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SCHOOL OF LAW
LLM IN BUSINESS LAW
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**THE IMPACT OF BREACH OF CONTRACT OF SALE OF GOODS
UNDER THE UNITED NATIONS CONVENTION ON CONTRACTS
FOR INTERNATIONAL SALE OF GOODS**

Thesis submitted in partial fulfillment of the
requirements for the award of a Master's
Degree in Business Law (LLM)

Submitted by:
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DECLARATION

I, MUGABO Emmanuel, solemnly declare that, this dissertation is original and has never been published or submitted to any other University for any other academic award before. However, where other peoples work has been used, it has been quoted.

Student's Name.....

Date.....

Signature.....

Supervisor's Name:.....

Date.....

Signature.....

DEDICATION

To Almighty God;

To my lovely Wife UWERA Anne, my Daughter ABERA Esther, my Sons MUGABO Ryan, MANZI Evan, my Parents, Brothers and Sister.

ACKNOWLEDGEMENTS

I am very grateful to express my immeasurable gratitude to the Lord Almighty for all the wonders He has done throughout my entire life, my Lecturers at University of Rwanda College of Arts and Social Science, School of Law who encouraged, helped and nurtured my academic strength and most especially Usta KAYITESI former Coordinator of LLM Business law Program and current Principal of College of Arts and Social Sciences.

My heartfelt special thanks are given to my beloved Wife UWERA R. Anne brothers and Sisters Egide TWAGIRAYEZU, KALISA Vincent, RURANGWA Julius, SAFALI Venant, MUTETERI Yvonne, NYIRASAFALI Harriet and their families and in memory of my beloved sister late MUKAYIRANGA Donatha for their love and support to me.

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MUGABO Emmanuel

LIST OF ABBREVIATION AND ACRONYMS

CISG	: Convention for International Sale of Goods
CECIC	: Convention on the use of Electronic Communications in International Contracts
CLPISG	: Convention on the Limitation Period in the International Sale of Goods
Ed	: Edition
FOB	: Free On Board
Http	: Hypertext Transfer Protocol
ICC	: International Commercial Code
ICUCRBL	: International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading.
Idem	: Same author, same book but different pages
LOA	: Law of Obligation Act
LTD	: Limited
Nº	: Number
NYE	: NYARUGENGE
PECL	: Principles of European Contract Law
Supra note:	Indicates reference above or previously used in the text.
UCC	: Uniform Commercial Code
UK	: United Kingdom
ULFCISG	: Uniform Law on the Formation of Contracts for the International Sale of Goods
UN	: Unites Nations
UNCITRAL:	United Nations Commission on International Trade Law
UNIDROIT:	International Institute for the Unification of Private Law
Vol	: Volume
WWW	: World Wide Web

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General introduction

This general introduction comprises the background for the United Nations Conventions on Contracts for the International Sale of Goods (CISG) that endeavors to highlight the ways in which CISG governs international sales contracts.

1. Background

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a treaty offering a uniform international sales law that has been ratified by more than 80 countries that account for a significant proportion of world trade, making it one of the most successful international uniform laws.¹ Rwanda, Madagascar and Bahrain were among the most recent states that have enacted laws authorizing accession to this Convention. Rwanda has concluded the domestic procedure for consideration of CISG by adopting a law for its adoption on 30th August 2013.²

However, there are other countries that are in due process to ratify this Convention. The CISG allows exporters to avoid choice of laws issues as the CISG offers accepted substantive rules on which contracting parties, courts, and arbitrators may rely.

The CISG was developed by the United Nations Commission on International Trade Law (UNCITRAL) and was signed in Vienna in 1980. The CISG is sometimes referred to as the **Vienna Convention**. It came into force as a multilateral treaty on 1 January 1988, after being ratified by eleven countries.³ The CISG has been described as a great legislative achievement and the ‘most successful international document so far’ in unified international sales law in part due to its flexibility in allowing Contracting States the option of taking exception to some specified articles.⁴

¹ United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, S.Treaty Document Number 98-9 (1984), UN Document Number A/CONF 97/19, 1489 UNTS 3.

² Article 1 of the law N° 068/2013 of 30/8/2013 Authorizing accession to the United Nations convention on contracts for international sale of goods adopted in Vienna in 1980, Official Gazette N° 51 of 23/2013.

³ The original eleven states that ratified CISG Convention were: Argentina, China, Egypt, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia, available at <http://cisgw3.law.pace.edu/cisg/biblio/felemgas.ytml> as accessed on 22nd February 2013.

⁴ *Supra note 1.*

The CISG governs international sales contracts if both parties are located in Contracting States, or private international law leads to the application of the law of a Contracting State (although, as permitted by Article 95 of the CISG), several Contracting States have declared that they are not bound by the latter ground). The autonomy of the parties to international sales contracts is a fundamental theme of the Convention: the parties can, by agreement, derogate from virtually any CISG rule, or can exclude the applicability of the CISG entirely in favor of other law.

When the Convention applies, it does not govern every issue that can arise from an international sales contract: for example, issues concerning the validity of the contract or the effect of the contract on the property in (ownership of) the goods sold are, as expressly provided in the CISG, beyond the scope of the Convention, and are left to the law applicable by virtue of the rules of private international law. Questions concerning matters governed by the Convention but that are not expressly addressed therein are settled in conformity with the general principles of the CISG or, in the absence of such principles, by reference to the law applicable under the rules of private international law.

In addition to the above, it's of a great importance to understand what is meant by a contract and the difference between ordinary contract and Contract of sale of goods, in this respect an ordinary contract is a promise or a set of promises the performance of which the Law recognizes as obligation and the breach of which the Law provides a remedy.⁵

On the other hand Section 2(1) of the sale of goods Act defines a contract of sale of goods as a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price, Subsections (3) and (4) give different names to two transactions. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some conditions later to be fulfilled the contract is called an agreement to sell.⁶

⁵Article 1 of the Law no 45/2011 of 25/11/2011 governing contracts in Rwanda, published in Official Gazette n° 04 bis of 23/01/2012.

⁶ JOHN DELATRE FALCONBRIDGE, section 2-4 of UK Sales of goods act of 1979, a selection of cases from on the sale of goods, available at <http://www.amazon.com/gp/product/B00088GTSG>, as accessed on 15th November 2014.

Contract of sale of goods is a specific type of legal contract, its nature of a transaction determines the type of contract law that applies. General contract law applies to such transactions as service agreements and sales of real property. The Hague convention relating to a Uniform law defines "goods" as all things that are movable at the time of the sale.⁷ Furthermore, the buyer's remedies for breach of contract by the seller, includes rights to demand delivery, to require repair or replacement of non-conforming goods, to avoid the contract, to recover damages, and to reduce the price for non-conforming goods. The seller's remedies for breach of contract by the buyer, includes rights to require the buyer to take delivery and/or pay the price, to avoid the contract, and to recover damages.⁸

Basing on the above general background therefore, this research will endeavor to address major issues that lead to the breach of contract for international sale of goods.

2. Interest of the Study

Under this research, the researcher wants to address the realized impact resulting from violation of contract for international sale of goods and the remedies subjected to the party approved to have been breached the contract. On this note, different writings of scholars and eminent authors related to this research were analyzed in order to address the factors that influence the breach of contract between two parties.

Furthermore, this research endeavors to discuss the binding nature of CISG in member states and non member states. The researcher also has been interested, to discuss the applicability of CISG in arbitration agreement and decisions of the courts thereof. In addition to the above, a profound practical example of settlement of disputes between seller and buyer were emphasized, hence realization of significance of this research. Based on the above mentioned statements, the researcher was interested in addressing specifically the negative effects experienced by the victimized party. In this regard

⁷Article 1 of the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods of Hague, 1 July 1964.

⁸ Articles 61-65 of United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, S.Treaty Document Number 98-9 (1984), UN Document Number A/CONF 97/19, 1489 UNTS 3.

therefore, the analysis made hereunder will enable the reader of this research to clearly understand the impact of breach of contract for international sale of goods.

3. Statement of the problem

As stated above, a contract of sale is a legal contract that involves exchange of goods and services. Contract of sale binds basically the seller and the buyer however, the transporting companies and insurance companies comes in as third party. The seller and the buyer are principal parties to the contract of sale of goods, though the two parties are bound by the contract of sale, in most cases one of the party do violate the provisions of the contract hence breach of such contract. In this research, the researcher will analyze the following legal questions affecting contracts for international sale of goods.

Why did the failure to comply with the provisions of the contract by the seller or the buyer leads to a remedy by either party?

Where can the parties to the contract of sale of goods refer their case of breach of contract in case one of the parties belongs to non signatory state of CISG convention?

To what extents are the court judgments and decisions of tribunals resulting from breach of contract for international sale of goods enforced and executed?

Basing on the statement of the problem, the researcher has responded to the above mentioned legal questions in the course of conducting this research.

