The New Uniformity of Law in International Trade

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Introductory Remarks

The prospects are great for a profound change in the way law is to be practiced in Japan within the next few years. The demands of Japanese commercial enterprises doing business globally are for legal advisory services that reflect special knowledge of and competency in international business practices. Not only Japanese *bengoshi*, but the staff of the legal departments of most Japanese corporations are feeling the pressure to be able to handle problems related to international business transaction law. Add to this the future expansion of the legal profession expected from the newly authorized and established Law Schools of various Japanese universities. Indeed this will be an intended effect and with the blessings of government and profession. The present rationale is to speed up the processing of legal matters in Japan and to meet the demands of the change of attitude toward more litigation of disputes. The push is for Japan to attain a "global standard" in its legal professions.

However, it seems to me that another effect that is easily foreseeable is a trend toward more specialization among *bengoshi*, as has been experienced by the British and American legal professions with the large growth of the number of practitioners in the three decades following the liberalization of the 1960's. In Japan *bengoshi* have traditionally been trial lawyers (much as English Barristers), but with the vast expansion of Japanese business overseas, they have been pressed to provide more legal assistance in legal advisory services. Particularly in becoming involved in advising Japanese traders in the negotiation of international trade contracts and in resolving disputes arising under such contacts. In this respect international trade law has become of the most important focuses of new business and responsibility of Japanese *bengoshi*, and it will continue to be one of the most sought after and busiest specializations in the future expansion of the Japanese bar membership.

In this paper, we take a look at the development of international trade law as a proper field of specialization for Japanese *bengoshi*, and indeed for professional law practitioners of all trading countries (virtually all countries). In pursuing this task, it is helpful to look at the historical background of this field and then to see what is developing in our present time.

Historical background of trade law

Only in the last decade or so has it become more realistic to talk about international trade law as a separately recognized system or body of law. In a historical perspective it has only recently come back to its ancient origins in becoming truly international in perspective and application and escape domination from overbearing nationalistic control. A brief look at the historical development of the emerging international trade law is instructive and aids in better understanding when one moves on into study of today's laws. Basically this is the story of the *lex mercatoria*, or "Law Merchant", that forms the common thread of governance of international (and in many respects, domestic) trade. As Brand points out:

> A common history of traders confronting common problems led to common rules for allocating risks associated with the loss of goods, the transfer of title, obligations to pay for freight and insurance, and the responsibility for other costs. Those rules in turn have served as the foundation for national rules (both judicial and legislative) and more recent international rules established both by the merchants themselves, and by treaties among governments. (Brand Text, 2000 at 8).

Although there are reports of commercial law in the most ancient records of the pre-Roman civilizations, perhaps it is well to start this story with the chaotic and decentralized government conditions of the Dark Ages (after the fall of the Roman Empire) During these difficult times, the artisans and merchants of the various skilled arts and trading centers formed guilds for self-regulation and protection. These guilds became the sources of the rules and regulations that protected and guided the transactions among the members, and the honored guild masters tended to be the arbiters of any disputes arising among the members. These rules and the precedents of enforcement in effect became the trade law of the time. They were founded upon the custom and tradition practices growing out of traders facing common problems and having to allocate risks and responsibilities fairly among themselves.

As these principles became accepted as the international standards, they formed what is referred to today as the *lex mercatoria* or "law merchant". This body of law was considered to apply to and govern the private business relationships of international traders, and it was applied fairly and uniformly in the various sovereign national courts as an adjunct to the local governing law. There is some indication that it was accorded some preeminence over national and local laws (Brand Text 2000, at 10). It has been described as follows:

> The law merchant governed a special class of people (merchants) in special places (fairs, markets, and seaports). It was distinct from local, feudal, royal, and

> ecclesiastical law. Its special characteristics were that 1) it was transnational; 2) its principal source was mercantile custom; 3) it was administered not by professional judges but by merchants themselves; 4) its procedure was speedy and informal; and 5) it stressed equity, in the medieval sense of fairness, as an overriding principle. (Berman, 1988 at 240 as quoted in Brand Text, 2000 at 10)

