INTERNATIONAL SALES LAW

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AUGUST 6, 1949

THE GENERAL PICTURE

IN OUR discussions on the assignment of debts you will encounter an English case, *Republica de Guatemala* v. *Nunez*, in which four eminent lawyers expressed five different opinions. What if four thousand judges have to decide on the basis of a hundred *different* laws? And what if these courts do not even know under what state's law they should develop their doubts, if the case has multiple territorial connections? No fancy case, this. What law governs a sales contract between a seller in Detroit and a buyer in Buenos Aires of a car f.o.b. New Orleans? American courts prefer the place of contracting, but which is it? The *Restatement of Conflicts Law* would identify it with the place of the last act; but which was the last act? Other American courts look to the place of performance, so would the Argentine courts, but does this mean Michigan, Louisiana, or perhaps Argentine, law? The German courts would search also for the place of payment, and so on. Courts and writers have their own worries over this uncertainty, but they forget their professional colleague of the bar, the counsel of the party who wants to make a contract or seeks advice whether to start a lawsuit, or the draftsman of a contract form. And the public itself, the individuals and corporations and associations, will they always wait for the "law" to be produced by the unknown court which finally decides?

The answer has been given by international commerce. Through their organizations, merchants have established standard forms which are devised and used for particular branches of trade, kinds of goods, financial needs, port conditions, freight rates, local usages, personal connections, et cetera, without distinguishing national commercial or conflicts law; and by stipulating arbitration, they have emancipated themselves also from the tribunals and procedural laws. Have we lost the merchants forever?

This aloofness of the contract practice, largely in the hands of trade organizations or big concerns, has been regarded by certain lawyers (easily overawed by economic facts or theory) as an objection to attempts to end the present insecurity by unifying the sales laws of the world. The branches

of trade, it has been argued, have needs and usages too different, the clauses in international contracts are too variable and too far distant from the codes, to be covered by legal texts, and, anyway, lawyers should avoid the halls of Mercury.

Similar arguments were used against the Warsaw-Oxford C. I. F. Rules of the International Law Association, the Inco terms of the International Chamber of Commerce and against the attempts made before the last war to unify the conflicts rules involving sales of goods. None of these undertakings, however, has been stopped by such opposition. True, the countries of the common law, though collaborating in the preliminary stages, finally have refused to adopt all these projects of unification with that defiant rejection which has marked the failure of many other world-wide conventions. But this is not due to the predominance of merchants over lawyers, either here or in Great Britain; on the contrary, commercial organizations have been greatly sympathetic, and the inexorable refusals were due to the good old common law spirit of the Statute of Merton, of 1236 A.D., and the fear of jeopardizing the uniformity of the common law in the British Empire and the United States.

The same thing happened in 1936 when the first draft for a uniform world sales law was sent out by the League of Nations to the governments. While most answers were favorable and a very competent British committee had worked on the draft, the British Government at the end shortly declared, without entering into particulars, that there was no prospect of Britain adopting a new sales law, because this would destroy the uniformity reached in the English-speaking countries. But in 1949, we observe that the practically finished draft of a new Sales of Goods Act of the United States has not shown consistent regard for the English tradition.

Another objection, importantly asserted by confused economists whenever unifying rules are planned, refers to the disagreements in international economic policies. But, resignedly, we have learned to take account of currency restrictions, import quotas and export premiums, prohibitions on import and export, seizures, sequestrations, liquidations, nationalizations—these self-protections and aggressions in political and economic warfare. They have their place, but certainly not in the normal peace time law.

THE DRAFTS FOR SALES OF GOODS ACTS

I shall need very little of our time for the conflicts rules on sales; they have been so maturely discussed that merely one point is doubtful. But substantive sales law remains one of the most significant topics of unification.