4. Research methodology

This research was conducted using different techniques most of them are documentary techniques that was used to consult different text books and documents such as legal writings of eminent authors. In addition to the above, in order to answer the research questions various methods has been used for a critical analysis of international conventions related to the sale of goods such as conventions on contracts for international sale of goods, Regional, bilateral and multilateral trade agreements. Furthermore, a

comparative method has been used in making a comparison of how CISG member states and non member states settle disputes, execute and enforce foreign judgments arising from breach of contract for international sale of goods.

5. Scope of the research

The scope of international convention on sale of goods is broad and wide. In this respect, this research analyzed how parties to the contract of sale of goods are bound by CISG provisions. It also focused on the impact of breach of contract for international sale of goods under CISG. Finally, this work illustrates the ways in which disputes arising from breach of contract of sale of goods are settled by competent courts and arbitration tribunals.

6. Division of research

This research is divided into three chapters. Chapter one endeavors to highlight the applicability of CISG, duties of the seller and the buyer under contracts for international sale of goods. Chapter two deals with the impact of breach of contracts for international sale of goods and chapter three analyses ways in which disputes arising from breach of contract for international sale of goods are settled by competent courts and arbitration tribunals. It also shows how justice is rendered to the injured party in terms of execution and enforcement of judgments arising from breach of contract for international sale of goods. Finally this chapter ends with general conclusion.

CHAPTER I. APPLICABILITY OF CONTRACT FOR INTERNATIONAL SALE OF GOODS UNDER CISG

This chapter endeavors to highlight the scope of application of contract for international sale of goods. Furthermore, declarations and reservation of member states to CISG were emphasized. It also deals with the formation and duties of the parties to perform the contract for international sale of goods.

I.1. Scope of application of contracts for sale of goods under CISG

Pursuant to the stipulations of article 1 of CISG, contracts for international sale of goods are applicable between parties whose places of business are in different States; when the States are Contracting States; or when the rules of private international law lead to the application of the law of a Contracting State.⁹ The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between or from information disclosed by, the parties at any time before or at the conclusion of the contract.¹⁰

I.1.1. Binding nature of contract for sale of goods under CISG

The contract for international sale of goods binds the parties, when the contract has an international character and does not pertain to exclusively domestic transactions. The essential criterion for the territorial and personal applicability is the place of business of the contracting parties. Nationality of seller or buyer is without significance (Article 1(3) CISG).¹¹ The transaction has an international character when the parties have their places of business in different States at the time the contract is concluded. These States must not necessarily be Contracting States to the CISG.

⁹JELANA PELOVI, Selected critical issues regarding the sphere of application of the CISG, available at <http://www.Cisg.law.pace.edu/biblio/perovic.html>, as accessed on 3rd March 2013.

¹⁰CAROLINA SAF, *A Study of the Interplay between the Conventions Governing International Contracts of Sale; Analysis of the 1955 Hague Convention on the Law Applicable to Contracts of International Sales of Movable Goods*; the 1980 Rome Convention on the Law Applicable to Contractual Obligations; and the 1980 United Nations Convention on Contracts for the International Sale of Goods art 1 of the revised version of September 1999, available at <http://www.cisg.law.pace.edu/cisg/text/saf96.html>, as accessed on 25th November 2013.

¹¹ *Idem*.

The subject matter of the contract must also have sufficient contact to a contracting state. This contact can be fulfilled in two ways: sufficient contact is given when the places of business of the parties are each located in different contracting states (Article 1(1)(a) CISG). If both parties have their places of business in different contracting States, the CISG is applicable without reference to further requirements. Although not expressly defined, a "place of business" is considered to be established at a place where a party has given authority to conclude or perform contracts, and this place has been established for a certain length of time.¹²

Article 10 of CISG addresses the situation in which a party has more than one place of business or has no place of business. In this respect therefore, if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract; if a party does not have a place of business, reference is to be made to his habitual residence.

I.1.2. Exclusion of certain contracts from the scope of CISG

The CISG does not universally apply to all contracts involving the sale of goods between parties from different countries, since certain types of contracts are specifically excluded from the scope of the Convention.¹³ In other words, CISG does not apply to sales of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use; by auction, on execution or otherwise by authority of law; of stocks, shares, investment securities, negotiable instruments or money. Also, the CISG does not apply to "contracts in which the preponderant part of the obligation of the party who furnishes the goods consists in the supply of labor or other services" (i.e. contracts for personal and professional services).¹⁴

¹² *Idem*.

¹³ Matthew A. Peluso, *The Magazine for International Business and Diplomacy* No. 3 March 2011, available at <http://www.ibde.org/component/content/article/98-convention-on-contracts-for-the-international-sale-of-goods-an-example-of-successful-international-commerce>, as accessed 5th March 2013.

¹⁴ *Idem*.

I.1.3. Declarations and reservations of member states to CISG

The United Nations Convention on contracts for international sale of goods has successful unified international sales laws and has been most successful document so far. Its advantages are that it has state legitimacy and contains its own values in establishing its legitimacy. CISG is also credited to be the most successful international uniform law.¹⁵

When ratifying the CISG, a country can exclude application of subparagraph 1(b) of Article 1, as permitted by Article 95 of the Vienna Convention, thereby restricting the role of private international law in determining the applicability of the CISG when both contracting parties do not have their relevant places of business in Contracting States. In this regard Countries like China, United States, Czech Republic, Germany and Singapore have declared that they will not be bound by the above mentioned condition basing on provisions of Article 95.¹⁶

Furthermore, pursuant to the Articles 12 and 96 of the Convention, any provision of Article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in some countries for example, the Countries like Denmark, Estonia and Sweden.¹⁷

In this regard, consequence of Article 12, among other provisions of the CISG, is that the CISG supersedes otherwise applicable requirements of form to conclude a contract for the sale of goods. However, when the parties to a covered contract for the sale of goods have their primary places of business in different countries that are Contracting States to the CISG, the Convention automatically governs “the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract”.¹⁸ It's upon state's declaration therefore, that practitioner must keep informed of the current status of

¹⁵ Bruno Zeller, *CISG and the Unification of International Trade Law*, P. 94, Routledge, USA, 270 Madison Ave, New York, NY 10016, (1st ed, 2007).

¹⁶UNCITRAL, Digest of case law on the United Nations Convention on the International Sale of Goods (“Digest”), Article 1-A/CN.9/SER.C/DIGEST/CISG, available at http://www.uncitral.org/english/clout/digest_cisg_e.htm, as accessed on 14th November 2013.

¹⁷ *Idem*.

¹⁸ CISG, Articles 4 and 6, available at <http://cisgw3.law.pace.edu/cisg/text/treaty.html>, as accessed on 14th November 2013.

Contracting States, including any declarations allowed under Articles 90 to 96 of CISG that these States have made.

I.2. Making of proposals for formation of contract under CISG

A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

I.2.1. Offer

To establish an offer under CISG, there must be an evidence indicating whether an offer was addressed to one or more specific persons, the intention of the offeror to be bound and sufficiently definite by indicating the goods and expressly or implicitly fixes or makes provisions the quality and the price.¹⁹

1) Invitation to offer

Proposal other than one addressed to one or more specific persons are not offer but are considered "invitation for offer" hence enquiries simple statement of intent and mass distribution merchandise brochures that does not constitute an offer unless the person making the proposal clearly indicates an intention to make an offer under CISG.²⁰ In some civil countries, a proposal to supply goods or services at a stated price which is made by professional supplier in a public advertisement or by display of goods is presumed to be an offer to sell or supply until the stock or supplier's capacity the service is exhausted.²¹

¹⁹Article 14. See general application in Switzerland 19 December 1995 Appellate court Thurgau, available at <http://cisgw3.law.pace.edu/cases/010425bl.html>, as accessed on 15th October 2013.

²⁰ALLISON E.BUTLER, A practical guide to CISG Negotiations with through litigation 2007 supplement2, available at <http://cisgw3.law.pace.edu/cisg/biblio/butler6.html>, as accessed on 15th October 2013.

²¹Andersern 52ff; Germany, munichener lomentaner(kramer)145 RZ: Bianca, II Cantrotto II 256 art 2:201 (3) PECL, offer available at http://www.cisg.law.pace.edu/text/peclcomp_14.htm, as accessed on 15th October 2013.

2) Intent

The CISG requires the seller to express in his/her proposal the intention to give an option to the buyer. The elimination of the writing formalities of the contract means that the contract can be established verbally or through writing.²² For example, electronic communication or facsimiles with the focus under the CISG being whether the offerer had the intention to be bound by its offer if accepted by the offeree.

The intent is established when observing the statements or conduct of a party which are to be interpreted according to his intent, where other party knew or could have an ware of what intent was. The focus of this provision is to establish the actual intent of actor as this achieves the contractual interpretation to determine the real mutual will of the parties, the interpretation of the parties define the agreed terms of the parties. In cases of ambiguous statements or unclear conduct intent cannot be established.²³

I.2.1.1. Acknowledgement and acceptance of the offer

A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror.²⁴

A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer. However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to

²² MICHEL. P.VAN ALSTINE, *contractual obligation through the prism of Uniform international sales law*, 37. Virginia journal of international law (fall 1996)1-105.

