incoterms 2000 e outras condições de venda. In www.aduaneiras.com.br/noticias/semfronteiras/default.asp?m=2&artigoid=366.

[23] CALIENDO, Op. Cit., p. 123.

[24] See also: www.aduaneiras.com.br/noticias/semfronteiras/default.asp?m=2&artigoid=2451. CALIENDO highlights that only when the obligation is performed by delivery it would be possible of being objects of such clauses, but still, not all international agreements could have them by clause. Their application is limited to international contracts of sale (CALIENDO, Op. Cit., p. 123-124.).

[25] JOLIVET, Emmanuel. Les incoterms: étude d□une norme du commerce international. Paris : Litec/FNDE, 2003, p. 375.

[26] OBERMAN, Neil Gary. Transfer of risk from seller to buyer in international commercial contracts : a comparative analysis of risk allocation under the CISG, UCC and Incoterms. (http://www.cisg.law.pace.edu/cisg/thesis/Oberman.html) and VALIOTI, Zoi. Passing of risk in international sale contracts: a comparative examination of the rules on risk under the United Nations Convention on contracts for the international sale of goods (Vienna 1980) and Incoterms 2000 (http://www.njcl.fi/2_2004/article3.pdf).

[27] "Le recours généralisé aux Incoterms dans les ventes commerciales internationales et la réception de ces termes dans les droits nationaux sont alors déterminants d□une positivité juridique dont le respect emporte la création d□un usage d□origine internationale transcendant les divergences communément observées entre les systèmes dits de « droit civil »et de « common law ». " (JOLIVET, Op. Cit., p. 428).

References:

AMARAL, Antonio Carlos Rodrigues do (Coord.). Direito do comércio internacional: aspectos fundamentais. São Paulo: Aduaneiras/Lex, 2004.

ARAUJO, Nadia. A cláusula de hardship nos contratos internacionais e sua regulamentação nos Princípios para os contratos comerciais internacionais do UNIDROIT. In POSENATO, Naiara (Org.). Contratos internacionais: tendências e perspectivas. Ijuí: Editora Unijuí, 2006. p. 317-341.

AZEVEDO JUNIOR, José Osório de. Compra e venda; Troca e permuta. São Paulo: RT, 2005.

BAPTISTA, Luiz Olavo. Dos contratos internacionais: uma visão teórica e prática. São Paulo: Saraiva, 1994.

_____. A boa-fé nos contratos internacionais. In Revista de Direito Bancário, do Mercado de Capitais e da Arbitragem, n° 20. São Paulo: RT, abril/junho 2003, p. 24-46.

BARBI FILHO, Celso. Contrato de compra e venda internacional: abordagem simplificada de seus principais aspectos jurídicos. In Revista do Curso de Direito da Universidade Federal de Uberlândia, vol. 25. Uberlândia: Universidade Federal de Uberlândia, dez. 1996, p. 15-37.

BASTOS, Celso Ribeiro; KISS, Eduardo Amaral Gurgel. Contratos internacionais. São Paulo: Saraiva, 1990.

BITTAR, Carlos Alberto. Contratos comerciais, 2. Ed., Rio de Janeiro: Forense Universitária, 1994.

BOITEUX, Fernando Netto. Contratos mercantis. São Paulo: Dialética, 2001.

BRITO, Maria Helena. Direito do Comércio Internacional. Coimbra: Almedina, 2004.

CALIENDO, Paulo. Incoterms, cláusulas padronizadas de comércio internacional. In Revista da Faculdade de Direito Ritter dos Reis, vol. 1, Porto Alegre, 1998, p. 119-152.

CAMARA, Bernardo Prado da. O contrato de compra e venda internacional de bens. In Revista de Direito Privado, n° 27. São Paulo: RT, Jul/Set 2006, p. 07-31.

CAMILLO, Carlos Eduardo Nicoletti; TALAVERA, Glauber Moreno; FUJITA, Jorge Shiguemitsu; SCAVONE JR., Luiz Antonio (Coord.). Comentários ao Código Civil. São Paulo: RT, 2006.

