

CISG Advisory Council^[1] Opinion No. 2

Examination of the Goods and Notice of Non-Conformity Articles 38 and 39^[2]

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Article 38

1. Although a buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances, there is no independent sanction for failure to do so. However, if the buyer fails to do so and there is a lack of conformity of the goods that an examination would have revealed, the notice period in article 39 commences from the time the buyer "ought to have discovered it".

2. Whether and when it is practicable, and not just possible, to examine the goods depends on all the circumstances of the case. It is often commercially practicable to examine the goods immediately upon receipt. This would normally be the case with perishables. In other cases, such as complicated machinery, it may not be commercially practicable to examine the goods except for externally visible damage or other non-conformity until, for example, they can be used in the way intended. If the goods are to be re-sold, the examination will often be conducted by the sub-purchaser. Another example is dealt with in article 38(3).

3. The period for examining for latent defects commences when signs of the lack of conformity become evident.

Article

39

1. The period for giving notice under article 39 commences when the buyer discovered or "ought to have" the lack of conformity. The buyer "ought to have discovered" the lack of conformity upon the expiration of

the period for examination of the goods under article 38 or upon delivery where the lack of conformity was evident without examination.

2. Unless the lack of conformity was evident without examination of the goods, the total amount of time available to give notice after delivery of the goods consists of two separate periods, the period for examination of the goods under article 38 and the period for giving notice under article 39. The Convention requires these two periods to be distinguished and kept separate, even when the facts of the case would permit them to be combined into a single period for giving notice.

3. The reasonable time for giving notice after the buyer discovered or ought to have discovered the lack of conformity varies depending on the circumstances. In some cases notice should be given the same day. In other cases a longer period might be appropriate. No fixed period, whether 14 days, one month or otherwise, should be considered as reasonable in the abstract without taking into account the circumstances of the case. Among the circumstances to be taken into account are such matters as the nature of the goods, the nature of the defect, the situation of the parties and relevant trade usages.

4. The notice should include the information available to the buyer. In some cases that may mean that the buyer must identify in detail the lack of conformity. In other cases the buyer may only be able to indicate the lack of conformity. Where that is the case, a notice that describes the symptoms is enough to specify the nature of the lack of conformity.

COMMENTS

The provisions regarding the notice that should be given by the buyer to the seller of goods in case of their alleged lack of conformity to the contract were among the most disputed matters in the preparation of the CISG. The proper interpretation of those provisions is in turn one of the most controversial matters in its implementation since it involves both fact and law, as shown in the appendix to this opinion.

2. Domestic Legal Systems

2.1. The differences of opinion in the drafting of the notice requirement and in its interpretation arise largely out of differences in the domestic law of sales. Those laws take three different approaches to the matter:

- 1) The buyer must give a notice specifying the nature of the alleged lack of conformity within a short period of time after delivery of the goods. The allowable period of time may be specified, e.g., eight days, or a word such as “immediately” may be used.
- 2) The buyer must give a notice of the alleged non-conformity before “acceptance” of the goods in order to reject them, an action that normally brings with it the avoidance of the contract. However, the buyer is under no obligation to examine the goods and no notice of lack of conformity within any particular period of time need be given in order to claim damages.
- 3) The buyer must give a notice of the alleged lack of conformity. The notice may not need to be as specific as in the legal systems of the first group and it must be given within a period that may be described as “a reasonable time”.

2.2. Legal systems in the first group emphasize the security of the transaction for the seller. Claims of lack of conformity that are raised any significant period of time after the delivery of the goods are suspect, do not allow the seller to verify the lack of conformity as of the time of delivery and reduce the possibility that the consequences of lack of conformity can be minimized by repair or the supply of substitute goods.

2.3. Legal systems in the second group emphasize the right of the buyer to receive compensation for the seller's failure to deliver conforming goods. Depriving the buyer of all remedies because notice is not given within some specified period of time is considered to be too harsh a result. The buyer automatically has a reduced possibility of recovery if no claim for lack of conformity is filed for a significant period of time since the buyer, who has the burden of proof, would have more difficulty to substantiate that the goods were not conforming at the time of delivery. Since

the buyer has the obligation to mitigate damages, any increase in damages that occur after the buyer is aware of the lack of conformity are not compensated. This group of legal systems contains a number of industrialized countries, as well as many developing countries.

2.4. Legal systems in the third group attempt to strike a balance between security of the transaction for the seller and assuring that the buyer can recover compensation for the seller's failure to deliver conforming goods. The requirement of giving notice is sometimes explained as designed to defeat commercial bad faith on the part of the buyer.

3. Drafting History

a) *The duty to examine the goods under article 38*

3.1. The leading participants in the preparation of the Uniform Law on the International Sale of Goods (ULIS), from which the CISG was derived, were from legal systems that have a strict notice requirement. Consequently, ULIS Article 38 provided that the buyer had to examine the goods "promptly", which was further defined in ULIS article 11 as being "within as short a period as possible, in the circumstances". ULIS Article 39 provided that notice had to be given "promptly after [the buyer] has discovered the lack of conformity or ought to have discovered it." This again meant that notice had to be given within as short a period as possible. The only amelioration to this strict regime was article 40, which provided that the seller could not rely on the buyer's failure to notify in conformity with article 39 "if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer."^[3]

3.2. The involvement of a broader array of legal systems during the preparation of the CISG in UNCITRAL led to several modifications in the strict notice regime of ULIS articles 38 and 39. Most of the expressed concerns were in regard to goods that the purchaser re-sold and shipped to the sub-purchaser when it would be impracticable to open the container or packaging. The UNCITRAL Working Group considered that the "flexible language" of article 38(2) and (3) introduced by it "would meet those objections."^[4] At a later session the Working Group moved further away from the strict examination requirement in ULIS by providing that the examination required by article 38(1) should be conducted "within as short a period as is practicable in the circumstances."^[5]

b) *The duty to give notice of non-conformity under article 39*

3.3. There was less discussion in UNCITRAL about the duty to notify in article 39. Nevertheless, the duty to give notice "promptly" in ULIS article 39, i.e., in as short a period as possible, was amended to provide that a notice of lack of conformity must be given "within a reasonable time" after the buyer discovered it or ought to have discovered it. It was pointed out that "what is a 'reasonable time' was, of course, a question that depended on the circumstances of each case."^[6]