²³ Switzerland 5 April 2005, Supreme Court, available at <http://cisgw3.law.pace.edu/case/050405sl.html>: see also Russian 21st February 1997 arbitration proceedings 373/1995, available at <http://cisgw3.law.pace.edu/cases/970221r1.html>, as accessed on 15th October 2013.

²⁴ ALLAN FARNSWORTH, *Formation of contract*, available at <http://www.cisg.law.pace.edu/cisg/biblio/farnsworth1.html>, accessed on 15th October 2013.

that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance. An offer to contract must be addressed to a person, be sufficiently definite that is, describe the goods, quantity, and price and indicate an intention for the offeror to be bound on acceptance.²⁵

Further, where there is no explicit price or procedure to implicitly determine price, then the parties are assumed to have agreed upon a price based upon that generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances.

I.2.1.2. Effectiveness of the offer

If a proposal meets the requirements for an offer set forth in CISG Article 14, the next step is to determine when that offer takes effect. This point in time is significant as regards the offeror's right to 'withdraw' an offer prior to the time of its receipt by the offeree. According to Article 15, paragraph (I), an offer becomes effective when it 'reaches' the offeree. Whereas an offer made orally may be said to 'reach' the recipient immediately (as soon as it is made), a written communication first reaches the offeree when it is actually 'delivered' to the offeree or to his place of business.²⁶

I.2.1.3. Revocation of offer

According to paragraph (2) of Article 15, an offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer. It should be emphasized that Article 15(2) applies only to an offer which it has not even 'reached' the offeree (the recipient) and hence cannot be described as having 'become effective'; such an offer can be 'withdrawn'. The right to 'revoke', dealt with in CISG Article 16, concerns the right of the offeror to call back an offer which has reached the offeree and which has therefore become effective.²⁷ On the other hand, Principles of European Contract Law under Article 2:205(2) and (3) provides that, offer may be revoked if the revocation reaches the offeree before it

²⁵JACOB ZIEGEL AND CLAUDE SAMSON, 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) Toronto.

²⁶JOSEPH LOOKOFSKY & BERNSTEIN, *Understanding the CISG in Europe*, 2nd ed. (2003), available at www.cisg.law.pace.edu/cisg/biblio/lookofsky.html, accessed on 20th Novemebr, 2013.

²⁷ *Idem*.

has dispatched its acceptance or, in cases of acceptance by conduct, before the contract has been concluded. An offer made to the public can be revoked by the same means as were used to make the offer. However, a revocation of an offer is ineffective if the offer indicates that it is irrevocable; or it states a fixed time for its acceptance; or it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.²⁸

Pursuant to Article 16 of the U.N. Convention on Contracts for the International Sale of Goods and Article 2:202 of the Principles of European Contract Law ("PECL") deal with the problem of whether an offer is binding and when it is irrevocable. Similarly, under the PECL, an offer becomes effective when it reaches the offeree and a subsequent revocation of the offer is regulated by PECL. However, the offer may be withdrawn before it reaches the offeree. In that situation, it will not become effective.²⁹

There is divergence in the way in which different legal systems deal with the matter of revocation of an offer. In common law systems, the offeror, in the absence of consideration given by the offeree, has been granted the freedom to revoke the offer before the contract is concluded, *e.g.*, in the case of written assent, before the offeree dispatches the acceptance, thus weakening the binding force of an offer.³⁰

On the other hand, in civil law systems, generally, a firm offer cannot be revoked until its rejection or expiry; therefore, the offeror is bound by the offer for a reasonable time. In the latter regimes, the offeror, with his offer, impliedly grants the offeree a certain reasonable time to consider and respond to the offer. In this context, if the offeror does not indicate otherwise, there is the presumption of irrevocability for a reasonable time, unlike in the common law systems.³¹

The CISG Convention provides that an offer is generally revocable; the right of the offeror to revoke his offer terminates at the moment the contract is concluded. However, it must be

²⁸ Principle of European contract law part I and II of revised version of 1998 and part III of 2002 revised version, articles 2:202 and 1:303 interpreting article 16 of CISG.

²⁹ JOHN FELEMEGAS ED, *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, Cambridge University Press (2006).

³⁰ ORKUN ARKSELI: *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, page 301 published by Cambridge university press.

³¹ *Idem*, Page 302.

noted that in the case in which an offer is accepted by a written indication of assent, CISG Article 16 provides that the right of the offeror to revoke the offer terminates at the moment the offeree has *dispatched* his acceptance, and not at the moment the acceptance reaches the offeror.³²

Here, it is worthwhile to mention briefly how the UNIDROIT Principles deal with this issue. Article 2.4 of the UNIDROIT Principles regulates the revocation of an offer, in the same manner as CISG Article 16.³³ In this regard, Andrea VINCZE argues that the UNIDROIT Principles also assume the common law presumption of revocability.³⁴

I.2.1.4. Restrictions of the offer

One of the restrictions provides that an offer is irrevocable if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; the second restriction provides that offers on which the offeree has acted in reliance are also irrevocable. Generally, for irrevocability, the offeror should intend to make his offer irrevocable and his offer should indicate that fact. However, the mere fixing of a time for acceptance makes the offer irrevocable. The PECL provides that an offer is revocable, but also provides three exceptions to that general rule: if the offer indicates that it is irrevocable, if it states a fixed time for its acceptance, if it was reasonable for the offeree to rely on the offer as being irrevocable, and the offeree has acted in reliance on the offer.³⁵

The wording of PECL Article 2:202(3)(b) clears any doubt in CISG Art. 16(2) (a), by stating that a revocation of an offer is ineffective even if it merely states a fixed time for its acceptance. Accordingly, the offer if accepted becomes binding even though it was purportedly revoked before it was accepted. However, in the Convention fixing a time for acceptance is one of the pillars indicating the intention to be bound and there must be

³² ALLAN FARNSWORTH, *contracts restatement*, available at www.cisg.law.pace.edu/cisg/biblio/mather2.html, as accessed on 20th april 2013.

³³ UNIDROIT Principles for international Commercial Contracts, Published by International Institute for the Unification of private law, 3rd edition of 2010, art. 2.1.4

³⁴ ANDREA VINCZE, *Unidroit principles of international commercial contracts with official commentary*, article 2.4(2)(a) interpreting article 16 of CISG, 1994.

³⁵ LARRY A. DIMATTEO HUBE HURST, *Critical Issues in the Formation of Contracts Under the CISG*, available at <http://www.cisg.law.pace.edu/cisg/biblio/dimatteo6.html>, accessed on 12th October 2013.

additional grounds for irrevocability.³⁶ In this regard, there is a real danger that lawyers from different legal systems may interpret Article 16(2)(a) in divergent directions, representing their different jurisprudential heritage.

I.3. Formation of contract of sale under CISG

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. A contract of sale may be absolute or conditional. The contract of sale of goods has to incorporate express terms agreed upon by the parties. It may also include implied terms that will be assumed to have incorporated into the agreement even if they are not specifically written down. The contract should also contain terms governing action to be taken in the event of dispute between the parties.³⁷

Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or is subject to some condition thereafter, to be fulfilled the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.³⁸

A contract for the sale of goods can be made in any manner that shows agreement between the buyer and seller. A contract may be made orally or in writing or through any other conduct by both parties that acknowledges the existence of a contract³⁹. Furthermore, a contract for international sale of goods can be concluded between parties purposely to facilitate trade and business personnel in different states in accordance with article 20 of the United Nations Convention on the Use of Electronic Communications in International Contracts which provides that the use electronic communications shall be used in

³⁶The PECL Comments explain that if the offeror does not perform the contract he could become liable for non-performance, and would have to pay damages under the relevant PECL provisions contained in chapter 9, section 5, available at <<http://www.cisg.law.pace.edu/cisg/text/peclcomp16.html#cnpc>, as accessed on 13th November 2013.

³⁷ CHARTERED INSTITUTE OF PURCHASING AND SUPPLY, *Effective negotiation in Purchase and Supply*, The official CPIS Course book, page 56, Easton house, Easton on hill, Starmford, Lincolnshire PE9 3NZ, 2011.

³⁸ Chapter S-1 of The Revised Statutes of Saskatchewan, 1978 (effective February 26, 1979) as amended by the Statutes of Saskatchewan.

³⁹ The law relating to the transfer of ownership of property from one person to another for value, which is codified in Article 2 of the Uniform Commercial Code (UCC), a body of law governing mercantile transactions adopted in whole or in part by the United States.

formation and performance of contracts to all states and parties to CISG, except states which has made declarations in accordance with article 21 of CECIC.⁴⁰

I.4. Obligations of the seller and the buyer under CISG

The obligations of the seller and the buyer are treated in different ways, despite the fact that some of the remedies and obligations are the same; however, it is useful to deal with the obligations of the parties separately.

I.4.1. Obligations of the seller

Pursuant to Article 4 of the UN convention for international sale of goods, the Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract.⁴¹ In this regard the rights of one party are the obligations of the other party. The CISG requires that the seller deliver the goods and transfer property in the goods (Article 30 CISG). The buyer must accept the goods and pay the purchase price.