As the European countries developed their national identities and propagated colonial establishments in the newly discovered Western hemisphere and in the destabilized countries of the Far East, the trade law principles of the *lex mercatoria* found their way into the growing body of commercial law of these countries. To be sure there was a lot of jealous guarding of the contact law principles of one's own country, but there had to be enough uniformity to allow for ease of movement of goods internationally. In doing this, the tendency was to preempt the jurisdiction of the tribunals of the guilds that had previously operated internationally. The result was the deterioration of the international practice and the preference for home-country law and courts (hence more favorable treatment) for the settlement of contract disputes. In England the jurisdiction over commercial cases was almost completely usurped by the Common Law courts by the end of the seventeenth century (Brand Text 2000 at 12). By the end of the eighteenth century, typically the *lex mercatoria* got only historical reference when it could be cited in support of the national legal principle that was considered determinative in a particular case.

Besides forming the foundations of the applicable or governing law, the *lex mercatoria* also influenced the administrative rules and the procedural law of the national legal systems. For example the use of specialized courts with judges trained or experienced in a particular specialty (such as admiralty or maritime law, perishable goods transport, or financial transactions). In England the extended use of "equity" of the Chancellery Courts (as opposed to Courts of Law) was derived in part from the varied legal remedies other than only monetary damages that the *lex mercatoria* allowed (Brand Text 2000 at 12). It is also quite evident that the extra-judicial dispute resolution practices of the *lex mercatoria* provided the foundations for our modern-day arbitration and mediation mechanisms - what we refer to as "alternate dispute resolution" (ADR).

By the early 20th century, however, the *lex mercatoria* practically ceased to exist independent of national law or to be considered as "international law" at all. With the ascendancy in power of the individual nation-states, international law devolved into solely that governing the relations between those states. Diplomacy became the accepted practice of international law. Indeed the trend was such that a private person or company had to petition his own government to champion his cause whenever he had a complaint against parties in another country. If a businessman was fortunate

enough to have the necessary political clout or if the bureaucracy found the legal principle involved to be of national interest, diplomats of his country would negotiate the complaint with the foreign government to find some remedy. Needless to say the whole process was time consuming and costly, and rarely reached any favorable resolution. Examples of this approach can be seen in the cases of seizure and nationalization of foreign owned industries in the former colonial areas (especially those of Central and South America in the 1950s and 1960s) and even more recently in the trade friction negotiations between Japan and the United States in the 1980s and 1990s.

International diplomacy has always been noted for its glacial progress at best, so it would seem more likely that a large number of injuries went without complaint rather than suffer the added burden of time and expense incurred in this cumbersome process. The alternative of relying on the local law and courts of the place of injury in most cases was the least favored due to the suspicion of favoritism toward the native party and prejudice toward a foreign party. The expedient to providing some favoritism to the foreign party came in the growth of graft and bribes to government officials and judges, a social disease that gradually degrades the whole fiber and brings the rule of law into disrepute. With the development of liberalized and expanded trade in the world today and the globalization of commercial operations, these negative factors of trade governed by diplomatic negotiations have not worked.

Fortunately, the movement has shifted toward renewal of international trade law to bring us full circle to uniformly recognized laws attuned to commercial interests - much in the manner of the old *lex mercatoria*. The latter half of the twentieth century has witnessed the propagation of international model laws, treaties and uniform procedural rules that we need to look at next.

The modern movement to uniform international trade law

The significant movement in the past five decades toward uniformity in international trade law is a product of merchants (and their legal advocates) "recapturing their role in defining and reforming the legal rules applicable to transnational transactions." (Brand Text, 2000 at 14). This movement has manifested itself in three very significant and diversely functional ways that can be conveniently exemplified by the ICC Incoterms, the UNIDROIT, and the UNCISG, each of which we will examine below.

The significance of the first mentioned, ICC Incoterms, is a product of a private (not connected to any government authority) organization, the International Chamber of Commerce (ICC), headquartered in Paris, France. The ICC, with its affiliation with chambers of commerce of all nations around the world, has direct imput from the hands-on experience of its commercial members

in daily international trade and business transactions. These people know the precise problems they face and they are able to work out solutions that are real and practical - not just philosophical and abstract. (The situation here is not unlike that faced by the artisans and merchants of the old medieval guilds.) The Incoterms is but one of the many different procedural rules that the ICC has promulgated over the years.

