NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
LAW MASTER'S PROGRAMME

MASTER'S THESIS

THE FORMATION OF CONTRACT FOR INTERNATIONAL SALE OF GOODS: COMPARISON BETWEEN IRAQI LAW OF CONTRACT AND ENGLISH LAW OF CONTRACT

Zana Seror ABDULKHAHEQ

NICOSIA
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Thesis Defence

Thesis Title: The Formation of Contract for International Sale of Goods: Comparison between Iraqi Law Of Contract and English Law of Contract

We certify the thesis is satisfactory for the award of degree of Master of Law

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ABSTRACT

The contract for international sale of goods is the main topic of our dissertation. Here we try to perceive the pattern in which the formation of contract for international sale of goods is structured in order to cope with issue relative to applicable law. In doing so we demonstrate similarities that exist between different systems of law and then we show implicitly that the United Nations conventions on Contract for International Sale of Goods is a kind of unification of common law and civil law system. By this way we show that there are little room for a great difference in contract formation between citizen of civil law system and common law system if they intend to perform a contract for international sale of goods. The aims of this thesis is to demonstrate that despite the difference of system of law there is unity in the formation of contract for international sale of goods under auspices of the United Nations convention on Contract for International Sale of Goods of 11 April 1980.

DECLARATION

I certify that all materials in this dissertation that are not my work have been clearly and properly identified; and that no material is included for which a degree has been previously conferred on me.

The content of this dissertation reflect my own view and is not necessarily endorsed by the university.

.. ..\....\2016

Zana ABDULKHALEQ

DEDICATION

To my parents, sisters, and brother

Without whom none of my success would be impossible

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TABLE OF CONTENTS

ABBRIVIA TIO NS

CISG: Convention on Contracts for the International Sale of Goods

ICC: Iraq Civil Code

UN: United Nations

UNCITRAL: United Nations Commission on International Trade Law

UNIDROIT: International Institute for the Unification of Private Law

CHAPTER ONE: INTRODUCTION

Today, 70 nations have embraced the CISG, among them most of the considerable trading nations of the world, for example, USA, Russia, China and most of the European Union member states. Thousands of cases have been chosen by state courts or arbitral tribunals and are accounted for upon through electronic databases or in lawful diaries, voluminous analyses in a few dialects. Its prosperity comes to direct application to the cross fringe deals and an impact on another universal and national regulation. Case in point, it is utilized as a model law for much nations' law of commitments. Also, the tradition intends to bring together the guidelines, which should be connected to international sales of goods. With a specific end goal to bring together the standards of International Sale of Goods, drafters of the tradition considered contrasts between Civil Law and Common Law and additionally contrasts in the middle of created and creating nations. Therefore, the CISG is entirely new and has a few contrasts from domestic laws (Zorlu, 2015).

Taking into consideration the significance and volume of international business, a uniform law to control the trade at the international level was a flat out must in the last quarter of the twentieth century. The endeavors to achieve a uniform law in the region of international business were effectively finished in 1980 with United Nations Convention on Contracts for the International Sale of Goods (hereinafter the CISG). Today we see 78 contracting states that marked the CISG and it has been acknowledged as an extensively effective instrument that gives harmonization and unification in the regulation of international business (Vural, 2013). Commercial letter of affirmation is likewise an issue stays out of the CISG, in other words there is no procurement that guidelines it yet there are insightful methodologies (Schlechtrien and Butler, 2009) to handle the issue under arrangement of contract. Likewise, e-trade exchanges is additionally handled by a few researchers under the contract development however we will exclude these issues in the work and manage the arrangement of contract through understanding terms sales and acknowledgment under the CISG when all is said in done

and at a few focuses in examination with German Approach on the issues and also specify the issue of standard contract terms (Vural, 2013).

As of late, just a couple of Western organizations have had noteworthy enthusiasm for Iraqi commercial law. On uncommon event, for instance, Iraqi commercial law has been important in the connection of cases before the United Nations Compensation Commission in Geneva, or in domestic courts. However, now that Iraq and the United Nations have started.executing Security Council Resolution 986, the supposed "oil for sustenance" program, more Westerıı organizations are probably reevaluating the future Iraqi market. Iraqi commercial law will again get to be critical in post-sanctions Iraq (Taha and Stovall, 1999).

Contract as a mean to conduct, to achieve and realize an act; takes after a procedure that ought to be regarded to pick up legitimacy. The contract is the base, the color of monetary society it react to the need to fortify relationship amongst financial performers too in inside as outside zone. In other hand, in State level there are standards that administer the contract formation some of them are compulsory to the finish of contract: it is the major standards of the contract formation. In worry with that perspective, there are formal standards and key standards to the contract formation. The non-admiration of formal standards to the contract formation does not prompt the nullity of contract. Despite what might be expected the need on the exigencies of key standards renders the contract void and voidable. In respect with contract made by two individuals of various nationality we call it international contract. There are numerous kind of international contract; it can be contract for street development, contract for good conveying, contract for delivery, contract for mineral assets misuse, contract for carriage, contract for international sales of goods and so forward. The last one specified above is the primary theme of this work. The contract of international sales of goods is contract held between two gatherings from various nations that can be gatherings to the Convention on Contract for International Sales of Goods (CISG 1980) or not. Here we are not worried with the case in which one gathering to the contract of international sales of goods is not members to the CISG. Our whole system is based upon the case which both sides are gatherings to the CISG. For this situation we concentrate on the contract formation of

international sales of goods. That is to say we are going break down the component by which the contract formation of international sales of goods is instituted to maintain a strategic distance from strife of law between the contracting parties. Other than our point is to elucidate unequivocally the contract formation of international sales of goods by a similar methodology in which we set down Iraqi law contract and British law of contract to dissimulate divergences and uncover more regular focuses inside both law.

The contract as we probably am aware is the key procedure of all financial structure on account of Iraq, after the second inlet war of 2003 there are new advancement of monetary enthusiasm for some districts such Kurdistan self-ruling locale and anyplace else in Iraq. Consequently the need of nation in goods supply is turning out to be more critical. This circumstance, regardless of the fact that Islamic State exercises has diminished the velocity of new contracts in Iraq; has favored an expanding advancement of financial area of goods supply especially in districts, for example, Kurdistan and particularly in Erbil. Here we posit the condition in which contracts should be concluded for a better development of economic circuits. A wrong or misguide concluded contract can slow down economic growth. In that respect, contract formation is essential to establishment of strong economic structure and in other sense it fosters and sustains economic growth.

The work on contract formations for the international sales of goods started in 1934. In that year the International Institute for the Unification of Private Law in Rome (UNIDROIT) isolated out formation from the Institute's general work on the international sales of goods. By 1936, a draft Uniform Law on International Contracts by Correspondence had been readied. Similar to the case for the general work on international sales, advancement was stopped by World War II, and the work was not continued until 1956 (Bender, 1984). By 1956 another draft had been readied by the Council ofUNIDROIT. In the interim, the general work on sales had finished in a Draft Uniform Law on the International Sale of Goods, which was updated by an exceptional board of trustees named at a meeting in The Hague in 1951. In 1959, after the Dutch government chose to hold a strategic gathering on this modified draft on international sales, UNIDROIT transmitted its draft on formation to the Dutch government with the

expectation that it may be brought before the same political meeting (Bender, 1984). In 1964 the draft was submitted to the same political gathering at The Hague that had before it the international sales draft. The outcome was two separate traditions, one managing the substantive law of sales and the other managing the formation of sales contracts - a Uniform Law on the Contract formations for the International Sale of Goods. It came into power and was at last embraced by seven nations. Before it got to be powerful, in any case, UNCITRAL was at that point at work updating the law on international sales. At the point when the UNCITRAL working gathering on sales had completed its work on the substantive sales procurements, it gave two gatherings in 1977 to formation. What's more it considered a UNIDROIT draft on the legitimacy of contracts and chose to fuse into the procurements on formation one of that draft's articles that managed understanding. In 1978, UNCITRAL evaluated the Working Group's draft and chose to incorporate the draft into the substantive. sales procurements that it had effectively endorsed as Part II ofCISG similarly those procurements on formation frame a portion of Article 2 of the Uniform Commercial Code. Since a portion of the procurements of Part II were viewed as disputable, in any case, it was chosen that a nation ought to have the alternative to choose to endorse whatever remains of the Convention however forget Part II (Bender, 1984). Starting here on, the formation procurements took after the same course as whatever is left of CISG. In spite of the fact that some might have viewed them as dubious, they experienced moderately few changes at the Diplomatic Conference in Vienna in 1980.

In this thesis we need to demonstrate implication and importance of the contract formation ;~~rymic building oflraq and particularly in Kurdistan autonomous region. In that respect, we will focus our framework on the contract formation (Chapter II) in Iraq and England. Then we will lay down an analysis of United Nations Convention on Contracts for International Sales of Goods of 1980 (Chapter III); further we will scrutinize applicability of CISG 1980 and issues (Chapter IV). The resolution of conflict of law under CISG 1980(Chapter V) and an analysis oflraq Case (Chapter VI) will end with a general conclusion this thesis.