In accordance with Articles 30 through 55 CISG, the seller must deliver the goods; transfer any documents referring to the goods and transfer property in the goods. The object of the delivery is the goods bought by the buyer, which the buyer may have to specify in accordance with Article 65 CISG. The seller performs its delivery obligation by making the goods available to the buyer. If the contract of sale involves carriage of the goods, the seller must hand the goods over to the first carrier for transmission to the buyer. When the parties agree in the contract that the goods must be delivered to a particular place, or this place of delivery is determined by law, the seller is responsible for the delivery of the goods to that particular place (Article 31 CISG).⁴²

⁴⁰ Article 20 of United Nations Convention on the Use of Electronic Communications in International Contracts, adopted by United Nations General Assembly of 23rd November 2005.

⁴¹ *Supra note 1*, article 4.

⁴²Uncitral Digest of case law on the United Nations Convention on the International Sale of goods art. 31, at http://www.uncitral.org/uncitral/en/case_law/digests/cisg.html, as accessed on 8th September 2013.

I.4.1.1. Seller's obligation to respect time

In International trade it is common for the date of delivery to be fixed in terms of a period of time. This is generally to allow the seller some flexibility in preparing the goods for shipment and in providing for the necessary transportation. Seller must perform the required act of delivery at the time agreed upon by the parties or at the time determined by law (Article 33 CISG). In addition to early delivery (Article 52(1) CISG), the CISG allows the seller under observation of strict requirements to deliver goods after the agreed date for delivery (Article 48 CISG).⁴³ However, it should be noted that in some cases the parties may have modified their original agreement which called for delivery within a period by specifying a particular date for delivery, a date which might fall within or without the period of time originally specified. For instance, if the contract originally called for delivery in January, by subsequent agreement the seller may have agreed to deliver on 15 January.

In such a case, delivery must be made on that date. It should be noted that where the buyer is to choose the delivery date, the seller will need notice of that date in time to prepare the goods for shipment and to make any contracts of carriage he may be required to make under the contract of sale.⁴⁴ If the buyer does not file such notice in adequate time, the seller would not be liable for his own non-performance to the extent he could prove that this lack of knowledge constituted an impediment beyond his control.

On the other hand however, Convention on the Limitation Period in the International Sale of Goods provides that where the debtor (Seller) performs his obligation after the expiration of the limitation period, he shall not on that ground be entitled in any way to claim restitution even if he did not know at the time when he performed his obligation that the limitation period had expired.⁴⁵

⁴³Varo Marketing v.green 373 F. supp.ed 475, 2005 wl 141065,200 us Dist lex 1512325, available at <http://cisg3.law.pace.edu/cases/050615u.html>, as accessed on 29th September 2013.

⁴⁴Factual issues of delivery date precluded summary judgment, Germany 21st appellate court dusselof(15u 88/03) goods must delivered on the date included in the contract,15 September 2003 Appellate court, Rostock, available at <http://www.cisgw3.law.pace.edu/cases/030915gl.html>, as accessed on 29th September 2013.

⁴⁵Article 26 of the Convention on the Limitation Period in the International Sale of Goods of 14 June 1974 as complemented by Vienna protocol of 11th April 1980.

I.4.1.2. Obligation of the seller to hand over documents

Documents play an important role in the sale of goods. For instance, if the parties to a contract of sale choose a simplistic classification, they have, on the one hand, documents which represent the goods and which are frequently, for the parties, the real object of the sale; they are dealing in documents, not in goods. On the other hand, there are documents which are of no importance as far as the power of disposition over the goods (such as bills of lading or warehouse receipts) and over their value (an insurance policy, for instance) is concerned, but which are relevant to their usefulness (certificates of origin, test certificates, handling instructions and the like).⁴⁶

In addition to delivery of the contractual goods, seller must transmit to buyer any documents relating to the goods (Article 34 CISG). The exact documents that are covered by this regulation, as well as the time, place, and form of transmission of documents, must be designated in the contract of sale, by relevant business usages and/or custom.⁴⁷

Under CISG convention the seller shall not only be obliged to deliver, but also to hand over all documents relating to the goods and to transfer the property in them. On the other hand one can imagine how exactly this obligation to transfer the property is to be met and lies beyond the scope of the Convention and is thus governed by domestic law.

Domestic law, therefore, determines whether the property passes when the contract is concluded, which documents may be necessary for the transfer of property, and so on. For certain provisions there may arise quite complicated combinations of domestic law and obligations founded on the Convention: If the seller promises to transfer the property only after full payment of the purchase price, then this is primarily an admissible modification of his obligation under the Convention to transfer the property.⁴⁸

The questions, however, whether the seller can retain title at all despite delivery of the goods, and whether title passes automatically with payment of the balance of the purchase

⁴⁶ PETER SCHLECHTRIEM, *Comments on Article 34*, available at <http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem10.html>, as accessed on 29th September 2013.

⁴⁷ PETER SCHLECHTRIEM, *Sellers obligation under CISG*, Available at <http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem10.html>, as accessed on 30th September 2013.

⁴⁸ *Idem*.

price or whether another transfer act will be necessary, are subject to the regulations of domestic law, Particularly complicated may be those cases in which a reservation of title is stipulated in favor of the seller, not only to secure the balance of the purchase price, but also to secure other claims of the seller which are not subject to the Convention.⁴⁹ Where there is such an agreement, it is doubtful whether and to what extent the seller's obligation to transfer the goods is still governed by the Convention in the first place.

I.4.1.3. Obligations of the seller to transfer the property

An obligation to transfer the property against payment of all debts the buyer may still have such as those stemming from contracts of manufacture not subject to the Convention or from sales contracts dealing with the kind of goods mentioned in article 2 may constitute a security arrangement that bears little relation to a typical sale. It is quite conceivable that such a contract exceeds the boundary to financing agreements.⁵⁰ If the seller, after the time within which the buyer has to make regular installments payments has elapsed is not bound to transfer the property automatically but only upon the "buyer's" request, it is questionable whether the arrangement is an installment sale at all, or whether it is really a lease not subject to the Convention.

In accordance with Article 30 CISG, seller must transfer to buyer property in the goods. Although this obligation lies at the core of sales contracts, the CISG contains no further regulations on transfer of property. Indeed, as noted above, CISG states expressly that the Convention is not applicable to property-related aspects of sales contracts.⁵¹

As a rule, in sales involving the carriage of goods, the seller is obligated to conclude at the cost of buyer all necessary contracts for the carriage of the goods. Whenever the apparent right of the buyer to the goods is not guaranteed, seller must give the buyer notice of the consignment specifying the goods (Article 32(1) CISG). On the other hand, the seller is not required to insure the carriage of the goods unless particular circumstances require the

⁴⁹ *Idem.*

⁵⁰ PETER SCHLECHTRIEM & MATTHEW BENDER: *the Seller's Obligations under the United Nations Convention on Contracts for the International Sale of Goods*, available <http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem10.html>, as accessed on 11th October 2013.

⁵¹ *Supra note 1*, article 30.

seller to do so (Article 32(3) CISG).⁵² Seller is required to ensure that the goods are appropriately packaged. The CISG requires also, the seller to give notice to buyer of any impediment to performance (Article 79(4) CISG).

I.4.1.4. Seller's assurance of quality of goods

The laws of almost all countries have detailed provisions of seller's assurance of the quality of goods, the most important of which are the English Sales of Goods Act 1973, the UCC and the CISG. Sales of Goods Act 1973 (Article 12-15) provide that seller's goods must be in conformity with the following implied conditions: for the sale of goods by description, there is an implied term that the goods will correspond with the description; When the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.⁵³ Satisfactory quality means; fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety, and durability. The quality of goods is specifically drawn to the buyer's attention before the contract is made, where the buyer examines the goods before the contract is made, which that examination ought to reveal, or in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.⁵⁴

In the case of a contract for sale by sample there is an implied term; the bulk will correspond with the sample in quality; the buyer should be given reasonable time for comparison of the goods and sample; the goods will be free from any defect, making their quality unsatisfactory which would not be apparent on reasonable examination of the sample.

The Sales of Goods Act calls seller's assurance of quality of the goods as implied conditions, while UCC calls it warranties, and further divides it into express warranties and implied warranties. Express warranties are created as follows: If the seller makes to the buyer any affirmation of fact or promise which relates to the goods and becomes part of the basis of

⁵²JOHN O. HONNOLD: *Uniform Law for International Sales under the 1980 United Nations Convention*, available at <http://www.cisg.law.pace.edu/cisg/biblio/honnold.html>, as accessed on 11th October 2013.

⁵³ *Supra note 50*.

