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**THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS AND THE SELLER’S
LIABILITY UNDER THE CISG AND VIETNAM’S LAW:
A COMPARATIVE PERSPECTIVE**

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Abstract

The widespread integration of Intellectual Property Rights (IPRs) in tangible goods has heightened the vulnerability to IPR infringement in commercial activities. To ensure the efficiency of such activities, the rights of buyers and the liabilities of sellers in cases of IPR infringement must be clearly defined. This paper seeks to examine the intellectual property (IP)-related legislation in Vietnam, a developing country with comparatively fewer regulations on IPRs, having entered various Free Trade Agreements and international agreements that necessitate substantial efforts to fortify IPR protection in the context of international integration. The paper aims to demonstrate how IPRs can be infringed in the international sales of goods context, comprehensively analyzing how Vietnamese law addresses IP-related issues in international sales. Additionally, a parallel comparison between Vietnamese law and the United Nations Convention on Contracts for the International Sale of Goods is conducted to identify deficiencies in the former. The research findings reveal that the general liability of sellers for third-party IPRs is mostly similar, with some notable differences in the extent of seller liability. However, buyer's remedies exhibit the most divergences, with domestic law offering different remedies in case of infringement and introducing knowledge requirements for both contractual parties to avoid confusion and future disputes.

Keywords: CISG, Vietnam, intellectual property, international sale of goods, seller’s liability

PHÂN TÍCH SO SÁNH QUYỀN SỞ HỮU TRÍ TUỆ CỦA BÊN THỨ BA VÀ NGHĨA VỤ BÊN BÁN QUY ĐỊNH DƯỚI CISG VÀ LUẬT VIỆT NAM

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Tóm tắt

Việc xuất hiện lòng ghép yếu tố về quyền sở hữu trí tuệ (SHTT) trong hàng hóa hữu hình làm tăng nguy cơ xảy ra vi phạm trong hoạt động thương mại. Nhằm đảm bảo tính hiệu quả của hoạt động thương mại, quyền của Bên mua và trách nhiệm của Bên bán cần được xác định rõ trong các trường hợp vi phạm quyền SHTT. Bài nghiên cứu tập trung phân tích pháp luật liên quan đến bảo vệ quyền SHTT tại Việt Nam, một quốc gia đang phát triển với ít quy định xung quanh bảo vệ quyền SHTT, đã tham gia nhiều Hiệp định thương mại tự do và các hiệp định quốc tế khác với các yêu cầu nhiều hơn trong việc tăng cường bảo vệ quyền SHTT trong bối cảnh hội nhập quốc tế. Bài nghiên cứu nhằm mục đích giải thích xâm phạm quyền SHTT trong mua bán hàng hóa quốc tế, phân tích hướng giải quyết của pháp luật Việt Nam đối với các vấn đề liên quan đến SHTT trong mua bán hàng hóa quốc tế. Bài viết đồng thời so sánh giữa luật pháp Việt Nam và Công ước Liên Hợp Quốc về Hợp đồng mua bán hàng hóa quốc tế nhằm đưa ra những thiếu sót của Việt Nam. Kết quả nghiên cứu cho thấy trách nhiệm chung của Bên bán đối với quyền SHTT của bên thứ ba đối với hàng hóa tương đối giống nhau, với một số khác biệt về mức độ trách nhiệm pháp lý của Bên bán. Ngược lại, các chế tài thương mại của Bên mua có nhiều sự khác nhau khi luật pháp trong nước đưa ra một số chế tài khác cho các trường hợp vi phạm và các yêu cầu khác về mức độ thông tin cho cả hai bên trong hợp đồng để tránh nhầm lẫn và tranh chấp trong tương lai.

Từ khóa: CISG, Việt Nam, sở hữu trí tuệ, mua bán hàng hóa quốc tế, trách nhiệm của bên bán

1. Introduction

Intellectual property (IP) plays a crucial role in promoting innovation, technology transfer, investment protection, consumer welfare, economic progress, and the establishment of a legal framework for rights enforcement. It serves as a vital catalyst for development, innovation, and societal advancement. Its significance becomes even more pronounced in the global integration era. Although intellectual property rights (IPRs) and property rights of tangible objects within which IPRs are integrated seem to be unrelated, the development of technology has made this relationship exist and become more apparent. More and more goods are subjected to IP protection ranging from clothes, books, and works to pharmaceuticals and software products (WIPO, 2017). However, the legal nexus governing these two matters has not undergone adequate scrutiny (Sean, 2014). From the perspective of IP law, the IPRs holder reserves the right and remedies to prevent the activities infringing their IPRs. In the sales of goods context, the activities of reselling and distributing the IP-related goods of buyers in countries where IPRs are not authorized can expose buyers to IPRs infringement risks. This can negatively affect commercial activities.