3.4. In contrast to the situation in UNCITRAL there was almost no discussion in the Diplomatic Conference in regard to article 38, but the discussions on article 39 were intense. They have usually been characterized as being between representatives from developing countries and representatives from the industrialized countries. The arguments for further modifications in the notice regime were largely articulated in terms of the unacceptable consequences for buyers from developing countries who might not be able to examine the goods or have them examined for as long as a year or more, thereby making it impossible for them to give notice any sooner than that. However, the debate could also be fairly characterized as one between representatives of legal systems that in their domestic law have a strict notice requirement and representatives of legal systems that in their domestic law have no notice requirement for a claim for damages for non-conformity of the goods. As stated at the Diplomatic Conference by the principal proponent of a further modification of the notice requirement, "Traders in jurisdictions which did not have a rule requiring notice to the seller might be unduly penalized, since they were unlikely to be aware of the new requirements until too late."^[7]

3.5. Various amendments to article 39 were proposed to reduce the adverse consequences for the buyer who failed to give adequate notice of non-conformity of the goods in time, including a suggestion to delete article 39(1) entirely. Finally, in an effort to satisfy the concerns that had been expressed, a new provision, currently article 44,

was adopted. It provides that the buyer may reduce the price or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the notice required by article 39.

4. General comments in regard to the text of articles 38, 39, 40 and 44

4.1. The obligation to examine the goods in article 38 is designed to set a time when, if no examination was conducted, the buyer “ought to have discovered” a lack of conformity of the goods as provided in article 39. There is no other consequence arising out of a failure to examine the goods. There are other occasions when the buyer ought to discover a lack of conformity even though there was no examination of the goods. For example, a buyer ought to discover a lack of conformity that was evident upon delivery of the goods. Similarly, even if article 38 did not exist, a reasonable interpretation of article 39 would be that a buyer “ought to have discovered” any lack of conformity that a reasonable examination of the goods would have shown. The condition that the buyer “ought to have discovered” the lack of conformity is, therefore, a concept of article 39 that is related to but does not depend upon article 38.

4.2. That is relevant to the proper interpretation of article 44. Article 44 permits a buyer to reduce the price or claim damages, except for loss of profit, if he has a reasonable excuse for failing to give notice in conformity with article 39, whether the cause of that failure was that the buyer did not know of the lack of conformity, though he ought to have known of it, or whether the buyer failed to give notice of a lack of conformity of which he did know.

4.3. It may be questioned whether article 44 added anything to the notice regime, since both article 38 and article 39 contain language that can fairly be interpreted to reach any result that article 44 was intended to reach. Furthermore, some courts interpreting ULIS had escaped the strict requirements of articles 38 and 39 by interpreting article 40 to hold that a seller who delivered defective goods “could not have been unaware” of the defects, thereby permitting the buyer to rely upon a late or defective notification of a lack of conformity.^[8] The same result could be achieved under CISG article 40, which is identical to ULIS article 40 in all essentials. However, the adoption of article 44 in the Diplomatic Conference confirms the movement to a less strict notice regime that began in UNCITRAL.

4.4. The final result of the drafting process could be fairly characterized as being closer to the solution found in the domestic law of the legal systems in the third group above than it is either to the strict notice regime of the legal systems in the first group or to the lack of a requirement to give notice in order to recover damages found in the second group of legal systems.

5. Judicial interpretation of CISG articles 38 and 39

5.1. The provisions governing the buyer’s obligations to examine the goods and to give notice of any alleged non-conformity are among the most litigated matters in the CISG. It is striking, however, that there appear to be few decisions from countries in which the domestic law of sales does not require notice to be given in order to claim damages for non-conformity. This is consistent with the fact that there are few decisions of any nature regarding the CISG from those countries, even though several of them are party to the Convention. Similarly, there are relatively few decisions from countries in which the domestic law of sales requires notice to be given in a reasonable period of time. By far the majority of the decisions have come from those countries in which the domestic law of sales is relatively strict both in terms of the content of the notice and the time-limit within which it must be sent to the seller. This necessarily means that any review of the decisions of the courts to date is heavily weighted towards those courts.

5.2. While many of the decisions that have been reported to date are unobjectionable on their facts, there has been a tendency on the part of some courts to interpret CISG articles 38 and 39 in the light of the analogous provisions in their domestic law. This has been most overt where the CISG text is similar to that in the domestic law.^[9] While the method of interpreting in the light of domestic law that also requires notice to be given in a reasonable time does not accord with the requirement of CISG article 7(1), since it does not give due regard to the international character of the Convention,^[10] the results in the individual cases are difficult to criticize.

5.3. The situation is noticeably different where the text of articles 38 and 39 is more lenient towards the buyer than is the domestic sales law or where the country was a party to ULIS and had numerous court decisions interpreting it. A few courts have said that they saw no significant change in the law.^[11] Most, however, have struggled to apply CISG articles 38 and 39 appropriately. It is not surprising that their frame of reference to decide whether the goods were examined “as soon as [was] practicable”, whether the examination was adequate, whether the notice was given

within a reasonable time and whether the notice was sufficiently detailed was based upon their prior experience with domestic law and ULIS. It is also not surprising that their decisions tend to be more demanding on the buyer than are the decisions coming from courts in countries that have long required that notice be given within a reasonable time.

5.4. Several high level courts in those countries have attempted to give guidance as to how to determine what might be a reasonable period of time within which to give notice. Perhaps because it is difficult to give a clear guideline as to how to evaluate the many commercial and other factors that might be relevant in a given case, one technique that has been used has been to fix a period of time that would be presumed to be reasonable. The Austrian Supreme Court (Obergerichtshof) has suggested that 14 days would normally be reasonable,^[12] while the Obergericht Kanton Luzern from Switzerland has suggested one month.^[14] While those decisions represent a genuine effort to loosen the otherwise strict notice requirements otherwise enforced in those countries, the difficulties inherent in fixing a presumptive period of reasonableness are illustrated in a 1999 decision of the German Supreme Court (Bundesgerichtshof).^[14]

5.5. The buyer had purchased a grinding device and attached it to a paper-making machine. Nine days after attachment the grinding device suffered a total failure. The buyer thought that the failure had probably been caused by operating errors of its personnel and therefore appears to have taken no action in regard to the device itself. Three weeks after the failure of the grinding device a purchaser of paper produced during the period the device had been in use complained of rust in the paper. Ten days later the buyer commissioned an expert to determine the cause of the rust. After a further two weeks the expert reported that the rust was due to the grinding device. The buyer notified the seller three days after receiving the report.

