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APPENDIX A-11

TABLE 4—COMMERCIAL TRANSACTIONS COMPARATIVE CHART*

Practical Application: The comparative chart is a summary of the laws. Counsel is advised to consult additional sources for further additional comparative analysis.

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Legal	Common Law	UCC	CISG	Civil Law
<p>Policies and Purpose</p> <ul style="list-style-type: none"> Sealed promise mandated writing, seal, and delivery. Informal promise with consideration must be required to be a binding contract. Duty of good faith implied in all contracts. Restatement (2d) Contracts. 	<ul style="list-style-type: none"> To simplify, clarify, and modernize the law governing commercial transactions; To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and To make uniform the law among the various jurisdictions. UCC § 1-103 Obligation of good faith in its performance and enforcement. UCC § 1-103; see also UCC § § 1-203, 2-103. 	<ul style="list-style-type: none"> International character and the need to promote uniformity in its application and the observance of good faith in international trade. Questions concerning matters governed by this CISG, which are not expressly settled in it, are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law. Article 7. Preservation and enforcement of the agreement rather than termination (specific performance rather than damages alone) 	<ul style="list-style-type: none"> Simple promises made with the serious intention to be bound will be enforced (<i>pacta sunt servanda</i>) Protection of reliance Doctrine of the juristic act underlying liability Private autonomy Protection of good faith Distinction between consumer transactions and commercial transactions 	
<p>Sources of law</p> <ul style="list-style-type: none"> Terms of Contract Case law- <i>stare decisis</i> 	<ul style="list-style-type: none"> Terms of Contract Legislation - codes Case law 	<ul style="list-style-type: none"> Terms of Contract Legislation - codes Case law Academic commentary on the codes 	<ul style="list-style-type: none"> Legislation - codes Academic commentary on the codes Case law, despite no principle of <i>stare decisis</i> 	

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App. A-11: COMMERCIAL TRANSACTIONS COMPARATIVE CHART

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<p>Application</p>	<ul style="list-style-type: none"> • Common law and equity provisions apply unless displaced by UCC provision or sale of goods between non-merchants. UCC§ 1-103 	<ul style="list-style-type: none"> • Sale of goods (UCC §§ 2-102 & 2-103) between merchants. See generally, 2-102(a). • Gap-filling terms to preserve contract. 	<ul style="list-style-type: none"> • Contract for the sale of goods (Article 2 & 3) between parties whose places of business are in different States when the States are Contracting States; or when the rules of private international law lead to the application of the law of a Contracting State unless the parties expressly opt out of its application. (Article 6), Article 1. • Gap-filling terms to preserve the contract. Note: Reservation made by Contracting State. Reservations under Part IV. 	<ul style="list-style-type: none"> • Sales law codified in most systems • Contained in two sections – general principles of contract; Specific sales law • Details differ from code to code • Some systems have specific rules dealing with standard terms • Differentiation between consumer and commercial sales
<p>Contract</p>	<ul style="list-style-type: none"> • A valid contract is an agreement which contains the following elements: <ul style="list-style-type: none"> • -mutual assent; • -sufficient consideration; • -parties have the legal capacity to enter into a contract; and • - there is no illegal purpose. 	<ul style="list-style-type: none"> • A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract. • An agreement sufficient to constitute a contract for sale 	<ul style="list-style-type: none"> • CISG it is not directly concerned with the validity of the contract. Focus is on the following: <ul style="list-style-type: none"> • -Formation of the contract of sale and • -The rights and obligations of the seller and buyer arising 	<p>Requirements for valid contract:</p> <ul style="list-style-type: none"> • Consensus • Legality – certain standard terms prima facie unlawful/void/voidable • Parties must have capacity to contract • No formalities