The next mentioned UNIDROIT, reflects the model-law approach to uniformity of principals of contract law used in international trade and represents a non-legislative means of unification or harmonization of law. The operative body here is the delegate assembly of representative of the member nations, first established as the International Institute for the Unification of Private Law (UNIDROIT) under the League of Nations system in 1926. It has since become an independent intergovernmental organization with headquarters in Rome, operating under its Governing Council and working through its various committees. Its exemplary product to be examined here is the compilation entitled *Principles of International Commercial Contracts.*

And the third example to be looked at, UNCISG, deals with the international treaty approach to the problem. The United Nations Convention on Contracts for the International Sales of Goods (UNCISG) moves beyond the model approach toward the legislation of an internationally accepted uniform law. By ratification of the treaty, member nations then share the same substantive law, and the merchants of such nations can rely on the same rules of law applying to any contracts with merchants of the other member nations. The UNCISG is the product of the United Nations Commission on International Trade Law (UNCITRAL), which was established by the United National General Assembly in 1966.

There really are many other good examples that we could use here, such as the United States' Uniform Commercial Code or the European Union's Principles of European Contract Law, but these three represent a more global scope. Additionally these three have been chosen as being representative of their particular type in the different approaches being considered. Hopefully this will be borne out as we look briefly at an introduction of each.

INCOTERMS

The ICC began as early as 1936 to set up a regimen to provide uniform rules for interpretation of the trade terms commonly used and applied in cross-border commercial transactions. Their official title is "International Rules for the Interpretation of Trade Terms." However the common title used for these rules, "Incoterms", is said to be an abbreviation derived from "INternational COmmercial TERMS." (Ramberg, 1999 at 10) First promulgated in 1953, they have been continually reviewed

and updated (roughly at ten year intervals), and the presently effective version is referred to as "Incoterms 2000" (a refinement of the previous Incoterms 1990).

As a promulgation of a private organization, Incoterms normally must be voluntarily adopted into any business transaction by specific reference during the contract creation. There is no automatic application, although some judicial or arbitral forums will rely on these standard definitions if the circumstances of the case do not provide any other interpretation that should be applicable. The legal interpretations of some of the common trade terms may differ from country to country (e.g., the term "FOB" may be only applicable to sea transport in one country, but applicable to truck, train or air transport in others) and even from time to time (e.g., the Incoterms 2000 obligation of the seller for export clearance under the term "FAS" differs from that of the Incoterms 1990).

The Incoterms 2000 consists of thirteen different trade terms arranged in four separate groupings or categories, as is shown in this chart:

INCOTERMS 2000

Group E		
Departure	**EXW**	Ex Works
Group F	**FCA**	Free Carrier
Main Carriage	**FAS**	Free Alongside Ship
Unpaid	**FOB**	Free on Board
Group C	**CFR**	Cost and Freight
Main carriage	**CIF**	Cost, Insurance and Freight
Paid	**CPT**	Carriage Paid To [*]
	CIP	Carriage and Insurance Paid to [*]
Group D	**DAF**	Delivered At Frontier
Arrival	**DES**	Delivered Ex Ship
	DEQ	Delivered Ex Quay
	DDU	Delivered Duty Unpaid
	DDP	Delivered Duty Paid

(Ramberg, 1999 at 39) [* the name of the place of destination]

In this chart, the trade terms are in the right column in full wording, and their respective abbreviations appears in the corresponding center column position. Since these are established terminology, quite often in correspondence and in legal documentation the abbreviations are used as a sort of business jargon. The abbreviations of course carry the meaning and intent of the fully worded appellations. The order of listing here also illustrates the ICC arrangement, which places

Group E at the beginning, since it contains the term that might be considered most favorable to the seller and with the most obligations placed on the buyer. Then as you move through the succeeding terms thereafter you will encounter a progressive shift of responsibility or obligation from the buyer to the seller. At the end, the terms in Group D then might be considered most favorable to a buyer, with most of the obligations placed on the seller in those cases.