⁵⁴ Articles 12-15 of the United Kingdom Sales of Goods Act of 18th April 1973.

the bargain, the goods shall conform to the affirmation or promise. If the seller makes any description of the goods which is made part of the basis of the bargain, the goods shall conform to the affirmation or promise. If any sample or model which is made part of the basis of the bargain, the whole of the goods shall conform to the description.⁵⁵

I.4.2. Obligations of the buyer

The obligations of the buyer under the Convention on Contracts for the International Sale of Goods can be succinctly summarized as the obligations to take the goods and to pay for the goods.⁵⁶ Article 53 describes the general responsibilities of the buyer in an international sales transaction. This Convention recognizes the primacy of the contract in defining the parties' obligations, and this article applies absent a contractual agreement between the parties to the contrary.⁵⁷

Buyer's primary obligations are to pay the purchase price and accept delivery of the goods. On the other hand the buyer's obligation to pay the contract price extends beyond the abstraction of owing the money. The obligation also includes whatever steps and costs that are necessary to ensure that the payment is actually made.⁵⁸ Whenever doubt arises generally the purchase price of the goods can usually be determined by the agreements of the parties or relevant circumstances at the time the contract was concluded.

I.4.2.1. Buyer's obligation to pay the price in the currency of payment on due time

Furthermore, the Buyer must make payments in legal form and in the relevant currency; several cases have also addressed the question as to which currency payment is to be used. The cases have come to the proper conclusion that the currency of payment, absent a specific agreement otherwise, should be made in the currency where the seller has his business or the place where the payment is to be made. One case, however, came to the

⁵⁵Article 2 of the American Uniform Commercial Code, 2007 edition.

⁵⁶HENRY DEEB GABRIEL, *the buyer's performance under the ciscg: articles 53-60 trends in the decisions*, available at <http://www.unicitral.org/pdf/english/CISG25/Gabriel.pdf>, as accessed on 2nd December 2013.

⁵⁷ *Idem*

⁵⁸ Tribunal of International Commercial Arbitration, CLOUT Case No. 142 at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 17 Oct. 1995] ["under Article 54 CISG, the buyer's obligation to pay the price of the goods included taking such measures and complying with such formalities as might be required to enable payment to be made"], available at <http://www.unicitral.org/pdf/english/CISG25/Gabriel.pdf>, as accessed on 2nd December 2013.

inexplicable conclusion that the currency of payment should be determined by the law that would govern the agreement absent the Convention.⁵⁹

Buyer must make payments at the proper time, unless other circumstances for the due date of payment are obvious, payment must be made as soon as the goods or the documents relating to the goods have been made available to buyer.⁶⁰ Article 59 requires payment by the buyer without any affirmative action by the seller on the payment date. This provision was enacted to circumvent European legal systems that require a formal demand by the seller in order for payment to become due.

Most of the reported cases simply refer to the obligation set out in the article without further analysis; however, one court appropriately noted that a buyer's failure to meet the requirements of Article 59 provides the seller to recourse under all of the other provisions of the CISG.⁶¹ The cases have also recognized that the failure of the buyer to pay timely under Article 59 provides the basis for interest to begin to accrue. On the other hand however, the German Civil Code provision implies that the seller must perform its obligations before the buyer. For instance, in the decision by the OLG Karlsruhe (*NJW-RR 1993, 1317*), the court found that for the delivery *frei Haus* payment was due only after the goods were made available at buyer's seat of business.⁶²

I.4.2.2. Buyer's obligation to take delivery

In addition to payment obligations, the buyer must take delivery of the goods delivered by seller (Article 60 CISG). Taking delivery is the counterpart of seller's obligation to deliver and applies also to accepting delivery of relevant documents. This obligation encompasses both reasonable preparations necessary to take delivery as well as taking physical control of the goods. Article 60 corresponds with the seller's obligation to deliver under Article 31. Absent a contrary agreement, the buyer's obligation to take delivery does not occur until

⁵⁹*Idem*

⁶⁰ CISG article .58. See generally Lief Sevón, *Obligations of the Buyer under the Vienna Convention on the International Sale of Goods*, and SUOMALAINEN LAKIMIESTEN YHDISTYS:—TIDSKRIFT UTGIVEN AV JURIDISKA FORENINGEN I FINLAND 327-43 (1990), available at <http://cisgw3.law.pace.edu/cisg/biblio/sevon.html>, as accessed on 11th December 2013.

⁶¹ Oberlandesgericht Koblenz, Germany, CLOUT Case No. 17 Sept. 1993.

⁶² Germany 20 November 1992 provincial Appellate Court Karlsruhe (*Frozen chicken case*) [translation available] at <http://cisgw3.law.pace.edu/cases/921120g1.html>, as accessed on 11th December 2013.

the seller has met the requirements to deliver the goods. Depending on the type of transaction, the buyer's obligation may arise at different times. For instance, absent a contrary agreement, under Article 58 the seller and buyer must perform their case; the buyer would have no obligation to perform until this concurrent exchange takes place.⁶³

Similarly, if the contract involves the carriage of goods, the buyer's obligation to take delivery does not arise until the seller places the goods at the buyer's disposal under Article 31(b). Paragraph (a) expresses the parties' general obligation of cooperation. This provision expands the remedies available to the seller. The action required by the buyer may range from the simplest responsibility, such as arranging the exact place for delivery, to more complex obligations, such as making arrangements for the carriage of the goods. Whatever the case may be, the contract will govern the corresponding ancillary obligations. Article 54 CISG requires that the buyer take all steps and comply with required formalities under the contract or any applicable laws and regulations to enable payment to be made. Otherwise the buyer is in breach of contract so that the seller may seek such remedies as provided in Articles 61 - 65 CISG.⁶⁴

I.4.2.3. Buyer's duty to examine the goods

The buyer's obligation begins to run upon delivery of goods, except where the contracts involve the carriage of goods or where the goods are redirected in the transit or redispached.⁶⁵ Hence the period begins to run upon delivery, irrespective of the point of the time when the goods are intended to be used in the actual business. The main purpose of examination and notification duties by the buyer, is to enable the seller to remedy a lack of conformity of the goods, therefore, the method of examination must be of such nature as to disclose recognizable defects.⁶⁶

⁶³LIEF SEVON, *obligation of the buyer under viena convention on international sales of goods*, SUOMAINEN LAKIMESTEN YHDISTYS: TIDSKRIFT UTGIVEN AV JURIDISKA FORENINGEN FINLAND 327-43 available at <http://cisgw3.law.pace.edu/cisg/biblio/sevon.html>, as accessed on 11th December 2013.

⁶⁴*Supra note 1*, CISG articles 61-65.

⁶⁵China 31 January 2000 CIETAC Arbitration proceedings (clothes case), available at <http://cisgw3.law.pace.edu/cases00013icl.html>, Russia 24 January 2000 arbitration proceedings 54/1999 available at <http://cisgw3.law.pace.edu/cases000124rl.html> china 7 January 2000 CIETAC Arbitration proceedings (cysteine case) available at <http://cisgw3.law.pace.edu/cases000107cl.html>, as accessed on 11th December 2013.

⁶⁶Germany 5 December 2000 appellate court Oldenburg. Available at <http://cisgw3.law.pace.edu/cases/001205g.html>, as accessed on 11th December 2013.

As such scholars and courts have interpreted as short period as practicable in the circumstances as set forth in the articles 38(1) to mean as commercial practical. In accordance with circumstances including the customs trade, taking into account the character of goods and is adequate to reveal, possible deficiencies, for example, in case of textiles ironing and washing tests in order to examine the quality of color and shrinking, in case of shoes and clothes a wearing of goods in case of mass production items only random sampling is required and where there are characteristics that are difficult to examine, especially where technical functions have to be determined, the buyer may be obliged to retain an expert and knowledge of the employees, however the buyer is only obliged to examine within the scope of that which is reasonable and usual under the circumstances.⁶⁷

The buyer is obliged to examine the goods promptly and give notice of defects to sellers promptly. On the other hand if there are doubts and if earlier deliveries had been deficient the courts may require high attention and more detailed examination.⁶⁸ Each delivery may be inspected accordingly in individual cases, the period of time for the examination must be determined with regard to the kind of goods and defects as well as necessities of the examination especially the time required for it. However, reliance on packaging to prevent inspection must be proven by the buyer.⁶⁹

Examination of goods transported by carriage may be deferred until the goods have arrived at their destination by virtue of article 38(2) the purpose of this provision is to give the buyer the opportunity to inspect the goods carefully.⁷⁰ If the goods reaches destination the buyer is obliged to inspect in the shortest possible time, if the goods are redirected in transit or dispatched by the buyer without reasonable opportunity for examination by him and the time of conclusion of contract the seller knew or ought to have known of possibility of such redirection or redispach examination may be deferred until goods have arrived at

⁶⁷CISG-AC Opinion No2 Examination of goods and notice of non conformity: articles 38 and 39.7 june 2004. Rapporteur: professor Eric E. bergesten, Eemertus,pace university school of law, new York, available at <http://www.cisg.law.pace>, as accessed on 11th December 2013.

⁶⁸ Switzerland 27 january 2004 District court Schaffhausen, available at http://cisgw3.law.pace.edu/cases/040127_sl.html, as accessed on 11th December 2013.

⁶⁹ Belgium 6 january 2004 Commercial Court Hasselt (H-S.V NVC) available at <http://cisg3.law.pace.edu/cases/010129b1.html>, as accessed on 11th December 2013.