We now have two outstanding drafts on sales of goods, fruits of long

labor by pre-eminent legal experts, both better prepared and greater achievements than any existing sales law in or outside the codes. They are the Draft of the Rome International Institute for the Unification of Private Law, Second Edition, 1939 (the "Project"),[1] and the Draft of a Revised Uniform Sales Act, Article 2 of the Uniform Commercial Code, by the American Law Institute and the National Conference of Commissioners on Uniform State Laws (the "Draft"),[2] which was tentatively adopted by the American Law Institute in May, 1949, and presumably will be adopted by the National Commissioners in the fall.

The two drafts do not necessarily compete for exclusive enactment. In order to facilitate its adoption, the Rome Project restricts its primary scope to "international sales," that is, sales made by parties situated in different countries; and in addition it applies only when in these countries sales are governed by different laws. The Project thus is designed to eliminate difficult questions of conflict of laws rather than to replace the national sales laws. Hence, in the United States the international law may be introduced for contracts made with Latin-American countries, whereas it need not affect commerce with Britain or Canada. However, the modesty of the Project is merely tactical. A sound tendency seeks to avoid divergency of national and international rules on the same matter; when English lawyers—with some difficulty!—are persuaded that a reform is reasonable, they want reform all along the line. As things stand, American lawyers will not be attracted by the idea of bringing into being two unreconciled codifications of mercantile sales law. This creates a problem, increased by the possibility that some other, e.g., Latin-American, jurisdictions will be unwilling to admit a new law alongside of their old law. Of course, such a double-track system is by no means unheard of and would allow the more adequate rules to demonstrate their domestic virtues.

But the international draft has, indeed, undertaken an extensive revision of commercial sales law, and therefore has constructed rules believed to suit the present time, covering the rights and duties that are created by sales contracts between seller and buyer. Aiming at a world-wide unification, the Project has been drafted in such form and size as to fit into any

[1] Projet d'une loi uniforme sur la vente internationale des objets mobiliers corporels, Société des Nations, 1939—U. D. P., Project I; also in Unification of Law, International Institute for the Unification of Private Law (Rome 1948), with English translation.

[2] The American Law Institute and the National Conference of Commissioners on Uniform State Laws, Uniform Commercial Code, May 1949 Draft, Article 2, Sales. (Cited according to the Proposed Final Draft, Spring 1950).

system although additional rules may appear advisable. Some modifications with regard to nonmerchants may be desired, and the French original text may need skillful free translation in the individual countries.

The two works, thus, are worthy subjects for comparative appreciation insofar as their contents coincide. This, assuredly, involves merely the obligations, the "contract" law of sale and not "title" questions. Anglo-American lawyers as well as French and Latin tradition have included transfer of property in sales law. But numerous codes and commercial usages have succeeded in segregating the two doctrines, to the advantage of both. The American Draft follows the same basic conception, although practically it favors simultaneous passing of title and risk, in contrast with the Project.

COMMON LAW MODELS FOR THE PROJECT

When the two works in question are viewed as a whole, the impression is very strong that their results are basically identical, while arrangement, terminology, choice of problems, and solution of particular minor conflicts of interests are different. The Project, conscientiously comparing the sales laws of the world, and looking for universally acceptable and commercially sound solutions, found much help in the common law. Even though most rules of the English and American sales acts mirror forgotten economic conditions, the courts have remained familiar with business conceptions and so are consciously prepared to protect fair dealing that civil law with all its higher theoretical equipment must continue to learn from the Anglo-American decisions. For illustration, we resort to specific problems.

1. Though not frequently, it does happen in international sales that no certain time is fixed by the contract or trade usages for delivery of the goods or payment of the price. The Project allows a "reasonable time," an elastic concept which has proved appropriate for the vast expanse of the Anglo-American territories. This idea is so new to some countries that the translations—French, "*dans un délai raisonnable*," and German, "*in angemessener Frist*"—have been mistakenly criticized as vague and uncertain. Likewise, a reasonable time is granted, for instance, for examining the goods and for giving notice of a defect.

2. The grounds for liability and for discharge of the debtor are conceived in a manner amenable to common law and French law. I attacked and we completely discarded the complicated system developed in Germany from the wrong starting point that impossibility of performance automatically extinguishes the obligation.