CCI. Incoterms: 2000 - regras oficiais da CCI para a interpretação de termos comerciais. São Paulo: Aduaneiras, 2004.

COELHO, Fábio Ulhoa. Manual de Direito Comercial, 9. Ed. São Paulo: Saraiva, 1997.

COSTA, Judith Martins. Os princípios informadores do contrato de compra e venda internacional na Convenção de Viena de 1980. In CASELLA, Paulo Borba (Coord.). Contratos internacionais e Direito econômico no MERCOSUL: após o término do período de transição. São Paulo: LTr, 1996, p. 163-187.

DERAINS, Yves; GHESTIN, Jacques (Direc.). La convention de Vienne sur la vente internationale et les incoterms: actes du colloque des 1er et 2 décembre 1989. Paris : LGDJ, 1990.

ENGELBERG, Esther. Contratos internacionais do Comércio, 3. Ed., São Paulo: Atlas, 2003. ESPANHA, Código Civil y legislación especial, 2ª ed. Madri: Colex, 2003.

FACHIN, Luiz Edson. Quebra de Confiança. In Folha de São Paulo, São Paulo, 06 de fevereiro de 1999, Caderno 3, p. 2.

FADLALLAH, Ibrahim. Projeto de Convenção sobre a venda de mercadorias. In Revista dos Tribunais, vol. 630. São Paulo: RT, Abril 1988, p. 33-42.

FONSECA, Patrícia Bezerra de M. Galindo da. Anotações pertinentes à regulamentação sobre transmissão de risco: Convenção da ONU de 1980, Incoterms e Código Civil brasileiro. In Revista de Informação Legislativa, n°139. Brasília, jul/Set 1998, p. 39-56.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. Novo Curso de Direito Civil: contratos. São Paulo: Saraiva, 2008, Vol. IV, Tomo 2.

GOMES, Orlando. Contratos, 6. Ed., Rio de Janeiro: Forense, 1977.

GONÇALVES, Carlos Roberto. Direito civil brasileiro: contratos e atos unilaterais. São Paulo: Saraiva, 2004. Vol. III.