⁷⁰ Italy 26 November 2002 District court Rimini (A1 palazzo s.r.l.v Bernadaurd di Limoges SA) Available at <http://cisgw3.law.pace.edu/cases/010312g1.html>, as accessed on 11th December 2013.

the new destination, proper examination will entitle the buyer to select its remedy provided the notice of its remedy is given to the seller and absent proof by the seller that the defects could have been discovered earlier.⁷¹

I.4.3. Common obligations of the buyer and the seller

Article 71 CISG gives to each party the right to suspend performance when it becomes apparent that the other party will not duly perform an essential part of its obligations after the contract has been concluded, independent of any obligation of first performance.⁷² CISG regulates passing of price and performance risk. The CISG as a rule foresees payments of damages for failure of performance regardless of a party's fault.⁷³

A party is not liable for failure to perform if failure is caused by the other party or the failure is due to circumstances that are beyond the control of the defaulting party. However, not all remedies of the injured party are forfeited, but only the liability for damages, It is irrelevant whether the impediment arose prior to or after conclusion of the contract.

On the other hand, the provision of Article 102 of the law relating to public procurement exempts the contracting parties from liability; if the reasons for not respecting the provisions of the contract are due to cases of force majeure such as demonstrations, lock-out, declared and undeclared wars, embargo, riots, people's uprising, landslides, earthquakes, hurricanes, thunder, floods, civil war, explosions or other similar phenomenon outside and beyond the contracting parties control.⁷⁴

Furthermore, a party is exempt from paying damages if the impediment is an objective impediment to performance; the impediment does not belong to the sphere of influence of the party that owes performance or impediment was not known to defaulting party at the time the contract was concluded and the defaulting party could not have been reasonably

⁷¹ Switzerland 21 September 2004 District court Luzern land, available at http://cisgw3.law.edu/cases_99014n1, as accessed on 13th December 2013.

⁷² Unicitral digest case law on United Nations Conventions for International Sale of Goods, available at <http://www.unicitral.org/pdf/English/clout/digest2008/article071.pdf>, as accessed on 13th December 2013.

⁷³ ENDERLEIN F & MASKOW, *International Sales Law - United Nations Convention on Contracts for the International Sale of Goods* (1992 New York) <<http://cisgw3.law.pace.edu/cisg/biblio/enderlein.html>>, as accessed on 17th December 2013.

⁷⁴ Article 10 2 of the law N° 12/2007 of 27/03/2007 on public procurement published in Official Gazette N° 8 of 15 April 2007.

be expected to have taken the impediment into account at that time; or the defaulting party could not reasonably have been expected to avoid or to overcome the impediment or its consequences.⁷⁵

In addition to the above, Article 103 of Rwandan procurement law provides that if there is loss or damage or destruction due to force majeure, the procuring entity (herein called the buyer) shall pay the invoices for the lost damages or destroyed items, if and only if such force majeure occurred after the provisional acceptance or final acceptance of activities where no provisional acceptance has been provided for; or after the inspection and confirmation by a written report by an authorized person.⁷⁶ In this respect therefore, the seller survives from paying damages.

In all other cases, both seller and buyer are held liable for all due performance of all obligations. Only Article 71 CISG gives a party the right to suspend performance when it becomes apparent that the other party will not perform a substantial part of its obligations. Regardless of which party carries the risk for the goods, Articles 85 - 87 CISG impose on both seller and buyer the duty to take measures to preserve the goods under certain circumstances. Thus, Articles 85 - 87 CISG broaden the sphere of risk for both seller and buyer.⁷⁷

I.5. Obligations of the carrier

In the course of execution of contract for international sale of goods, the CISG provides for the obligations of the parties to the contract. However, the obligation and liability of the carrier is covered by the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.⁷⁸

Since the beginning of the twentieth century, many States have provided rules, within the frame of conventions and principles, for carriage by sea and for the liability of the carrier, these rules and conventions are the most important components of the carriage by sea.

⁷⁵ *Idem*

⁷⁶ *Idem*, Article 3.

⁷⁷ *Supra* note 1

⁷⁸ Article 11 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, adopted in New York on 11th December 2008.

Finally, as with all international conventions, the Rotterdam Rules aim to increase the trust in international trade.

Obligations of the Carrier are provided by Chapter 4 Article 11 of the Rotterdam Rules which states that “the carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee”.⁷⁹

The obligations of the carrier which are more of a general nature compared to those in the Hague and Hague-Visby Rules are set forth in Chapter 4. Article 12.1 of the convention which states that the period of responsibility of the carrier for the goods begins when the carrier (or a performing party) receives the goods for carriage and ends when the goods are delivered. Different from other conventions pertaining to the carriage of goods, the Rotterdam Rules expressly provides the boundaries for the period of responsibility of the carrier.

Therefore, the convention has defined the period as one where the carrier is in actual possession of the goods as a compulsory provision; and states expressly that the period of responsibility cannot be less than the period of possession, which is an appropriate provision.⁸⁰

Chapter 4 Articles 13.1 of the convention provide the specific obligations of the carrier. According to this, the carrier shall, during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.⁸¹

As is well known, The Hague and Hague-Visby Rules provided a regime where the carrier’s main obligation was to ensure the seaworthiness, roadworthiness and cargo worthiness at

⁷⁹ Article 11 of Rotterdam rules adopted by resolution no 2205 of 17th December 1966.

⁸⁰ *Idem*.

⁸¹ Article 3(2) of the Hague Rules as amended by the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (Visby Protocol) and Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1979 (SDR Protocol).

the beginning of the voyage. As generally accepted in the doctrine, in cases where the ship becomes unworthy for any of the conditions mentioned therein and for any reason at the beginning of the voyage, it is deemed as that the carrier could not provide the ship in a worthy condition.

The same issue has been regulated under the Rotterdam regime in Chapter 4 article 14. According to this article: The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to: Make and keep the ship seaworthy; Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.⁸²

⁸² FRANCESCO BERLIGIERS, An analysis of two recent commentaries of the Rotterdam rules, page 12, *Il Diritto Marittimo*, 2012.

CHAPTER II. EFFECTS OF BREACH OF CONTRACT FOR INTERNATIONAL SALE OF GOODS

This chapter discusses the effects of breach of contract of sale goods as the core part of this research, by emphasizing on ways by which the contracting parties breach the contract, remedies and damages for breach of contract for international sale of goods.

II.1. Breach of contract

As earlier mentioned in this research, a contract for international sale of goods, if properly formed, It is legally binding and all parties to a contract are required to perform their respective obligations under the contract, failure of which legal action can be taken. A failure or refusal to perform one's obligations under the contract for international sale of goods is a "breach" of the contract. Contract breaches have wide ranging consequences both legal and practical to the parties to the contract.

A breach of contract occurs where a party to a contract fails to perform, precisely and exactly, his obligations under the contract. A contract may be breached by one or both parties. A breach of contract can result in legal consequences for the breaching party. A breach of contract may either be material or non-material depending on the nature of the breach.⁸³ This can take various forms for example, the failure to supply goods or perform a service as agreed.

Breach of contract may be either actual or anticipatory. Actual breach occurs where one party refuses to perform his side of the bargain on the due date or performs incompletely. Anticipatory breach occurs where one party announces, in advance of the due date for performance, that he intends not to perform his side of the bargain.⁸⁴ The innocent party may sue for damages immediately if the breach is announced.

⁸³KEN LAWMANANCE, *Breach of Contract*, article published by legal match, available at [http://legalmatch.com/law-library/artcile/breach of contract.html](http://legalmatch.com/law-library/artcile/breach-of-contract.html), as accessed on 19th march 2013.

⁸⁴ MAARTJE BIJL, *Fundamental breach in documentary sales contract, the doctrine of strict compliance with underlying sales contract*, available at www.cisg.law.edu/cisg.biblio/bijil.html#*, as accessed on 15th October 2013.

II.1.1. Types of breach of contract

There are many types of breach of contract, however for the interest of this research the following were discussed as types of breach of contract for international sale of goods;

1. Minor breach

Minor breach of a contract is referred to as partial breach, it is a breach of contract that is less severe than a material breach and it gives the harmed party the right to sue for damages but does not usually excuse him from further performance.⁸⁵ On the other hand minor breach of a contract occurs when the non breaching party of the contract is not entitled to an order for performance of it's obligation but only collect damages for they are owed. For instance, the buyer may be in a situation of stock out of tubeless tyres, and wish to demand a tubeless tyres from the seller if the buyer demands tubeless tyres and seller delivers to him the tyres of low quality compared to the tubeless one, the buyer deserves the right to sue for damages equivalent to the difference in price for tubeless tyres and non tubeless tyres delivered by the seller.

2. Material breach

Material breach is when there is a failure to perform a part of a contract that permits the other party of the contract to ask damages because of breach that has occurred. When there has been material breach the aggrieved party is relived of further performance under the contract. The remedies awarded hereunder are designed to place the injured party in a position they would be in if the contract would not have been breached.⁸⁶

3. Anticipatory breach

Anticipatory breach occurs where before the time for performance, one party informs the other party that they will not perform his contractual obligation, this type of breach is normally repudiatory breach since the contract is renounced or the party incapacitates

⁸⁵ Material vs Minor breach, available at <https://www.google.rw/#q=minor+breach+contract>, as accessed on 12th May 2014.