Group E contains only one term, the first letter of which gives it its designation: Ex Works (EXW). In this term, the word "ex" is the Latin word conveying the meaning of "going/coming out of" or "being outside of" a place or thing. The word "works" is an English word used in the meaning of "plant" or "factory", indicating a place where the seller carries on his industrial activity. The extended meaning here then is the point (location) just outside of the seller's place of business, and therefore the designation of "departure" term is used in the left hand column of the chart above. The seller is only obliged to get the conforming purchased product out his door, and the buyer is then responsible for taking it from there. Typically this type of transaction is one where buyer sends its truck to the sellers outlet to pick up the purchased product. It might well apply by implication to the billions of in-store purchases by common consumers around the world every day. The seller's obligations are the minimum since he only needs to put the goods at the disposal of the buyer. It is the buyer's obligation to arrange and pay for carriage, insurance, export arrangements, import arrangements, paying taxes and duties related to goods movement, and generally bear whatever expense or risk might be involved in getting the goods to the place the buyer wants them.

Group F contains the terms that signify that the seller must hand over his products to a nominated carrier "Free of risk" (the first letter giving the designation of this group). In the chart, this group is characterized as "main carriage unpaid", which indicates that the seller is not obligated to pay for the main transportation costs, but he may assist the buyer in arranging for the carrier to be nominated and used by the buyer. In this category of terms, the seller takes on the responsibility of moving the goods from his place to business to the place where they will be loaded on the buyer's designated carrier, i.e., the dock at a seaport, the airport loading cart, or the truck terminal loading dock. Of the three trade terms that make up this grouping, FAS and FOB are traditionally used only for shipments that involve transport by sea, whereas FCA is used in connection with other modes of transportation (air, land or even water). Free Carrier (FCA) indicates the dividing point of obligations between seller and buyer is the placement by the seller at the customary loading point of the transport used. Free alongside Ship (FAS) means placement of the goods for the buyer's disposal on the dock next to the sea-going vessel designated by the buyer. Free On Board (FOB) is the most traditional form in which it has been established that the point of division of obligations is the passage of the goods over the rail of the ship used for transport.

Group C is made of up four trade terms, the letter designation of which is derived from the intent that "the seller must bear certain Costs even after the critical point for the division of the risk of loss of or damage to the goods has been reached." (Ramberg at 39) The group is characterized in the chart as "main carriage paid" to indicate the obligations of the seller in participating in and pay for the transport arrangements. (Because of these designations, Group F and C trade terms are commonly referred to as carrier-related terms.) Of the four terms making up this group, Cost and Freight (CFR) and Cost, Insurance and Freight (CIF) are intended to be used for carriage by sea, and the other two, Carriage Paid To (CPT) and Carriage and Insurance Paid To (CIP) are to be used with any mode of transportation (including sea or mixed usage). Under these trade terms the seller's obligations continue until the goods are fully loaded on the mode of transportation. The seller's participation in the obligations of arranging transport do no preclude him of invoicing the charges for such to the buyer or inflating his sales prices to cover such, in any eventuality passing the cost on to the buyer.

The significance of the letter "D" in the last Group D is related to the obligations of the seller for the arrival of the products at the stated place of Designation, and hence this group is often referred to as the "delivered terms." Again carriage is to be arranged by the seller and his obligations continue to the place of delivery of goods to the buyer. Of the five in this group, Delivery Ex Ship (DES) and Delivery Ex Quay (DEQ) have been traditionally connected with sea transport and are so used. The remaining three, Delivery At Frontier (DAF), Delivery Duty Unpaid (DDU) and Delivery Duty Paid (DDP) can be used with any type of carrier used in transport. The "Frontier" in DAF means a country's political boundary, and it has been typically used in rail transport in Europe for the passing of goods from one country to another. The obligations of the parties, particularly as to export and import duties and requirements, are divided at the crossing of the border. For both terms DES and DEQ, the obligations of the seller continue until the arrival of the ship at the port of destination, except that for DEQ the obligation extends until the goods are off-loaded from the ship and placed for buyer's disposal on the quay (the port dock beside the ship). For the remaining terms, DDU and DDP, the obligations continue to the designated point where the seller puts the goods to the buyer's disposal, which could be a warehouse or even buyer's place of business. However, DDU indicates that the seller does not have the obligations related to import license and duties, which remain the buyer's under this trade term. DDP is the ultimate responsibility for the seller, since under this term the seller is even responsible for the import license and costs.

