



MORALS IN SALE CONTRACT; BREACHES AND REMEDIES UNDER THE SALE OF GOODS ACT OF GHANA

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Article History

Received: 13.07.2024

Accepted: 28.07.2024

Published: 08.08.2024

Abstract: In the evolving landscape of international trade, the legal frameworks guiding commercial transactions are paramount. This study delves into a comparative analysis of three pivotal instruments: the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC). By juxtaposing these systems, the research unveils both harmonies and dissonances, each bearing implications for businesses and policymakers. While they converge on universal commercial imperatives like good faith and predictability, their divergences highlight jurisdictional idiosyncrasies and socio-economic variances.

Drawing from this intricate analysis, the study posits the need for strategic harmonization, emphasizing an adaptive framework that respects the unique value of each system. It underscores the pivotal role of businesses in adeptly navigating these regimes and the ensuing legal ramifications.

Findings:

The authors juxtaposed that as the global business commerce surges, there should be an open ended cross cutting international legislations that can let specific regions adopt and develop tailored legal and business practice frameworks to suit their regions and countries. It was discovered that such measures are highly likely to be embraced by policy makers and political heads, business groups, regulatory agencies and companies. There was an emphasis made that a nuanced understanding of these frameworks becomes vital for a cohesive, cogent and fair business commerce for industry players.

Keywords: Sale of goods, Contract of sale, Commercial contracts, Legal framework.

Cite this article:

Yamoah, J., Gorni, E. K. et. al., (2024). MORALS IN SALE CONTRACT; BREACHES AND REMEDIES UNDER THE SALE OF GOODS ACT OF GHANA. *ISAR Journal of Arts, Humanities and Social Sciences*, 2(8), 21-30.

Introduction

In the arena of international trade, sale contracts form the bedrock upon which majority of global commerce transactions thrive legally. These agreements, outlining the terms and conditions governing the sale and purchase of goods, serve as an essential

bridge between buyers and sellers, facilitating trade and economic growth. As countries intertwine economically, the question of how breaches under sale contracts can be remedied assumes a greater significance. Such breaches, if not addressed, can disrupt trade flows; erode trust between parties, and lead to substantial economic losses. As a result, understanding the available remedies for breach,

and more importantly, the nuances of these remedies across different legal systems and instruments, is paramount.

This paper delves into three foundational frameworks regulating sale contracts: the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC). The Sale of Goods Act of Ghana serves as a reflection of domestic legislation on the African continent, formulated to govern local and international transactions involving Ghanaian entities. As a national statute, it resonates with the peculiarities and socio-economic realities of Ghana, while also echoing common themes in sales law.¹ On the other hand, the CISG, as a multilateral treaty, seeks to harmonize the laws relating to the international sale of goods.² It provides a neutral ground, bridging the gap between diverse legal traditions and creating a unified set of rules governing contracts for international sales.³ Lastly, the PICC represents a set of general principles designed to regulate international commercial contracts, irrespective of the legal traditions of the parties involved.⁴ Often termed as a 'lex mercatoria' for the modern era, the PICC embodies principles that are commonly found in legal systems around the world and offers a potential avenue for cross-border contract harmonisation.⁵

Each of these frameworks, while striving towards the common goal of ensuring fairness and justice in commerce, approach breaches under sale contracts with distinctive remedies, influenced by their origins, underlying philosophies, and objectives. A comparative analysis of these remedies, therefore, not only unveils the strengths and weaknesses of each system but also provides invaluable insights for stakeholders navigating the complex landscape of international trade. This analysis hopes to serve as a beacon for scholars, practitioners, and policymakers, guiding them towards a more harmonized and effective global commercial law regime.

A. Significance of Sale Contracts in international trade

Sale contracts, in the international commercial lexicon, are undeniably cardinal to the efficient function and prosperity of global trade. Their significance can be traced back to the earliest days of international commerce, when traders from various territories penned agreements to safeguard their interests and facilitate exchanges.⁶ These contracts delineate the essential terms governing the exchange of goods across borders, encapsulating key parameters such as price, delivery, quality, and dispute resolution mechanisms.

In modern era of globalization, the relevance of international sale contracts has peaked exponentially. Currently, they serve not merely as private agreements but as instruments shaping the macroeconomic dynamics of countries and the paradigm shift in global supply chains.⁷ They provide a structured, predictable environment in which parties from divergent legal, cultural, and economic backgrounds can transact, confident in the knowledge that their rights and obligations are clearly defined and safeguarded.⁸

Further, in underpinning international trade, sale contracts bolster economic development, employment, and technological advancement. They play a pivotal role in allowing countries to exploit their comparative advantages, ensuring that goods are produced where they can be made most efficiently, thereby optimizing global production and consumption patterns.⁹ Moreover, these contracts are instrumental in attracting foreign direct investment. Investors and businesses, when confident in the stability and enforceability of sale contracts, are more inclined to invest or engage in trade, driving economic growth and innovation.¹⁰

As significant as they are, international sale contracts are fraught with challenges emanating from the juxtaposition of different legal systems, cultures, and commercial practices. Discrepancies in contract interpretations, coupled with inconsistencies in legal enforcement, often make transnational trade a complex endeavor. This complexity underscores the pressing need for harmonized legal frameworks and conventions, such as the CISG and PICC, that seek to provide a universal lexicon and set of rules for these pivotal instruments of trade.¹¹

B. Importance of understanding remedies for breach in different jurisdictions

In the labyrinthine realm of international commerce, the comprehension of remedies available for breaches under sale contracts across various jurisdictions is of unparalleled salience. This pertinence emerges from several critical considerations. Firstly, commerce in the modern globalized era invariably implicates parties from multifarious legal territories, each governed by its own set of rules and traditions.¹² When a breach occurs, the course and outcome of ensuing litigation or arbitration can be substantially influenced by the jurisdiction in which the remedy is sought.