⁸⁶ Material breach law and legal definitions, available at <http://www.definitions.uslegal.com/m/materials-breach>, as accessed on 12th may 2014.

him/herself from performing the obligation under the contract, on the other hand renunciation of the contract in advance occurs where the party evinces an unconditional intention not to perform his contractual obligation or not to be bound by the contract.⁸⁷ In this respect therefore, where there is anticipatory breach the innocent party elects to treat the contract as discharged, and sue for damages.

4. Fundamental breach

Fundamental breach of the contract occurs when a person that has had the contract breached against and can sue the breaching party for damages incurred.⁸⁸ According to the article 25 of CISG, fundamental breach occurs when breach of contract by one of the contracting parties results in such detriment to other party as substantially to deprive him of what he is entitled to expect under the contract. In this regard, the buyer has the right to avoid the contract in respect of article 49 (1) (a) when the seller has failed to perform his obligation under the contract. Furthermore, if the contract is fundamentally breached by seller, the buyer may apply article 46 (1)(a) to require the delivery of replacement of goods that did not conform with specifications provided in the contract.⁸⁹ Under CISG, fundamental breach of contract is considered to be the basis of the avoidance of the contract and it serves a legal ground to claim damages for breach of the contract for the international sale of goods.

II.1.2 Avoidance

The contract for international sale of goods binds the parties (commonly referred to as buyer and seller), if one of the contracting parties breached the contract either party can make declaration to avoid the contract in accordance with Article 72 of CISG.⁹⁰ In essence, avoidance transforms the contract from a future oriented ongoing relationship into a backward oriented restitution relationship. The contractual duties turn into restitution and

⁸⁷ JILL POOLE, *Cases book on Contract Law*, Page 401, Blackstone Press Limited, Adeline Place, London, United Kingdom, 5th edition (2001).

⁸⁸ Types of contract breaches, available at lawfirms.com/resource/business/types_of_contract_of_breach.html, as accessed on 12th May 2014.

⁸⁹ Unicitral digest case law on the United Nations Convention on International Sale of Goods, available at cisg/text/digest-2012-25.html, as accessed on 12th May 12, 2014.

⁹⁰ *Supra note 1*, Article 72

preserving duties whose violation results in damages like a violation of the primary duties of the living contract.⁹¹

On the other hand however, article 4:105 of the principles of European contract law states that if the party is entitled to avoid the contract for the mistake but other party indicate that he is willing to perform or actually does perform, the contract as it was understood by the party entitled to avoid, the contract is to be treated as if it had been concluded as the party understood it. After such indication or performance the right to avoid is lost and any earlier notice of avoidance is ineffective.⁹²

II.1.2.1 Limitation of avoidance

Under the contract of sale of goods the limitation of avoidance is of particular importance, since in free enterprise economy, it is assumed that the injured party generally has available market on which to arrange a substitute transaction. If the seller failed to deliver the goods, the assumption is that the buyer can go to the market and cover by obtaining substitute goods, so that the buyer's damages should be based on the difference between a presumable greater price that the buyer will have to pay on the market and lesser contract price.⁹³

If the buyer fails to take and pay for the goods, the assumption is that the seller can go to the market and resell to the substitute buyer so that the seller's damages should be based on the difference between presumably greater contract price and the lesser price that he is expected to receive on the market in accordance with provisions of section 2:706 of UCC.⁹⁴

Furthermore, where the injured party fails to take advantage of availability of substitute transaction on the market, the limitation of availability results in a formula based on the difference between the contract price and the market price, at which it could have arranged a hypothetical substitute transaction. If when the seller failed to deliver the goods, the

⁹¹URICH MAGNUS, *The remedy of contract under CISG, General remarks and special cases*, page 10, available at <http://www.unicitral.org/pdf/english.CISG25Magnus.pdf>, as accessed on 27th May 2014.

⁹² Article 4:105 of the Principles of European contract law, prepared by commission on European contract law, November 1999.

⁹³ ALLAN E. FARNSWORTH, WILLIAM F.YOUNG, *Contract case and materials*, University case book series, page 498, the foundation press Inc, 4th edition 1988.

⁹⁴ Section 2:706 of 2007 American Uniform commercial code.

buyer fails to go to market and “cover” its damages are based on the difference between the market price and the contract price. Based on the above mentioned transactions between two parties, if one party fails to perform his part as agreed in the contract, the either party will try his best to find a substitute solution in order to minimize the risk of avoidance.

II.1.2.2. Effects of avoidance

Under CISG, avoidance of the contract is considered to be dissolution of the contract, hence its cancellation. The consequences of avoidance are governed by article 81 and following it other articles of the Convention. According to article 81, avoidance of the contract releases both parties from their obligations under it subject to any damages which may be due. The most important obligations are generally the obligations of the seller to deliver the goods, to transfer title to the goods and to hand over the documents; and the obligations of the buyer to pay the price and to take delivery of the goods. If the obligations have not been fulfilled by the moment of the avoidance of the contract, the parties do not have to fulfill them later. Apart from the avoidance of the contract, claims for damages which have arisen in connection with the non-performance of the obligations can be asserted by the aggrieved party.⁹⁵

Furthermore, buyers have the duty to preserve the goods which he intends to reject. In addition to the above, a party who has performed the contract either entirely or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. In this regard, the party who has performed the contract as part or as whole may claim restitution from other party of whatever the first party has supplied or paid under the contract.⁹⁶ Thus, the parties are free to claim restitution as they may wish to leave what has been supplied or paid with the other party. In the case of a contract for delivery and payment of goods by installment, they may agree to retain what they received prior to the avoidance. Usually, the avoidance of the contract is at the same time accompanied by a claim to return that which has been supplied or paid.

⁹⁵ANNA KAZIMIERSKA, *The remedies of avoidance under Vienna convention on international sale of goods*, available at cisgw3.law.pace.edu/cisg/biblio/kazimierska.html, as accessed on 12th may 2014.

⁹⁶ CHENGWEI LUI, *Effects of avoidance perspectives from cisg, unidriot, principles and PECL and case law*, available at www.cisg.iaw.pace.edu/cisg/biblio/lui/2.html, as accessed on 12th May 2014.

The buyer, however, will be freed from his obligation to return the goods when the contract is avoided insofar as such restitution is made impossible because of an event for which he already bears the risk such as avoidance, under the provision of article 70, which does not influence the rules on passage of risk.⁹⁷

II.1.2.3. Proprietary effects of avoidance

The restitutionary process of the property in the Convention amounts to a type of reverse sale of the goods back to the original seller. Furthermore, where the buyer has acquired the property in the goods; the buyer is contractually bound to restore the seller to its original property rights. The proprietary effect of the buyer's efforts to do so is determined by the applicable law for proprietary matters.⁹⁸

It should be concluded that the contract is not nullified upon the exercise of the remedy of avoidance. Some obligations of the parties are terminated and some remain in existence. The specific obligations characteristic of the sales contract end or performance already made in fulfilling these obligations has to be returned in goods or in price so that a situation is achieved as from before the conclusion of the contract. However, the contract remains in force as long as there are still claims of the parties under it, including claims for returning the goods or the price.

II.2. Remedies for breach of contract for international sale of goods

This section discusses remedies for breach of contract for international sale of goods available to the parties as provided in Articles 45-52 of the CISG. The above mentioned articles address various aspects of remedies available to the buyer in case the contract is breached by the seller. Hence the aggrieved buyer enjoys the right to avoid contract when the seller's breach is proved beyond doubt to be fundamental. In this regard, the buyer is given a choice of alternative remedies.

⁹⁷*Idem*

⁹⁸ MICHAEL BRIDGE, Consequences of avoidance of the contract, available at www.cisg.pace.edu/cisg/CISG-AC-Opg.html, as accessed on 12th May 2014.

On the other hand, the seller's remedies for breach of the contract by the buyer are provided by Articles 61-65 of the CISG, the stipulations of these articles authorizes the aggrieved seller to claim remedies arising from the breach of the contract by the buyer. Under this section therefore, the damages resulting from breach of contract by two parties were addressed in order to reflect the relevancy and significance of the impact of the breach of the contract by both parties under the CISG.

II.2.1. Remedies available to the buyer due to the seller's breach of the contract

Pursuant to the Article 45 of CISG, if the seller fails to exercise his obligation to deliver the goods as agreed in the contract or deliver the goods that do not conform to the contract or he does not intend to fulfill his obligation provided under CISG, the buyer can request the seller to perform as agreed in the contract.⁹⁹ In this regard, if the buyer purchases the substitute goods the buyer can recover from the seller the difference between the contract price and the cost of the substitute.

The damages available to the buyer arise only if the seller fails to deliver or repudiate his agreement or if the buyer rightfully rejects the goods in this respect the buyer has the right to claim the damages.¹⁰⁰ The buyer is also allowed to reject the goods, with the power to retain the goods as a way of assuring prompt repayment of any money due to the buyer.