3. The *Code Napoléon* (article 1184) meritoriously introduced a remedy

for an aggrieved party to a bilateral contract enabling him to free himself of his own duty toward the party in default. But in the absence of an appropriate contractual stipulation, the means is a judicial action for rescission. Only the court can rescind the contract, and it may do so according to its own discretion, or grant the debtor days of grace. This is a system alien to or forgotten by the German and Scandinavian common law groups. The French members of the committee were the first to decry it, and the new Italian Code (articles 1515 ff.) follows the modern principle. International practice can certainly not tolerate it. A buyer must be able to declare without a court and by private communication, on the ground of breach, that he will no longer wait for delivery.

4. The Project has conceived the measure of damages for nonperformance (which includes the case of nonacceptance) essentially in the same manner as the American Sales Act. Damages are ordinarily "general," amounting to the difference between the contract price and the current price at the time when the breach is ascertained. Resale or cover may be executed in fact or not. Special damages, including loss of profit, higher than the price difference, are added if the defaulting party had to contemplate in contracting such contingency. The general damages are always recoverable; they are the minimum amount of compensation, which has sometimes been forgotten on the Continent. Thus, it has been declared a good defense against a buyer that he procured goods such as those contracted for, somewhere at a cheaper price or that he should have covered before the breach to mitigate the damage. This rests on mistaken theories in Germany and Italy and in the Scandinavian sales law, but has been rejected by the German Supreme Court and the new Italian Code (article 1518). Also the definitions of time, place, and market of resale or cover are consonant with the American practice. This means new law for France, where the measure of damages is left to the discretion of the lower courts, for Germany, a stricter definition of the decisive time, and for many countries, abolition of court interference and circumstantial formalities.

5. Naturally, the Project abhors from the rule of *Chandler* v. *Webster* that loss lies where it falls and agrees with American, Scotch, and all other laws that a seller who is excused by accidental events from delivering has to return a prepaid price. But in the meantime, the English reform legislation has itself corrected that aberration.

ADJUSTMENTS OF AMERICAN LAW IN THE DRAFT

The Project, on the other hand, has repudiated a number of rules on the Sales of Goods Act. When I published an article on this subject in 1938,

the list of these divergencies was not inconsiderable.[3] We had a very calm conscience, however, the English Act and, despite a few modernizations, its offspring, the American Act, depend on obsolete sales technique and precisely for these reasons have confused the practice. Now, the deviations of the Project have been most authoritatively justified; the Draft has done away with all but one major and many minor rules which we regarded as overaged or misconceived.

1. Thus, the Draft also distinguishes basically the kinds of sales contracts according to the place where the seller has to terminate his activity (for example, sale *ex* factory, for shipment, for delivery at the port of destination; *ex* car, at the place of the buyer). Unilateral appropriation by the seller of goods to the contract is recognized. The seller, after an unsuccessful attempt at proper delivery, has a limited right to substitute other goods. The rules of installment contracts and those on anticipatory breach of contract are developed. The buyer has the right to cover. The queer rule of the Uniform Sales Act (section 19 (5)) that, when the seller has to pay the cost of transportation, the property does not pass until arrival, with its wrongly attached consequence for passing of the risk, has disappeared. The seller has to give notice of shipment unless risk does not pass.

2. The venerable rules stemming from cash-and-carry sales are swept away: that in principle the seller cannot sue for the price unless property has passed; that the seller cannot resell the goods as a remedy for breach when title has passed to the buyer; that the risk passes when the title passes, and so on. The last prejudice is shared in the Latin countries, and I was astonished to hear quite recently a very eminent colleague protest that it goes too far to separate title and risk, i.e., the questions by what event the buyer acquires ownership and by what event he becomes liable for the price although the goods, on their journey, perish or are seized or deteriorated. Well, the modern drafts so provide and they do no more than follow commerce: usually shipment transfers risk but not necessarily title, which goes with the bill of lading. (On this point, the American Draft, following a few decisions, disagrees, in my opinion, wrongly.)