The paper seeks to scrutinize the third party's IPRs and the seller's liability under the CISG and Vietnamese law. Under the CISG, Articles 41 and 42 would be used to analyze the seller's liabilities, Articles 46 to 52 are interpreted for the buyer's remedies, and Articles 74 to 77 are referenced for the buyer's damage claim. Under the Vietnamese Law, the scope of this paper will mainly be on the Vietnam Commercial Law 2005 (Hereinafter referred to as VCL 2005), with several references from the Civil Code 2015 and the Intellectual Property Law 2005 to complement the analysis of the Commercial law. Specifically, Article 46 is referenced for seller's liabilities and buyer's remedies are governed under Chapter IV of the VCL 2005. The main methodologies for this paper include the Case Study and Comparative Law methods. The Case Study method provides a selection, analysis, and comment on typical cases and judgments related to the use of third-party rights and related provisions. The Comparative Law method focuses on understanding, comparing, and explaining the similarities

and differences in regulations and related provisions between CISG and Vietnamese law in terms of Third-party rights.

2. Relationship between Intellectual Property Rights and Sale of Goods

2.1. Intellectual Property and the Intellectual Property System in Vietnam

2.1.1. What is Intellectual Property Rights?

Intellectual Property Rights, as defined by the World Trade Organization (WTO), are legal privileges granted to individuals or groups in order to protect their discoveries or creative works and to provide them complete control and ownership over their intangible assets. According to Vietnam's IP Law, IPRs are organizations' and individuals' legal claims to their intellectual property, which include rights to plant varieties, industrial property, copyrights, and rights connected to copyrights. IPRs fall into four main categories: patents, trademarks, copyrights, and trade secrets. To protect the same intangible assets, intellectual property owners sometimes combine many of these categories of intellectual property law.

2.1.2. Common Intellectual Property Rights

The key aspects of IP rights in Vietnam can be categorized as follows:

- Patents: Exclusive rights to protect an innovation are granted to inventors through patents. The National Office of Intellectual Property in Vietnam is in charge of the review and issuance of patents. A framework for patent protection, including requirements for patentability, examination processes, and the length of patent rights, has been enacted by the nation. In order to facilitate international patent filings, Vietnam is a party to the Patent Cooperation Treaty.

- Copyrights: The Law on Intellectual Property governs copyright protection in Vietnam. It includes literary, artistic, and scientific creations such as songs, movies, computer programs, and architectural plans. The law automatically protects works after they are created, without requiring registration. Nevertheless, voluntary registration with the Copyright Office is an option and can offer extra ownership proof.

- Trademarks: The Trademark Law and the Law on Intellectual Property govern the protection of trademarks in Vietnam. The National Office of Intellectual Property is in charge of registering and enforcing trademarks. Trademarks act as distinguishing indications that set one entity's products or services apart from another. By registering a trademark, you have exclusive control over its usage and can stop others from using it in the same or related industries.

- Trade secrets are valuable, non-public corporate details that give an advantage over competitors. Trade secrets in Vietnam are protected by laws, notably clauses in the Civil Code and the Law on Intellectual Property. To effectively protect their trade secrets, however, organizations must employ internal safeguards including confidentiality agreements and restricted access.

2.1.3. The Intellectual Property System in Vietnam

The legal framework for IP in Vietnam has been developed to comply with international standards and ensure effective enforcement. The country has established a network of agencies and organizations responsible for enforcing IP laws and has seen a growing number of IP assets being

created and protected. This includes various forms of IP such as industrial designs, inventions, plant varieties, trademarks, and artistic works.

Vietnam has undergone significant changes in its legal system, particularly in relation to IP. The 1995 Civil Code was the first to include provisions on IP rights, influenced by the TRIPs Agreement when Vietnam expressed its interest in joining WTO. However, over time, it became clear that the 1995 Civil Code's provisions were inadequate and not in compliance with the TRIPs Agreement. In response to these shortcomings, Vietnam revised the Civil Code in 2005 and enacted the IP Law. The IP Law, along with the revised Civil Code, established a comprehensive and consistent legal system for IP in Vietnam, aligning with international standards. The IP Law covers various aspects of IP rights, including copyright, inventions, utility solutions, industrial designs, trademarks, and more.