CHAPTER TWO: CONTRACT FORMATION IN IRAQ AND ENGLAND AND THE IRAQ CODES

Contract is defined by the Iraqi civil Code as the unison of an offer made between two parties to affect a certain object (Iraq Civil Code: Article, 73, 1990). This definition exposes indirectly two positions. The first position is relative to offer made to another party; the second idea is the supposed acceptance of the said offer. The other hypothesis is the object of the offer that should be valid and in the straight-line of public order. The contract in this definition puts in presence two persons or two companies or more. But basically the contract involved at least two actors: the offeror and the offeree. These entire hypotheses hide fundamentally the substance of contract process that can be found relevant to understand the contract formation. Our aim is to demystify the contract formation in order to reveal similarities between the contract formation in Iraq and England. The main way to follow is that of comparative approach. Then we will focus on relative particularity of contract in England and Iraq.

2.1 Contract Formation in Iraq

Forming contract in Iraq requires establishment of certain legal conditions. Those conditions are applicable in respect with the nature and specificity of contract that ought to be closed. Despite the fact, it ought to be perceived that there exists some broad standards that oversee contract formation in Iraq. The general conditions for the contract formation in Iraq are worried with the terms offer and acknowledgment that are utilized as a part of Iraqi Civil Code to signify the production of contract. The first will communicates to contract is viewed as the offer and the second is esteemed to be acknowledgment. Those two angles are insufficient to decide the legitimacy of Iraqi contract. To be legitimate an Iraqi contract endless supply of three principle components: a substantial item, a lawful cause and assent. In that sense a substantial contract as indicated by Iraqi Civil Code, is contract which is lawful, finished up by

gatherings with full limit with no deformities, with a lawful cause and lawful item (Iraq Civil Code: Article: 133, 1990). Contracts are enhanced and monetary and social exercises (Iraq Civil Code: Article: 74, 1990). Also a contract is considered substantial insofar as it is not in spite of the law, the general population request or against good values (Iraq Civil Code, 1990, Art. 75).

For an Iraqi contract to be performed there are a few exigencies. Exigencies are with respect to the substance of contract itself Case in point the acknowledgment of the offer ought to be complied with the terms of offer (Iraq Civil Code; Article: 85, 1990). Acknowledgment is regarded fit in with the offer when both sides to the contract concede to all and each crucial components to the contract (Iraq Civil Code; Article: 86(1), 1990). As per that manner, the assention ought to be supreme as in the consent to a few, yet not all the fundamental components to the contract is considered as lacking to perform contract (Iraq Civil Code; Article: 86(1), 1990). For the situation in which the contracting parties choose to concede to every single crucial component however delay arrangements on auxiliary matters on a later date, the contract is confessed to be shaped typically on key terms (Iraq Civil Code; Article: 86(2), 1990). Yet, this case is legitimate just if the contracting parties have not stipulated that the reservation on auxiliary matters is a sine qua non condition to perform contract. On the off chance that in which a question emerges later in those uncertain auxiliary matter, the court might issue a choice as per;~-~ic of the contract, procurement of the law, normal utilization and value (Iraq Civil Code; Article: 86(2), 1990). It is clear as per Iraqi Civil Code that one-sided articulation of will ought not bound. That is means for contract to be performed, there is need of two will, one will communicating its offer and the other communicating it acknowledgment (Iraq Civil Code; Article: 184 (1), 1990). Those cases are confined to the circumstance in which the offeror has offered thought to whoever performs certain demonstration (Iraq Civil Code; Article: 185(1), 1990).

In some cases gatherings could go into a preparatory assention wherein they express their will to be bound if certain circumstances are acknowledged inside of a breach of time beforehand decides (Iraq Civil Code; Article: 91(1), 1990). Where the law obliges

to take after a kind of structure to build up contract that understanding ought to critically regard those formal exigencies (Iraq Civil Code; Article: 91(2), 1990).

In uprightness of Iraqi Civil Code, offer and acknowledgment might be oral, composed or by some sign which is perceived in like manner use as showing a longing to be bound by a contract (Iraq Civil Code; Article: 79, 1990). In that sense a contract can be performed by including in a trade which traduces common understanding and which was led in such a way, to the point thatthe will to contract is clear (Iraq Civil Code; Article: 79, 1990). Despite the fact that there is no need for the contracting gathering to be physically present right now of conclusion (Iraq Civil Code; Article: 87(1), 1990); since the understanding could be performed by phone or other method for cutting edge communications (Iraq Civil Code; Article: 88, 1990). All things considered the contract will be esteemed finished up when the offeror will get adequately anyplace else the notice of acknowledgment of the offeree (Iraq Civil Code; Article: 87(1), 1990). The presentation of goods with their costs is rumored an offer (Iraq Civil Code; Article: 80(1), 1990), in the meantime their distributed, posting or publicizing of current managing is not (Iraq Civil Code; Article: 80(2), 1990). For a situation of closeout sales the contract may be finished up just if an offer (acknowledgment) is not vitiated by a higher offer (Iraq Civil Code; Article: 89, 1990).

In some degree, hush can be considered as acknowledgment; in such situation buyer gets great and stays noiseless or he or she considering their past managing the offer is identified with it (Iraq Civil Code; Article: 81(1), 1990). Other choice is the situation in which the offer advantages to the offeree to whom it was tended to (Iraq Civil Code; Article: 81(2), 1990). As per article 82 oflraqi Civil Code, offeror can pull back the offer before the offeree has acknowledged it; for this situation he communicates his aim to pull back or dismiss the offer by any method for communication preceding the acknowledgment (Iraq Civil Code; Article: 82, 1990). In addition, any reiteration of the offer preceding the acknowledgment infers the nullity of first offer (Iraq Civil Code; Article: 82, 1990). At the point when the offer made by the offeror is setting inside of a period limit (Iraq Civil Code; Article: 83, 1990), the offer stays legitimate until as far as possible passes. After the end of time utmost the offer is not any more substantial (Iraq

Civil Code; Article: 84, 1990). For the situation there is what is called "earnest money", any utilization of it is esteemed to be confirmation that the contract is last and won't not be disavowed at all unless it is stipulated otherwise by the contracting parties (Iraq Civil Code; Article: 91(1), 1990). On the off chance that it is the payer of the *"earnest money"* who pulls back, he will relinquish the "earnest money" (Iraq Civil Code; Article: 92(2), 1990). Be that as it may, on the off chance that it is the collector of the "earnest money" who pulls back from the contract, he will pay twofold the sum (Iraq Civil Code; Article: 92(2), 1990).

2.2 Contract Formation in England

The contract formation in England requires also as anyplace else around the globe three essential components: an offer, an offeror and offeree to be finished. Those three components are set around a specific decides that administer them. To adapt to specificity of contract procedure in England it ought to be decent to extricate the guideline administering them legitimately for an understanding talk. As we probably am aware English law of contract is an easygoing law it is not classify as Iraqi law of contract in some degree. However there are some basic rules that represent English law of contract in respect with the contract formation. Fundamentally there exist three essentials components to the contract formation in English law of contract. To a contract be performed, it requires presence of an assention, a contractual aim and thought. Give us a chance to examine these three components under their separate range. It is imperative to recognize that a contract is characterized in some degree as an assention offering ascend to commitments that are authorized or perceived by law. In such a way it shows up, to the point that the main essential is to achieve an assention. An understanding is the sine qua non condition between contracting gatherings to express their will to be bound by a contract.

2.2.1 Offer

An offer in that sense alludes to ability of the contracting gatherings to be bound by a contract on indicated terms, made with an unequivocal goal of offeror and once acknowledged unequivocally too by the offeree to whom it is tended to (Stover v Manchester City Council, 1974). The offeror ought to show plainly his expectation to be bound if the offeree acknowledges the offer. That is to say the offeror ought to act in a manner that even an outsider will have the capacity to translate his conduct as an obviously aim to be bound regardless of the fact that he has no such goal. That was the situation of a college that made an offer of a spot to a proposing understudy as a result of administrative blunder (Moran v University College Salford, 1993).

We ought to say however that an offer is not quite the same as a welcome to treat. As in, a man just welcomes the others to manage him while, the offer is an unmistakable indication of aim to the invested individual to contract with the offeror. A welcome to treat is made with no expectation that on the off chance that where the individual to whom it is tended to if communicates his consent to the terms, he will be bound by it. Generally, it is conceded that show of goods on rack in self-administration store (Partridge v Critterden, 1969) or ad (Pharmaceutical Society of Great Britian v Boots Cash Chemist, 1953) are welcome to treat not an offer. The popular instance of Carlill v Carbolic Smoke Ball Company [1893] 2 QB 256 is pertinent here. A restorative firm publicized that its new medication, a carbolic smoke ball, would cure influenza, and in the event that it didn't, purchasers would get £100. Whenever sued, Carbolic contended the advert was not to be taken as a lawfully tying offer; it was simply a welcome to treat, an insignificant "puff" or "contrivance". Notwithstanding, the Court of Appeal held that the promotion was an offer. A goal to be bound could be construed from the announcement that the promoters had saved £1,000 in their bank "demonstrating our earnestness'. In addition, an offer can be made to a solitary individual or gatherings of individual. In the same vein an offer could be made explicitly by word or by behavior.

2.2.2 Acceptance

As to the offer, just as acknowledgment ought to be showed by a reasonable goal of the offeree to get the offer with an unequivocal will to be bound by the terms of offer. That is to say there will no endeavor to change or challenge any of the terms of offer. An offer can be acknowledged by behavior of the offeree for occurrence the offeree can send the goods to purchase to the offeror showing by that mean it purpose to be bound by the terms of offer unequivocally. The guideline results from above articulation are that the acknowledgment should coordinate every one of the terms of offer and every one of the terms might be acknowledged unequivocally.