3. (a) Rescission and damages, by twisted logic a strict alternative, an "either–or," in the United States and Germany, may be combined as in the French Code—both drafts say so.

(b) Warranty of quality is in part improved, in the Draft as well as in the Project. In both, the confused doctrines of express warranty, of description, and of patented goods are excluded, and the remedies for breach of

[3] "A Draft of an International Law of Sales" (1938) 5 U. of Chi. L. Rev. 543. See also my article on the American Draft in the same review, March 1950.

warranty are merged with the remedies for nondelivery. The Draft is superior in that it almost eliminates the particular concept of breach of warranty. But more remains to be done.

Our apparently most daring proposals have thus been equalled by the American draftsmen.

(c) But more strikingly yet: In the Project of 1935, two of the really important divergencies of the legal systems were left unreconciled as seemingly hopeless. One was the principle concerning the events freeing a party, especially the seller, from his obligation. This is a bad gap in view of the innumerable obstacles to the fulfilment of contracts, occasioned by the modern states in war and so-called peace and by modern means of transportation. With the support of the Swedish Government, I was happy to receive, in the second phase of discussion, assent to the formula which I had developed in a series of researches—from suggestions that I owed to the common law (Project, article 77). We find a similarly worded rule in the new Draft (section 2–615). This unity is a most remarkable result of comparative law.

The other divergence stands as the only half-bridged cleft in the Project. Common law does not admit an action for specific performance of a contract of sale; civil law looks to the right of a party to have a promise fulfilled outright as the backbone of the contractual obligation. We despaired of being able to eliminate this basic contrast. From the civil law side, we renounced compulsory specific performance where on close investigation of party interest and court practice we found that it can well be excluded. The buyer loses the right he now has to obtain an enforceable judgment to receive the goods in kind, when according to trade usage he *ought* to repurchase the goods, or even when he *can* do so without undue inconvenience or expense. Correspondingly, the seller cannot claim payment of the price where a resale is contemplated by trade usage. These we acknowledged as practical advantages of the Anglo-American system. However, we did not dare to trouble the courts here with a new principle.

However, the Draft has come even nearer to the distinction of cases invented in the Project. Thus, the seller may sue for the price when he "is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing."

These analogies are natural, despite the contrary or conflicting rules of many surviving codes. In this field there are in the world no two or three equally good systems of sales law agreeable to modern commerce, since the legal technicalities dividing the national systems of negotiable instruments and the methods of transferring movables do not essentially affect the rules

regulating the seller–buyer obligatory relationship. There is no fundamental divergence, indeed, in the ways of establishing the obligations of the parties as to delivery, payment, warranty of title and quality; their interrelation; the distinction and treatment of exonerating events and breach of contract; the passing of risk of loss; the remedies available to the buyer and the seller in case of nonperformance; the pecularities of cash-and-carry contracts, payment against documents, f.o.b. and c.i.f. contracts; custody; suspension of performance because of insecurity.

DIFFERENCES

The divergencies are very numerous, though less substantial. The main general difference is instantly felt. The American Draft has the substance of a new law, but is still a "Revised Sales Act," an adaptation of the present rules to the needs of clarity, modernization and completeness. The provisions are conceived in view of the needs of bar and bench in the United States. The terms had to be the familiar ones, although their significance is altered. Doubtful judicial decisions have been incorporated or repudiated, or corrected. The universal subject matter is seen through the eyes of an American lawyer, expert in business and court practices, alert to existent abuses and the goals of justice, subtle in distinguishing cases and resourceful in providing an abundant number of viewpoints for adequate decisions. In the eyes of a Continental lawyer, the Draft does not look like a code. It is rather a new "touchstone." In order to facilitate its application, it would seem that much remains to be done to clarify and straighten out this eminently rich material.

The International Project, on the contrary—anxious to provide all countries with a reliable guide—concentrates on the fundamental rules and their most usual operation in the course of sales transactions. It endeavors to establish a simple, easily understandable system of rules. Although the French language used for the original text has its own style, sometimes difficult for a common lawyer, the conceptions are taken from commercial language and as much as possible, given a legal polish. Repetitions—undesirable in my opinion—are not spared to help understanding.