5.6. There is no question but that the notice given by the buyer three days after receipt of the report of the expert was given within a reasonable time after the buyer knew that the failure of the grinding device, and the rust in the paper produced with the machine containing the device, was because the device itself was defective. Nevertheless, it is striking that the Bundesgerichtshof held that the notice was given in time, although given more than nine weeks after delivery and seven weeks after the first signs of trouble appeared.

5.7. The court commenced by noting that the court of appeals had found that the defect in the grinding device was a latent defect, so that neither the period for examination nor the period for notice could have commenced any sooner than when the device failed. The court of appeal had concluded that on failure of the device the buyer ought to have been aware that there was a defect in the device and that the reasonable period for notice began at that date. The Bundesgerichtshof disagreed. It accepted the buyer's contention that the buyer could not have determined immediately and by itself whether the device failed because of a defect or because of operating errors by its personnel. Therefore, it was not the period for notice under article 39 that had commenced at the time when the device failed, but the period for examination under article 38.^[13]

5.8. The court then calculated the amount of time available to the buyer to give notice by assuming that it should have had one week to decide whether to engage an expert to report on the source of the failure and to engage the expert. The period for the expert to prepare its report had in fact been two weeks, which the court deemed appropriate. To the three weeks thus calculated, it added a four week period for giving notice after the buyer knew or ought to have known of the lack of conformity of the goods. The court described a four week period for giving notice as "*regelmäßig*", i.e., "regular" or "normal". Thus, the court calculated that the notice given by the buyer seven weeks after the failure of the grinding device had been given within time.

5.9. Two alternative readings of the notice period as calculated by the Bundesgerichtshof are possible. One is that the court gave the buyer a single period of seven weeks from the time it first learned of symptoms that should have alerted it to the possibility that there was a latent defect in the grinding device. If that was the decision of the court, it does not accord with the CISG, which provides for two separate periods.

5.10. The second reading is that the court did calculate two separate periods as provided in CISG. The court allowed the buyer three weeks to have the device examined by the expert pursuant to article 38 starting from the time the grinding device failed and not when its customer complained of the rust in the paper. At the end of that hypothetical examination the buyer "ought to have known" of the lack of conformity of the device and the one-month period for giving notice that the court considered to be presumptively reasonable commenced. This reading of the decision illustrates that there is no independent sanction for a failure to examine the goods within the time allowed under article 38. The buyer in this case received the report of the expert 46 days after the failure of the grinding device, which was three weeks after he "ought to have known" of the defect according to the Bundesgerichtshof. Consequently, rather than three weeks to determine the nature of the defect in the grinding device and four weeks to give notice as anticipated by the Bundesgerichtshof, it took the buyer six weeks to determine the nature of the defect and only three days to give notice.

5.11. Under either reading of the decision, the buyer had seven weeks from the failure of the device in which to give notice.

5.12. If the court had restricted itself to saying that the four week period from the time the buyer “ought to have discovered” the lack of conformity of the goods and the time it sent the notice was a reasonable time, the decision might be questioned on the facts. A period of one month from the time the buyer knew or ought to have known of the lack of conformity in this case seems rather long to be presumptively “*regelmäßig*”, i.e. “regular” or “normal”. Nevertheless, it would have been unobjectionable as a matter of legal interpretation. One month or even longer to give notice might be reasonable under the particular facts of the case.

5.13. The most positive aspect of the decision of the Bundesgerichtshof, as of the decisions of the Obergerichtshof in Austria and the Obergericht Kanton Luzern in Switzerland, is that it is an indication to the German courts that they should be willing to accept longer periods for the giving of notice than in regard to ULIS or § 377 HGB.

5.14. One last feature of the decision of the Bundesgerichtshof calls for comment and approval. In earlier cases the German courts had required the buyer to inform the seller in detail as to the nature of the lack of conformity. That can be beyond the power of a buyer, especially where the buyer does not have the technical knowledge to know what is wrong with the goods. In the instant case the Bundesgerichtshof clearly states that a buyer of machinery and technical equipment need give notice only of the symptoms, not an explanation of the underlying causes. The notice given by the buyer to the seller in this case stated that a purchaser of its paper had found steel splinters in the paper produced using the grinding device in question. The buyer voiced the suspicion that the grinding device was defective. The court held that the buyer’s notice was sufficiently specific in accordance with the buyer’s knowledge at that time. It would seem that description of the symptoms would also put the typical seller in a position to decide what further actions it should take to protect its interests.

5.15. By way of contrast, the French Cour de Cassation in its decision of 26 May 1999 refused to declare any specific period of time as reasonable.^[14] It stated that the Court of Appeals had “used its sovereign discretion in maintaining, after having recalled the chronology of the facts, that the buyer *had* inspected the goods in a prompt and normal period of time, bearing in mind the handling that the [laminated metal sheets] required, and that the [buyer] *had* alerted [seller] of the non-conformities within a reasonable time in the meaning of Article 39(1) CISG”. (Emphasis in original) The decision was a strong affirmation that the determination whether examination of the goods under article 38 or the giving of notice of non-conformity under article 39 are ultimately dependent on the circumstances with which the buyer was confronted.

Case Law on CISG Articles 38, 39

Prepared for the CISG Advisory Council, January 2004[*]

As an annex to
CISG Advisory Council
Opinion No. 2

Examination of the Goods and Notice of Non-Conformity **Articles 38 and 39**

The following gives an overview of reported case law on these provisions of the CISG. It permits “at a glance” to distinguish cases raising different issues, outlining them in key words. This list is not exhaustive.[**]

For the detailed reasoning of the Courts in the various cases, go to:
<<http://cisgw3.law.pace.edu/cisg/text/casecit.html>> where the full texts of the cases or links to the full texts of the cases may be accessed.