The other part of acknowledgment is that the contract produces results from the minute where the offeror is informed viably (in light of the fact that it could make hardship the offeror to be bound without realizing that his offer had been acknowledged). On account of postal acknowledgment the key principle is that acknowledgment produces results once the letter is posted (Henthron v Fraser, 1892) regardless of the fact that the letter could be postponed, wrecked or lost (Adams v Lindsell, 1818), the contract is considered substantial presumed compelling. Nevertheless this tenet is connected just if the contracting parties have concurred that it should apply. This tenet verifiably concede that if there exist a path whereupon the offer has set out the mean by which acknowledgment ought to be conveyed; the acknowledgment ought to agree to it to be legitimate. Coincidentally if the acknowledgment is made by means of medium such email, acknowledgment produces results quickly in the spot and time where the receipt of email of acknowledgment held (Entores v Miles Far East Corp, 1995).

Another hypothesis is the one where the communication neglects to produces results as an acknowledgment because of endeavor to fluctuate, altered or change the terms of offer. All things considered it is a counter-offer that could be acknowledged or dismisses by beginning offeror. For instance, where the offeror offers to trade on its standard terms and the offeree indicates to acknowledge, however all alone standard terms, that speaks to a counter-offer. Unless the contracting parties concur on counter-offer, it constitutes promptly a dismissal of the first offer (Hyde v Mrench, 1840). That is to say counter-

offer ought to be recognize from minor solicitation for information which don't altered the crucial terms of offer.

An offer can be repudiated before the acknowledgment of the offeree however this denial ought to be conveyed adequately to the offeree before he or she acknowledge if not the disavowal is regarded insufficient (Byrne v Van Tienhoven, 1880). The acknowledgment of offer is the premise of contract despite the fact that it stays lacking to make a lawful premise for commitment.

2.2.3 Consideration

English law by and large concedes that thought is something worth or quality that is given as guarantee and required to perform the guarantee upheld as a contract. This is customarily either some impairment to the promisee (in that he might give esteem) and/or some advantage to the promisor (in that he might get esteem). Case in point, installment by a purchaser is thought for the merchant's guarantee to convey goods, and conveyance of goods is thought for the purchaser's guarantee to pay. In such a way there are some pertinent standards issues from the thought.

Firstly the thought must be adequate, yet not should be sufficient that is means the guarantee itself has no quality until there is acknowledgment of some worth influenced to it by every one of the contracting parties.

Also thought must not be from the past that is to say thought for a guarantee must be given in kind for the guarantee.

Thirdly thought must move from the promisee i.e. the promisee must give the thought. Here the weight of proof of thought stays at the charge of the promisee. While thought must move from the promisee, it need not move to the promisor. To start with, thought might be fulfilled where the promisee endures some drawback at the promisor's solicitation however presents no comparing advantage on the promisor.

2.2.4 Contractual Intention

An agreement even supported by consideration is not binding until the contracting parties have expressed their will to be bound and that their initial intention was to create, to produce a legal effect to their relation. Just to say that the parties must intend their agreement to be legally binding.

2.2.5 Form of Contract

Once an agreement has reached, coupled with consideration and contractual intention the contract is valid accordingly to English law of contract. However, when regarding the form with which it should comply there is no exigency. The only rule is that a contract can be made even informally; therefore most of contracts in English law are made orally. There are statutory exceptions to this rule. For example: (i) a lease for more than 3 years must be made by deed: Law of Property Act 1925, ss 52, 54(2); (ii) most contracts for the sale or disposition of an interest in land must be "made in writing": Law of Property (Miscellaneous Provisions) Act 1989, s 2; (iii) contracts of guarantee are required to be evidenced in writing: Statute of Frauds, s 4.

2.3 Comparison between Common law (England) and Civil law system (Iraq)

As admitted by most of international law practitioner's, Common law system is essentially casual while Civil law is based commonly on formalism. This first statement reveals to us a kind of adaptability of British Law of contract to the social facts within it is embedded and constructed. Differently, Civil law system proceed to identification of social facts that are recurrent to produce a general rule of law aiming at reduce, prevent it recurrences in social life. Focusing on that fundamental specificity, it appears evidently that as Iraq Civil Code is inspired from French Civil Code, it belongs substantially to civil law tradition. In contrast British law of contract as basically known is the founding law of common law tradition, in that sense, it could be said the main

differences are incrusted in a.kind of approach of question law rather than a fundamental and technical differences. That is to say the differences between British law of contract and Iraq Civil Code (ICC) are not based fundamentally on rule of law but most of time in the way the rule of law is implemented, but also in the interpretation of rule of law (Giuditta, 2007). Even though we should acknowledge their specificity it should be recognized in that perspective that basically there exist a common core principles shared by both systems of law.

While we are, it should be known that United Kingdom is not party to the United Nations Convention on Contract for International Sales of Goods (UNCISG, 1980), on the contrary Iraq has ratified and is party to the said convention on contract for international sales of goods. What is important here is to agree basically on general principles of law that are similar wherever we are. As aforementioned British law of contract is essentially casual, other specificity is relative to the category of institutions that we do not found it in Iraqi Civil Code. The consideration as defined above is specified to Common law this category is common to most of common law system.

We have just visited the contract formation in Iraqi Civil code and English law of contract; it appears that there is a fundamental difference between those two laws of contract regarding their formulation. The Iraqi law of contract is codified while English law of contract is not codified is rather casual. However, we should realize that there are some similarities between English law of contract and Iraqi law of contract in some extent. This intrinsic difference does not mean that it is impossible for Iraqi citizen to contract with English citizen, but the problem here is: how are they going to find an agreement? Which law should apply? The other questionable issue is: how Convention on Contract for International Sales of Goods of 1980 deals with it?

2.4 Iraq Codes

The Iraqi lawful framework is basically a common law framework, despite the fact that it joins Islamic law ideas with those of the Continental frameworks, (for example,

France). Large portions of the more essential commercial law tenets are contained in Iraqi lawful codes, especially the Civil Code, the Commercial Code, and the Code of Civil Procedure (Al-Mukhtar, 1995).

By Iraqi constitution, the Revolutionary Command Council is the incomparable government power in Iraq, and might enact by issuing resolutions. There are other lesser sorts of enactment, for example, Presidential regulations and pronouncements, and in addition ecclesiastical guidelines, declarations and mandates.

2.4.1 Civil Code

The Civil Code, Law No. 40 (1951), is likely Iraq's most imperative law, surely its most critical commercial law. As constitutions, laws, government divisions and techniques go back and forth; the Iraqi Civil Code has remained. Despite any political, lawful, or commercial changes in post-sanctions Iraq, the Civil Code most likely will remain basically unaltered (Taha and Stovall, 1999). The Iraqi Civil Code contains broad procurements with respect to "commitments", incorporating what in like manner law frameworks is referenced as contract and tort law. For instance, the Civil Code addresses an extensive variety of contract law issues: the components and contract formation (counting offer and acknowledgment); contractual surrenders, for example, coercion, oversight and distortion; interpretive standards for contracts; release, pardon (power majeure and changed circumstances) and break; and contractual harms. The artists of the Iraqi Civil Code tried to mix standards from both the Sharia and common codes in other nations, especially the Egyptian common code. In this manner, a noteworthy number of guidelines, standards and proverbs of Islamic statute were incorporated into the Iraqi Civil Code. Abdel Razzak Al-Sanhouri, the colossal Egyptian legal adviser, directed the drafting of the Iraqi Civil Code, and also the Egyptian, Syrian and Libyan common codes. (Al-Sanhouri additionally drafted the 1961 Kuwaiti Commercial Code.) Shortly before his demise, Al-Sanhouri was asked which code he thought to be his outstanding administrative accomplishment. "The Iraqi common code", he answered, on the grounds that that code, rather than the Egyptian code, was closer to Sharia (Habachy, 1979).

2.4.2 Commercial Code

The Iraqi Commercial Code, Law No. 30 (1984), like comparative commercial codes in other Arab wards, manages different commercial matters material to organizations, for example, commercial enrollment (power for which has been assigned to nearby assemblies of business), commercial books and trade names.

The Commercial Code contains broad procurements on managing an account exchanges, for example, current records, money stores and bank exchanges. The Commercial Code likewise contains rules on letters of credit and bank ensures. In that association, essentially all Iraqi government tenders have required offered and execution bonds, as unlimited bank ensures from Rafidain Bank. The standard practice has been to set up a (consecutive) bank ensure or stand-by letter of credit through a reporter bank for Rafıdain, which thus issued the bank surety to the Iraqi client (Al-Tabakchali, 1987).

2.4.3 Civil Procedure Code

The Iraqi Civil Procedure Code, Law No. 83 (1969), manages legal methods relevant in common and commercial cases, including ability and locale of the courts, rules on administration of procedure, pleadings, court hearings, and directives. Also, Articles 251-276 of the Civil Procedure Code direct discretion of debate - in spite of the fact that the Civil Procedure Code does not explicitly address remote assertion or outside arbitral recompenses. Outside court judgements are liable to the Law on Enforcement of Foreign Judgements No. 30 (1928), yet that law also does not explicitly address outside arbitral honors. Therefore, an outside arbitral recompense can't be authorized in Iraq under Law No. 30 (1928), unless affirmed by a court choice in the spot of discretion (Majid, 1995). Amid the 1980s, the Iraqi government more often than not demanded that its contracts with a remote organization accommodate discretion in Iraq. In light of past experience, a few eyewitnesses alert that intervention procedures in Iraq, between an administration element and a remote gathering, may not generally be reasonable and impartial (Taha and Stovall, 1999). Despite the fact that Iraq has acquiesced to some reciprocal and

multilateral understandings for the implementation of remote judgements and arbitral recompenses, Iraq has not agreed to the 1958 New York Convention.