The 2015 Civil Code introduced significant amendments and only includes four articles related to IP. These articles recognize the creation of IP as a basis for establishing civil rights, define property rights (including IP) as rights that can be valued in terms of money, acknowledge the creation of IP objects as a basis for ownership rights, and state that individuals engaged in creative activities are entitled to own the property resulting from such activities according to the IP Law. Additionally, the 2005 Commercial Law briefly touches upon the IPRs of third parties and the liability of sellers in the sale of goods. However, it specifically governs commercial activities and differs from the Civil Code.

2.2. Intellectual Property Rights Infringements in the context of Sale of Goods

2.2.1. Primary infringements

When it comes to primary infringement, it may include (1) making and using (2) offering for sale or selling, and (3) importing. Regarding making and using, according to TRIPS (1994), the owner of an industrial design or a patent registered to be protected under IP Law has the exclusive right to produce and use his creations for trading purposes. On the other hand, the Vietnam IP Law mentions the term “use of an industrial property” (industrial property refers to inventions, industrial designs, layout designs, marks, and geographical indications) as the act of manufacturing, applying, or exploiting the utilities of a product. In the context of sales of goods, the buyer might be considered making a breach of IPRs by applying the process, using or exploiting the utilities of the protected products. Regarding offering for sale or selling, Article 26 and Article 28 of TRIPS (1994) regulate the exclusive rights of industrial design and patent owners, including preventing third parties from offering for sale or selling the protected products or copies of the protected products for commercial purposes without the consent of the owners. In Vietnam IP Law, the term is broadened and therefore buyers who accidentally purchase protected products for circulating, advertising, offering for sale, or stocking for circulation will be accused of violating the IPRs. Regarding importing, both TRIPS and the IP Law of Vietnam regulate that IPR holders have the right to prevent any importation or other distribution of their protected products. Any international sales of goods comprising the import of a protected product without the owner’s consent will constitute an IPR infringement.

2.2.2. Secondary infringements

Secondary infringement pertains to the handling of infringing works, a concept predominantly employed in copyright law, although patent and trademark laws also encompass analogous classifications with differing terminology. In patent law, secondary infringement is termed "indirect," while trademark law defines it as arising when the party applying the mark 'knew or had reason to believe' that the trademark application lacked consent. The implications of secondary infringement pose challenges in the realm of international sales, particularly for buyers. In the context of dealing

with infringing works, buyers may inadvertently infringe when acquiring such goods for commercial use. Notably, the rules governing secondary infringement and the extent of liability vary across national intellectual property laws. The buyer's potential liability is contingent upon the specific regulations of the country in which these infringements occur.

2.3. Intellectual Property Doctrines

Excessive protection of IP has been discussed as a form of tariff that detrimentally impacts the promotion of free trade and in the context of international sales of goods, thus raises the need for counterbalance tools to fairly limit the protection enjoyed by the IPR holders, and regarding the international sales of goods background, the exhaustion doctrine is one such tool to protect sellers and buyers when it comes to IP laws. The exhaustion doctrine was first evolved and explained in the United States following the Supreme Court case of *Adams v. Burke*, which can be defined as the loss of an IPR protection when an authorized transaction of the tangible product holding the IP from the IPR holder or other authorized entities, thus enabling the purchaser to use and, especially, resell the product in the future.

The exhaustion doctrine is the legal fundamental for parallel importation, which is the import of genuine products without the authorized license. This stems from the territorial nature of IP protection, which makes IPR holders usually required to register a trademark or patent in other countries when participating in international sales of goods to ensure the protection of their IPs. Currently, three exhaustion regimes are enforced from different jurisdictions globally. The international regime, which is currently adopted by many developing countries, including Vietnam and other ASEAN countries, rules that the exhaustion of rights takes place whenever the first authorized sale is made, regardless of whether it takes place domestically or in other countries.

3. Seller's liability for Third-Party Intellectual Property Rights under the CISG and Vietnam Law

3.1. Third-Party Intellectual Property Rights under the CISG

3.1.1. Scope of application of Article 42 of the CISG

A study of Shinn (1993) on the liabilities under Article 42 of the CISG quoted a broad definition of the term “Intellectual property” by WIPO. However, they believed that in the context of sales of goods, “Intellectual property” shall be regarded as trademark, copyright and patent rights as they are the most important ones.