The three issues distinguished are:

1. Extent and timeliness of examination (Article 38)
2. Specificity and form of notice of non-conformity (Article 39)

3. Timeliness of notification of non-conformity (Article 39)

1. Extent and Timeliness of Examination: Article 38

Venue	Date	Docket No.	Goods	Proper Examination?
Belgium:				
Rb Hasselt	06.03.02	A.R. 2703/01	Rolls with printed numbers	No; buyer should check numbering, not rely on customers
Rb Ieper	29.01.01	Unavailable	Cooling installations	Yes; continued use necessary to see defect
Rb Kortrijk	06.10.97	A.R. 4143/96	Crude yarn	Yes; not required to unroll threads to examine
Denmark:				
Maritime & Commercial Court of Copenhagen	31.01.02	H-0126-98	Frozen fish	No; A sample should have been thawed and analysed
Finland:				
Helsinki Court of Appeal	30.06.98	S 96/1215	Skin care products (hidden defect Vitamin A reduction over shelf life)	Yes; sampling took time, ten weeks between delivery and notice OK because of 38
Turku Court of Appeal	12.11.97	S 97/324	Canned food	Yes, court allowed buyer to rely on complaints from customers as he could not have examined cans
France:				
Cour d'appel Paris	06.11.01	2000/04607	Cables for elevators	No, defect should have been discovered, at latest when repackaging 8 days after delivery
Cour de Cassation	26.05.99	P 97-14.315 Arret 994D <i>Schreiber v. Thermo Dynamique</i>	Laminated sheet metal	Yes; 11 days timely due to heavy handling of metal (notice 20 days after exam. also timely); left to lower instance
Germany:				
Landgericht Berlin	21.03.03	n.a.	Fabric	No; although latent defect only evident after dyeing fabric
Landgericht Munchen	27.02.02	5 HKO 3936/00	Metal cantilevers for video screens	Yes; a buyer does not have duty to examine goods as to their electrical operational safety

Landgericht Trier	29.03.01	7 HKO 204/99	Mobile telephones (some replaced by cobblestones)	No; external examination should have revealed signs of tampering
Oberlandesgericht Oldenburg	05.12.00	12 U 40/00	Tiller machine	No; defects noticed by buyer upon first use 3 months after delivery
Oberlandesgericht Köln	13.11.00	16 U 45/00	Plug couplings	No; not examined prior to resale
Oberlandesgericht Koblenz	18.11.99	2 U 1556/98	Fibreglass fabrics	No; discernible defects should be discovered within a week
Oberlandesgericht Thüringen	26.05.98	8 U 1667/97	Live fish	No; although virus a latent defect, goods must still be examined
Landgericht Paderborn	25.06.96	7 O 147/94	Plastic	Yes: defect too hard to spot
Landgericht Ellwangen	21.08.95	1 KfH O 32/95	Paprika	Yes; ethylene oxide contents problem considered hidden defect
Netherlands:				
Rb Rotterdam	20.01.00	HAZA 99-325	Cherries	No; unsuitable packaging should have been detected
Hof s'Hertogenbosch	15.12.97	C9700046/HE	Mink furs	No; failure to examine before resale not OK
Rb Roermond	19.12.91	900366	Frozen cheese	Buyer must defrost sample & test to comply with Art. 38
Spain:				
Audiencia de Barcelona	20.06.97	755/95-C	Clothes dye	No; despite hidden defect, waited after 3rd party complaints until after seller sued for price
Switzerland:				
Pretura di Locarno-Campagna	27.04.92	6252	Furniture	No; not rely on customers
Arbitration:				
ICC International Court of Arbitration	? .06.99	9187	Coke	Insufficient Art. 38 examination by 3rd party not binding on buyer. Art. 44 excuse
ICA Russian Federation Arbitration	12.03.96	166/1995	n.a.	Yes; missing certificate of quality; discovery after a few days OK
CIETAC Arbitration (China)	04.08.88	n.a.	Calculator assembly parts	No; examination 4 months after delivery - 60 days in contract

2. Notification, Form and Specificity: Article 39

Venue	Date	Docket No.	Goods	Notice Specific & Satisfactory?
Belgium:				
Cour d'appel Mons	08.03.01	R.G. 242/99	Badge	No; not proven
Rb Kortrijk	16.12.96	A.R. 4328/93	Cloth	Telephone OK, but unspecific to simply say "bad quality"
Germany:				
Landgericht Stendal	12.10.00	22 S 234/94	Granite stone	No; telephone OK but "implausible" and not proven.
Landgericht Köln	30.11.99	89 O 20/99	Facade stones	No; "labelled wrongly" not specific, must detail defect and quantity defective
Landgericht Regensburg	24.09.98	6 O 107/98	Cloth	No; faxes fail to specify defects
Landgericht Erfurt	29.07.98	3 HKO 43/98	Shoe soles	No; two letters do not specify defect
Landgericht München	09.07.97	7 U 2070/97	Leather goods	No; "the products are not conforming to our specification and cannot be sold to customers" or "250 items were badly stamped"
Oberlandesgericht Koblenz	31.01.97	2 U 31/96	Blankets	No; unspecific as notice did not specify which designs were missing
Oberlandesgericht Köln	08.01.97	27 U 58/96	Machines	No; notice not proven
Bundesgerichtshof (Supreme Court)	04.12.96	VIII ZR 306/95	Software and print system	No; did not specify whether missing papers were for printer/system
Landgericht Aachen	19.04.96	43 O 70/95	Machines	No; notice not proven
Landgericht Kassel	15.02.96	11 O 4187/95	Marble	No; oral notice to third party not sufficient
Landgericht Bochum	24.01.96	Unavailable	Truffles	No; not specific to say "soft" for worm-ridden; also, risk of transmission of notice on buyer.
Landgericht Marburg	12.12.95	2 O 246/95	Machines	No; unspecific (missing serial nos. of machines) and unproven.
Amtsgericht Kehl	06.10.95	3 C 925/93	Fashion goods	No; telephone not proven (also not timely, 6 weeks)
Landgericht Kassel	22.06.95	8 O 2391/93	Clothes	No; telephone call not proven.
Oberlandesgericht Frankfurt a.M.	23.05.95	5 U 209/94	Shoes	No; telephone call not proven.
Landgericht München	20.03.95	10 HKO 23750/94	Bacon	No; telex "the goods are rancid" not specific enough
Landgericht München	08.02.95	8 HKO 24667/93	Software	No; not specific to simply ask for help
Landgericht Oldenburg	09.11.94	12 O 674/93	Lorry parts	No; need new notice after repair
Landgericht Frankfurt	13.07.94	3/13 O 3/94	Shoes	No; telephone call not proven
Amtsgericht Nordhorn	14.06.94	3 C 75/94	Shoes	Yes; return of goods valid notice; also: 10 day time limit agreed
Landgericht Aachen	28.07.93	42 O 68/93	Wood	No; non-payment not specific notification