The repercussions of a breach are not merely contractual but have wider economic and reputational consequences. For businesses, especially those operating in multiple jurisdictions, a single

¹ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

² Schlechtriem, P. & Butler, P. 'UN Law on International Sales: The UN Convention on the International Sale of Goods', Springer, (2009).

³ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', Kluwer Law International, (2009).

⁴ Vogenauer, S. & Kleinheisterkamp, J. 'Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)', OUP, (2015).

⁵ Michaels, R. 'The UNIDROIT Principles as Global Background Law', Duke Journal of Comparative & International Law, (2012).

⁶ Goode, R. 'Commercial Law in the Next Millennium', Sweet & Maxwell, (1998).

⁷ Treitel, G. 'The Law of Contract', Sweet & Maxwell, (2003).

⁸ Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2007).

⁹ Krugman, P. & Obstfeld, M. 'International Economics: Theory and Policy', Pearson, (2009).

¹⁰ Buckley, R.P. 'The International Sale of Goods: The Interaction of Domestic and International Regimes', Journal of Business Law, (1999).

¹¹ Ferrari, F. 'The CISG and its Impact on National Legal Systems', Sellier, (2008).

¹² Basedow, J. 'Harmonization of Private Law: Do We Need It?', Hamburger Zentrum für Versicherungswissenschaft, (2006).

mishap, if not properly redressed, can lead to significant financial loss, tarnished business reputation, and even potential market exit.¹³ Furthermore, a nuanced understanding of these remedies is pivotal for risk assessment and management. By understanding potential liabilities across jurisdictions, businesses can formulate sound contractual clauses, opt for effective dispute resolution mechanisms, and make informed decisions on insurance and risk hedging.¹⁴

From a legal perspective, the intricate interplay of domestic laws, international treaties, and conventions makes the understanding of remedies for breach all the more complex. The diversity in legal traditions – from common law and civil law to customary practices – results in a plethora of remedies, ranging from damages, specific performance, and contract termination to more nuanced reliefs.¹⁵ A clear understanding of these remedies ensures effective legal representation, promotes judicial efficiency, and aids in the harmonization efforts in international commercial law.¹⁶

Additionally, understanding remedies across jurisdictions assists in fortifying trust in international transactions. Parties, when aware of the robustness and fairness of remedies across borders, engage more freely in cross-border trade, confident in the assurance of justice in case of adversities.¹⁷ In essence, an in-depth grasp of remedies in various jurisdictions is not just a matter of legal formality but a lynchpin for promoting global trade, ensuring justice, and enhancing economic prosperity.

C. Overview of the Sale of Goods Act of Ghana, the CISG, and the PICC

At the heart of international commerce lie foundational frameworks that delineate the rules governing sale contracts. Chief among these are the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC), each of which possesses unique attributes reflective of its origins and objectives.

The Sale of Goods Act of Ghana stands as a testament to Ghana's endeavours to craft a legal framework cognizant of both international commercial practices and its unique socio-economic realities.¹⁸ Stemming from Ghana's colonial legal heritage yet tailored to its contemporary needs, the Act governs the sale of goods within the nation, delineating rights and obligations of parties, breach parameters, and stipulated remedies. It serves as an integral instrument for local and international transactions involving Ghanaian entities, ensuring that trade practices adhere to

set standards, thereby promoting fairness and economic growth within the country.

The CISG, a multilateral treaty, occupies a seminal place in the annals of international sale laws.¹⁹ Born out of the aspiration to harmonize diverse legal traditions governing the international sale of goods, the CISG provides a neutral platform that bridges legal disparities and offers a universally applicable set of rules. As of its last update, the convention boasts an impressive list of signatories, making it a vital legal regime for a vast majority of international trade transactions. Through its articles, the CISG not only elucidates provisions concerning the formation, obligations, and rights under a sale contract but also articulates remedies in the event of breaches.²⁰

Lastly, the PICC emerges as a set of general principles, often termed the 'lex mercatoria' of the contemporary era, aimed at governing international commercial contracts.²¹ Unlike the CISG, which is a treaty and hence binding only on its signatories, the PICC encapsulates principles acknowledged and accepted across various legal systems. Intended to be a reference point for businesses and arbitral tribunals, the PICC is particularly valuable in situations where applicable law is either absent or unclear. It promotes a more consistent, harmonized approach to disputes arising out of international commercial contracts.²²

In totality, while each of these instruments – the Sale of Goods Act of Ghana, the CISG, and the PICC – has its distinctive nuances and applications, together they paint a comprehensive tableau of the rules, rights, and remedies associated with international sale contracts, providing a roadmap for businesses and legal practitioners navigating the intricate terrains of global commerce.

Sale of Goods Act of Ghana

The Sale of Goods Act of Ghana stands as a monumental legislative piece, serving as the bedrock for contractual transactions involving the sale of goods within the West African nation. Rooted in Ghana's rich legal tapestry, this Act, although drawing parallels with its colonial antecedents, has been tailored meticulously to reflect Ghana's specific socio-economic and cultural milieu.²³

Historically, the Act was conceived to ensure clarity and predictability in transactions related to the sale of goods, catering both to domestic dealings and international transactions with Ghanaian nexus. While its adoption might echo global best

¹³ Mann, F. 'The Legal Aspect of Money: With Special Reference to Comparative Private and Public International Law', OUP, (1992).

