

## CISG CASES

### [Attorney-General Of Botswana v Aussie Diamond Products Pty Ltd \[No 3\] \[2010\] WASC 141 \(23 June 2010\)](#)

Editorial:  
Bruno Zeller

The contract involved the sale of a rig and its installation. The court noted correctly that the issue was the sale of the rig and not the construction, which was a minor part though without referring to article 3 CISG.

The court spent a great deal of time discussing the applicable law and came to the conclusion that Western Australian law is the governing law. The court was aware that the CISG forms part of the law of Australia and is applicable in this case. However the court erroneously noted:

*“Neither party in this case has suggested that there are provisions of the Convention which require consideration, or that the provisions of the Convention would operate inconsistently with the application of the Act in the circumstances of this case, and the general law of Western Australia. Having regard to the way the case was run it is unnecessary to refer to the Convention further: see also *Playcorp v Taiyo Kogyo* [235] - [245] in this regard.”*

In effect the court treated the CISG as it would do so if a foreign law would be applied. The rule is that if there are no inconsistencies between the domestic and foreign law domestic law is applied. Furthermore noting only *Playcorp*<sup>1</sup> where the CISG was not correctly applied is disappointing. The court should have referred to *Perry Engineering v Berthold*<sup>2</sup> a case similar to the one at hand. The court would have been informed that the master of the Supreme Court did not proceed with the case as the plaintiff failed to invoke the CISG and pleaded domestic law.

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<sup>1</sup> <http://cisgw3.law.pace.edu/cases/030424a2.html>

<sup>2</sup> <http://cisgw3.law.pace.edu/cases/010201a2.html>