Landgericht Frankfurt	09.12.92	3/3 O 37/92	Shoes	Yes; telephone call 19 days after delivery (timely)
Landgericht Bielefeld	18.01.91	15 O 201/90	Bacon	In part; "unclean" bacon specific, but "not properly smoked" not specific enough
Landgericht München	03.07.89	17 HKO 3726/89	Textiles, fashion goods	No; "poor workmanship and improper fitting" not specific enough
Italy:				
Tribunale di Busto Arsizio	13.12.02	n.a.	Machine for plastic recycling	Yes; buyer not required to indicate cause of defect
Tribunale di Vigevano	12.07.00	n. 405	Shoe sole rubber	No; not specific "[the goods] caused some problems"
Netherlands:				
Rb Middelburg	01.12.99	408/98	Building panels	Suspended for buyer to prove notification
Rb s'Gravenhage	07.06.95	94/0670	Apple trees	No; no notice proven by buyer
Switzerland:				
Obergericht Luzern	29.07.02	11 01 125	Machinery (presses)	No; voicing suspicion that pestles may not fit is not adequate
Bundesgericht (Supreme Court)	28.05.02	4C.395/2001/rnd	Maple wood	Yes; enough to say that quality is too low where the quality has been agreed (reversing lower instance)
Handelsgericht Zürich	17.02.00	HG 980472	Software and hardware	No; not specific to simply say not working properly
Handelsgericht Zürich	21.09.98	HG 960527/O	Books	No; not specific to state that goods do not conform to contract, especially as buyer is expert
Kantonsgericht Nidwalden	03.12.97	15/96Z	Furniture	No; not specific to simply indicate "wrong parts"
Handelsgericht Zürich	09.09.93	HG 930138 U/H93	Furniture	No; notice not proven by buyer (his burden)

Arbitration:				
ICC International Court of Arbitration	23.01.97	8611/HV/JK	Industrial equipment	No; notice not proven

3. Notification of non-conformity, Within "Reasonable Time": Article 39(1)

Venue	Date	Docket No.	Goods	Notice Timely?
Austria:				
Oberster Gerichtshof (Supreme Court)	14.01.02	7 Ob 301/01t	Cooling system	Yes, both notices for obvious (12 days) and hidden (several months) defects. OGH 14 day practice restated
Oberster Gerichtshof	21.03.00	10 Ob 344/98	Wood	No; Art. 39 not used as Art. 9 means that an established trade practice will prevail
Oberster Gerichtshof	27.08.99	1 Ob 223/99x	Athletic shoes	No; 19 days regarded as unreasonable
Oberster Gerichtshof	15.10.98	2 Ob 191/98x	Wood	No; 14 day time frame for Arts. 38 AND 39 set forth
Oberster Gerichtshof	30.06.98	1 Ob 273/97x	Pineapples	No; COFREUROP rules in contract derogate from Art. 39 require immediate notice
Oberster Gerichtshof	27.05.97	5 Ob 538/95	Deep drill stabilizers	Yes; 4 weeks; allows 10-14 days for examination (38) and a month for notice (39)
Oberlandesgericht Innsbruck	01.07.94	4 R 161/94	Flowers	No; 3 months from discovery, 2 months considered reasonable
Belgium:				
Hof van Beroep Gent	08.10.03	2002/AR/1184	Textiles	No; not await complaints from customers after resale
Hof Gent	12.05.03	2000/AR/1957	Fashion clothes	No; three months too late
Rb Veurne	15.01.03	A/02/00430	Breeding sows	No; 1 ½ years after delivery, 1 year after disease known
Hof van Beroep Gent	02.12.02	1997/AR/384	Clothes	No; 3 months after delivery
Rb Hasselt	06.03.02	A.R. 2671/01	Shoes	No; not wait for end of season
Rb Mechelen	18.01.02	n.a.	Tomatoes	Yes; few days, general conditions in contract stipulating 24 hours not valid (in German and too fine print)
Hof van Beroep Gent	23.05.01	1999/A/2160	Thread	No; no notice proven by buyer (instead seller produces fax where buyer calls goods "very good")
Rb Veurne	25.04.01	A/00/00665	Diesel tram	No; over 2 months; previous notice by fax could not be proven by buyer (his burden of proof); one month guideline proposed

Cour d'appel Mons	08.03.01	R.G. 242/99	Metal badges	No; 6 weeks after delivery (easily discernible defects)
Hof van Beroep Gent	28.04.00	1997/AR/ 2235	Plastic bags	No; 14 months and 5 months
Rb Hasselt	17.02.00	n.a.	?	No; 8 months after delivery
Rb Hasselt	19.05.99	n.a.	Squirrels	No; 6 weeks.
Hof van Beroep Antwerpen	04.11.98	1995/AR/ 1558	?	Yes; 20 days; despite agreement on 14 days max.
Rb Kortrijk	27.06.97	A.R. 651/97	Yarn (for textiles)	No; 3 months after delivery
Rb Hasselt	21.01.97	A.R. 1972/96	Neon signs	No; 4 months after delivery
Rb Kortrijk	16.12.96	A.R. 4328/93	Cloth	No; 2 months after delivery (speed required in clothes trade)
Rb Hasselt	03.12.96	A.R. 2987/95	Boilers	No; 4 months after discovery
Tribunal Commercial Bruxelles	05.10.94	R.R. 1.205/93	Shoes	No; 9 months after delivery
Canada:				
Ontario Superior Court of Justice	31.08.99	98-CV-14293CM	Picture frame mouldings	No; 2 years after delivery
Denmark:				
Vestre Landsret	10.11.99	B-29-1998	Christmas trees	Yes; 1 and 2 days, BUT NB! Notice of avoidance after 8 days untimely
France:				
Cour d'appel de Colmar	24.10.00	Unavailable	Glue additive for lamination	Yes; 2 months after delivery
Cour d'appel de Versailles	29.01.98	95/1222	High tech double-edged roll grinder machines	Yes; series of notices: two weeks after initial test and one month after second test (final notice 6 and 11 months after delivery)
Tribunal de commerce de Besançon	19.01.98	97 009265	Sports clothes for children	Yes; 6 months after delivery, because "well within" the Art. 39(2) cut-off of 2 years
Cour d'appel de Grenoble	13.09.95	93/4126	Cheese	Yes; 30 days after delivery
Germany:				
Oberlandesgericht München	13.11.02	U 346/02	Organic barley	No; should not have waited for formal declaration but recognized that lack of certificate was non-conformity in itself
Oberlandesgericht Rostock	25.09.02	6U 126/00	Frozen food	No; buyer unable to prove
Oberlandesgericht Schleswig	22.08.02	11 U 40/01	Live sheep	No; livestock requires notice of 3-4 days after delivery
Landgericht Saarbrücken	02.07.02	8 O 49/02	Tiles	No; because after 1 month period, despite latent defect (tiles absorb liquids such as apple juice and stain)
Oberlandesgericht München	01.07.02	10 O 5423/01	Fashion shoes	No; several months can under no circumstances be reasonable for seasonal goods
Landgericht München	30.08.01	12 HKO 5593/01	Wine	No; 8 months after delivery, short period time required
Oberlandesgericht Saarbrücken	14.02.01	1 U 324/99-59	Windows and doors	No; over 2 years 39(2); ½ - 1 month considered reasonable as "general opinion"