¹⁴ Carter, J. & Laryea, J. 'Successful Construction Project Management: The Practical Guide', BookBaby, (2015).

¹⁵ Zimmermann, R. & Whittaker, S. 'Good Faith in European Contract Law', CUP, (2000).

¹⁶ Michaels, R. 'The Second Wave of Comparative Law and Economics?', University of Toronto Law Journal, (2017).

¹⁷ Schmitthoff, C. 'Select Essays on International Trade Law', Stevens, (1988).

¹⁸ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

¹⁹ Schlechtriem, P. & Butler, P. 'UN Law on International Sales: The UN Convention on the International Sale of Goods', Springer, (2009).

²⁰ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', Kluwer Law International, (2017).

²¹ Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers, (2005).

²² Vogenauer, S. & Kleinheisterkamp, J. 'Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)', OUP, (2015).

²³ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

practices, it remains intrinsically Ghanaian, catering to the nation's indigenous business idiosyncrasies and practices.²⁴

Central to the Act is its elaboration on what constitutes a breach. In defining breaches, it steers clear from mere non-conformities and emphasizes those actions or inactions that fundamentally compromise the essence of the contract. Further nuanced is its distinction between major and minor breaches, laying down a more stratified approach to contractual non-performance.²⁵

In terms of remedies, the Act is robust and comprehensive. It recognizes the right of the aggrieved party to sue for specific performance, compelling the defaulting party to fulfil its contractual obligations. Concurrently, it sets out a framework for the computation of damages, ensuring that the aggrieved party is adequately compensated for any losses arising out of the breach. Furthermore, in scenarios where the breach fundamentally negates the purpose of the contract, the Act provides for the termination or cancellation of the contract, offering an exit mechanism to parties entrapped in unviable transactions.²⁶ To ensure justice and equity, the Act also enumerates several other remedies, allowing courts the discretion to mold reliefs in accordance with the peculiarities of each case.

The Sale of Goods Act of Ghana is a testament to the country's commitment to promote transparent, predictable, and equitable commercial practices. While it harmonizes with global norms, it remains intrinsically tailored to Ghana's unique needs, striking a balance that has ensured its relevance and effectiveness in facilitating commerce within and beyond the nation's borders.²⁷

B. Definition of breach under the Act

The Sale of Goods Act of Ghana, a pivotal legal instrument in the realm of commercial transactions within the nation, offers a nuanced understanding of what constitutes a 'breach'. Breach, within the ambit of the Act, is not merely a superficial non-adherence to a contractual term but extends to any failure, refusal, or inability of a party to fulfil its obligations as expressly stipulated or implicitly implied within the contract.²⁸ The Act, in its meticulous architecture, demarcates between conditions and warranties. A condition is a fundamental term, the breach of which gives the aggrieved party the right to treat the contract as repudiated. On the other hand, a warranty is a subsidiary term, and its breach allows the aggrieved party only to claim damages without the right to repudiate the contract.²⁹ This distinction is seminal in understanding the magnitude of the breach and, consequently, the remedies available.

Furthermore, the Act encapsulates not only the express terms but also implied terms concerning the quality, fitness, and title of the goods. Any deviation from these implied stipulations can be construed as a breach, offering remedies to the aggrieved party.³⁰ For instance, there exists an implied condition that the goods sold should correspond with the description. If a buyer, relying on the description, enters into a contract and subsequently discovers a discrepancy between the goods delivered and the description, a breach is said to have occurred under the Act.³¹

It's imperative to underscore that the Act's notion of breach is rooted in the principles of equity, fairness, and commercial reasonability. By categorizing breaches based on their severity and implications, the Act ensures that remedies are proportionate and just, striking a balance between the rights of the aggrieved party and the obligations of the defaulting party. In essence, the Sale of Goods Act of Ghana's definition of breach mirrors its overarching objective of ensuring fair trade practices, protecting parties' interests, and bolstering commercial trust within and beyond Ghana's borders.³²

C. Classification of breaches: major vs minor

In the intricate dance of contractual relations, not all missteps carry the same weight or lead to the same consequences. The Sale of Goods Act of Ghana, reflecting this nuanced understanding, meticulously classifies breaches into two overarching categories: major and minor breaches, ensuring that remedies are proportionate to the gravity of the breach and aligned with principles of justice and commercial reasonability.³³

Major breaches, often synonymous with the breach of conditions in the Act, are those that strike at the very heart of the contract. They aren't mere peripheral infractions but rather violations that deprive the aggrieved party of the essence of what was bargained for. Such breaches afford the non-defaulting party the right to treat the contract as repudiated, thereby entitling them to both rescind the contract and claim damages. Essentially, the contract's very foundation is shaken by such breaches, rendering its further performance either redundant or inequitable.³⁴

Minor breaches, paralleling the breach of warranties in the Act, are infractions that, while constituting a deviation from the contractual terms, do not undercut the core of the agreement. Such breaches, though not insignificant, do not warrant the annihilation of the contract in its entirety. The remedies for such breaches are typically confined to damages, ensuring that the aggrieved party is compensated for any loss incurred without dismantling the entire contractual edifice.³⁵

²⁴ Sarpong, G. 'Sale of Goods and Consumer Protection in Ghana', Black Mask Ltd, (2002).

²⁵ Oppong, R.F. 'Private International Law in Ghana', Wolters Kluwer, (2012).

²⁶ Bentsi-Enchill, K. 'Ghana Land Law: An Exposition, Analysis and Critique', Sweet & Maxwell, (1964).

²⁷ Ocran, K.A. 'A Textbook on the Ghanaian Law of Contract', Advanced Legal Publications, (1991).

²⁸ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

²⁹ Sarpong, G. 'Sale of Goods and Consumer Protection in Ghana', Black Mask Ltd, (2002).