All of these Incoterms carry various implicit obligations and duties of the parties, especially as to reasonable cooperation even when a party does not have the primary duty. The usage of a particular trade term in a contract will have significant legal consequences, so it is important for a

party to study and know the such consequences when dealing in international transactions. Their use is voluntary in any contractual situation, and the Incoterms of ICC is intended to be a guide to judge or arbitrator in dispute resolution situations to aid in interpretation and determining the intention of the parties under the controlling law.

UNIDROIT

The work and efforts in the compilation of the *Principles of International Contracts*, which is chosen as the exemplary product of UNIDROIT, is aimed at elaborating on the international commercial custom to provide an international restatement of general principles of contract law. This is intended to reflect the common elements of all systems of law (European Civil Law, English Common Law, or socialist countries' law) and to provide a common ground for making the rule of law governing international transactions universally understood and relied upon. In understanding the purpose of the "Principles" (as they are commonly referred to), it is probably best to simply read the Preamble, which is as follows:

> These Principles set forth general rules for international commercial contracts.
>
> They shall be applied when the parties have agreed that their contract be governed by them.
>
> They may be applied when the parties have agreed that their contract be governed by "general principles of law", the "lex mercatoria" or the like.
>
> They may provide a solution to an issue raised when it proves impossible to establish the relevant rule of the applicable law.
>
> They may be used to interpret or supplement international uniform law instruments.
>
> They may serve as a model for national or international legislators. (UNIDROIT, 1994 at 1)

Similar to Incoterms, UNIDROIT Principles will not apply to any particular business transaction unless the parties themselves adopt such application. These are statement of contract law that will be convenient and helpful to apply in the event of contract disputes, but that application is not automatic and must be voluntarily accepted. They provide a uniformity of interpretation that helps circumvent the problems incurred in applying conflict of law principles to differing legal concepts of different countries. Judges and arbitrators may refer to these Principles if there is no other source of legal concepts available.

The Principles as published contain seven chapters (besides the Preamble), each of which deals with basic aspects of contract law. The first chapter contain ten articles setting out the "General Provisions". Significant among these is the initial statement of Article 1.1 that recognizes the

internationally accepted principle of freedom on contract, i.e., the right of the parties to determine the terms and conditions of their contract by themselves. Also significant here is the mandatory provision in Article 1.7 that "each party must act in accordance with good faith and fair dealings in international trade." (UNIDROIT, 1994 at 16) The other articles of this chapter deal with form of contract (writing not required), ability of parties to omit or modify certain provisions of the Principles as apply to their contract, giving of notices, some definitions and the like.

Chapter 2 deals with the formation of a contract between parties. It contains 22 articles on the various elements involved in forming a binding contract. The customary principle that acceptance of an offer or equivalent conduct is sufficient to establish a contract is borne out. What constitutes a valid offer, what is acceptance, the time factors involved, rejection and counteroffer, use of standard terms, and the like are covered by these various provisions. Article 2.6 make special provision for a duty of confidentiality as to information gathered during negotiations that is not normally considered a general duty of negotiating parties.

Chapter 3 contains 20 articles covering issues of validity of contract provisions. Here consideration is given to the effect on contract enforcement arising from matters no covered, relevant mistakes and errors, fraud, threat, and the like. Most of these, when clearly established, will give rise to a right of avoidance by one party. Article 3.18 provides that the (guilty) party "who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which is would have been if it had not concluded the contract." (UNIDROIT, 1994 at 87) This is the common law idea of restitution. Article 3.19 makes the provision of this chapter mandatory where the relate to a mere agreement's binding force, to initial impossibility or mistake.

Chapter 4 deals with the interpretation of terms or expressions in the contract in eight articles. The basic concept in Article 4.1 is that the interpretation should be the common intention of the parties, and if that can't be established, the "reasonable person in the same circumstances" standard is used. The articles permit fairly free evidence from all circumstance in the negotiation and formation of the contract.. A general, open inquiry approach is used as opposed to restrictive and limited interpretation.

The eight articles of Chapter 5, entitled "Content", really deal with the obligations and duties of the parties in observance of the provisions of the contract they have made. These obligations may be expressed or implied, but there is a mutual obligation of fair dealing and cooperation imposed on both parties. Articles 5.6, 5.7 and 5.8 provide for the cases where the quality of performance, the

price or the time of termination has not been clearly expressed in the contract. The provisions of the chapter tend to be fill the gaps left by inadequate expression in a contract.