Another analysis of the CISG Advisory Council in 2022 defined the term “Intellectual property” as all rights relating to a commercial or intellectual achievement, including patents, utility models, designs, trademarks, copyrights, etc. According to the analysis, the article 42 also applies to goods produced by means of a process, consisting of a certain series of steps with which a defined result is achieved, that is protected by a process patent; goods used to apply a process protected by a process patent; goods encumbered by personality or personal name rights; goods subject to measures of public authorities based on IP; and rights and claims based on the IP of the seller.

3.1.2. Seller's liability under the CISG

The first liability that the seller holds is the responsibility for any encumbrances of sold goods deriving from IP rights. Since third party rights refer to the official legal standings of the protected

item. If the merchandise is indeed burdened by IP rights related problems, the seller is held responsible, regardless of whether the IP holder pursues a claim against the buyer.

The second liability of the seller is the responsibility for IP claims against sold goods, irrespective of the existence of the rights and how they are founded. It is understood that third parties are able to claim any reasonable rights for their IP achievements, although in fact some of those rights do not exist. Moreover, there has been no emphasis on the foundation of such claims, meaning that even if they are frivolous, the seller still bears the burden to some extent.

3.1.3. Liability limitations under the CISG

The first requirement to claim the seller's liability for IPRs infringement is his knowledge of the IP rights. Under article 42, only if at the time of the contract, the seller knew or could not have been unaware of an IP right or claim, his liability would be concluded. This term is determined by various factors, including the availability of IP rights, characteristics of the sold goods and the seller's experience.

In terms of the availability of IP rights, seller's awareness can be examined by taking into account the official publication and registration of that IP right. Besides, available information such as whether that is a well-known right in the relevant sector will also help to clarify the seller's knowledge. In terms of characteristics of sold goods, the goods' nature and novelty may have an impact on the accessibility of information relating to IP rights and claims. In terms of the seller's experience, the familiarity of trading a specific kind of goods with a specific market enables the seller to access more relevant information. In addition, size of the business or its expertise can also help in the investigation of IP rights and claims.

Article 42 also set a geographical limitation to which it applies by using the term "the State where the goods will be resold" or "the State where the buyer has his place of business". The rationale behind this is to protect the seller from unreasonable requests to be liable for IPR related problems all over the world, which is nearly impossible. The State in the article is defined as the State of use, which implies any action that the buyer is going to take with the sold goods. These can comprise federal states with constituent areas, but not a group of states. If the buyer insists that sold goods will only be used in a specific area of the state, the seller will be at no fault for problems arising from using goods in other areas within the state.

Finally, there are time limitations that affect the conclusion of the seller's liabilities for IP related problems. The seller's knowledge and identity of the State of use is determined at the time of the contract conclusion. Besides, whether the seller holds responsibility for IPRs related encumbrances is determined by the time of risk transferring between seller and other parties involved in the sales of goods, as generally specified in article 36.

3.1.4. Exclusions under the CISG

In some cases, the liabilities do not fall under the seller, but the buyer instead. According to article 42.2, if the buyer is aware of an IP right or claim at the time of the contract conclusion, then the obligation mentioned above does not solely apply to the seller. And the requirements as well as factors taken into account when assessing buyer's knowledge are applied similarly to the ones applied to assessing seller's knowledge.

Besides, sellers do not have to take the responsibilities for an IP infringement if the contract regulates that goods shall comply with conditions given by the buyer. However, the seller shall notice

the buyer as soon as possible about the infringement if having the knowledge of relevant IP rights. Therefore, this exclusion will not be applicable in case the seller knew or could have known about it but did not inform the buyer.

3.2. Third-Party Intellectual Property Rights under Vietnam Law

3.2.1. Scope of application of Article 46 of the Vietnam Commercial Law

While IPRs are relevant in many of Vietnam's legal documents, the subject of third-party IPRs rights and claims along with the seller's liability is governed under the VCL 2005. The scope of the VCL 2005 mainly includes commercial activities conducted in the State, or outside of the territory if the involved parties agree to apply this Law. The definition of "commercial activities" is lacking in the text of CISG, yet it is an important determinant to assess the applicability of the VCL 2005 compared to other bodies of legal text, namely the Civil Code 2015. According to Article 3.1, commercial activities can be interpreted as activities for the purpose of generating profits, which include the sale and purchase of goods, provision of services, investment, commercial promotion, etc. This definition helps to distinguish the application scope of the Law from that of the Civil Code, along with correctly identifying the source of law to draw comparisons with the CISG which applies to contracts of sale of goods between parties.