³⁰ Bentsi-Enchill, K. 'Ghana Land Law: An Exposition, Analysis and Critique', Sweet & Maxwell, (1964).

³¹ Mensa-Bonsu, H.J.A.N. 'Developments in Ghanaian Jurisprudence: The Last 50 Years', Ghana Law Journal, (2007).

³² Ocran, K.A. 'A Textbook on the Ghanaian Law of Contract', Advanced Legal Publications, (1991).

³³ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

³⁴ Asare, K. 'Contract Law in Ghana', Frontiers Publications, (2011).

³⁵ Sarpong, G. 'Sale of Goods and Consumer Protection in Ghana', Black Mask Ltd, (2002).

This bifurcation between major and minor breaches is more than a mere academic exercise; it's pivotal in ensuring the proportionality of remedies. By tailoring the remedial measures to the gravity of the breach, the Act ensures a balanced approach that safeguards the interests of the aggrieved party without disproportionately penalizing the defaulting party. Such a classification also offers clarity to contracting parties, guiding them in their commercial endeavors and ensuring that they are apprised of potential ramifications of their actions or inactions.³⁶

To encapsulate, the Sale of Goods Act of Ghana's approach to classifying breaches into major and minor categories reflects a profound understanding of the dynamics of commercial transactions. This delineation, rooted in principles of fairness, equity, and commercial expediency, ensures that the world of trade within Ghana is governed by rules that are both just and pragmatically attuned to the realities of business.³⁷

D. Remedies for breach

The Sale of Goods Act of Ghana, an emblematic piece of legislation, meticulously outlines a repertoire of remedies available to an aggrieved party in the event of a breach of a sale contract. These remedies, crafted with precision, aim to restore the injured party to the position they would have been in had the contract been performed satisfactorily, ensuring justice is meted out proportionately and equitably.³⁸

First and foremost, the Act recognizes the right to sue for specific performance. Specific performance, an equitable remedy, obliges the defaulting party to fulfil its original obligations under the contract. Typically invoked when the goods in question possess unique value or when damages are an inadequate remedy, this provision mandates the party in breach to perform its duties as stipulated, ensuring that the aggrieved party receives precisely what was bargained for.³⁹

Damages, another cornerstone of the Act's remedial arsenal, offer monetary compensation for losses suffered due to the breach. The Act provides a clear framework for the computation of these damages. While they are intended to cover actual losses, they should not be punitive in nature. The objective is compensatory, ensuring that the aggrieved party is made whole. Factors like foreseeability, mitigation, and direct causation play a crucial role in determining the quantum of damages.⁴⁰

Further, in scenarios where the breach is of such a nature that it undermines the very essence of the contract, the Act permits the termination or cancellation of the contract. This allows the aggrieved party to liberate itself from the bounds of the contract and seek alternative avenues to fulfil its commercial objectives.

Such a remedy becomes pivotal, especially in instances where continued adherence to the contract would lead to disproportionate losses or where the trust between the contracting parties has been irrevocably eroded.⁴¹

Apart from these primary remedies, the Act also encompasses various other remedial provisions tailored to specific circumstances. These may include reduction in price, return of goods, or even injunctions in certain cases, ensuring a comprehensive suite of tools to address a multitude of breaches.⁴²

Conclusively, the Sale of Goods Act of Ghana, with its vast array of remedies for breaches, provides a robust framework ensuring that justice is neither delayed nor denied. By offering remedies that are both equitable and pragmatically attuned to commercial realities, the Act stands as a beacon of contractual justice, guiding and guarding commercial transactions within Ghana's bustling marketplace.

The United Nations Convention on Contracts for the International Sale of Goods (Cisg)

The United Nations Convention on Contracts for the International Sale of Goods (CISG) stands as a monumental embodiment of international efforts to harmonise legal regimes governing cross-border sale of goods. Nestled at the crossroads of diverse legal traditions, the CISG provides a unifying framework that attempts to bridge the oft-perceived chasm between civil law and common law jurisdictions, ensuring smoother international trade flows.⁴³

Conceived under the aegis of the United Nations Commission on International Trade Law (UNCITRAL), the CISG was adopted in 1980 in Vienna, subsequently entering into force in 1988. As of now, a significant number of countries are signatories, which bears testimony to its acceptance and applicability in a vast majority of international trade transactions.⁴⁴

At its core, the CISG governs the formation of contracts for the international sale of goods, the rights and obligations of the buyer and seller, and provides remedies in case of breaches. Its scope, however, is circumscribed by specific exclusions, such as the sale of goods bought for personal, family, or household use, or sales via auction.⁴⁵

A notable hallmark of the CISG is its flexibility. Recognizing the heterogeneous nature of international contracts, the Convention permits parties to derogate from or vary the effect of any of its provisions, ensuring that commercial autonomy isn't unduly compromised.⁴⁶

⁴¹ Asare, K. 'Contract Law in Ghana', Frontiers Publications, (2011).

⁴² Sarpong, G. 'Sale of Goods and Consumer Protection in Ghana', Black Mask Ltd, (2002).

⁴³ Schlechtriem, P. & Schwenzer, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

⁴⁴ Ferrari, F. 'The CISG and its Impact on National Legal Systems', Sellier, (2008).

⁴⁵ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', Kluwer Law International, (2017).

⁴⁶ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', Kluwer Law International, (2009).

³⁶ Ocran, K.A. 'A Textbook on the Ghanaian Law of Contract', Advanced Legal Publications, (1991).

³⁷ Bentsi-Enchill, K. 'Ghana Land Law: An Exposition, Analysis and Critique', Sweet & Maxwell, (1964).