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Legal	Common Law	UCC	CISG	Civil Law
		<p>may be found even though the moment of its making is undetermined.</p> <ul style="list-style-type: none"> • Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. UCC § 2-204. • Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act. UCC 	<p>from such a contract. The main obligations of the seller and buyer are set forth in Article 30 and 53 respectively. such that the seller has the obligation to <i>deliver the goods and transfer the property in the goods to the buyer, who for its part agrees to pay the price for the goods and take delivery of them.</i></p>	<ul style="list-style-type: none"> • No consideration required, but a valid <i>objet</i> or <i>causa</i>; usually found in serious intention to be bound

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<p>Offer</p>	<ul style="list-style-type: none"> Present Intent to enter into Contract: Objective Standard- believable by a reasonable person. Actual knowledge of offeree. Subject Matter: Goods: Quantity Duration: Stated in offer. Usually revocable unless option contract. Firm Offer: If no time limit stated, reasonable time. Advertisements: No contract by means of advertisement absent consideration. Auctions: Invitations for offers to buy which may be rejected by the seller, unless auction is "without reserve" where seller offers to sell for any price. 	<p>§ 2-207(3).</p> <ul style="list-style-type: none"> Sufficiently Definite to Invite Acceptance. UCC § 2-206. Reasonable Intent to Contract and reasonable basis for remedy. UCC § 2-204. Subject Matter: Goods: Quantity UCC § 2-204. Merchant Firm Offer Rule UCC § 2-205: Written Offer irrevocable for time stated or reasonable time no longer than 3 months if not stated in offer UCC § 2-204. 	<ul style="list-style-type: none"> Offer addressed to one or more specific person; Intention of the offeror to be bound and Sufficiently definite: Indicates goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. Article 14 Intention of the offeror to be bound in case of acceptance. Article 12(1). Advertisements: A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal. Article 12(2). 	<ul style="list-style-type: none"> Juristic act – statement made with object to conclude contract Must contain all the elements of the eventual agreement; ie must be certain or ascertainable; lawful Communicated to the intended party or class of parties Advertisements not regarded as offers Irrevocable nature of offers – either restricted (Romanistic systems) or excluded (Germanic systems) Sufficiently definite. Price term may be left open – intention presumed to be reasonable price or usual price.
<p>Offer Acceptance of Contract</p>	<ul style="list-style-type: none"> Bilateral: Exchange of promises 	<ul style="list-style-type: none"> Battle of the Forms: UCC § 2-207: Evidence of the 	<ul style="list-style-type: none"> Variation of Mirror Image/ Battle of Forms: If reply 	<ul style="list-style-type: none"> Acceptance must be unconditional; mirror image;

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Legal	Common Law	UCC	CISG	Civil Law
	<ul style="list-style-type: none"> • Unilateral: Performance. Unilateral is irrevocable by the offeror if the offeror, with the knowledge of offeror, started substantial performance. • Mirror Image Rule: Different terms equals counteroffer. • Mailbox Rule - Contract formed at moment of posting except if offer stipulates acceptance not effective until received or an option contract. • Application of Mailbox: Offeror sends rejection, then sends acceptance. If offeror receives rejection first then no contract; acceptance treated as counteroffer. If acceptance received first then contract. • Offeror sends acceptance then rejection. Contract is formed without regard to receipt. Acceptances are effective upon dispatch, even if it never reaches the offeror 	<p>parties' conduct, offer and acceptance, or contract which is confirmed by record that contains different or additional terms. UCC § 2-202.</p> <p>Knockout Rule: Contradictory terms cancel each other out and the UCC is used as a gap-filler to provide omitted terms and uphold contract unless unconscionable one-sided contract or clause. UCC § 2-302.</p> <p>• Omission of Price- UCC § 2-305.</p> <p>• Delivery: UCC § 2-308, 2-309.</p> <p>Payment: UCC § 2-310(a).</p> <p>• Definite and reasonable expression of acceptance. UCC § 2-205.</p> <p>• Silence can constitute an acceptance if buyer fails to effectively reject goods after a reasonable opportunity to inspect them he or she is deemed to have accepted or buyer acts inconsistently with</p>	<p>contains material modification constitutes counteroffer. Material modifications include price, payment, quality of goods, place and item of delivery, liability or settlement terms. If the additional terms do not materially alter the terms of the offer than the terms of the contract are the terms of the offer with modifications contained in the acceptance unless the offeror, without undue delay, objects orally to the discussion on dispatch. Article 19.</p> <p>Receipt Rule:</p> <ul style="list-style-type: none"> • A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. • An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. 	<p>modified acceptance equals rejection plus counter offer.</p> <ul style="list-style-type: none"> • Acceptance becomes valid when it reaches the offeror; postal rule not applicable • Battle of forms: different solutions followed; <ul style="list-style-type: none"> • first shot rule (standard terms in offer apply unless excluded expressly); • knock-out rule (contradictory terms cancel each other out and rest of the terms apply) • modified consensus (both sets of standard terms are ignored and only the expressly agreed terms applied) • Silence not regarded as acceptance unless usage between parties or prior agreed