Oberlandesgericht Oldenburg	05.12.00	12 U 40/00	Machine for tilling athletic fields	No; 7 weeks after delivery unreasonable
Landgericht München	16.11.00	12 HKO 3804/00	Equipment for pizzeria	No; almost 1 year
Oberlandesgericht Koblenz	18.11.99	2 U 1556/98	Glass fibre	No; 3 weeks after delivery, defects easily recognizable
Bundesgerichtshof	03.11.99	VIII ZR 287/98	Grinding machine (hidden defect)	Yes; court allows 1 month after expert's report for notice
Landgericht Berlin	25.05.99	102 O 181/98	Fabric	No; 7 weeks untimely
Bundesgerichtshof	25.11.98	VIII ZR 259/97	Sticky film	No; BUT seller implicitly waived right to rely on Arts. 38/39 (24 days not timely in prior instance)
Oberlandesgericht Koblenz	11.09.98	2 U 580/96	Dryblend for PVC tubes	No; 3 weeks after delivery' court allows 1 week for examination and 1 week for notice
Oberlandesgericht Celle	02.09.98	3 U 246/97	Vacuum cleaners	No; 8 and 5 weeks, notice "doubtful"
Oberlandesgericht Saarbrücken	03.06.98	1 U 703/97	Fresh flowers	No; no notice proven; court states <i>obiter</i> that for flowers notice must be same day as delivery
Oberlandesgericht Thüringen	26.05.98	8 U 1667/97 (266)	Live fish	No; 1 month after delivery, no evidence of 38 examination; court states 8 days would be reasonable (livestock, infected)
Oberlandesgericht München	11.03.98	7 U 4427/97	Cashmere sweaters	No; 4 months, 2 weeks agreed
Landgericht Hagen	15.10.97	22 O 90/97	Socks	No; 3 ½ month too late
Oberlandesgericht Köln	21.08.97	18 U 121/96	Chemicals (aluminium hydroxide)	No; although 1 month normally reasonable, immediate notice needed before deliveries mixed
Bundesgerichtshof	25.06.97	VIII ZR 300/96	Steel wire	Yes; seller waived right to object to late notices by accepting them
Oberlandesgericht Karlsruhe	25.06.97	1 U 280/96	Surface protection film	No; 24 days after delivery, reversed by BGH
Oberlandesgericht Köln	08.01.97	27 U 58/96	Tannery machine	No; although latent should have notified seller before commissioning repair
Landgericht Saarbrücken	26.03.96	7 IV 75/95	Ice cream parlour fittings	No; court argues that paying final price cuts off buyer from right to complain
Amtsgericht Augsburg	29.01.96	11 C 4004/95	Fashion shoes	No; 18 months (1 month OK)
Landgericht Düsseldorf	11.10.95	2 O 506/94	Generator	Yes; 1 week, but not mentioned; decided on other grounds
Amtsgericht Kehl	06.10.95	3 C 925/93	Knitwear	No; six weeks – one month considered reasonable
Oberlandesgericht Nürnberg	20.09.95	12 U 2919/94	Software	Yes; 1 day after discovery
Oberlandesgericht Stuttgart	21.08.95	5 U 195/94	Machines	No; none proven, one month considered reasonable

Oberlandesgericht Hamm	09.06.95	11 U 191/94	Windows	Yes; applied to Article 46.
Bundesgerichtshof	08.03.95	VIII ZR 159/94	Mussels	No; 6 weeks, 1 month considered reasonable
Oberlandesgericht München	08.02.95	7 U 3758/94	Plastic	No; 3 months unreasonable; 8 days reasonable
Amtsgericht Riedlingen	21.10.94	2 C 395/93	Ham	No; 20 days despite holiday; spot check feasible within days (ham developed mould within hours on unpacking)
Landgericht Nürnberg-Fürth	26.07.94	5 HKO 10824/93	Software	Yes; 1 day after discovery
Landgericht Gießen	05.07.94	6 O 85/93	Clothes	No; outside time-limit agreed – Art. 39 derogated
Landgericht Düsseldorf	23.06.94	31 O 231/94	Presses	No; 4 & 20 months after delivery, both tardy
Oberlandesgericht Köln	22.02.94	29 U 202/93	Wood	Yes; 8 days after examination
Oberlandesgericht Düsseldorf	10.02.94	6 U 32/93	Textiles	No; 2 month, strict construction
Landgericht Hannover	01.12.93	22 O 107/93	Shoes	No; outside time-limit agreed – Art. 39 derogated
Landgericht Köln	11.11.93	86 O 119/93	Research	No; 21 days, due to deadline which seller knew of
Oberlandesgericht Düsseldorf	12.03.93	17 U 136/92	Textiles	No; 25 days, analogy to German HGB §377 and implicit waiver of untimely notice defence
Oberlandesgericht Saarbrücken	13.01.93	1 U 69/92	Doors	No; 2 months after delivery
Oberlandesgericht Düsseldorf	08.01.93	17 U 82/92	Gherkins	No; 7 days from loading, implied agreement re examination
Landgericht Berlin	30.09.92	99 O 123/92	Shoes	No; 3 ½ months after delivery
Landgericht Berlin	16.09.92	99 O 29/93	Shoes	No; over 2 months after delivery
Landgericht Mönchengladbach	22.05.92	7 O 80/91	Textiles	No; 1 month, court considers 1 week for exam and 1 for notice reasonable