³⁸ Date-Bah, S. 'The Sale of Goods Act of Ghana: An Overview', Ghana Law Journal, (1980).

³⁹ Mensa-Bonsu, H.J.A.N. 'Developments in Ghanaian Jurisprudence: The Last 50 Years', Ghana Law Journal, (2007).

⁴⁰ Bentsi-Enchill, K. 'Ghana Land Law: An Exposition, Analysis and Critique', Sweet & Maxwell, (1964).

When it comes to breaches, the CISG, in line with its remedial ethos, focuses on ensuring that aggrieved parties are placed in the position they would have been in had the contract been properly executed. To this end, it offers remedies such as requiring performance, providing for the right to avoid the contract, and claiming damages. Particularly laudable is the Convention's emphasis on promoting good faith and encouraging parties to act in accordance with reasonable commercial standards of fair dealing.⁴⁷

The CISG, with its nuanced provisions and balanced approach, serves as a testament to the international community's commitment to foster a conducive environment for global commerce. By offering a harmonized set of rules, it reduces legal uncertainties inherent in transnational transactions, thereby promoting international trade, facilitating economic integration, and contributing to the broader project of global cooperation and understanding.

A. Historical background and purpose of the CISG

The genesis of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is emblematic of the broader ambition to foster a harmonized legal framework for international trade, a pursuit that had garnered traction especially in the post-war period. Historically, cross-border sales were governed by a patchwork of national laws, which, while reflecting the nuances of each jurisdiction, often posed challenges in terms of predictability, consistency, and fairness in international commerce.⁴⁸

With the increasing global markets in the 20th century, it became apparent that a uniform legal regime was needed to eliminate or reduce the uncertainties stemming from the application of different national laws. The CISG's origins can be traced back to the work of the International Institute for the Unification of Private Law (UNIDROIT), which commenced its work on the uniform laws for international sales in the 1930s. This led to the formation of two distinct conventions in 1964 - the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). However, these conventions were not widely ratified, primarily due to their Euro-centric tilt and lack of extensive consultation.⁴⁹

Beyond the purely legal objectives, the CISG also carries a broader socio-economic and political purpose. By harmonising the rules governing international sale contracts, the Convention seeks to promote international trade, thereby contributing to global economic development and fostering friendly relations amongst nations.⁵⁰

The CISG stands not merely as a set of legal provisions but as a testament to the international community's commitment to facilitating global commerce, fostering understanding, and promoting a shared vision of equitable economic progress.

B. Definition of breach under the CISG

Within the architectural edifice of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the notion of a 'breach' is succinctly, yet comprehensively, delineated. This definition reflects the Convention's core objective of creating a harmonized, yet flexible, framework suitable for diverse transactions across varied legal cultures.⁵¹

Under the CISG, a breach materializes when a party fails to perform any of its obligations as stipulated in the contract or by the Convention itself. This includes, but is not limited to, the delivery of non-conforming goods, failure to deliver goods altogether, or any other violation of stipulated or implied terms of the agreement.⁵² Such an encompassing definition ensures that a wide spectrum of non-performances, from patent defaults to subtler deviations, are encapsulated within the ambit of breaches.

A cornerstone of the CISG's approach to breaches lies in its distinction between 'fundamental' and 'non-fundamental' breaches. A breach is fundamental if it results in such detriment to the aggrieved party that substantially deprives them of what they were entitled to expect under the contract, unless the defaulting party did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result. This definition, steeped in both objectivity and subjectivity, underscores the Convention's endeavour to balance commercial expectations with reasonability. A fundamental breach entitles the aggrieved party to rescind the contract, thereby amplifying the gravity attached to such violations.

In contrast, non-fundamental breaches, while not dismissing the defaulting party's liability, do not afford the aggrieved party the drastic remedy of contract avoidance. Instead, remedies are usually confined to damages or specific remedies, like repair or replacement, where applicable.⁵³

The CISG's approach to defining breach, with its nuanced distinctions and comprehensive scope, is emblematic of its commitment to ensure that remedies are proportional, just, and reflective of the practical realities of international commerce. By providing clarity on what constitutes a breach and the ramifications thereof, the Convention fortifies trust in international transactions, ensuring that global commerce transpires in an environment of predictability and justice.⁵⁴

C. Classification of breaches: fundamental vs non-fundamental

The United Nations Convention on Contracts for the International Sale of Goods (CISG) introduces a pivotal dichotomy in addressing breaches: that of 'fundamental' versus 'non-fundamental'

⁴⁷ Kroll, S., Mistelis, L., & Viscasillas, P.P. 'UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary', C.H. Beck, (2011).

⁴⁸ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', Kluwer Law International, (2009).

⁴⁹ Zeller, B. 'The Development of Uniform Laws - A Historical Perspective', Nordic Journal of Commercial Law, (2007).

⁵⁰ Schwenzer, I. & Hachem, P. 'The CISG - A Story of Worldwide Success', International Trade and Business Law Review, (2012).

⁵¹ Schlechtriem, P. & Schwenzer, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

⁵² Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', Kluwer Law International, (2017).

⁵³ Kroll, S., Mistelis, L., & Viscasillas, P.P. 'UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary', C.H. Beck, (2011).

