

BOOK REVIEWS

*SHARING INTERNATIONAL COMMERCIAL LAW ACROSS NATIONAL
BOUNDARIES, FESTSCHRIFT FOR ALBERT H. KRITZER ON THE
OCCASION OF HIS EIGHTIETH BIRTHDAY*

*Edited By Camilla B. Andersen and Ulrich G. Schroeter, Wildy, Simmonds
& Hill Publishing, London, 2008*

*Reviewed by Melissa Ann Pansiri, Esquire**

The joint collaboration of Camilla B. Andersen and Ulrich G. Schroeter as editors of the festschrift¹ to Albert H. Kritzer² on his eightieth birthday succeeds in bringing together international commercial law heavyweights and enlightening commentary on the United Nations Convention on Contracts for

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1. A festschrift is a celebration of writing or a volume of writings by different authors presented as a tribute, especially to a scholar. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003), available at <http://www.merriam-webster.com/dictionary/Festschrift>.

2. I had the pleasure of meeting Professor Albert Kritzer at the Fifteenth Willem C. Vis International Commercial Arbitration Moot in March 2008, when the festschrift was dedicated to him, and thanking him for his contributions, including the CISG3 (a database containing case law and scholarly work), which made my life, as a law student and Vis mootie easier. The term "CISG3" is borrowed from Professor Joseph Lookofsky's personal and poignant contribution to the festschrift. Joseph Lookofsky, *Online with Al K*, in SHARING INTERNATIONAL COMMERCIAL LAW ACROSS NATIONAL BOUNDARIES, FESTSCHRIFT FOR ALBERT H. KRITZER ON HIS EIGHTIETH BIRTHDAY 287, 288 (Camilla B. Andersen & Ulrich G. Schroeter eds., 2008) [hereinafter SHARING].

the International Sale of Goods (CISG).³ The work pays homage to a preeminent scholar on the CISG whose scholarship has aided in the uniformity of the application and interpretation of the CISG.

The international commercial law heavyweights who contributed to the *festchrift* include, among others, Peter Schlechtriem, Hiroo Sono, Pilar Perales Viscasillas, John P. McMahon, Ruth M. Janal, Franco Ferrari, Harry Flechtner, Robert Koch, Joseph Lookofsky, and the editors.⁴ These scholars dealt with the complex and important questions and issues the CISG raises, such as the illusory general principles of CISG article 7(2),⁵ the application of the CISG to arbitration terms of international contracts for sale of goods,⁶ and the application of the CISG to the international sale of computer software,⁷ and lays the ground for the need to explore other areas, such as a seller's liability for third party intellectual property claims under CISG article 42.⁸

Although I wish to discuss every contribution among these heavyweights in CISG scholarship, I cannot. Instead, I discuss a few contributions that helped me better understand international commercial law, the CISG, and Professor Albert Kritzer. Among my favorite contributions is Professor Joseph Lookofsky's, which I previously described as personal and poignant because Professor Lookofsky provides knowledge on how Professor Kritzer helped him share his CISG scholarship with a wider audience.⁹ Professor Lookofsky, the scholar behind the *Understanding the CISG* series,¹⁰ which also made my life easier as a law student and *Vis mootie*,¹¹ discusses how Professor Kritzer enabled him to help others understand the CISG by introducing him to the

3. The *festchrift* contains not only commentary on the CISG, but also contains commentary on related areas of international commercial law and international arbitration.

4. The *festchrift* also includes articles of twenty-three other contributing scholars.

5. See Camilla Baasch Andersen, *General Principles of the CISG—Generally Impenetrable?*, in SHARING, *supra* note 2, at 13.

6. See Robert Koch, *The CISG as the Law Applicable to Arbitration Agreements?*, in SHARING, *supra* note 2, at 267.

7. See Hiroo Sono, *The Applicability and Non-Applicability of the CISG to Software Transactions*, in SHARING, *supra* note 2, at 512.

8. See Ruth M. Janal, *The Seller's Responsibility for Third Party Intellectual Property Rights under the Vienna Sales Convention*, in SHARING, *supra* note 2, at 203.

9. See *supra* note 2.

10. The series is published in The Netherlands by Kluwer Law International and publication dates vary by edition and geographic area.

11. A professor in law school recommended the UNDERSTANDING THE CISG series to me, and reading this "crash course" in the CISG did not by any means make me an expert on the CISG, but it did help me understand the CISG in my legal coursework and refresh my memory on the CISG when I participated in the *Vis Moot*.

publishers of his *Understanding the CISG* series and urging him to contribute his insight on *Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Co.*¹²

The other sections which I find particularly interesting include Hiroo Sono's contribution, *The Applicability and Non-Applicability of the CISG to Software Transactions*,¹³ and Camilla Baasch Andersen's *General Principles of the CISG—Generally Impenetrable?*¹⁴ Each adds insight on the CISG. Professor Sono tackles the “hot” issue of whether software falls under the ambit of goods under the CISG by discussing the meaning of software (be it tangible media, copyright, or information), whether the CISG applies under different definitions of software, and whether it is justifiable to restrict licensing contracts under the policy of uniformity and anti-licensing. Because the classification of software as goods triggers the application of the CISG to a software transaction, Professor Sono's article is especially significant and offers insight to practitioners and courts on the applicability of the CISG to software sale contracts.

Dr. Andersen's analytical contribution tackles general principles,¹⁵ a conceptually difficult and illusory issue.¹⁶ In explaining gaps in the CISG and trying to define general principles that should fill those gaps, Dr. Andersen addresses the main problems with Article 7. First, the CISG does not define general principles.¹⁷ Second, resorting to general principles to fill gaps within the CISG does not ensure a more uniform approach to the CISG.¹⁸ By identifying the inconsistency of interpretation and application of the CISG as a problem, Dr. Andersen lays the ground for further exploration by others—the Jurisconsultorium.¹⁹

As to those contributions I was not able to discuss in detail, each was a tribute to a pioneer and a testament to the “sharing” that Professor Albert Kritzer emphasized in his career; the sharing of an understanding of the CISG

12. *Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Co.*, No. 99-C4040, 2002 WL 398521 (N.D. Ill., Aug. 28, 2001), *rev'd*, 313 F.3d 385 (7th Cir. 2002), *cert. denied*, 540 U.S. 1068 (2003) (where the court held that CISG article 74 permits successful parties to recover attorneys fees incurred in litigating a CISG breach of contract claim; this holding is reversed on appeal).

13. *See* Sono, *supra* note 7.

14. *See* Andersen, *supra* note 5.

15. *See* CISG art. 7(2).

16. *See* Andersen, *supra* note 5.

17. *Id.* at 16, 23–24.

18. *Id.* at 32–33. *See also* CAMILLA BAASCH ANDERSEN, UNIFORM APPLICATION OF THE INTERNATIONAL SALES LAW: UNDERSTANDING UNIFORMITY, THE GLOBAL JURISCONSULTORIUM AND EXAMINATION AND NOTIFICATION PROVISIONS OF THE CISG (2007).

19. The Jurisconsultorium is a shared interpretational sphere or cross-jurisdictional “common law.” *See* Andersen, *supra* note 5.

and international commercial law that will aid in the uniformity of application and interpretation of the CISG.