Landgericht Baden-Baden	14.08.91	4 O 113/90	Tiles	No; outside time-limit agreed – Art. 39 derogated
Landgericht Stuttgart	13.08.91	16 S 40/91	Clothes	No; 6 weeks not reasonable. NOTE, no separate Art. 39 notice, only Art. 49 notice of avoidance
Landgericht Aachen	03.04.90	41 O 198/89	Shoes	Yes; 1 day after discovery
Landgericht Stuttgart	31.08.89	3KfHO 97/89	Shoes	No; 16 days not timely in view of defects in earlier delivery
Italy:				
Tribunale di Rimini	26.11.02	3095	Porcelain tableware	No; 6 months after delivery (earlier notice unproven)
Tribunale di Vigevano	12.07.00	405	Shoe-sole rubber	No; 4 months case-by-case basis for determination (also unspecific and unproven)
Pretura di Torino	30.01.97	Unavailable	Cotton fabric	No; 7 months after delivery/discovery
Tribunale Civile di Cuneo	31.01.96	93/4126 [45/96]	Clothes	No; 23 days after delivery, easily recognizable defect reduces time frame
Netherlands:				
Hof Arnhem	27.04.99	97/700 and 98/046	Room units	No; over 2 years cut-off: Article 39(2)
Hoge Raad (Supreme Court)	20.02.98	16.442	Floor tiles	No; 4 months after customer complaints (hidden defect)
Hof Arnhem	17.06.97	96/449	Gas compressors	No; 3 months after delivery
Rb Zwolle	05.03.97	HA ZA 95-640	Fresh fish	No; perishables require short period
Rb Rotterdam	21.11.96	95/3590	Daisies	No; 4 months after delivery
Rb Roermond	06.05.93	925159	Kettles	No; 3 months after discovery

Hof s'Hertogenbosch	26.02.92		Shoes	No; by paying for goods 2 months after last delivery buyer accepted as they were
Spain:				
Audiencia Provincial Pontevedra	03.10.02		Frozen fish	Yes; 3 months after delivery (1 for exam, 2 for notice)
Audiencia Provincial Coruna	21.06.02	201/2001	Rainbow trout eggs	No; 10 weeks after delivery, 6 weeks after despatching eggs for analysis (virus detectable after 2-7 days)
Audiencia Provincial Barcelona	12.09.01	566/2000	Frozen seafood	Yes; notice given 11 days after report on defects issued
Audiencia Provincial Castellon	16.06.00	371/1999	Industrial machine	No; but note court considers Art. 39 to have a "laxer wording" than the corresponding Spanish domestic law prescribing 30 days.
Audiencia Provincial Navarra	27.03.00	Unavailable	Electric water dispensers	No; 6 months after delivery not timely
Switzerland:				
Tribunale d'appello di Lugano	08.06.99	12.19.00036	Wine bottles	No; 8 days agreed - 39 derogated re time. Also notice not specified
Handelsgericht Zürich	30.11.98	HG 930634/O	Lambskin coats	No; 1 month. Allows 7-10 days for Art. 38 and "generous" 2 weeks for Art. 39-notice; defect was obvious (colouring)
Bezirksgericht Unterrheintal	16.09.98	EV. 1998.2 (1KZ. 1998.7)	Furniture	No; one year unreasonable
Tribunale Cantonal Valais	29.06.98	CI 97 288	Sports clothing	No; 7-8 months by far too late.
Obergericht Zug	24.03.98	OG 1996/2	Meat	Yes; 7-17 days, despite perishables
Obergericht Kanton Luzern	08.01.97	11 95 123/357	Medical appliances (blood infusion devices)	No; 3 months after delivery unreasonable

Cour de Justice Genève	10.10.97	C/21501/ 1996	Acrylic cotton	Yes; hidden defect - Swiss 1 year cut-off amended and Art. 39(2) prevail
Gerichtskommission Oberrheintal	30.06.95	OKZ 93-1	Sliding gates	No; 1 year obviously too late
Handelsgericht Zürich	26.04.95	HG 920670	Salt water isolation tank	No; 4 weeks after discovery of leakage
USA:				
US Circuit Court of Appeals (5 th Circuit)	11.06.03	<i>BP Oil v. Impresa</i>	Gasoline	No; due to testing agency, buyer should have discovered defects and notified before accepting delivery; BUT remanded for Art. 40
US District Court (N.D. Illinois)	29.05.03	<i>Chicago Prime Packers v. Norham Foods</i>	Frozen pork ribs	Undecided; court denied summary judgment to determine if notice over 1 month after delivery is reasonable, more facts needed
Arbitration:				
ICA Russian Federation Arbitration	11.02.00	226/1999	Equipment	Yes; 6 days after discovery
ICC International Court of Arbitration	?08.99	9887	Chemicals	Yes; 12 days after delivery
ICC International Court of Arbitration	?08.99	9083	Books	No; 14 day guideline from Austrian law adopted
ICC International Court of Arbitration	?02.99	9474	Banknotes	No; 3 years
CIETAC Arbitration (China)	1999	n.a.	Piperonal aldehyde	Yes; goods arrived 18 Nov.: notices on 27 Dec. when goods unloaded from port; and on 30 Nov. when unloaded from container, and on 4 Dec.
ICC International Court of Arbitration	?09.97	8962	Glass commodities	No; 5 weeks, 1 month considered reasonable
ICA Russian Federation Arbitration	04.06.97	256/1996	n.a.	No; outside 30 day time limit in contract

ICC International Court of Arbitration	?.06.96	8247	Chemical compound	No; 3 weeks too long for examination and notice
BTPP Bulgarian Arbitration	24.04.96	56/95	Coal	No; Article 40 disclosure
Schiedsgericht der Handelskammer Hamburg	21.03.96	Unavailable	Goods	No; over 2 years
Hungarian Court of Arbitration	05.12.95	VB/94131	Waste containers	No; 32 days speedy affairs
CIETAC Arbitration (China)	1995	Unavailable	Jasmine aldehyde	Yes; same days as end user rejected goods (few days after delivery)
ICC International Court of Arbitration	23.08.94	7660/JK	Machinery	Yes; not explained why
Int. Schiedsgericht Bundeskammer Vienna	15.06.94	SCH-4318	Metal sheets	No; outside agreed time frame – Art. 39 derogated
ICC International Court of Arbitration	1994	7331	Cowhides	Yes; agreed time frame of one month OK
ICC International Court of Arbitration	1994	7565	Coke	Yes; undisputed
ICC International Court of Arbitration	1989	5713	Unavailable	Yes; 8 days after discovery

* The case overview was prepared for the CISG Advisory Council by Camilla Baasch Andersen, Queen Mary, University of London.