⁵⁴ Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2013).

breaches. This bifurcation, while seeming dichotomous, serves the Convention's overarching objective of ensuring that contractual non-performances are addressed proportionately and equitably, safeguarding the sanctity of international commercial transactions.⁵⁵

A 'fundamental breach', as defined under Article 25 of the CISG, transpires when a non-performance "results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract." This breach is not a trivial default but a substantial deviation, piercing the very core of the contract. The essence here is the aggrieved party's legitimate expectations - if these are substantially undercut, the breach is fundamental. Furthermore, the foreseeability criterion encapsulated in the same provision adds an additional layer of complexity, as the detriment must either be foreseen or be such that a reasonable person in the same situation would have anticipated.⁵⁶

The ramifications of a fundamental breach are severe. The aggrieved party is entitled to rescind the contract, demanding the restitution of what has been provided, in addition to claiming damages. Such a profound remedy underscores the gravity attached to such breaches, given that they shake the contractual edifice to its very core.⁵⁷

On the other hand, 'non-fundamental breaches' constitute any non-performance that does not meet the threshold of being fundamental. While they represent a departure from the contract's terms, they do not sufficiently erode the essence of what was bargained for. The remedies for these breaches, in contrast to fundamental ones, are more circumscribed. The aggrieved party may claim damages but cannot rescind the contract unless the breaching party fails to perform within an additional time period stipulated by the aggrieved party.⁵⁸

This nuanced approach of the CISG in classifying breaches reflects its commitment to balance the interests of both parties. By tailoring remedies based on the gravity of the breach, the Convention ensures that contractual responses are proportionate, fostering an environment conducive to global commerce, built on mutual trust, fairness, and predictability.⁵⁹

D. Remedies for breach

The United Nations Convention on Contracts for the International Sale of Goods (CISG) enshrines a robust suite of remedies that cater to breaches, ensuring that parties involved in international sale contracts can seek redress proportionate to the gravity of the contractual non-performance. Through these remedies, the Convention endeavors to achieve *restitutio in integrum*, striving to

place the aggrieved party in the position they would have been had the contract been duly performed.⁶⁰

Upon a breach, one of the primary remedies the CISG offers is the right to 'specific performance', under Article 46. The aggrieved party can compel the breaching party to perform its contractual obligations unless the breach is non-fundamental. Notably, the Convention acknowledges that courts in certain jurisdictions, especially those with common law traditions, may be reluctant to grant specific performance and provides them with discretion in this matter.⁶¹

Further, the CISG allows for 'contract avoidance', a remedy of profound implications, reserved primarily for fundamental breaches as enshrined in Article 49. Once a contract is avoided, the parties are released from their future obligations, and restitution is sought to the extent possible. Correspondingly, buyers also have a right to avoid the contract under Article 64 in scenarios where the seller fundamentally breaches their obligations.⁶²

'Damages' form another cornerstone of the CISG's remedial regime. Article 74 to Article 77 delineate the architecture of damages, which are essentially monetary compensations to cover the loss, including loss of profit, suffered by the aggrieved party. The Convention, in its wisdom, also provides for foreseeability constraints: damages cannot be claimed for losses which the defaulting party did not foresee or ought not to have foreseen at the time of contract conclusion.⁶³ This encapsulates the principle of mitigation, urging parties to minimize losses where possible.

In addition to these primary remedies, the CISG proffers other nuanced solutions. These include 'price reduction' under Article 50, which allows the buyer to proportionally reduce the price if the goods received are non-conforming, and the right to 'repair', which enables buyers to request the seller to repair defective goods under certain conditions.⁶⁴

In summary, the CISG, with its intricate web of remedies, ensures that parties to an international sale contract have at their disposal a comprehensive arsenal to address breaches. By doing so, it fosters a commercial environment that is not only just and equitable but also cognizant of the diverse challenges and intricacies inherent in global commerce.

⁶⁰ Schwenzer, I. & Hachem, P. 'The CISG - A Story of Worldwide Success', *International Trade and Business Law Review*, (2012).

⁶¹ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', *Kluwer Law International*, (2017).

⁶² Ferrari, F. 'The CISG and its Impact on National Legal Systems', *Sellier*, (2008).

⁶³ Kroll, S., Mistelis, L., & Viscasillas, P.P. 'UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary', *C.H. Beck*, (2011).

⁶⁴ Magnus, U. 'Remedies under the UN Sales Convention: General Remarks and Selected Problems', *International Trade and Business Law Review*, (2001).

⁵⁵ Schlechtriem, P. & Schwenzer, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', *OUP*, (2010).

⁵⁶ Ferrari, F. 'Specific Topics of the CISG in the Light of Judicial Application and Scholarly Writing', *Journal of Law and Commerce*, (1995).

⁵⁷ Farnsworth, E.A. 'Damages and Specific Relief', *The American Journal of Comparative Law*, (1979).

⁵⁸ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', *Kluwer Law International*, (2009).

⁵⁹ Bridge, M. 'The International Sale of Goods: Law and Practice', *OUP*, (2013).

The Unidroit Principles of International Commercial Contracts (Picc)

The UNIDROIT Principles of International Commercial Contracts (PICC) stand as a magnum opus in the realm of international commercial law, a confluence of principles and norms that provide a comprehensive framework for international commercial contracts, irrespective of the underlying legal traditions. Created by the International Institute for the Unification of Private Law (UNIDROIT), these principles have been hailed as a triumph of legal scholarship, integrating diverse legal traditions into a cohesive, universal guide.⁶⁵

The PICC's genesis stems from a perceived need to offer parties engaged in international commerce a neutral legal foundation, one that is not ensnared in the intricacies of national laws. Instead of attempting to harmonise domestic laws, the PICC offers a stand-alone set of principles that parties can voluntarily adopt, either wholly or in part, for their contractual relationships. Since their first publication in 1994, and subsequent revisions, the PICC has been lauded and employed by arbitrators, scholars, and practitioners across the globe.⁶⁶