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	<ul style="list-style-type: none"> • Silence is not acceptance unless implied-in-fact Contract; or • Trade practice; or Benefit is Taken • Form of acceptance the same as form of offer 	<p>seller's ownership. See UCC § 2-606.</p> <ul style="list-style-type: none"> • Form of acceptance any medium unless otherwise specified in offer. UCC § 2-206. 	<ul style="list-style-type: none"> • An acceptance is not effective if the indication of assent does not reach the offeror within the time he or she has fixed or, if no time is fixed, within a reasonable time. • But see Articles 8,9,18, and 19. • Silence or inactivity is not acceptance. • Law is unsettled with courts applying both the mirror image rule and knock-out rule 	
<p>Statute of Frauds</p>	<ul style="list-style-type: none"> • Requirement of writing for goods priced over \$5,000.00 unless part performance. 	<p>UCC § 2-201:</p> <ul style="list-style-type: none"> • Contract for sale of goods; • Authenticated by party to be bound • Quantity must be stated • Goods priced over \$5,000.00 • Unless part performance or admission. • If merchant sends written confirmation of contract to another merchant and writing satisfies State of Frauds and sender is being sued, the one who receives writing must 	<ul style="list-style-type: none"> • Not applicable. See Article 10. 	<ul style="list-style-type: none"> • Freedom of form; simple oral statement with the necessary serious intention sufficient

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Legal	Common Law	UCC	CISG	Civil Law
		<ul style="list-style-type: none"> object within 10 days or recipient loses defense of Statute of Frauds. Modification of contract may be subject to Statute of Frauds. UCC §2-209. 		
Consideration	<ul style="list-style-type: none"> Bargained-for exchange and either detriment to the promisee or benefit to the promisor. Pre-existing duty to other party does not constitute a legal detriment. Exception Promissory Estoppel 	<ul style="list-style-type: none"> Same as common law except under certain conditions: UCC § 2-205, an offer can be irrevocable in the absence of consideration – "Firm offer" provided the offeror is a merchant, sale of goods and assurance not to revoke was embodied in a signed writing. No consideration for modification UCC § 2-209. 	<ul style="list-style-type: none"> Element of Consideration eliminated under CISG. 	<ul style="list-style-type: none"> No consideration required <i>Causa</i> or <i>objet</i> required in some systems (valid underlying cause or object)
Parol Evidence	<ul style="list-style-type: none"> Writing intended by parties to be final evidence of agreement cannot be contradicted – "Four Corners Rule" exception to show subsequent modification or evidence of collateral agreements admissible. 	<ul style="list-style-type: none"> No evidence is admissible to show prior written or oral agreements, or contemporaneous oral agreements contradicting the contract; however, a contract can be explained or supplemented by evidence of 	<ul style="list-style-type: none"> Article 8 displaces parole evidence rule. 	<ul style="list-style-type: none"> No restrictions on evidence to prove contract. Integration or merger clauses unusual, but binding