GOULART, Monica. Eghrari. A Convenção de Viena e os

Incoterms. In Revista dos Tribunais, vol. 856. São Paulo: RT, fevereiro de 2007, p.67-91.
GRANZIERA, Maria Luiza Machado. Incoterms. In RODAS, João Grandino (Coord.). Contratos internacionais, 2. Ed.. São Paulo: RT, 1995, p. 147-221.
_____. Contratos internacionais: negociação e renegociação. São Paulo: ícone, 1993.
GREBLER, Eduardo. O contrato internacional no Direito de empresa. In Revista de Direito Mercantil, Industrial, Econômico e Financeiro, nº 85. São Paulo: RT, Janeiro/Março 1992, p. 22-33.
_____. A Convenção das Nações Unidas sobre contratos de venda internacional de mercadorias e o comércio internacional brasileiro. In Revista de Direito Mercantil, Industrial, Econômico e Financeiro, n° 144. São Paulo: Malheiros, Out/dez 2006, 59-72.
GUIMARÃES, Antônio Márcio da Cunha; SILVA, Geraldo José Guimarães da. Manual de Direito do Comércio Internacional: contrato de câmbio. São Paulo: RT, 1996, p. 248-255.
JOLIVET, Emmanuel. Les Incoterms: étude d□une norme du commerce international. Paris: Litec/FNDE, 2003.
KASSIS, Antoine. Théorie générale des usages du commerce: droit compare, contrats et arbitrage internationaux, lex mercatoria. Paris: LGDJ, 1984.
LISBOA, Roberto Senise. Manual de Direito Civil: contratos e declarações unilaterais - teoria geral e espécies, 3.ed., São Paulo: 2005, Vol. 3.
LÔBO, Paulo Luiz Netto. Comentários ao Código Civil: parte especial, das várias espécies de contratos. São Paulo: Saraiva, 2003, Vol. 6.
LORENZETTI, Ricardo Luis. Tratado de los contratos, 2. Ed., Buenos Aires: RubinzalCulzoni editores, 2004. Tomo I.
LUNARDI, Angelo Luiz. Incoterms 2000 e outras condições de venda. In www.aduaneiras.com.br/noticias/semfronteiras/default.asp?m=2&artigoid=366. Acesso em 06/11/2007.
MARTINS COSTA, Judith. Os princípios informadores do contrato de compra e venda internacional na convenção de Viena de 1980. In CASELLA, Paulo Borba (Coord.). Contratos internacionais e Direito econômico no MERCOSUL: após o término do período de transição. São Paulo: LTr, 1996, p. 163-187.
MARTINS, Fran. O contrato de compra e venda internacional. In Revista de Direito Mercantil, Industrial, Econômico e Financeiro, n° 33. São Paulo: RT, jan/mar 1979, p. 25-39.
MOUSSERON, Jean Marc. La gestion des risques par le contrat. In Revue trimestrielle de droit civil, n° 3. Paris : Sirey, juillet septembre 1988, p. 481-504.
OBERMAN, Neil Gary. Transfer of risk from seller to buyer in international commercial contracts : a comparative analysis of risk allocation under the CISG, UCC and Incoterms. Disponível em: http://www.cisg.law.pace.edu/cisg/thesis/Oberman.html.
OSMAN, Filali. Les príncipes généraux de la lex mercatoria contribution à l□étude d□un ordre juridique anational. Paris: LGDJ, 1992.
POSENATO, Naiara (Org.). Código europeu dos contratos projeto preliminar- Livro primeiro. Curitiba: Juruá, 2008.
RODRIGUES, Waldemar. Condições internacionais de exportação e importação -INCOTERMS. In DIAS, Reinaldo; RODRIGUES, Waldemar (Org.). Comércio exterior: teoria e gestão. São Paulo: Atlas, 2004, p. 311-337.
SANTOS, J. A. Penalva. Os contratos mercantis à luz do Código Civil. São Paulo: Malheiros, 2006.
STRENGER, Irineu. Contratos internacionais do comércio, 4. Ed., São Paulo: LTr, 2003.
TEPEDINO, Gustavo; BARBOZA, Heloisa Helena; MORAES, Maria Celina Bodin de. Código Civil interpretado: conforme a constituição da República. Rio de Janeiro: Renovar, 2006. Vol. II.
UNIDROIT – Instituto Internacional para a Unificação do Direito Privado. Princípios Relativos aos Contratos Comerciais Internacionais. Roma: Ministério da Justiça de Portugal, 1995.
VALIOTI, Zoi. Passing of risk in international sale contracts: a comparative examination of the rules on risk under the United Nations Convention on contracts for the international sale of goods (Vienna 1980) and Incoterms 2000. Disponível em: http://www.njcl.fi/2_2004/article3.pdf.
VENOSA, Sílvio de Salvo. Direito civil: contratos em espécie. 5. Ed. São Paulo, 2005. Vol. III.
WALD, Arnoldo. Curso de Direito Civil Brasileiro: Obrigações e contratos, 17. Ed., São Paulo: Saraiva, 2006.

COMPARATIVE LEGAL ANALYSIS OF THE LEGISLATION ON A COMPETITION IN THE NORTH AMERICA AND THE EUROPEAN UNION

Assel E. Karibayeva
Academician E.A. Buketov Karaganda State University
28, Universitetskaya st., Karaganda, Kazakhstan, 100028

The article is devoted to comparative legal analysis of competition law in North America and the European Union. In the article the laws of the United States of America, Canada and countries of the European Union, questions of origin and development of competition law in these states were established, key similarities and fundamental differences, the types of legal regulation of market relations were identified.

Basic element of economic system of the state with the market form of management is the free competition. The state support of a competition, restriction of monopolistically tendencies and hindrance of monopolistically offences are erected in a rank of the most priority directions of activity of the state on construction and maintenance of effective market economy.

Through market economy is based on a principle of self-control of the market, the state influence on competition processes, and also antimonopoly regulation nowadays are recognized by objective necessity as in the countries only followed a way of construction of market economy and to where within decades life experience is saved up in "the market environment".