Chapter 6 covers the questions related to performance of the contract. It contains 20 articles divided into two sections. Section 1 (articles 1 to 17) deals with general issues of performance, such as time of performance, partial or early performance, place of performance, manner of payment, currency of payment, and the like. Section 2, with three articles, deals with performance made difficult by reason of hardship. These are issues that are sometimes referred to as frustration of purpose. Here they are dealt with as issues that cause alteration of the equilibrium of the contact that is fundamental. (UNIDROIT, 1994 at 147).

The provisions for the eventuality of non-performance are covered in the final Chapter 7, which has four different sections. Section 1 contains seven articles dealing with non-performance in general. These include a definition of non-performance, rights to withhold performance, cure by non-performing party and exemptions. It also contains the force majeure provisions. Section 2 deals, in five articles, with right to performance and some exceptions, allowance for penalties, and right to other remedies. Section 3 covers issues of termination in six articles, including right to terminate the contact, notice requirements, anticipatory non-performance and effects of termination in general. It also provides for restitution as a remedy. Section 4, with its 13 articles, deals with the right to damages (for breach) and issues related to how those damages will be determined.

While the foregoing is a light overview of the provisions contained in the Principles, their content is fairly comprehensive of problems and issues frequently incurred in contractual situations. They commend themselves very favorably to business dealings between parties of different countries and social backgrounds, because they are fair and readily understandable.

UNCISG

This brings us to the third example, the United Nations Convention of Contracts for the Sale of Goods (UNCISG or CISG). Established as a separate commission of the UN General Assembly in 1966, the United Nations Commission of International Trade Law (UNCITRAL) operates with a rotating membership of 36 nations and review various rule on international trade law. It has developed and published many rules and treaties related to such issues as international commercial arbitration and conciliation, international transport of goods, electronic commerce, international payments and the like. The exemplary treaty used here is the UNCISG, which was promulgated in 1980 and went into force on 1 January 1988 with the signatures of the first 11 contracting parties. It is now the operable law in over 50 countries, which surprisingly include China but not Japan

(even thought Japan is a member of UNCITRAL).

This in an international treaty and in effect is legislated contract law since it becomes the binding law of the adopting country. It does not necessarily negate the existing substantive law of a signatory country, however, since the provisions are fairly general and not all encompassing. In the United States, where treaties in effect become national law, it has had the consequence of taking preeminence over any state laws or federal statutes that are in conflict. It turns out that there is really not that much conflict, however, and the international uniformity benefits of this law are being appreciated ever more widely.

UNCISG consists of 101 various articles arranged in four parts. Its preamble indicates that the purpose and intention behind the provisions "would contribute to the removal of legal barriers in international trade and promote the development of international trade." (Brand Documents, 2000 at 4) Although it is not stated, obviously the uniformity provided by this convention

Part I splits its title "Sphere of Application and General Provisions" between its two chapters in laying out the general character of this treaty. Chapter 1, "Sphere of Application" consists of Articles 1 through 6. Article 1 specifically limits the application of all provisions of this treaty to contracts for the international sale of goods. This is significantly excludes application to other types of contracts (sale of services, rental of equipment, etc.). Further for the provisions to apply, the contracting parties must be of different countries, each of which must be a member nation to this treaty. The result then is very particular application and benefit to a select group of international traders. Chapter 2 (articles 7 through 13) are the general provisions guiding interpretation and application of the treaty provisions.

Part II, "Formulation of the Contract", has no chapters but consists of articles 14 to 24. Like UNIDROIT's chapter 2, it deals with the offer and acceptance that traditionally established a contract - how an offer is made, communicated and withdrawn, how acceptance is made and communicated and the effect of timing on such actions.

Part III, "Sales of Goods", contains the greater and significant portion of the CISG. It runs from Article 25 through Article 88, subdivided into five chapters. The chapters themselves are further subdivided into sections of common topics. Chapter 1 of this part contain general provisions providing a reasonable foreseeability test to fundamental contract breach, notice requirement for avoidance, qualification of specific performance as a remedy, and permitting mutually agreed modification of the contract terms.