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		trade usage, or course of dealings or performance. <ul style="list-style-type: none"> Unless the contract is found to be a complete and exclusive statement of terms, evidence of consistent additional terms may be admitted. UCC § 2-202		
Defenses to Formation	<ul style="list-style-type: none"> Incapacity, minor, mental illness, guardianship, and corporate incapacity. Illegality, duress, and public policy 	<ul style="list-style-type: none"> Unconscionability UCC § 2-302. 	<ul style="list-style-type: none"> Outside scope of CISG. 	<ul style="list-style-type: none"> Mistake Lack of capacity Illegality; certain standard clauses void or voidable Duress Misrepresentation Performance not ascertainable Performance impossible
Duty to Inspect before Payment	<ul style="list-style-type: none"> Term governed by contract and principles of good faith and state law. 	UCC § 2-310.	<ul style="list-style-type: none"> Article 58. 	<ul style="list-style-type: none"> No general duty to inspect
Early Delivery	<ul style="list-style-type: none"> Term governed by contract and principles of equity and state law. 	UCC § 2-508(1); § 2-607(1).	<ul style="list-style-type: none"> Article 52. 	<ul style="list-style-type: none"> Presumption that time fixed for benefit of debtor – creditor must accept early performance
Partial Delivery	<ul style="list-style-type: none"> Terms of contract and Principles of Equity. See also Breach. 	UCC § 2-601.	<ul style="list-style-type: none"> Article 51 (1) See also discussion on Delivery of Nonconforming Goods. 	<ul style="list-style-type: none"> No general right to split delivery unless contained in agreement; creditor may refuse

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Installment Contracts	<ul style="list-style-type: none"> Divisible Contract: Performance of one divisible portion permits the nonbreaching party to demand performance from the breaching party for that divisible portion, even if the non-breaching party is in breach with respect to another divisible portion. 	UCC § 2-612.	<p>Compare CISG Fundamental Breach to UCC Substantially Impairs.</p> <ul style="list-style-type: none"> Article 51(2). 	<ul style="list-style-type: none"> acceptance if substantial Partial delivery constitutes a breach; malperformance Party entitled to claim specific performance of other installments Entitled to reject nonconforming installment, and contract as a whole if breaching installment materially affects the rest of the installments
Performance: Obligation of Seller	<ul style="list-style-type: none"> Express warranties are all affirmations of fact and promises made by the seller that relate to the goods. Any objective manifestation made by the seller that relates to the goods. 	<ul style="list-style-type: none"> Tender of Delivery UCC §§ 2-307, 2-612; Quantity UCC § 2-306 Express Warranties UCC § 2-313. Implied Warranty of Merchantability UCC § 2-314. Implied Warranty of Fitness for a Particular Purpose UCC § 2-315 Disclaimers UCC § 2-316. 	<p>Article 30</p> <ul style="list-style-type: none"> Warranties Article 35 and 36 CISG can be broader in scope than UCC due to Article 8, 9, and 11 provided not reservation as to Article 11. 	<ul style="list-style-type: none"> Determined by the contract Delivery of the goods on or before time determined in the contract; within a reasonable time Warranty against hidden defects – fitness of goods for general or usual purpose; must be of at least average quality Merchants liable for statements on quality of the goods