2.5 Types of Business

2.5.1 Offshore Sales

Iraqi law does not by and large keep a U.S. then again other outside organization from making "offshore sales" specifically to clients in Iraq. Before, therefore, some outside organizations have utilized this structure for their sales to Iraq, which ought to essentially diminish lawful and down to earth vulnerabilities. For instance, the outside vender might choose not to ship items until it gets an irreversible narrative letter of credit, affirmed by a trustworthy bank in its home purview. Additionally, an offshore vender's profits by and large ought not be liable to Iraqi pay charge. Nonetheless, remote merchants may not generally have the capacity to arrange such ideal terms from Iraqi buyers. Throughout the years, the Iraqi government has straightforwardly obtained more than 90 percent of all imports into the nation. Through its import authorizing techniques and hard coin designation frameworks, the Iraqi government controls for all intents and purposes all remote trade. As the 1980s advanced, Iraq depended intensely on remote financing and conceded installment terms for real ventures and imports. Truth be told, Iraqi regulations required for all intents and purposes all Iraqi shippers to get the most ideal conceded installment terms from remote suppliers (Taha and Stovall, 1999). Prior to the Gulf War, some outside organizations acquired Iraqi government contracts through international delicate, yet progressively the Iraqi government was utilizing direct invitational tenders. In post-sanctions Iraq, therefore, remote organizations might need to enroll specifically with the applicable Iraqi government contracting entity(s). In view of related knowledge, remote organizations might be very much served by direct in-nation advancement, for example, support in the Baghdad International Fair.

2.5.2 **Commercial** Agency

In numerous Arab nations, the way to achievement is often to locate the right commercial specialists to open entryways and effectively advance the remote organization's items or administrations. Now and again, Western organizations have observed Iraqi commercial operators to be comparatively useful, for instance, to help with neighborhood conventions, and to get and catch up delicate archives. When all is said in done, notwithstanding, the Iraqi lawful and business environment for commercial operators has been very not the same as that in other Arab nations. Throughout the years, for instance, Iraqi law denied or confined remote organizations from utilizing commercial specialists as a part of association with Iraqi government contracting. Some Iraqi state substances just declined to manage commercial specialists (The American Contractor, 1978). In spite of the over, the Revolutionary Command Council revised the Commercial Agency Law in 1989, uprooting a percentage of the confinements on outside organizations utilizing commercial specialists as a part of sales to the Iraqi government. This correction mirrored the Iraqi (Stovall, 1989) government's endeavors to energize private segment commercial action taking after the end of the Iran-Iraq war (and the arrival of numerous men from the front, searching for work in the wake of leaving the military). The Iraqi government's state of mind toward commercial operators in post-sanctions Iraq might be a gage of the administration's dedication to the Iraqi private division. The Iraqi Commercial Agency Law at present requires that an Iraqi commercial specialists (i) be an Iraqi national and dwell in Iraq (if an organization, it must be enrolled in Iraq and be completely Iraqiowned); (ii) have a position of business in Iraq; and (iii) be enlisted with one of the Iraqi councils of trade. All approved commercial operators should likewise be authorized by the Commercial Agency Registrar.

2.5.3 Branch Offices

An outside organization performing a contract (or subcontract) for the Iraqi government is generally qualified for have a branch office in Iraq. A remote organization need not

build up a branch office, ifits contract is essentially for the supply of items to an Iraqi government buyer with no related exercises in Iraq, for example, preparing, supervision or establishment of gear. In the event that a contract incorporates even negligible exercises in Iraq, notwithstanding, the administration buyer might ask for the remote organization to build up a branch. A remote organization, regardless of the possibility that not required to do as such, might need to enlist a branch to determine certain advantages under Iraqi law - for instance, branch enrollment has facilitated the occasionally troublesome techniques for an organization's move of money into and out of Iraq, and encouraged the section and exit of laborers, and in addition getting home and work licenses. Keeping in mind the end goal to set up a branch, an outside organization has been required to present an application to the Department of Trade Control. The branch is not permitted to practice any movement other than as determined in the pertinent contract, unless unique endorsement is allowed. Outside organizations have a distinct option for setting up a full commercial branch office. The Iraqi Companies Law was corrected in 1989 to permit remote organizations to open delegate and contact offices in Iraq. A remote organization might open such an office (Taha, 1989) without first acquiring an Iraqi government contract, which is required to set up a branch office. Agent and· contact offices may not participate in commercial wage creating exercises (specifically, such offices ought to abstain from performing commercial organization or intermediation exercises). The delegate or contact office might direct market and possibility ponders, give item information to potential buyers and/or customers, and behavior general contact between its outside guardian and the Iraqi market.

2.5.4 Joint Ventures

A joint endeavor, similar to Beauty, is now and again entirely subjective. Throughout the years, businesspeople have utilized the expression "joint endeavor" to portray an extensive variety of various commercial game plans (counting purchase offer assentions and occupation contracts!). In the Iraqi lawful setting, nonetheless, in any case, there are

two essential sorts of joint wander: the unincorporated joint endeavor and the joint endeavor organization (Taha and Stovall, 1999).

(a) Unincorporated Joint Venture.

Under Iraqi law and practice, a "unincorporated joint endeavor" is perceived as a contractual game plan whereby two or more gatherings (they could be corporate elements or people) join together, typically to seek after a specific task for an Iraqi state association. In making this kind of joint wander, the gatherings have not built up a different and free lawful element. The unincorporated joint endeavor is made contractually, and the joint endeavor accomplices for the most part have expansive circumspection to concede to proper terms and states of the endeavor - subject to the regulations administering business conduct in Iraq. For instance, as an issue oflraqi law, a unincorporated joint endeavor is dealt with as a general association in a few circumstances. Therefore, the joint endeavor accomplices would be together and severally subject to outsiders for obligations of the joint endeavor. In most cases, a unincorporated joint endeavor is suitable for short-extend and/or slender purposes - for instance, where an Iraqi state association requires more than one organization to take an interest in a venture or, in view of the extent of the task, one contracting organization wishes to include other organizations.

(b) Joint Venture Company.

In a few circumstances in other Arab nations, U.S. organizations choose that a neighborhood joint endeavor organization might be the ideal type of business. Be that as it may, under current Iraqi law, non-Arab outside nationals and organizations are not permitted to put or partake in Iraqi organizations, whether in the general population or the private area. (Bedouin nationals might partake in Iraqi modem and trading organizations).

Therefore, with a specific end goal to use a joint endeavor organization in Iraq, remote (non-Arab) accomplices must set up the joint endeavor organization in a locale outside Iraq, and then enlist a branch of that remote organization in Iraq. After approvals are

lifted, the Iraqi government could choose to unwind the limitations on outside venture into the nation - at any rate for undertakings which bolster reproduction endeavors. On the off chance that Iraq decides to change its remote speculation rules, it could profit by looking into the new venture laws as of late drafted in neighboring nations - including Egypt, Jordan, Syria and Yemen. As experience has appeared in those nations, in any case, most potential remote financial specialists search not simply for changed speculation laws, but rather for changed markets. Iraq would think that its hard to rapidly change, for instance, its trade control and saving money framework, open division, and import/send out standards (Taha and Stovall, 1999).

CHAPTER THREE: CONTRACT CONVENTION FOR INTERNATIONAL SALES OF GOODS AND CONTRACT FORMATION

The contract formation for international sales of goods is liable to some vital standards that condition his foundation formally and essentially. The tenet of law arrives of the best significance as in it constitutes the primary point from which the formation of contract is developed. As seen above, in the first sections the formation of contract is not considerably a simple matter; for the primary reason that the corpus of tenets that oversee its structuration are excessively be in fact deciphered either by gathering or by the courts so as to be reasonable (CISG, 1980). The other viewpoint is the character international (CISG, 1980) of the contract for sales of goods that must be characterized. Actually the contract for international sales of goods should hold international character at whatever time it includes two on-screen characters of various nations. Those on-screen characters are the merchant and the purchaser who can be national of two states members of the United Nations tradition on CISG. Our point in this part is to see and break down pertinent hypothesis that demonstrate the procedure of formation of contract as indicated by CISG 1980. For that reason, we will examine the section two of UN tradition on CISG and then we will make a relative examination with Iraqi and English law of contract.

3.1 The rule governing the offer in the UN Convention on Contract for International Sales of Goods 1980

The contract is the result of exchange of will by two parties; one making an offer and another one expressing his will to accept the offer in order to achieve something which is recognized lawful. The both step to get into a contract are the offer and the acceptance in such a way the contract is the meeting point between an offer and acceptance. What is relevant amongst both protagonist (offeror and offeree) is their intent to be bound.

3.1.1 Offer

An offer is defined by article 14(1) of UNCISG 1980 as "A proposal for concluding a contract addressed to one or more specific persons(...) if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance ... " In the light of this above definition it appears three main steps a proposal, an intention to be bound and the criteria "sufficiently definite". Let us examine step by step those core concepts of offer.