It is quite sure that an internationally workable sales law has to be content with enouncing the great rules from which standard forms and usages may deviate and which by reasonable construction will be applied to those parties and agreements to which they fit.

The vast domain of sales includes so many problems of universal interest that selection among them may vary and has not turned out identically in

the drafts. They would both be enriched by mutual borrowing. The American Draft, for instance, contains stimulating provisions on mercantile terms (sections 2–321 ff.), third party beneficiaries of warranty (section 2–318), payment before inspection (section 2–512), right to inspect (section 2–513 (3)), substituted performance (section 2–614), presenting of evidence (section 2–515). The Project provides for such problems as doubts on the place of performance (article 21), change of custom duties (article 60) and change of seller's domicil (article 61, paragraph 2), general rules on accessory duties (articles 55, 70), et cetera.

Regrettably, it must be furthermore stated that in almost every section the rules differ to some small extent; the reasons for these differences ought to be investigated. Probably one or the other drafting might be modified, as in the following particulars:

Party agreements derogating from the law: Draft, section 1–107; Project, article 12.

Buyer's failure to specify: Draft, section 2–311 (2) (3); Project, article 69.

Warranty of title: Draft, section 2–312 (2); Project, article 52.

Exclusion of warranty: Draft, section 2–316 (2) (b); Project, article 42, sentence 2.

Shipment and tender of delivery (delivery, in the terminology of the Project): Draft, sections 2–503, 2–504, 2–510; Project, article 19.

Risk of loss: Draft, section 2–510 (1); Project, articles 19, 99.

Excuses: Draft, section 2–615; Project, article 77.

Received bill of lading: Draft, section 2–323 (1), where usual in the port of shipping; Project, article 19, paragraph 3, where permitted to the seller by the contract or commercial usage.

A few major problems need reconsideration, as, for instance, the following:

1. The most striking instance is the strange fact that the American Draft (section 2–201) maintains and even fortifies the Statute of Frauds condemned by innumerable English and American lawyers, abandoned by the British Reform Committee, and neglected by business. France and a part of the Latin codes do not extend their analogous rigid prescription of writing to all commercial transactions. The Central and Northern European group has, for a long time, recognized formlessness of contracts concerning movables. The French and English members of the international committee voted against the Statute.

2. The Draft continues a tendency of generalized severity of remedies for breach, brought into the American practice by the Uniform Act. It

does not correspond, at least on the surface, with the following distinction made in the Project.

The time for the delivery of goods, agreed upon in a sales contract, may be intended to be "of the essence" of the contract and failure to comply with it may therefore justify immediate rejection. While the English law establishes a presumption to this effect in mercantile sales, the Draft at first view permits rejection in all cases of any nonconformity of goods (section 2–601) but mitigates this rule by various means. The Project recognizes a presumption for essentiality of the time only when the goods are available at a current price on a market (article 31). Thus, sales by manufacturers and growers are released from such severe regulation. Time for payment is neither under English law nor in the Project (article 64, paragraph 2) deemed to be essential. These are the only rules acceptable in civil law countries, except Scandinavia and Switzerland. While it is possible to reach identical results on the ground of the "cure" provision under both systems (where the seller may still deliver) the main principle of the Draft is unnecessarily forbidding.

The Project, pursuing its method and in the details often met by the Draft, distinguishes whether partial delivery (article 32) and defects of quality affecting a part of the goods (article 50) are essential; whether in installment contracts, goods delivered may be rejected because of their connection with nondelivered or defective goods (article 79, paragraph 2); and treats all collateral duties of the parties, that is, those not involving goods and price, according to their character as essential or not to the contractual relationship (articles 55, 70).

Warranty is not recognized at all when a quality or particularity of the goods is without importance (article 37 (b)). Much of all this may be obtainable on the ground of the Draft. But internationally its method seems inadvisable.