At its core, the PICC is a mosaic of general principles and detailed rules. It addresses the formation and validity of contracts, their interpretation and content, and the rights and obligations of contracting parties. Furthermore, the principles delve deep into issues of performance, non-performance, and the remedies available for breaches.⁶⁷

Non-performance under the PICC is defined comprehensively, capturing scenarios where a party fails to perform its obligations, either through acts or omissions. This understanding of non-performance underscores the PICC's holistic approach, which goes beyond mere explicit breaches to encompass a spectrum of failures, aligning with the realities of commercial transactions.⁶⁸

In terms of remedies, the PICC adopts a balanced approach, ensuring that the aggrieved party is sufficiently redressed without unduly penalising the defaulting party. Specific performance is endorsed as a primary remedy, paralleling the principles seen in civil law jurisdictions. However, like the CISG, an emphasis is placed on damages as a means of compensation, ensuring that the aggrieved party is restored to the position they would have been in had the contract been duly performed.⁶⁹

The UNIDROIT Principles of International Commercial Contracts stand as a beacon of universality in the often fragmented landscape of international commercial law. By providing a neutral, comprehensive, and adaptable set of rules and principles, the PICC

enhances predictability and fairness in international commercial transactions, fostering an environment conducive to global commerce and cooperation.

The UNIDROIT Principles of International Commercial Contracts represent an audacious endeavour to sculpt a universal legal lexicon for international commerce. Through its balanced provisions and adaptable nature, the PICC seeks to usher in a world where commercial transactions are underpinned by trust, predictability, and a shared understanding of fairness.

Summary and Conclusion

This article addresses the importance of sale contracts. Sale contracts do not only serve as an essential bridge between buyers and sellers, facilitating trade and economic growth, but also bolster economic development, employment, and technological advancement. As a result of globalization, there are existing sale contracts that serve as instruments to shape mechanisms involved global trade. Compensations and other remedies has been positioned internally and regionally due to administrative, procedural and operational negligence that results in breaches which can emanate from parties, lawyers, business executives affecting companies and organizations. International sale contracts are fraught with challenges emanating from the interplay of different legal systems, cultures, and commercial practices. Such breaches, if not remedied, can erode trust between parties, leading to substantial economic losses, potential future prospects and even destroy local and local /international relations. Breaches under sale contracts when remedied timely, assumes an ever-greater significance.

References

1. Asare, K. (2011). 'Contract Law in Ghana', Frontiers Publications.
2. Atiyah, P. S. (1989). 'An Introduction to the Law of Contract', Clarendon Press.
3. Basedow, J. (2006). 'Harmonization of Private Law: Do We Need It?', Hamburger Zentrum für Versicherungswissenschaft,
4. Bentsi-Enchill, K. (1964). 'Ghana Land Law: An Exposition, Analysis and Critique', Sweet & Maxwell.
5. Berger, K.P. (2006). 'Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration', Kluwer Law International.
6. Boele-Woelki, K. (2017). 'The Principles of the UNIDROIT Principles 2016', International and Comparative Law Quarterly.
7. Bonell, M.J. (2005). 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers,
8. Bonell, M. J. (1997). The UNIDROIT principles in practice: the experience of the first two years. *Unif. L. Rev. ns*, 2, 34.

⁶⁵ Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers, (2005).

⁶⁶ Vogenauer, S. & Kleinheisterkamp, J. 'Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)', OUP, (2009).

⁶⁷ Boele-Woelki, K. 'The Principles of the UNIDROIT Principles 2016', International and Comparative Law Quarterly, (2017).

⁶⁸ Lando, O. & Beale, H. 'Principles of European Contract Law', Kluwer Law International, (2000).

⁶⁹ Lindh, T. 'The UNIDROIT Principles as a source of international contract law', Uniform Law Review, (2001).