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<p>Performance: Obligation of Buyer</p>	<ul style="list-style-type: none"> Established by terms of contract and /or varied in accordance to state law. 	<ul style="list-style-type: none"> Acceptance and Payment UCC § 2-301. Acceptance after reasonable opportunity to inspect or upon failure to reject or by acting inconsistently with seller's ownership UCC § 2-606. Duty to pay is condition to seller's duty to delivery UCC § 2-511. 	<ul style="list-style-type: none"> Article 53 The buyer's obligation to take delivery consists: in doing all the acts which could reasonably be expected of him or her in order to enable the seller to make delivery; and in taking over the goods. Article 60. 	<ul style="list-style-type: none"> Terms of the contract Payment of the price Acceptance of the goods
<p>Delivery of Goods Title</p>	<ul style="list-style-type: none"> Established by terms of contract and /or varied in accordance to state law. 	<ul style="list-style-type: none"> Title passes when Seller completes performance with respect to physical delivery of goods unless otherwise agreed to by the parties. UCC § 2-501 Rejection by buyer reinvests title in seller. Buyer acquires title held by Seller unless voidable title or entrustment. UCC § 2-403 	<p>Articles 41 and 42.</p>	<ul style="list-style-type: none"> Established by terms of contract Must deliver goods Must transfer ownership Guarantee against eviction
<p>Risk of Loss</p>	<ul style="list-style-type: none"> Established by terms of contract. Incoterms Varied in accordance with state law. 	<ul style="list-style-type: none"> Risk of loss passes to buyer on receipt of goods, if seller is merchant. UCC § 2-509 unless otherwise agreed by parties. 	<p>Risk of loss passes when the goods are handed over to the first carrier. Article 67(I). CISG does not require the seller to notify the buyer of</p>	<ul style="list-style-type: none"> Transfer of risk determined by contract In some systems the risk passes on conclusion of the contract; ie when ownership passes

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Legal	Common Law	UCC	CISG	Civil Law
Non-Delivery of Goods	<ul style="list-style-type: none"> Established by terms of contract and /or varied in accordance to state law. 	<ul style="list-style-type: none"> Risk of loss passes to buyer on tender of delivery if seller is not a merchant unless otherwise agreed to by the parties UCC § 2-509. Conditional Sales UCC § 2-327 Breach of Contract UCC § 2-510. Goods held by Bailee UCC § 2-509. Shipment contract UCC § 2-509(1) Incoterms Note: Reliance is on possession of goods not title. 	<p>the shipment in all cases. See UCC § 2-504(a)-(c).</p> <ul style="list-style-type: none"> When the seller is to hand over good at a particular place other than the seller's place of business risk of loss passes when and where the goods are handed over the carrier. <p>ICC does not address intermediary port but see UCC § 2-509(b).</p> <ul style="list-style-type: none"> Incoterms. Article 9. Risk of loss passes when goods handed over even in documentary exchange. Article 67(1). 	<ul style="list-style-type: none"> In some systems risk only passes on delivery of the goods, usually when ownership passes in this systems
		<ul style="list-style-type: none"> UCC § 2-601: Buyer reject goods if they fail to conform to contract within a reasonable time after their delivery or tendered and seasonably notify the seller of rejection. Must particularize the defect in case of rejection. 	<ul style="list-style-type: none"> Article 49(2) : Buyer can declare contract avoided if case of nondelivery, if the seller does not deliver the goods within the additional period of time under Article 47 (1) (Nachfrist notice) or will not deliver within time the time fixed. Buyer must avoid the contract within a 	<ul style="list-style-type: none"> Established by terms of the contract No unitary concept of fundamental breach, but dependent on type of breach Late delivery not fundamental breach in itself Requirement to set a reasonable period (<i>Nachfrist</i>)

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<p>Acceptance of Goods after Delivery</p>	<ul style="list-style-type: none"> Established by terms of contract and /or varied in accordance to state law. 	<ul style="list-style-type: none"> After a reasonable opportunity to inspect, manifest to seller that goods conform OR acceptable in spite of non-conformance; Failure to reject within a reasonable time after a inspection; Act inconsistently with seller's ownership. UCC § 2-606 	<p>reasonable time after late delivery.</p> <ul style="list-style-type: none"> The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable under the circumstances. If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination. If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of 	<ul style="list-style-type: none"> Romanistic systems: termination only by court Germanic systems: may terminate if trust in agreement is lost Right to claim specific performance <ul style="list-style-type: none"> Terms of the contract take precedence Buyer must accept goods if goods are in conformity Must examine the goods within a fairly brief period after delivery Must notify the seller of any non-conformity and provide details of the non-conformity Failure to notify leads to loss of right to terminate
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Legal	Common Law	UCC	CISG	Civil Law
			<p>such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination. Article 38.</p> <ul style="list-style-type: none"> The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it. In any event, the buyer loses the right to rely on a lack of conformity of the goods if he or she does not give the seller notice therefore at the latest within a period of two years from the date on which the goods were actually handed over to the buyer unless this time in inconsistent with a contractual period of guarantee. Article 39 	