1- Definiteness of Addressee

According to CISG 1980, the offer is clear when it is explicitly distinguished either especially or for the most part (CISG, Article 14; 1980). Here it is informed that in the feeling of CISG 1980 the amount and cost of the goods could be known verifiably by the contracting parties. In any case, the more vital thing here is to perceive that hush can't be considered as acknowledgment of amount, cost of goods that are proposed to be sold subsequent to there is no firm and positive cost and measure of goods particularly decided either by the gatherings hone or by the system of their past contract. The primary issue raise up here is with respect to the case in which an offer is made to unspecific gathering of individual. All things considered the inquiry is whether the recipient is distinct or not. The reaction is given to us by Vural (2013) who considered whether the proposition constitutes an offer or a welcome to treat. The instrument that ought to be connected to decide or to recognize in the event that it is an offer tended to open or on the off chance that it is a welcome to make an offer is given in article 14(2) of CISG which says that a reasonable sign ought to be enounced in the proposition to say that it constitutes an open offer otherwise proposition made to inconclusive circle is considered as a welcome to make an offer. In the same vein, Giannini notice that

> "To distinguish an offer from an invitatio offerendi the proposal should describe itself either as a binding offer or else as sans engagement, senza impegno, freibleibend, without obligation or other words of the same effect; in absence of

any such indications, Article 8 CISG pays attention on how the proposal would be understood by a reasonable person in the position of the addressee" (Giannini, 2006).

2- Intention to be Bound

Offeror must show his intention to be bound by contract by providing a minimum of information that show clearly his will to conclude if the offer is accepted. In such way intention as a subjective criterion demonstrate the unequivocal will of the offeror to be bound in case of acceptance of offer. It is exactly this intention that constitute essential element that renders offer effective. However as stated by Belkis Vural:

> "In cases where the offeror wants to be bound by his offer, is a question of interpretation under national legal systems, and it is fair to say, that under the CISG it has to be handled in each case individually as well" (Vural, 2013; pp.131).

3- Sufficient Definiteness

Sufficient definiteness of proposal is mentioned in second sentence of article 14 paragraph 1 which lays down exigency of identified quantity, quality and price of goods to be sold by the offeror. This exigency posits by the way the rule of sufficient determination of goods, quantity and price (Vural, 2013).

a) Indication of Nature and Quantity of Goods to be Sold

Under article 14(1) the CISG gives that the goods ought to be learned amid the contracting period once that the contract is on approach to be closed. In such a way the nature and the amount of goods must be resolved or in some degree it ought to be definite inside of offer made. This certain standard demonstrates that there is least

commitment to set up decently and precisely what constitute of the goods being referred to. Article 65 gives a few particulars procurements with respect to the way of goods. In that sense its procurements states as takes after:

> "1) if under the contract the purchaser is to determine the structure, estimation or others components of the goods and he neglects to make such determination either on the date settled upon or after a sensible time after receipt of a solicitation from the vender or the merchant might, without the preference to some other rights he might have, make the detail himself as per the prerequisite of the purchaser that might be known not (CISG, Article 65(1); 1980).
>
> 2) If the dealer makes the determination himself, he should educate the purchaser the points of interest thereof and might settle a sensible time inside of which the purchaser might make an alternate particular. On the off chance that after receipt of such a communication, the purchaser neglects to do as such inside of the time so settled, the determination made by the vender is tying (CISG, Article 65(2); 1980)."

In any case it ought to be recognize that utilization of article 65 in the contract formation is debilitated because of its area inside of the cures segment ofCISG 1980 (Xie and Xu, 1997). Thusly determination put forward in article 65 gets to be endless supply of the purchaser in light of the fact that, once the goods are indicated; the contract can't be proclaimed "void for ambiguity" under article 14, and the vender is qualified for the cure of shirking in accordance with article 64 and will then have the capacity to exchange to another purchaser and utilize the resale cost as a way to compute the harms for rupture (Lookofsky, 1995). Furthermore, article 65specification gets to be true blue supplement to the understanding in accordance with article 29 (Kuhm and Andersen, 1995).

b) Price Determination

Determination of price according to CISG in provisions of article 14 stipulated explicitly or implicitly that it should have a determined price or at least a determinable price. That

condition sine qua non is the one that renders offer effective and by the way afford a validity to contract of sales of goods. However, the price as mentioned in article 14 is at the heart of an important debate concerning it assimilation or not with open price contract theory. That's why to solve this above ambiguity the court, most of time look at the parties practice in regard with their conformity to article 8 CISG 1980 (Lookofsky, 1995). Besides there exist others ambiguities which are relevant with the word of article 55 CISG 1980. In fact article 55 reads as follows:

> "where a contract has been validly concluded, but does not expressly or implicitly fix or make a provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of contract for such goods sold under comparable circumstances in the trade concerned."

At first sight, there is antinomy between article 55 and article 14 due to their different location in the CISG. Article 55 is located in Part III relative to sales of goods meanwhile article 14 is concerned with Part II relative to contract formation under CISG. This apparent different scope is not enough to determine their relative implication and imbrication in the process of contract formation. That's why according to Vural article 55 only applied if the contract has been validly concluded without determining the price (Vural, 2013). Furthermore some scholars like Schlechtriem (2009; pp. 72) considered that:

> "If the parties have performed the contract despite no definite price having been agreed, or have in other way made clear that they wanted to perform the contract, the requirement of a sufficiently definite or determinable price can be seen as having been excluded by the parties. Accordingly, a valid contract has been concluded and the price has to be determined according to Art.55 CISG."

In such a way, Schlechtriem estimated that "article 55of the CISG has an application scope in cases where the parties exclude any types of price determination (based on party autonomy acc. to Art.6 of the CISG) and conclude a valid contract" Schlechtriem (2009, p. 69). This approach reveals the fact that article 55 is applied only if the contract

has a gap in concerned with the price that has to be managed. In that sense article 55 appears as gap filler in case where the price has not been determined. But this point of view is not shared by scholars like Lookofsky for who article 55 and article 14 cannot be read together because the condition of a valid contract under article 55 cannot be met if article 14 is not satisfied (Lookofsky, 1995).

3.1.2 Effectiveness of Offer

Under article 15(1) CISG, offer gets to be compelling just on the off chance that it comes to the offeree. Passage 2 of article 15 manages the denial of offer, at any rate it is critical to specify diverse hypothesis which renders offer successful. Essentially, offer is successful when these certainties happen:

- The offer is made to orally or,

- The offer is conveyed by whatever other intends to the offeree by and by, or to its place of business or postage information or,

- If the offeree does not have a position of business or postage information, to its ongoing living arrangement (CISG, Article 24; 1980).By the way, it should be known that under article 24 and article 27 CISG which define the *"reaches"* or the receipt; it is only when the offeree receives the communication of offer effectively. It is at this moment that there can be acceptance. In that sense, oral offer should normally be accepted immediately unless circumstance indicates otherwise (CISG, Article 18(2); 1980). The notion of oral offer implies conversation face to face, by telephone or by any other technical or electronic means of communications that permit instant oral contact, but statement captured in medium such fax is excluded from this scope of application (CISG, Article 21(1); 1980). An offer transmitted by electronic means reaches the offeree when the electronic communication has entered the offeree server's provided the offeree has consented to receive electronic communication of that type (CISG, 2003). Communication that is properly addressed is effective even if addressee changes his address (Fashion v Kejjer, 1994).

3.2 Rules Governing Withdrawal or Revocation of Offer and Acceptance Under1980 United.Nations Convention on Contract for International Sales of Goods

3.2.1 Withdrawal or Revocation of Offer

The CISG build up that an offer can be renounced whenever at the condition that the repudiation notice comes to the offeree before he has as of now advised its acknowledgment (Konrad, 1996). As we see it, this methodology is comparative in some degree to normallaw despite the fact that we ought to note some specificity of CISG. By 16(2) (a) states that an offer is unalterable when the offeror says that an acknowledgment must be set aside a few minutes period. In any case it ought to be conceded that there can be a few ambiguities with the expressions of article 16(2)(a) which consolidates in its push to make a bargain between normal law and common law framework two strategies for notice of offer denial. As known, in a common law custom, if a period limit has been expressed the offer is rumored unalterable, or if the time period has not been expressed the offer stays permanent for a sensible time period. Despite what might be expected, offer is revocable whenever regardless of the possibility that a period limit has been set for certain period in the normal law framework unless a thought has been given by the offeree. In this manner an exchange between two basic law gatherings won't bring on any worry in connection to the expressions of article 16(2) (a), however for the situation which both sides are uninformed and both additionally originating from nations of various custom, for example, basic law and common law convention, perplexity can emerge in connection to the procurements of article 16(2) (a). In any case this understanding issue can be explained with the assistance of article 8 CISG.

Other than there is another special case uncovers through article 16(2) (b) which states that an offer is irreversible "in the event that it was sensible for the offeree to depend on the offer as being permanent and the offeree has acted in dependence of the offer." Once more legitimate convention might influence drafting thought. Subsequent to the

expressions of this procurement mirror the principle of promissory estoppel set up under regular law (Mather, 2000). Incidentally, the CISG has set up an alternate form of precept of promissory estoppel in which the predictability or impediment is not required. Hence, it shows up the presentation of the contention decides acknowledgment under CISG. Then an Act or a behavior is important to set up dependence under article 16(2) (b). So CISG in one provision states:

"An act such as one relating to the dispatch of goods or payment of the price and the acceptance is effective at the moment the act is performed, provided the act is performed either within fixed by the offeror, if no such time is fixed, within reasonable time" (CISG, Article 18(3), 1980).