3. In justified contrast to the present text of the Uniform Sales Act, section 69, and to the German doctrine, both Drafts combine rescission or "rejection" (should it not be "cancellation" in the Draft?) and damages. But the Draft goes too far in leaving indiscriminately all kinds of damaging events to court appreciation (sections 2–710 and 2–715). Damages for nonperformance and damages for reliance on the performance are necessarily distinguishable. Whilst it is disputed which kind of damages is more suitable to accompany rejection, damages of both kinds should never be cumulated. A buyer entitled to special damages may recover lost profit on the ground of nondelivery but he should not be allowed at the same time to claim expenses incurred in inspecting the goods.

4. A significant problem has been solved in the Project in favor of the Anglo-American principle, which, however, is highly controversial in civil law countries. Is the buyer entitled to damages for defects of quality when the seller has no fault either in selling or in performing the sale? The affirmative answer of the common law has been adopted in the Project, but has aroused bitter opposition. The problem will return in later stages of unification.

Events since the Project was finished have confirmed the soundness of its attitude to the basic problems of modern sales law. In the details, both drafts have more to learn from each other. The two drafts, both results of the highest effort, should be closely compared; their differences in the choice of problems, in the solutions of these problems, in language and technique should be critically investigated; and the international draft, enriched by this comparison and adjusted to the new authoritative statement of the desirable American law, should be formulated also in English in language suitable to this country.

UNIFORM CONFLICT RULES

Commercial lawyers, again, initiated in the 1920's a unification of the conflicts rules applicable to sales of goods and kindred international transactions. The International Law Association achieved a draft at the meeting of Vienna, 1926, which was submitted to the Sixth Hague Conference on Private International Law, 1928; there it encountered the theoretical and nationalistic criticism usual in Western Europe. But a special committee was created which, in 1931, established a remarkable draft. Maintaining the decisive progress accomplished by this draft, we should no longer doubt and discuss the two main rules. In the first place, the parties to a sales contract, having their habitual residence or establishment in different countries, are permitted to stipulate for the law applicable to the contract. No exception is made for so-called imperative rules nor is a substantial connection of the contract with the chosen law required. Practical common sense prevailed.[4] In the second place, in the absence of agreement, the law of the seller governs the contract. Certain problems are excluded: capacity, form, transfer of property, and effect of the contract as to third persons. No role is given the law of the place of contracting or that of performance. This is most reasonable and a definite gain.

Everyone agrees that there must be cases where not the law of the seller but that of the buyer should govern. But the successive committees and

[4] See *infra* p. 129, the Committee report on this question.

conferences—at least six, probably more—have not been certain how to formulate the test for the exception. The last draft (of 1931) points to the case where an offer of the buyer is received by the seller or his agent in the state where the buyer lives. My proposition makes the buyer's law govern only and always if the goods are to be tendered to him upon arrival in his state or in similar situations.

International sales law is one field where the tendency toward a universal private law is thoroughly justified. The very minimum that ought to be reached immediately, is reconciliation of the Western legal systems of commercial sales through separate but substantially parallel codifications and uniform conflicts rules. If no more should be obtainable, namely, a true unification of the fundamental rules, this would be the fault of the lawyers rather than of the merchants or the parliaments.

APPENDIX

Projet de Convention

Sur les Conflits de Lois en Matière de Vente d'Objets Mobiliers Corporels

(Adopté par le Comité spécial dans sa session du 28 Mai–2 Juin 1931)

Article 1

La présente Convention est applicable aux conflits de lois en matière de ventes d'objets mobiliers corporels, à l'exception des ventes de navires et de bateaux immatriculés, des ventes d'aéronefs enregistrés et des ventes par autorité de justice ou sur saisie.

Pour son application sont assimilés aux ventes les contrats de livraison d'objets mobiliers corporels à fabriquer ou à produire, lorsque la partie qui s'oblige à livrer, doit fournir les matières premières nécessaires à la fabrication ou à la production.

Article 2

La vente est régie par la loi interne du pays désigné par les parties contractantes.

Cette désignation doit faire l'objet d'une clause expresse ou résulter indubitablement des dispositions du contrat.