** There are also other sources of case law information, e.g., the UNCITRAL Digest of CISG Cases: a draft of the UNCITRAL Case Digest is currently available through Sellier, European Law Publishers: München and Sweet & Maxwell: London; the final text of the UNCITRAL Case Digest is scheduled to be published by UNCITRAL in the latter part of 2004.

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FOOTNOTES

1. The CISG-AC is a private initiative supported by the Institute of International Commercial Law at Pace University

School of Law and the Centre for Commercial Law Studies, Queen Mary, University of London. The International Sales Convention Advisory Council (CISG-AC) is in place to support understanding of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the promotion and assistance in the uniform interpretation of the CISG.

At its formative meeting in Paris in June 2001, Prof. Peter Schlechtriem of Freiburg University, Germany, was elected Chair of the CISG-AC for a three-year term. Dr. Loukas A. Mistelis of the Centre for Commercial Studies, Queen Mary, University of London, was elected Secretary. The CISG-AC has consisted of: Prof. Emeritus Eric E. Bergsten, Pace University; Prof. Michael Joachim Bonell, University of Rome La Sapienza; Prof. E. Allan Farnsworth, Columbia University School of Law; Prof. Alejandro M. Garro, Columbia University School of Law; Prof. Sir Roy M. Goode, Oxford; Prof. Sergei N. Lebedev, Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation; Prof. Jan Ramberg, University of Stockholm, Faculty of Law; Prof. Peter Schlechtriem, Freiburg University; Prof. Hiroo Sono, Faculty of Law, Hokkaido University; Prof. Claude Witz, Universität des Saarlandes and Strasbourg University. Members of the Council are elected by the Council. At its meeting in Rome in June 2003, the CISG-AC elected as additional members, Prof. Pilar Perales Viscasillas, Universidad Carlos III de Madrid, and Prof. Ingeborg Schwenzer, University of Basel.

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2. This opinion is a response to a request by the Study Group on European Civil Code - Utrecht Working Group on Sales Law for the Council to reflect on the interpretation of the provisions concerning the periods of time according to articles 38 and 39 CISG. The question referred to the Council was:

"Should the periods of time in Art. 38 and 39 CISG ("as short as is practicable" and "reasonable") be made more concrete by respective directives set by courts or in projects of unification of law, e.g. by qualifying as "reasonable" in the meaning of Art. 39 (1) CISG under normal circumstances a period of 2 or respectively 4 weeks."

3. Article 40 passed through the entire re-drafting of ULIS in UNCITRAL and in the Diplomatic Conference with almost no discussion and a minor editorial change.

4. WG 3rd session, Annex II, para. 71, A/CN.9/62, Add.2.

5. WG 6th session, A/CN.9/100, para. 59.

6. WG 3rd session, Annex II, para. 78, A/CN.9/62, Add 2.

7. Official Records (A/Conf.97/19), Summary Records, First Committee, 16th Meeting, para. 32.

8. OLG Köln, 29 June 1978, 7 U 141/76, MDR 1980, 1023; OLG Hamm, 17 September 1981, 2 U 253/80.

9. Chicago Prime Packers, Inc. v. Northam Food Trading Co., 29 May 2003, U.S. District Court [Northern Dist. Illinois], 2003 WL 21254261 (N.D. Ill.), case presentation <<http://cisgw3.law.pace.edu/cases/030529u1.html>>, "[c]ase law interpreting analogous provisions of Article 2 of the ... [UCC] may also inform a court where the language of the relevant CISG provision tracks that of the UCC. However, UCC case law 'is not per se applicable'," citing Delchi Carrier S.p.A. v. Rotorex Corp., 6 December 1995, U.S. Circuit Court of Appeals, 71 F.3d 1024, 1028 (2nd Cir.1995) case presentation <<http://cisgw3.law.pace.edu/cases/951206u1.html>>.

10. "In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade."

11. OLG Oldenburg 5 December 2000, 12 U 40/00, RIW 2001, 381-382, case presentation and English translation <<http://cisgw3.law.pace.edu/cases/001205g1.html>>. The court acknowledged that, in regard to the notice requirement, the CISG gave the appearance of being more "buyer friendly" than ULIS. The court stated, however, that there were no differences between ULIS article 38 and CISG article 38 that were so significant as to call in question the jurisprudence in regard to ULIS. It cited a decision of the Bundesgerichtshof (BGH, 2 June 1982, VIII ZR 43/81, NJW 1982.2730, 2731) concerning ULIS in support of its decision that the buyer should and could have examined the goods earlier than it did, an action it said should be "as soon as possible".

12. OGH 27 August 1999, 1 Ob 223/99x, [2000] RdW No. 10, case presentation and English translation <<http://cisgw3.law.pace.edu/cases/990827a3.html>>.

13. OG des Kantons Luzern, 8 January 1997, 11 95 123/357, [1998] Schweizerische Juristen-Zeitung 94, 515-518, case presentation <<http://cisgw3.law.pace.edu/cases/970108s1.html>>.

14. BGH, 3 November 1999, VIII ZR 287/98, [2000] RIW 381, case presentation and English translation

<http://cisgw3.law.pace.edu/cases/991103g1.html>.

15. The court said it was not necessary to decide whether, in the case of a latent defect, the period for examination began when the buyer learned of the lack of conformity of the goods from the report of the expert or at the earlier time the symptoms first appeared. For the purposes of the case, it calculated the period for examination from the time the symptoms first appeared.

16. Société Karl Schreiber GmbH v. Société Termo Dynamique Service et autres, 26 May 1999, Cour de Cassation, [2000] Recueil Dalloz 788, <http://Witzjura.uni-sb.de/CISG/decisions/260559v.htm>, case presentation and English translation, <http://cisgw3.law.pace.edu/cases/990526f1.html>, affirming, Cour d'Appel d'Aix-en-Provence, 21 November 1996.