3.2.2. Seller's Liability to assure intellectual property rights over goods

The first clause set out a similar general liability for the seller of the subject compared to that of the CISG, to provide goods free from any dispute related to IPRs over goods sold. The opening sentence of Article 46.1 lays out a new liability for the seller, that is not to sell goods infringing upon IPRs. The analysis of Article 45.2 can be applicable in this case, which means the seller is potentially held liable even if no disputes arise if the buyer has the knowledge that the goods sold are under infringement. Furthermore, the wording of the first sentence implies the seller must know of the possible IPRs that can hamper the buyer's possession and enjoyment of the goods. Determining when the "sell" action occurs is crucial for us to correctly clarify the extent of the seller's liability under domestic law, and whether it is similar to the period ruled under the CISG. In Article 42.(1) of the CISG, the law said that the extent of the seller's knowledge lasts until the conclusion of the contract. This is different from how the VCL 2005 interprets the term "sell", which is stated under Article 3.8 as "[...] the seller is obliged to deliver goods, transfer ownership of goods to the purchaser and receive payment [...]". If we understand the term how it is worded in the term "Purchase and sale of goods", the seller opens up to a larger scope of liability, which extent to at least the delivery of the goods, the ownership of the goods is transferred, and can be up to the point when full payment is made. This interpretation unfortunately leads to great fluctuations depending on what term of transportation is used, how the payment is made, and even leads to the intervention of a third party when the title of the goods is transferred.

The law also imposes on the seller to be responsible for any arising dispute. The law seems to be oblivious to the nature of the potential dispute, whether it is lawful or frivolous, akin to how the CISG mentions third-party rights and claims and puts that burden under the seller's sphere of liability because of the seller's knowledge of the goods sold, the nature and place of occurrence of these claims, and the buyer's interests of not buying a lawsuit. However, similar to the CISG, this is not a strict liability (A type of liability that does not require the seller to be at fault to be held liable), as there are cases of exemption as well as the discussion of the seller's knowledge.

3.2.3. Liability limitations under the CISG

The liability limitations under the CISG include (1) the Seller's Knowledge and (2) other exemptions. Regarding the seller's knowledge, The seller is held liable for any dispute related to third-party IPRs, which can potentially mean that the seller's liability is unlimited. The matter is circumvented in the CISG by providing the limitation that "at the time of the conclusion of the contract the seller knew or could not have been unaware of". This limitation is not provided explicitly, but arguments can be made that this limitation is implicitly mentioned under Article 294. Here, some authors state that, if a third-party dispute occurs that is unknown to the seller despite due diligence, arguments can be made in favor of the seller that such disputes fall under a Force Majeure, defined under Article 156 of the Civil Code 2015 as "an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken". Agreement of such an argument means that the seller can make use of Article 294.1.(b) to exempt himself from the liability caused by the dispute. Regarding the other Exemptions, it can be seen that the first exemption available for the seller, if a third party's IPRs-related dispute occurs, is mentioned explicitly under Article 46.(2), which shields the seller from possible liability if the transpiration of the dispute is caused by following the technical drawings, designs, formulas or specifications provided by the buyer. Further liability exemptions require us to refer to Article 294. While the two parties are allowed to negotiate and agree on different exemptions in the contract, the law sets several strict exemptions, not only for international customs but also for necessary administrative actions performed by the authority. The exemption due to a decision of a competent state management agency, although not written word-by-word in the CISG, can overlap with the exemption ruled under Article 79.(1).

3.3. Comparison of the CISG and the Vietnamese Law

Article 41 of the CISG and Article 45 of the VCL 2005 both address the seller's obligation to deliver goods free from any claims or disputes raised by a third party. Additionally, both the CISG (Article 42) and the Vietnamese Law (VCL 2005, Article 46) specifically address the scenario concerning IPRs in connection to the aforementioned case, indicating a notable emphasis on the protection and consideration of IPRs.

While Article 42(1) of the CISG clearly stipulates that the seller must have knowledge of potential IPR infringements at the time of contract formation in order to be held liable, Article 45 of VCL 2005 implies that the seller must be aware of possible IPRs that could impede the buyer's possession and enjoyment of the goods and does not explicitly mention the relevant time. Given this difference, determining the timing of the "sell" action in article 46(1) of VCL 2005 becomes crucial in order to establish the point at which the seller's knowledge and liability regarding IPR infringements are assessed. If we interpret the term "Purchase and sale of goods" in the context of Article 3.8 of the VCL 2005, it expands the scope of the seller's liability, which may encompass the delivery of the goods, the transfer of ownership, and potentially extend until full payment is received. However, this interpretation can result in significant variations depending on the terms of transportation, payment methods, and even involve the involvement of a third party when transferring the title of the goods.