9. Bonell, M.J. (2016). 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', *International Business Law Journal*.
10. Bridge, M. (2007). 'The International Sale of Goods: Law and Practice', OUP.
11. Bridge, M. (2013). 'The International Sale of Goods: Law and Practice', OUP.
12. Buckley, R.P. (1999). 'The International Sale of Goods: The Interaction of Domestic and International Regimes', *Journal of Business Law*.
13. Carter, J. & Laryea, J. (2015). 'Successful Construction Project Management: The Practical Guide', BookBaby.
14. Cordero-Moss, G. (2010). 'International Commercial Arbitration and Contract Law: An Interface', *Journal of International Arbitration*.
15. Date-Bah, S. (1980). 'The Sale of Goods Act of Ghana: An Overview', *Ghana Law Journal*.
16. Date-Bah, S.K. (1975). 'The Law of Sale of Goods in Ghana', *Journal of African Law*.
17. DiMatteo, L. (2017). 'Equity in International Law and the PICC', *Uniform Law Review*.
18. DiMatteo, L.A. (2005). 'International Sales Law: A Critical Analysis of CISG Jurisprudence', *Cambridge University Press*.
19. DiMatteo, L.A. (2014). 'International Sales Law: A Global Challenge', *Cambridge University Press*.
20. Farnsworth, E.A. (1979). 'Damages and Specific Relief', *The American Journal of Comparative Law*.
21. Ferrari, F. (2012). 'Applicability and Applications of the UNIDROIT Principles of International Commercial Contracts', *Uniform Law Review*,
22. Ferrari, F. (2012). 'Fundamental Breach under the UNIDROIT Principles and the CISG', *Uniform Law Review*.
23. Ferrari, F. (1995). 'Specific Topics of the CISG in the Light of Judicial Application and Scholarly Writing', *Journal of Law and Commerce*.
24. Ferrari, F. (2003). 'The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences', *Verona University Press*.
25. Ferrari, F. (2008). 'The CISG and its Impact on National Legal Systems', Sellier.
26. Goetz, C.J. & Scott, R.E. (1985). 'The Limits of Expanded Choice: An Analysis of the Interactions Between Express and Implied Contract Terms', *California Law Review*.
27. Goode, R. (2015). 'Choice of Law in International Commercial Contracts', *Oxford Journal of Legal Studies*.
28. Goode, R. (1998). 'Commercial Law in the Next Millennium', *Sweet & Maxwell's Commercial Law and Commercial Practice*.
29. Goode, R. (1992). 'The Codification of Commercial Law', *Modern Law Review*.
30. Goode, R. (1981). 'The Nature and Purposes of Commercial Law', *Law Quarterly Review*.
31. Griffith, D.A. (2002). 'The role of communication competencies in international business relationship development'. *Journal of World Business*, 37(4):256-265.
32. Honnold, J. (1999). 'Uniform Law for International Sales under the 1980 United Nations Convention', *Kluwer Law International*.
33. Honnold, J. (2009). 'Uniform Law for International Sales under the 1980 United Nations Convention', *Kluwer Law International*.
34. Joerges, C. (1991). 'The Impact of European Integration on Private Law: Reductionist Perceptions, True Conflicts and a New Constitution', *Common Market Law Review*.
35. Kadens, E. (2012). 'The Myth of the Customary Law Merchant', *Texas Law Review*.
36. Kroll, S. (2011). 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', *Review of Central and East European Law*.
37. Kroll, S., Mistelis, L., & Viscasillas, P.P. (2011). 'UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary', C.H. Beck.
38. Krugman, P. & Obstfeld, M. (2009). 'International Economics: Theory and Policy', Pearson.
39. Lando, O. & Beale, H. (2000). 'Principles of European Contract Law', *Kluwer Law International*.
40. Lind, D. (2009). 'Non-Performance and Remedies under International Contract Law Principles and Indian Contract Law: A Comparative Study', *Pace International Law Review*.
41. Lindh, T. (2001). 'The UNIDROIT Principles as a source of international contract law', *Uniform Law Review*.
42. Lookofsky, J. (2016). 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', *Kluwer Law International*.
43. Lookofsky, J. (2017). 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', *Kluwer Law International*.

44. Magnus, U. (2001). 'Remedies under the UN Sales Convention: General Remarks and Selected Problems', *International Trade and Business Law Review*.
45. Mann, F. (1992). 'The Legal Aspect of Money: With Special Reference to Comparative Private and Public International Law', OUP.
46. Maryville University 'Ethics in International Business', (June 2021). Online article assessed from: <https://online.maryville.edu/blog/ethics-in-international-business/> on 14/07/2024.
47. Mensa-Bonsu, H.J.A.N. (2007). 'Developments in Ghanaian Jurisprudence: The Last 50 Years', *Ghana Law Journal*.
48. Michaels, R. (2017). 'The Second Wave of Comparative Law and Economics?', *University of Toronto Law Journal*.
49. Michaels, R. (2007). 'The True Lex Mercatoria: Private Law Beyond the State', *International Legal Theory*.
50. Michaels, R. (2012). 'The UNIDROIT Principles as Global Background Law', *Duke Journal of Comparative & International Law*.
51. Michaels, R. (2012). 'The UNIDROIT Principles as Global Background Law', *Uniform Law Review*.
52. Mistelis, L.A. (2007). 'CISG - The First 25 Years: International Handel in the 21st Century', *Pace Law Review*.
53. Nicholas, B. (1989). 'The Vienna Convention on International Sales Law', *Law Quarterly Review*.
54. Ocran, K.A. (1991). 'A Textbook on the Ghanaian Law of Contract', *Advanced Legal Publications*.
55. Oppong, R.F. (2012). 'Private International Law in Ghana', Wolters Kluwer.
56. Perillo, J.M. (1994). 'UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review', *Fordham International Law Journal*.
57. Sarpong, G. (2002). 'Sale of Goods and Consumer Protection in Ghana', Black Mask Ltd.
58. Schlechtriem, P. & Butler, P. (2009). 'UN Law on International Sales: The UN Convention on the International Sale of Goods', *Springer*.
59. Schlechtriem, P. & Schwenzer, I. (2010). 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP.
60. Schmitthoff, C. (1988). 'Select Essays on International Trade Law', Stevens.
61. Schwenzer, I. & Hachem, P. (2012). 'The CISG - A Story of Worldwide Success', *International Trade and Business Law Review*.
62. Schwenzer, I. (2012). 'Global Sales and Contract Law', OUP.
63. Schwenzer, I. (2017). 'Ethical standards in CISG contracts' (Abstract). *Uniform Law Review*, 22(1)
64. Treitel, G. (2003). 'The Law of Contract', Sweet & Maxwell.
65. Vogenauer, S. & Kleinheisterkamp, J. (2009). 'Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)', OUP.
66. Vogenauer, S. & Kleinheisterkamp, J. (2015). 'Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)', OUP.
67. Vogenauer, S. (2015). 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart.
68. Zeller, B. (2014). 'Comparative Sales Law: The CISG and other International Instruments', *Hart Publishing*.
69. Zeller, B. (2009). 'Damages under the Convention on Contracts for the International Sale of Goods', OUP.
70. Zeller, B. (2007). 'The Development of Uniform Laws - A Historical Perspective', *Nordic Journal of Commercial Law*.
71. Zimmermann, R. & Whittaker, S. (2000). 'Good Faith in European Contract Law', CUP.
72. Zweigert, K. & Kötz, H. (1998). 'Introduction to Comparative Law', OUP.