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<p>Nonconforming Goods</p> <ul style="list-style-type: none"> Established by terms of contract and /or varied in accordance to state law. 	<p>Perfect Tender Rule: Buyer when receiving goods that fail in any respect to conform to the contract may</p> <ul style="list-style-type: none"> reject the whole accept part and reject part UCC § 2-601. If rejection, must give notice within a reasonable time or lose right to reject. UCC § 2-602. If reasonable notice, Buyer entitled to Damages UCC § 2-714 Acceptance may be revoked if goods were accepted on assumption that nonconformity would be cured or if induced by difficulty of discovery before acceptance or seller's assurance. Revocation must be done in reasonable time. Buyer may only revoke if the non-conformity substantially impairs the value of the goods to buyer. UCC §§ 2-607-2-608. Damages for accepted good. 	<p>Article 49(1): Buyer can declare contract avoided when seller fails to perform any of his obligations under the contract or the CISG that amounts to a fundamental breach as defined under Article 25. The Buyer must give notice of avoidance within a reasonable time. Article 49(2)(b)(i). Buyer can seek damages under Article 50 or 74</p> <p>The UCC's "substantial impairs" is similar to Article 49(1)'s fundamental breach in that a contract can only be avoided if the breach is fundamental.</p>	<ul style="list-style-type: none"> Established by terms of the contract No general right to cure by seller; differ from system to system Right to claim reduction in price – <i>actio quanti minoris</i> May terminate the agreement where non-conformity is sufficiently serious Right to claim specific performance consisting of delivery of substitute goods, repair or cure
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Legal	Common Law	UCC	CISG	Civil Law
Breach of Contract	<ul style="list-style-type: none"> Material v. Minor or Immaterial Breach Substantial Performance 	<ul style="list-style-type: none"> Perfect Tender Rule UCC § 601 Substantial Impairs UCC § 2-608 	<ul style="list-style-type: none"> Fundamental Breach Articles 25, 49 and 61 	<ul style="list-style-type: none"> Differentiation between serious and non-serious breach Dependant on circumstances and differing widely from system to system
Breach of Warranties	<ul style="list-style-type: none"> Doctrine of Election of Remedies: Party cannot pursue multiple remedies in order to obtain a double recovery. 	<ul style="list-style-type: none"> Express Warranties UCC § 2-313 Implied Warranty of Merchantability UCC § 2-314 Implied Warranty of Fitness for Particular Purpose UCC § 2-315 Breach of Title UCC § 2-312 	<ul style="list-style-type: none"> Articles 35-36 Breach of Title: Articles 41, 42, 43(1) Differs to UCC as CISG does not impose upon the buyer a duty to investigate as to defects. 	<ul style="list-style-type: none"> Absence of physical and legal defects Terms of the contract Guarantee of title
Buyer's Remedies	<ul style="list-style-type: none"> Doctrine of Election of Remedies: Party cannot pursue multiple remedies in order to obtain a double recovery. 	<ul style="list-style-type: none"> Buyer's Remedies upon Seller's Breach. Cancel contract. Recover price and either cover and obtain damages or recover damages for nondelivery. See generally, UCC § 2-711, 2-712, and 2-715 	<ul style="list-style-type: none"> Buyer's Right to Remedies (Articles 45 and 70): Avoid Contract Article 49 Require seller to deliver substitute goods. Article 46 (2) 	<ul style="list-style-type: none"> Specific performance: delivery of the goods, repair of the goods, delivery of substitute goods Termination if the breach is sufficiently serious and restitution Price reduction Right to withhold performance - presumption of concurrent performance Damages