Les conditions relatives au consentement des parties quant à la loi déclarée applicable sont déterminées par cette loi.

Article 3

A défaut de loi déclarée applicable par les parties dans les conditions prévues par l'article précédent, le contrat est régi par la loi interne du pays où le vendeur a sa résidence habituelle au moment où il reçoit la commande. Si la commande est reçue par un établissement du vendeur, la vente est régie par la loi du pays où est situé cet établissement.

Toutefois, la vente est régie par la loi interne du pays où l'acheteur a sa résidence habituelle ou dans lequel il possède l'établissement qui a passé la com-

mande, si c'est dans ce pays que la commande a été reçue soit par le vendeur, soit par son représentant, agent ou commis-voyageur.

ARTICLE 4

S'il s'agit d'un marché de bourse ou d'une vente aux enchères, le contrat est régi par la loi interne du pays où se trouve la bourse ou dans lequel sont effectuées les enchères.

ARTICLE 5

A moins de clause expresse contraire, la loi interne du pays où doit avoir lieu l'examen des objets mobiliers corporels délivrés en vertu de la vente, est applicable en ce qui concerne la forme et les délais dans lesquels doivent avoir lieu l'examen et les notifications, ainsi que les mesures à prendre en cas de refus des objets.

ARTICLE 6

La présente Convention ne s'applique pas aux conflits de lois relatifs:

1° à la capacité des parties;

2° à la forme du contrat;

3° au transfert de propriété, étant entendu toutefois que la question des risques est soumise à la loi applicable à la vente en vertu de la présente Convention;

4° aux effets de la vente à l'égard de toutes personnes autres que les parties.

ARTICLE 7

Dans chacun des Etats contractants l'application de la loi déterminée par la présente Convention peut être écartée pour un motif d'ordre public.

(Translation)

DRAFT OF A CONVENTION

On the Conflict of Laws Concerning Sales of Goods

(Adopted by the Special Committee Instituted by the Sixth Hague Conference of Private International Law at its Meeting of May 28 to June 2, 1931)

ARTICLE 1

The present Convention is applicable to conflicts of laws concerning sales of goods, excepting sales of vessels and registered ships, sales of registered aircraft and judicial sales or sales in connection with sequestration or attachment proceedings (*saisie*).

In the application hereof, contracts for the delivery of goods to be manufactured or produced, when the party who undertakes to make delivery is to furnish the primary materials necessary for manufacture or production, are equivalent to contracts for the sale of goods.

ARTICLE 2

A sales contract is governed by the domestic law of the country designated by the contracting parties.

This designation must appear in an express clause or result unambiguously from the provisions of the contract.

The requirements for the consent of the parties in stipulating the law applicable, are governed by this same law.

ARTICLE 3

In the absence of a law declared applicable by the parties according to the preceding article, the contract is governed by the domestic law of the country in which the seller has his habitual residence at the time he receives the order. If the order is received by an establishment of the seller, the sale is governed by the law of the place in which this establishment is situated.

Nevertheless, the sale is governed by the domestic law of the country in which the buyer has his habitual residence or in which he has the establishment which issued the order, provided that the order has been received in this country either by the seller or by his employee, agent, or traveling salesman.

ARTICLE 4

A contract at an exchange or at an auction is governed by the domestic law of the country in which the exchange is situated or in which the auction is held.

ARTICLE 5

Unless there is an express agreement to the contrary, the domestic law of the country in which the goods, delivered in performance of the sales contract, are to be examined, determines the form and the period of time for examining the goods and giving notice of defect as well as what measures should be taken in case of rejection of the goods.

ARTICLE 6

This Convention does not apply to conflicts of laws concerning:

1. the capacity of the parties;
2. the form of the contract;
3. the transfer of ownership, saving that the question of risk of loss is subject to the law applicable to the sale under this Convention;
4. the effects of the sales contract as to all persons other than the parties.

ARTICLE 7

In every member state, the application of the law determined by this Convention may be denied for a motive founded on public policy.