While the CISG imposes limitations on the seller's liability regarding territorial coverage, the VCL 2005 (Vietnamese Law) does not have the same restriction because it is a national law, so the potential burden of a worldwide warranty is not a consideration. The CISG focuses on protecting the buyer within the territories where commercial activities are undertaken, as long as the buyer shares

information about the states in which they use or resell the goods. On the other hand, the VCL offers a broader warranty with regards to territorial coverage, providing buyers with a greater sense of security when trading goods.

Under both legal instruments, the seller's liability is generally excluded if the infringement of IPRs arises from the seller's compliance with technical drawings, designs, formulae, or other specifications provided by the buyer. In such cases, the seller is not held responsible for any IPR violations resulting from their adherence to the buyer's provided specifications. Instead, the liability for such violations typically rests with the buyer. Moreover, under the CISG, there is an additional exclusion that applies to the buyer. According to Article 42.2.(a) of the CISG, if, at the time of contract formation, the buyer knew or could not have been unaware of the IP right or claim that is being infringed, the seller's liability for such infringement may be excluded. In other words, if the buyer was aware or should have been aware of the existence of the right or claim being violated, they cannot hold the seller responsible for any resulting infringement. This provision aims to prevent buyers from taking advantage of their own knowledge or willful ignorance to later claim damages or hold the seller liable for IPR violations that they were already aware of when entering into the contract. However, Vietnamese law is silenced on this issue.

4. Buyer's Remedies for Third-Party Intellectual Property Rights and Claims under the CISG and Vietnam Law

When facing a third party's rights and claims, the subject of buyer's remedies sees the most divergences between the CISG and the VCL 2005. First and foremost, the CISG prevents the buyer from accessing two seller performances (substitute delivery and repairment) and price reduction (Unavailable in the VCL 2005) due to the nature of a third party's rights and claims, as well as the inability to apply other remedies apart from damages and penalties (allowed in certain cases). The VCL 2005's stipulation shares the same limitations while opening the buyer to receiving goods from another seller and self-repairment. Avoidance is seen as a last resort in both cases and is only applicable in cases of fundamental breach, in which the research concludes a title defect of goods in terms of IPRs can be regarded as one. The major lack of Vietnamese Law is the Nachfrist principle which is recommended to be added when drafting contracts. Damages are a widely used remedy in the CISG and VCL 2005, but each law stresses different aspects when computing the amount for such damages, which are foreseeability as opposed to actuality and directness respectively, along with damages in avoidance. Suspension and stoppage of performance of contracts are two additional remedies stipulated in the VCL 2005 that are not available for the buyer suffering from a third party's rights and claims regarding IPRs.

5. Conclusion

As Vietnam engages more in the global economy and welcomes more international trade transactions, a cohesive and secure legal system is an utmost requirement to protect the interests of both domestic and foreign parties, ensuring the efficiency of the conduction of economic activities. Overall, the paper has highlighted the intricacy of IPR in the international sale of goods as well as discussion-worthy subjects when it comes to different protection of IP and IPR holders in different jurisdictions. The Vietnam IP system provides the necessary protection required by its member status of multiple multilateral agreements, and this system works jointly with the VCL 2005 to prevent

infringements upon IPRs over goods.

The comparison between the VCL 2005 and the CISG shed light on the necessity for a revamp of the old Commercial Law 1997, as the currently enforced version inherited updates from the drafting of the CISG. While the seller's liability ruled under Article 46 of the VCL 2005 is sufficient compared to that under the CISG, with noticeable amendments to maintain an equal sense of liability between to parties and to promote good faith when entering a contract, updates should be made regarding certain vagueness in the wording of the body of legal text. Establishing a harmonized way of interpreting clauses under the VCL 2005, either by making amendments to update the clause or providing supplements through resolutions is essential to demystify the legal system of Vietnam.

While the analysis of the seller's liability may paint the picture that there are few differences between the CISG and the VCL 2005, clauses concerning remedies available for the buyer see the most divergency between the two. The phrasing of the remedies under the VCL 2005 is usually more open, but yet lacks detailed explanations for the applicability of these remedies, namely the indeterminate definition of fundamental breach for avoidance of contracts, which can create traps for both parties when facing an infringement of IPRs. A number of remedies not mentioned in the Commercial Law 2005 exists in other domestic legal texts, such as the Civil Code 2015, further raising the need to modernize the VCL 2005.

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