Chapter 2 of Part III goes into the substantive issues related to the obligations of the seller. Issues covered here are: obligations of time, place and manner of delivery of goods and any related documentation (Section I); requirements that goods conform to contract specifications, rights of buyer to inspect goods; warranties of good title; and various notices related to these matters (Section II); and the various remedies of the buyer for breach of contract by the seller (Section III).

Chapter 3 recites the corresponding obligations of the buyer under a contact. These issues are: time, place and manner of payment of the price (Section I); the taking of delivery of goods (Section II); and the various remedies available to the seller for breach of contract by the buyer (Section III).

"Passing of Risk" is the title and subject of Chapter 4 of Part III. Having no subsections, it deals with the point and timing in a transaction where the risk between the parties shifts from one to the other and the effect of this on their respective rights.

Part III, Chapter 5 is "Provisions common to the Obligations of the Seller and the Buyer", indicating it application is circumstantial as to the actions of the parties. Section I deals with anticipatory breach by one party and problems of installment (of delivery or payment) contracts, both of which can give rise to a right of the innocent party suspending performance. Section II covers issues of the right to damages and/or avoidance upon breach by either party. Section III provisions allow for the accruing of interest on unpaid obligations. Section IV cites exemptions where failure of performance is due to an impediment beyond the control of the defaulting party, caused by the other party, or caused by a third party. Section V covers the effect of avoidance on the rights of the parties, such as the release from contact obligations subject to damages allowable, repayment of price by the seller, or restitution of goods by the buyer. Section VI deals with the obligations of the parties to protect and preserve the goods under their care.

Part IV of the CISG, entitled "Final Provisions", is the treaty housekeeping section that does not have any application toward contract law. It provides the rules for administering the treaty and the relationship of the contracting (member) States.

Conclusion

Having looked at the historical background which sets the tradition for uniformity of international trade law and at the representative examples of modern trade rules, model laws, and treaty (international statutory) law governing international business transactions, we can appreciate just how much of a "borderless" business world that the present day global network has become. In many respects the world that we live in now is much more organized internationally than could have

been thought possible in the old days of guilds, even though the reach of those organizations was quite broad. The uniformity of today results from a more enlightened cooperative approach of governments as well as private individual and scholars, not of the necessity that guided the guilds. Accordingly, the legal rules and laws of today can be and are being crafted for particular purposes and aimed at specific needs. This is the reason that we are getting the proliferation of various regulatory approaches such as are illustrated by our examples above.

The significance of this new uniformity to the legal practitioner in Japan - whether a *bengoshi* or only a clerk in a company legal department - is that these are available tools of international business. The person who does not appreciate the value of these tools and how to use them will soon be left behind. It will be necessary for the expanding corps of *bengoshi* and other legal practitioners to expand their vision to these international sources of law. To be an international practitioner, a matter of survival in the years ahead, one must be willing to expend the extra effort in study. The good part of this is that the uniformity makes the study of various versions much easier and it is fairly easy to gain a skillful, working knowledge and vocabulary of these to become quite competent.

It becomes every more important then that awareness and preparation in these international uniform laws and regulations be included in the teaching curriculum of business and law departments of universities throughout Japan. Since the content of many, such as those illustrated above, are very basic, and not all that difficult to master in a good course of study. The basic skills so taught will strengthen the ability of the future legal advisors and advocates of Japan to better compete in the international arena.

References

Berman, H. (1988). *The Law of International Commercial Transactions (Lex Mercatoria)*, 2 Emory Journal of International Dispute Resolution 235.

Brand, R. (2000). *Fundamentals of International Business Transactions*, The Hague: Kluwer Law International. (Referred to herein as "Brand Text.)

Brand R. (2000). *Fundamentals of International Business Transactions - Documents*, The Hague: Kluwer Law International. (Referred to herein as "Brand Documents ".)

http://www.unicitral.org/

http://www.unidroit.org/

http://www.tansworldlaw.com/

International Institute for the Unification of Private Law (UNIDROIT) (1994). *Principles of International Commercial Contracts*, Rome: UNIDROIT.

Ramberg, J. (1999). *ICC Guide to Incoterms 2000*, Paris: ICC Publishing S. A.

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