In such circumstances, article 8CISG is appropriate to elucidate the issue.

3.2.2 The Acceptance

According to article 18(1), "a statement made by or other conduct of the offeree indicating assent to an offer is acceptance" (CISG, Article 18(1), 1980). Consent is to be resolved under the principle put forward in article 8. What we ought to remind here is that consent to an offer can be put forth orally, in a composed proclamation or by a behavior. However oral acknowledgment incorporate a discussion up close and personal by phone, or other method for communication that can permits prompt oral contract, for example, "Skype, Facebook, hurray envoy and so forward." But medium, for example, fax is prohibited subsequent to there is no oral communication quickly as in the other method for communication (CISG, Article 20, 1980). For that reasons electronic acknowledgment is legitimate at whatever time when an electronic sign has entered the offeror server gave and the offeror has agreed either explicitly or verifiably to the electronic communication (CISG, 2003). Conduct that otherwise would not have been taken but rather for the truth of consent to an offer has incorporated purchaser's acknowledgment of goods (Reyken and Dimsey, 1993), including demand for alterations (Huhes and Technocontact, 1998), issuance of letter of credit (Magellan

Intemationalv Salzgitt<::r Handel, 1999), affirmation of receipt (Reyken, 1993), and execution and/of exhibitions of conditions put forward in the offer or in the contract by and large. It ought to be reminded here that hush or dormancy in itself couldn't be summed as acknowledgment (CISG, 2002, Art. 18). Notwithstanding, previous use to which parties host concurred and any practices which gatherings might have built up in their past contractual relations might demonstrates a consent to an offer (CISG, 2005, Arts. 8, 9).

Hereafter, a period confinement for acknowledgment must be put forward. In that point of view it exists an instrument under CISG which oversees time restriction in worried with acknowledgment. Therefore to be viable, an acknowledgment must be get in opportune way or inside of the time impediment put forward in the offer or late acknowledgment as per procurements of article 21. For the situation where the acknowledgment is not got by the offeror, the offeree bears the danger of transmission (ICC, Article 18(2); 1994). Then CISG has embraced the "receipt theory" of acknowledgment missing opposite assention between gatherings (Honnold, 1999). The receipt theory is common to most civil law countries and is based on the premise that "the sender has a greater opportunity to know whether the medium he uses, is then subject to hazards or delays" (Honnold, 1999).

The method of communication decides the time of times for acknowledgment. A timeframe settled by the offeror in a telegram or letter starts to keep running from the minute the telegram is handed in for dispatch or from the date appeared on the letter or, if no such date is appeared, from the date appeared on the envelope. A timeframe settled by the offeror by phone, by telex, email or whatever other method for communications, starts to keep running from the minute the offer reaches the offeree (CISG, Article 20(1), 1980). Official holydays or non-business days are incorporated into ascertaining the period. On the off chance that a notification of acknowledgment can't be conveyed at the location of the offeror on the most recent day of the period, since that day fall on the official occasions or the non-business days at the spot of business of the offeror, the period is reached out until the primary business day which takes after (CISG, 1980, Art.

20(2)). A late acknowledgment is nevertheless substantial as an acknowledgment if immediately the offeror so illuminate the offeree or inform the offeree to that impact.

As seen over, the contract formation for international sales of goods depends on principles that expect to encourage ease of changes among members States. In that viewpoint, the UN tradition on Contract for International sales of goods has managed a bargain relative with two noteworthy law conventions: Civil Law custom and Common Law convention. These both law conventions are the law from which most of members States contract law has been enlivened from. For that reasons, most of standards in energy numerous members States are like each other. This announcement lead us to say that if there is struggle of law between contracting parties in one given contract for international sales of goods of various nations, this contention can't hung on the key standards of contract, yet on some part of inward law of members States that can be points of interest. That is to say for the most part and universally the CISG mirrors the key decides that administer contract formation anyplace around the globe.

CHAPTER FOUR: APPLICABILITY OF CISG 1980 AND ISSUES

Since its adoption in 1980, United Nations Convention on Contract for International Sales of Goods has changed general configuration of international trade. In that respect, in the same way, CISG 1980 has paved the way of fluidity of exchanges amongst signatories States, it has also unexpectedly met so many problems due to collision with its application concomitantly with domestic internal law. For that reason, it is important for us to gather many issues relative to application of CISG 1980 and scrutinized them for a better understanding of the said convention. The applicability of CISG arises some issues in concerned with many specific matters of the convention. The first one is relative to the conflict of convention rule, the second is connected with reservation, and then we have issue on its limited sphere of application.

4.1 The CISG and the Conflict of Convention Rule

CISG in its procurement 90 states as takes after:

> "This Convention does not beat any international understanding which has as of now been or might be gone into and which contains procurements concerning the matters represented by this Convention, gave that the gatherings have their places of business in States gatherings to such assention."

According to this procurement, for a situation where a contracting State to the CISG is additionally member of another tradition which manages sales law issues, and that the spot of business of the gatherings is in this contracting State, the CISG offer probability to the gatherings to pick another appropriate law to any international exchange issue. This announcement demonstrates to us that the CISG is not a restrictive law that applies to international sales law; rather there could be other wellsprings of law material on the matters. In other words, Article 90 CISG unmistakably constitutes one reason why

courts of contracting States to the CISG,.as well, might need to consider wellsprings of law other than the CISG.

However the CISG does not make accuracy over the other wellsprings oflaw that can be connected, for that reasons the expressions of article 90 stays misty in the measure where the procurement does not determine what other wellsprings of law might need to be considered, nor is it clear about their association with the CISG (Herber, 1998), therefore making a great deal of vulnerability rather than dispensing with it (Loewe, 1997). Similarly as the main issue is concerned, it would be adequate; to remind that article 90 has prompted conception of numerous questions. Such debate are with respect to determination of international consent to which it alludes as in, is it international concession to substantive law or concurrences on private international law that ought to beat the CISG. By (1984), the second view is adequate in the point of view where it gives the idea that the Article 90 prerequisite that the understanding "contains procurements concerning the matters administered by this Convention" restrains the assentions that can beat the CISG to concessions to substantive law. Yet, the issue here is that CISG itself is a substantive law, all things considered it doesn't give any private international law standard to recognize the relevant law; for that reasons it is basically another substantive law that can be connected for a situation in lieu of CISG. The other issue is worried with the way of tradition that ought to be connected. The inquiry here is whether multilateral assentions or whether reciprocal understanding ought to win on CISG? As we understand, article 90 CISG is an endeavor to characterize or decide the contention of law over tradition rules, however this endeavor remains discreetly misty and out of the blue it doesn't achieve the end it was alloted to. At any rate, what we ought to have at the top of the priority list is that article 90 CISG as some other tenet on Conflict of tradition does not succeed in its endeavor to clear up numerous viewpoints.

4.2 Hypothesis of Conflict of Law in the Applicability of CISG 1980

The contention of law is hypothesis in which there are two laws rumored to be appropriate on the same matters for the same reason and where there is connection of

anteriority amongst bothlaw. Here is the situation in domestic law. Another case is the circumstance where we have two contracting parties who consent to close a contract however the issue is that both contracting gatherings are from various nations, the inquiry all things considered is which law of the contracting parties nations might win or whether in the light of CISG, the contract will take after the principle of one decided nation. There is one character that progressions the model of investigation all things considered; it is international character of the contract. On the off chance that for occurrence we have a contract between a purchaser and merchant where the purchaser is British native and the vender is Iraqi native living in Iraq, the inquiry is which law in the formation of their contract might win, is it British law of contract which might win or Iraqi law of contract that ought to win in prudence of the habitation of the dealer? Give us a chance to examine it.

By expression of CISG, the extent of use is worried with the situation where "between gatherings whose spots of business" are in various contracting states. In the event that a gathering has different spots of business, Article lO(a) of the Convention gives that: "The spot of business is what has the nearest relationship to the contract and its execution, having respect to the circumstances known not mulled over by the gatherings whenever before or at the finish of the contract ... "

The Convention does not characterize "spot of business." Nevertheless, case law and analysis - including remote sources, as indicated in Article 7, the Convention's elucidation procurement - point to a gathering's area, not the gathering's nation of consolidation, as the controlling element (Brekoulakis, 2011). In addition the tradition by delimitating the circle of utilization of tradition tries to clear up the epistemic field of impact of the said tradition. However the tradition neglects to characterize some center ideas, for example, "contract", "deal" or "goods". That definition disappointment influences the goal of tradition that will to be consistently acknowledged and caught on. For that reasons the authors of tradition attempt to balance their point of illumination by expressing negative identification, so in that regard article 2 (CISG, 1980, Art. 2) states as takes after:

"This Convention does not have any significant bearing to sales:

(a) Of goods purchased for individual, family or family unit use, unless the merchant, whenever before or at the finish of the contract, neither knew nor should have realized that the goods were purchased for any such utilize;

(b) By closeout;

(c) On execution or otherwise by power oflaw;

(d) Of stocks, shares, speculation securities, debatable instruments or money;

(e) Of boats, vessels, air cushion vehicle or airplane;

(f) Of power."

The slightest that ought to be said alludes to the way that all the significant components refered to in this above procurements are for most of them components on the ground of common life. They constitute exchanges out of addition desire rather they are incorporated into the circle of shopper individual life. The other angle is worried with determination of appropriate law.