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<p>Seller's Right to Cure</p>	<p>Established by terms of contract and /or varied in accordance to state law.</p>	<ul style="list-style-type: none"> • Prior to date of delivery: Seller can cure up until time of performance with notice of intention to cure. UCC § 2-508(1). • After Time of Delivery: Seller has the right to substitute a conforming tender for a non-conforming tender; the seller must have reasonable grounds to believe that the first delivery would be acceptable to the buyer. UCC § 2-508(2). Both UCC and CISG requires the seller to give the buyer seasonable notice of his intention to substitute. 	<ul style="list-style-type: none"> • Prior to date of delivery: Article 37 provided the seller does not cause the buyer any unreasonable inconvenience or unreasonable expense. CISG has no notice requirement prior to date of delivery. • After Time of Delivery: Seller can remedy any defective goods or documents that have already been delivered. The seller may remedy either by repair, replacement, or substitution; the seller may request that the buyer inform him if the buyer will accept his remedy. If the buyer fails to provide an answer, the seller may perform within the time indicated in the request, and the buyer may not invoke a remedy which is inconsistent with the seller's performance (such as avoidance of the contract) during this time. Article. 48 	<ul style="list-style-type: none"> • Terms of the contract takes precedence • No general right to cure
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Legal	Common Law	UCC	CISG	Civil Law
Seller's Remedies	<p>Doctrine of Election of Remedies: Party cannot pursue multiple remedies in order to obtain a double recovery.</p>	<p>Seller's Right to Remedies: • Failure to perform UCC § 2-607(2) ; • Rejection or Revocation UCC § 2-708. Remedies are cumulative in nature and include all of the available remedies for breach. UCC § 2-703</p>	<p>Seller's Right to Remedies (Article 61):</p> <ul style="list-style-type: none"> • Mandate the buyer pay the price; • Fix an additional time for the buyer's performance • Avoid the contract: Article • Select the measurement or form of the of the goods; or • Claim damages; • Specific Performance Article 62. 	<ul style="list-style-type: none"> • Specific performance both of payment and forcing buyer to accept the goods • Termination: non-payment and failure to accept the goods are primary obligations entitling the seller to terminate • Right to withhold performance – presumption of concurrent performance; good faith and proportionality limitations
Compensatory Damages	<p>Place non-breaching party in as good as a position if contract performed. This means giving non-breaching party the amount of money reflecting the gains prevented and losses caused by the defendant's breach less any savings made possible; or focusing on the three elements:</p> <ul style="list-style-type: none"> • -Restitution • -Reliance • -Expectation: • <i>Hadley v. Baxendale</i> Rule: • -Natural Damages • -Consequential Damages 	<p>Goal is restore aggrieved party to as good as position as if the party to be bound has fully performed. UCC § 2-803. Buyer: • If Buyer covers, the difference between the cost of cover and contract, plus incidental and consequential damages less expenses saved due to breach. UCC § 2-712 (b), 2-715. • If Buyer does not cover, the difference between market price at item Buyer learned of breach and contract price, plus</p>	<p>Articles 74, 75, and 76. The UCC equivalents to Article 75 are the UCC § § 2-706 and 2-712. The UCC equivalents to Article 76 are the UCC 2-708(1) and 2-713.</p>	<ul style="list-style-type: none"> • Compensatory nature of damages to fulfill expectations, including loss of profit – party must be put in position it would have been in if the contract had been properly performed • Romanistic systems limit consequential damages with foreseeability • Germanic systems limit consequential damages with principle of adequate causation