As a result, in the light of the procurements of article 6 (CISG, 1980, Art. 6) expressing: "The gatherings might bar the utilization of this Convention or, subject to article 12, disparage from or differ the impact of any of its procurements." In the light of this above explanation it ought to be said that there exist two hypotheses in which plausibility is given to gatherings to apply tradition or not. The principal methodology is worried with avoidance of use of tradition. Here the standard is that the contracting gatherings ought to have rejected explicitly use of the tradition. This perspective is shared by creator such as Mistelis (2011) for whom the expressions of contract for international offer of goods should unmistakably and unequivocally express their refutation to apply the tradition in the formation of their contract. So that without such demeanors the tradition guideline stays in power between the contracting parties.

The other face of article 6 states that "gatherings might ... disparage from or shift the impact of any of its procurements." This happens when for example parties want to apply administers declared by the International Chamber of Commerce, an about

hundred-year-old, worldwide association headquartered in Paris, France rather than CISG 1980 (ICC, 2010). Parties much of the time choose to uproot a few, yet not all, procurements of the Convention. For this situation, the Convention remains the law relevant to the equalization of the contract. Moreover, the gatherings later might change their contracts keeping in mind the end goal to discredit from all or a few terms of the Convention. To do as such, they should fulfill the prerequisites of Article 29 (CISG, Article 29; 1980) concerning alterations.

Before the end, materialness of the United Nations traditions on Contracts for International Sale of Goods raises numerous worries while in regards to its substance. A few issues are significant because of the way that there is ambiguous elucidation; conversely some are worried with the absence of definition on certain center ideas. At any rate we ought to recognize that with a specific end goal to dissimulate vagueness on the tradition, the drafters of tradition have attempted to improve at most extreme the perception of content despite the fact that this target comes up short in some degree, see the fragmentation of the entire tradition. Coincidentally, the United Nations Convention on Contract for International Sale of Goods has recognized in any event unequivocally the system to take after when searching for the tradition to apply in simultaneousness with CISG. However, in other angle, it has the legitimacy to avoid a few matters to its circle of use. This avoidance presents some eliteness and specialization to the tradition making its more operational.

CHAPTERFI¥E:iRES0LUTION OF CONFLICT OF LAW UNDER CISG 1980

"Conflict9flıı»7ſ.'iis .cl.e[n;ıed by some authors as: that part of the law which deals with the case.hııyıı:ıgJornigpfly:ı:ıient(Dicey, 2006). The United Nations Convention on Contract for Inte:qıatiprıiJŞı:r_lc:.ofGoodshas settled a corpus of norms that aims to solve any conflict of law which could eventually occur and block the process of the formation, execution of contract for international sale of goods. In that respect it should be imporj:§1-p.t fqf ı.,ışJQ perceive those rules and determine how they are applied. As far as we are concerned, the first step should be for us to scrutinize how the court does to determinc-theapplicalrle law. Then we will see in the light ofrelevant case how the rule on conflict öf law or convention is applied.

5.1 The Determination of Applicable Law

There are three main principles which underlying Article 7(1) of the CISG its "international character," "uniformity" and "good faith." Gap filling is managed under Article 7(2), which, in spite of the fact that not explicitly tended to, is based upon the reason that courts ought to first apply the CISG's general standards and arrangements and, if a hole exists, then resort ought to be made to the standards of "private international law" (CISG, 1980, Art. 7). Article 7 of CISG 1980, has offered chance to contracting parties in the event of debate to fathom their issue in two points of view. The first is in respect to utilization of CISG in extenso; the second alternative permits contracting gatherings to pick another corpus of standards. That corpus of standards can be identified with private international law. Therefore in our point of view we find that it is difficult for the gatherings perfomıing contract for international offer of goods to choose effectively which corpus of guideline is ideal to settle their disagreement regarding the law that will be suitable for them. In that regard, CISG 1980 has set out an essence of inadequacy.

In any case contracting parties apply their capacity to choose most of time, hence the decision of law at some point and even routinely called upon a few guidelines

overseeing shipper law or lex mercatoria. Luckily CISG is one of fundamental lex mercatoria and thus CISG is actualized with thought to that lex mercatoria rules. The CISG has set its corpus of principles with adaptability; this adaptability prompts diverse use of contention of law standard. We have in that sense diverse hypothesis in the determination of material law, the previous is the determination of appropriate law by a judge, and the last is the determination of pertinent by the intervention tribunal.

5.1.1 Determination of Applicable Law by Judge

The determination of material law in the contention of law relies on particular principles of CISG. By 1(1) a (CISG, Article 1.l(a); 1980), there is probably in a circumstance where the purchaser and vender are nationals of various nations gatherings to the CISG, the CISG all things considered might apply unequivocally. This principle is connected indistinguishably to the case subsequent to the main rule is that the gatherings ought to be from various Members State of the CISG. In that regard the domestic standard of law with respect to strife of law ought to be nonchalance for any inquiry on the matter. This procurement is connected as uniform and one-sided strife oflaw standard of the CISG.

Further article 1(1) b (CISG, 1980, Art. l(l)(b)) give the likelihood to the contracting gatherings to apply the CISG if stand out gathering to the contract for international offer of goods is national of nation gathering to the UN Conventions on Contract for International Sale of Goods. For this situation, the procurement is connected as in

> "... The Convention will expand its application when one and only of the states is a contracting state if the guidelines of private international law lead to the utilization of the law of the contracting state. In actuality, if the judge or the arbitral tribunal were to find that the contentions of law principles indicates out the law of the "non-contracting state"

Then CISG won't be material. Nonetheless, the strategy for finding the pertinent law would be diverse relying upon the organ endowed with its application" (Viscasillas, 2013; pp. 747).

In another side, the judge can decide the appropriate law through usage of private international law rules. Use of contention of law principle infers for this situation that the judge takes after the law of the gathering which is most of time the vender law. In that point of view the judge decides the pertinent law in respect with the standard area of the merchant. The determination of appropriate law is led in a manner that the judge at some point is obliged to consider some important elements that prompt associate contract with the particular nation. That case is the alleged "association test" theory which guarantees that so as to effortlessly decide appropriate law the judge will examine contract to uncover the most critical variables that can join contract to one given law of the contracting parties (Viscasillas, 2013, p. 748). By and large the judge will search for the law having nearest associating ties with contract.

5.1.2 Determination of Applicable Law by Arbitration Tribunal

According to Viscasillas (2013, p. 753) the determination of appropriate law is difficult to mediation tribunal when happen accommodation of one given international contract of offer to it for two reason essentially. The primary reason is worried with the way that, the arbitral tribunal does not have a "discussion" as it the case with CISG. In spite of the way that the spot of mediation more often than not decides the discretion law appropriate to the assertion, which is not to say it is proportional to the spot of the discussion as expressed in workmanship. 1.l(b) CISG, therefore the contention guidelines of the spot of intervention ought to be slighted.

Second, as pointed out by a few creators, intervention tribunals have connected different diverse conflicts of law :frameworksincluding:

- Conflict tenets of the spot of assertion.
- Conflict governs most firmly associated with the topic of the procedures.
- Conflict governs the tribunal considers suitable.
- Converging conflicts of law standards.

• General standards of conflict laws.

5.2 The Choice of Law

The choice of law depends on two situations. Primary we have situations in which the contracting parties decide to exclude the CISG of the field of their contract for international sale of goods but solicit application of private international rule to solve their issue. This situation leads Ferrari to say:

> "... courts have to determine the applicable law by resorting to their rules of private international law, which necessarily will make applicable a set of rules different from those of the CISG, even where its rules of private international law lead to the law of a contracting State" (Ferrari, 1995, p. 72).

In second thought we have hypothesis where contracting parties choose to prohibit CISG to the utilization of their contract for international offer of goods and even they doesn't pick the appropriate, all things considered the judge pick relevant law with respect to associating variables theory.

Alongside, for the situation where the contracting parties criticize, shift or alter some part of CISG, the pertinent guidelines won't need to be dictated by method for a private international law approach, but instead by taking a gander at the contract itself. However this above proclamation is not applicable in the circumstance depict in article 12 (CISG, Article 12; 1980), as per which were no less than one of the gatherings to the contract represented by the CISG has its place of business in a State that has proclaimed a reservation under Article 96 (CISG, 1980, Art. 96), the gatherings may not discredit from or change the impact of Article 12. In those cases, in accordance with Article 12 the guideline of flexibility from structure necessities does not make a difference, for example,

As seen over the determination of appropriate law is not a straightforward assignment, it requires a sort of analysis to decide firstly the pertinent law in court and even in

assertion tribunal: Relevant law which alludes straightforwardly to struggle of law issue between two contracting gatherings is particularly issue with unpredictability. To adapt to the determination of contention of law under CISG 1980, we have seen fırstly the determinatiomof appropriate law; then in a resulting examination we have demonstrated how the courts .outline the decision of law. The less it can be said is that the CISG has giventlı~.cq:ı::ıtractto international offer of goods with a device going for encourage the contractfqr:ı::ınntio:ı::ıandven the execution of contract for international offer of goods.

CHAPTER SIX.: THE IRAQI CASE, ENGLAND AND CISG

Know about the United Nations Convention on Contract for International sale of Goods is to question its applicability and its issue on the era sale transactions. The relative worldwide success of the CISG hide most of time the difficulty that met the seller and buyer around the world in regard with different system of law (common law countries v. civil law countries) from which they are coming from. Even if we should admit the fact CISG has made a great effort to comply with that issue, it remains however that there is a taste of incompleteness in the CISG 1980. Since we know that every juridical system has it specificity and considering those specificity it implements law by taking it into account. The question we should have here is to know in the case where there are seller from Iraq and the buyer from England, which law should be applied? To respond to that fundamental question we are going to analyze different hypothesis to clarify that issue. Foremost a comparative analysis will leave room to implementation of applicable law between Iraqi seller and British buyer.

6.1 Comparative Analysis of Iraqi Law of Contract and British Law of Contract

A contract should be perform that three stages set out: an offer, a lawful item, and an acknowledgment of offer by offeree inside of the time permits if so and with no alteration of the fundamental terms of offer (Iraq Civil Code, 1990, Art. 73). Those three stages once set up together; the contract is legitimate and lawfully tying for the offeror and offeree. Ordinarily there is no issue about the contract perform inside of two national of one given State, the issue emerge when the contract is perform between persons of various States (CISG, 1980, Art. l(l)(a)). Such circumstance is the situation for case for a contract for international offer of goods between British native and Iraqi national, where Iraqi is the dealer for occasion and British is purchaser. The inquiry emerges is which law of contract ought to be connected in that contract for international offer of goods?

To look at both.law of contract it is vital to see before what are the fundamental defining moment between British law of contract and Iraqi law of contract. When we take a gander at the conditions inside of which an offer should be made in both law of Contracts it can be said that there is a few indistinguishable focuses. Firstly, the offer requires an unequivocal articulation of will by the offeror (CISG, 1980, Art. 96). This principle is found in Iraqi common code and British law of contract. By law of contract, an offer. is rumored firm when offeror plainly enounce that there is an item or administration he proposes to one decided individual or to open with an obviously goal to fınishup contract if acknowledged unequivocally by any offeree. In the same vein Iraqi commoncode concedes that an offer should be made unequivocally to consent to exigency of open request and ethical quality (Iraq Civil Code, 1990, Art. 79). Also, the offer can be made orally in Iraqi law of contract and in addition in British law contract. The other meeting point between both law of contract is worried with the exigency of not make any change either understood or express to the offer which is pertinent to both law of contract. While with respect to the terms of offer this former exigency refuted the offer and even the contract. However as we will see it later both law of contract don't give the same impact to that circumstance when it happens. Similarly as acknowledgment is concerned, the standard is comparable in more than one point between Iraqi law of contract and British law of contract. Essentially, Iraqi law of contract commands that the acknowledgment be made unequivocally this exigency is the same for British law of contract. The less that can be said is that acknowledgment produces results once the notice achieves the offeror inside of the time articulated in the offer if such time has been set for. Iraqi law of contract and also British law of contract does not place completely some exigency of structure to perform contract (Iraq Civil Code, 1990, Art. 75). What is known as the contractual goal in British law of contract is referred to in Iraqi common code as exigency of any individual included in exchange procedure, to have at the top of the priority list that they will be bound by their demonstration. That is means in Iraqi law contract both partner of contract formation remember that their will express the way that they will be legitimately bound by the demonstration they need to perform.

Interestingly; there is nothing, for example, thought expressly in Iraqi common code, hence thoughtıshows up as a specificity of British law of contract. In other point of view, when it happens that the offeree alter while tolerating the starting offer, British law considers such adjustment of introductory offer as counter-offer (Entores v Miles far east corp, 1840) and recommends that another contract can be closed in considering new terms of offer proposed by offeree. This circumstance has impact on the contract formation in an unexpected way, for Iraqi common code such case prompts end of contract formation while for British law of contract the contract can go on yet with regards to new terms recommended by the offeree if acknowledged by the offeror. Another sound of ringer comes to us, in respect with the general type of codification. English law of contract is basically easygoing conversely Iraqi common code has been built up taking after some group of French common code, Arab law. Thus, Iraqi common code depends on tenet of law obviously settled by the legislator.

6.2 How to solve Conflict of Law in a Case there is British Buyer and Iraqi Seller?

On the off chance that happen that there is an Iraqi dealer situated in Erbil (Iraq) need to offer oil items to British subject living in Manchester (Great Britain), which law of contract ought to be connected? Is it British law of contract or Iraqi common code when in regards to contract formation standards? Since oil item is a decent first it is essential to specify there exist an international tradition which administers such matters: it is the United Nation Convention on Contract for International Sales of Goods (hereinafter CISG) built up on April 1980. In any case, for that tradition to be connected there is exigency firstly that both partner to the contract formation being subject of nations that have confirmed, acquiesced, affirmed or succeeded the UN (CISG, 1980, Article l(l)(a)) or if nothing else that one of the gathering to the contract formation be resident of nation members to the (CISG, 1980, Art. l(l)(b)). The other rule is that gatherings to the contract process must have explicitly picked that the CISG will be pertinent law to their exchange (CISG, Article 6; 1980). Once those crucial exigencies are collected, usage of CISG law can be figured it out. Yet, it stays one obstruction how does a judge

or intervention tribunal are going to decide appropriate law since both gathering have diverse law Onthe same matter?

In such a case the judge or mediation tribunal will decide firstly if gatherings to the contract have picked CISG as relevant law to their contract. Besides the judge or intervention tribunal will confirmed if parties or if nothing else one gathering to the contract are nationals of States that have sanctioned United Nations Convention on Contract for International Sale of Goods if so then it will be decide as indicated by struggle of tradition standard which law ought to be appropriate to their exchange. All things considered, Iraq is gathering to the United Nations Convention on Contract for International Sale of Goods that is means there is now one adequate component to make CISG material law to their contract. In the event that they have picked what's more, that CISG will be connected to their contract, there is most likely administering law is CISG (Decision No. 979, 2006). As seen above, as per CISG the law relevant is the law of discussion. That is means for the genuine case it is Iraqi law of contract that is significant to be connected to the contract between Iraqi merchant and British purchaser.

We have two hypotheses in this aforementioned case, the first is that in which the British purchaser and Iraqi merchant have chosen ordinarily to quit the CISG and the other alternative is circumstance in which as nationals of nations gatherings to the CISG there should be immediate application. However there is another alternative as per Dawwas and Shandi (1999) that is important it is the situation where CISG is connected as segment of the lex mercatoria to contract of the gatherings. For the present case if the British purchaser and the Iraqi merchant have expected to pick the lex mercatoria as their lex contractus, they will have the CISG as pertinent law to their contract and if so the law material to their case can be the lex fori i.e. the law of the vender as per private international law principle of the gathering. This is going on just on the off chance that they contracting parties have decided to not matter CISG as law of their contract despite the fact that they are from contracting State to the CISG. Typically CISG is an uncommon law that connected to contract for international offer of goods and, for example, it might win in every circumstance in which all the pertinent certainties have shown that it application required (Decision NO. 380, 1999).

Before the end the case on which we were examining demonstrat to us the inescapability of use of CISG in any choice that can be picked by the gatherings to a contract for international offer of goods. This case exhibit that as expressed by Dawwas and Shandi it is difficult to keep away from at some point use of CISG as lex speciali considered only to represent contract for international offer of goods.

CONCLUSION

The contract formation for international offer of goods between traders of various nations requires unique errand to handle with it. Initially it requires an aptitude for national courts or arbitral tribunal to see every important certainty that direct to decide the la"\\' a.ppropriate to the issue in cause. Other than some of the time it requires an immacula.teJeıırnitıg.ofprivate international law rules combined with the United Nations Convention on Contract for International Sale of Goods. The less it can be said is the contract formation for international offer of goods is plainly systematized in the CISG, and, for example, it gives a target view on contract formation which get components from common .law :frameworkand regular law :framework.Therefore the CISG is seen as uniform law for the offer of goods since it collected inside of its group of standards components of both arrangement of law on the planet and by along these lines that extraordinary international law available to be purchased of goods has made a sort of unification in the matters it merits. In doing as such, we have attempted in our exposition to show that there are numerous similitudes between, British law of contract and Iraqi law of contract, Then displaying the procedure of the contract formation inside of the extent of the United Nations Convention on Contract for International Sale of Goods we have exhibited that there is additionally a sort of concordance between domestic law of contract and what we can call international law of contract while concerning offer of goods. After that when centering in hypothesis in which a British purchaser and Iraqi vender situated in Erbil in Iraq fınish up a contract for oil items, we see that if there should arise an occurrence of contention of law standards the CISG stays pertinent in whatever alternative they can pick. In that regard it creates the impression that the CISG acquires and more significance in the commercial exchanges the world over. For those creators as Ferrari (1995) who in some degree sees appropriateness of Private international law as rivaling CISG it can be said the drafter of the CISG have offered opportunity to the contracting gatherings to choose keeping in mind the end goal to support usual meaning of the said convention within merchant usage.

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THE FORMATION OF CONTRACT FOR INTERNATIONAL SALE OF GQO,DS: COMPARISON BETWEEN IRAQ LAW OF CONTRACTrA.ND ENGLISH LAW OF CONTRACT

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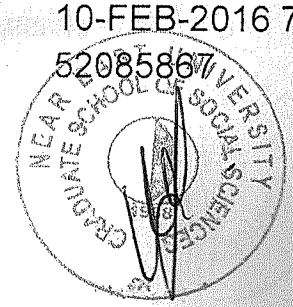

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