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		<p>incidental and consequential damages, less expense saved due to breach. UCC § 2-713, 2-715.</p> <ul style="list-style-type: none"> • Resale UCC § 2-711. <p>Seller:</p> <ul style="list-style-type: none"> • Buyer's Insolvency. Seller can refuse further delivery; demand payment, or stop delivery in transit. UCC § 2-702, 2-705. • Reclamation. Provided cash and credit sales. UCC §§ 2-702(b), 2-507. • If Buyer wrongfully rejects or revokes acceptance or fails to make payment or repudiate contract UCC § 2-703: • Withhold delivery • Stop delivery by Bailee • Resell and Recover damages UCC § 2-706. • Recover damages without resale § 2-708, 2-713. <p>Incidental Damages UCC § 2-710</p>	
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Legal	Common Law	UCC	CISG	Civil Law
Non-Compensatory	<ul style="list-style-type: none"> Nominal Damages Punitive Damages Liquidated Damages Quasi-Contract Interest 	<ul style="list-style-type: none"> Liquidated Damages UCC § 2-718. No Punitive Damages UCC § 1-106(1) 	<ul style="list-style-type: none"> Incidental and consequential damages plus interest. 	<ul style="list-style-type: none"> Only actual damages proven No punitive damages Liquidated damages clauses enforceable subject to restrictions of reasonableness
Anticipatory Repudiation	<ul style="list-style-type: none"> Promisor clearly and unequivocally repudiates his or her promise before the time for performance arises. Promisee can treat the repudiation as breach or perform. Applies to a bilateral contract with executory duties for all parties. Effective at time the repudiation is sent. 	UCC § § 2-609-610	Articles 71 and 72	<ul style="list-style-type: none"> Regarded as a species of nonperformance Breach of good faith obligation
Specific Performance	<ul style="list-style-type: none"> Available when no legal remedy available. 	Right to Specific Performance UCC §§ 2-716., 2-601 through 2-612.	Article 62 (Seller); Article 46 (Buyer)	<ul style="list-style-type: none"> Parties entitled to specific performance as primary right, subject to certain exceptions
Mitigation	Non-breaching party must lessen his or her damages due to the breach; if he or she does not mitigate, damages decreased recovery.	UCC § 2-715(2)(a) (Buyer's duty) UCC § 2-708 (Seller's duty)	Article 77	<ul style="list-style-type: none"> Differentiation in some systems between mitigation and contributory conduct General duty to mitigate loss Entitled to claim for reasonable expenses

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<p>Impossibility and Frustration of Purpose</p>	<p>Frustration: Purpose has become valueless by unforeseeable supervening act. Impossibility</p> <ul style="list-style-type: none"> • Objective standard - Duty cannot be performed by anyone; • Death or physical incapacity • Destruction of subject matter or means of performance • Impracticability: • Extreme and unreasonable difficulty or expense; • Difficulty not anticipated. 	<p>UCC § 2-615</p>	<p>Article 79 Under CISG, defense of impossibility is available to both buyer and seller. In contrast, UCC provides defense for the seller and only in delay in delivery and non-delivery. CISG does not have Impracticability.</p>	<p>Force majeure</p> <ul style="list-style-type: none"> • Romanistic systems • Circumstances unforeseeable • Beyond the control of the debtor • Practical impossibility <p>Germanic systems:</p> <ul style="list-style-type: none"> • In addition to force majeure, doctrine of changed circumstances • Based on good faith • Contract modified unless impossible
<p>Statute of Limitations</p>	<p>Refer to Individual State Statute of Limitation Statutes.</p>	<p>UCC § 2-725</p>	<p>Domestic law unless contracting state to the UN Convention on the Limitation Period in the International Sale of Goods.</p>	<ul style="list-style-type: none"> • Different periods apply in different systems and depending on the type of debt • Standard limitation periods vary from 2 to 3 years in general, but may be as short as six months and as long as 30 years.

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