Section 2-712 of the Uniform Commercial Code allows the buyer to "cover" upon the seller's breach thereby recovering any loss sustained, but subtracting any savings the seller's breach may produce. Cover is defined as any reasonable purchase of or contract to purchase goods in substitution for those due from the seller. The buyer is not only allowed to receive the goods, but it greatly simplifies his proof of damages in a law suit because both the contract and the market price are ascertainable.¹⁰¹

⁹⁹ *Supra note 1, Article 45.*

¹⁰⁰ Section 2-711 of the Uniform Commercial Code of 2007.

¹⁰¹ LOUIS F.DEL DUCA EGON GUTTMAN & ALPHONSE M SQUILLANTE, *Problems and Materials on Sales under the Uniform Commercial Code and the Convention on International Sale of Goods*, page 492, commercial transaction volume II, Anderson Publishing Company, United States,1993.

II.2.1.1 Buyer's remedy for breach of contract in case of non conformity of the goods

Under the contract of sale of goods the seller is obliged to deliver the goods in accordance with the terms of the contract. In this regard, if the goods or tender made by seller do not conform to the contract in respect, the buyer may reject the goods or reject the tender for supply of goods which is not perfect as against the contention that a substantial performance is sufficient.¹⁰²

In addition to the above, the buyer may repudiate the contract and reject the goods where the seller is in breach of condition the effect of this is that the buyer may refuse to pay the price or recover it if paid, or sue for damages, basing on the later claim on the seller's failure to deliver the goods in accordance with the contract.¹⁰³ Further to the above right vested to the buyer to reject non conforming goods, the buyer is obliged under Article 39 (1) of the CISG to give a notice to the seller of non conformity of the goods after the buyer has discovered it in a reasonable time.¹⁰⁴ If the goods tendered consists of the different units and some of which conforms to the contract the buyer has the choice of rejecting the entire quantity delivered or accepting the entire tender or accepting any one or more commercial units and reject the rest, the rejection must be made within a reasonable time after the delivery and the buyer must notify the seller of the choice made.¹⁰⁵

After rejecting non conforming goods the buyer may not exercise any right of ownership as to the goods but must hold them waiting instruction from the seller. In this respect therefore, the buyer may require performance by the seller of his obligation unless the buyer has resorted to a remedy which is inconsistent with this requirement.¹⁰⁶

Furthermore, Article 46(2) of the CISG if the goods do not conform to the contract the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in

¹⁰² RONALD A. ANDERSON, FOX IVAN, DAVID P.TWOMEY, *Business Law, UCC Comprehensive volume* , Page 368, south western publishing co, concinnati, Ohio Dallas west CHICAGO ILL DALLAS PELHAM MANOR N.Y ALTO,CALIF, 12th edition, 1984.

¹⁰³ SMITH AND KEENANS, *Law for Business*, Page 337, Bell & Bain Limited, Glasgow, 90 Tottenharm, Court Road, London, 12th edition 2003.

¹⁰⁴ *Supra note 1, Article 39(1).*

¹⁰⁵ *Supra note 102.*

¹⁰⁶*Supra notes 103.*

conjunction with notice given under article 39 or within a reasonable time thereafter. In this respect therefore, if the buyer requested a substitute goods he is required to return the delivered goods in condition in which he received them in accordance with Article 82(1).¹⁰⁷

II.2.1.2. Claim of performance of the contract through repair of thing

Under the contract for international sale of goods, the aggrieved buyer is vested with the right to claim performance of the contract. If the goods do not conform to the contract, the buyer may require the seller to remedy the lack of conformity by repair of the delivered goods that do not conform to the contract in accordance with Article 46 (3) of the CISG.¹⁰⁸

Repair may be made by amending the goods or by exchanging the defective parts.¹⁰⁹ Repair may also consist in delivery of the part which had not been delivered originally as long as this particular failure to deliver amounts to non conformity as provided under article 35.

II.2.1.3. Remedy to reduce the price

In case of non-conformity of the goods, the buyer may also reduce the price pursuant to Article 45(1) (a). The remedy of price reduction can be applicable where the seller has delivered non-conforming goods and the buyer elects to accept them in spite of the non-conformity.¹¹⁰

As with the remedy of damages, the remedy of price reduction does not require a breach but is available in any case of non-conformity of goods.¹¹¹ As has been set out, any reduction of the production costs resulting from a violation of ethical standards can be regarded as causing a decrease in the value of the goods. Thus, the buyer may reduce the purchase price in proportion to the lower value that the goods actually delivered had at the time of the delivery.

¹⁰⁷*Supra* note 1, Article 81(1).

¹⁰⁸*Supra* note 1, Article 46 (3).

¹⁰⁹ PETER HUBER & ALASTAIR MULLIS, *the CISG, New textbook for students and practioners*, Page 206, European Law Publishers, 2007.

¹¹⁰ ALEXANDER LORENZ, "Fundamental Breach under the CISG" Published by Pace institute of International Commercial Law, available at <http://www.cisgw3.law.pace.edu>, as accessed on 14th February 2013.

¹¹¹ *Idem*

On the other hand however, where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against the buyer for the price of the goods.¹¹² Where under a contract of sale the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

II.2.1.4 Buyer's remedy to cancel the contract

The buyer may cancel or rescind the contract if the seller fails to deliver the goods or repudiates the contract or the buyer has rightfully rejected the tender of goods or rightfully revokes acceptance in them, a buyer who cancels the contract is entitled to recover as much as the purchase price as has been paid, including the value of any property given as trade in as part of the purchase price. The fact that the buyer cancels the contract does not destroy the buyer's cause of action against the seller for breach of that contract. The buyer may therefore, recover from the seller not only any payment made or the purchase price but in addition damages for breach of the contract.¹¹³ In this regard, the damages here represent the difference between the contract price and the cost of cover.

II.2.1.5. Buyer's remedy to resale of the goods

When the buyer has possession of the goods when rightfully rejecting them or revoking acceptance, the buyer is treated the same as the seller in possession of goods after the default of the buyer, that is to say the aggrieved buyer has a security interest in the goods to protect the claim against the seller and may resell the goods, as though the aggrieved buyer were a seller from the proceeds of the sale, the aggrieved buyer is entitled to deduct

¹¹²PIIA KALAMEES, *Hierarchy of Buyer's Remedies in Case of Lack of Conformity of the Goods*, available at <http://www.jurdicainternational.eu/index.php?id=14839>, as accessed on 13th November 2013.

¹¹³ SMITH AND KEENANS, *Law for Business*, Page 337, Bell & Bain Limited, Glasgow, 90 Tottenham, Court Road, London,, 12th edition 2003.

any payment made on the price, any expenses reasonable incurred in the inspection reception, transportation, care and custody and resale of the goods.¹¹⁴

II.2.2. Remedies available to the seller due the buyer's breach of the contract

The remedies available to the seller due to contract breach by the buyer are provided under articles 61-65 of the CISG. On the other hand however, the remedies available to seller are not only limited in the provisions of the CISG, they are also stipulated by other international regulations. Under this research, the remedies entitled to the contracting parties that are enshrined in the provisions of Uniform Commercial Code were consulted in order to make this research more relevant in accordance issues addressed. The buyer may breach a contract when wrong fully refuse to accept the goods or wrong fully returns the goods. He may also fail to pay for the goods when payment is due by indicating an unwillingness to go ahead with the contract. When the buyer breaches the contract the seller is entitled to the following remedies;

II.2.2.1. Recovery of the purchase price

Pursuant to the Article 66 of the CISG, the buyer is not discharged from the obligation to pay the price if the goods are damaged or lost after the risk has passed to him. Furthermore, Article 53 imposes the principal obligation to the buyer pay the price and takes the delivery in accordance with the provisions of the CISG.¹¹⁵

In normal performance of the contract, the seller delivers conforming goods (goods that meet contract specifications) to the buyer; the buyer accepts them and pays the price. When the buyer fails to pay the price as it becomes due the seller may recover the price of the goods accepted or of conforming goods lost or damaged within a commercially reasonable time after the risk of their loss has passed to the buyer. The seller will also recover goods identified to the contract if he is unable after the reasonable effort to resell

¹¹⁴ *Idem*, Page 373.

¹¹⁵ *Supra note 1*, Articles 53 - 66.

them at a reasonable price or the circumstances indicate that such effort will be unavailing.¹¹⁶

If the seller manufactured the goods especially for the buyer and goods are not useable by anyone else, the seller will sue the buyer for the contract price of the goods. He must hold the goods for the buyer; the seller must turn the goods over the buyer, if the buyer pays for them. However, if resell becomes possible before the buyer pays the goods, the seller may resell them.¹¹⁷ In this respect therefore, after the buyer wrongfully rejected the goods or revokes acceptance of the goods or has failed to make payment due or has repudiated, the seller who is held not entitled to the price shall never the less be awarded damages for non acceptance.

II.2.2.2. Seller's remedy to cancel the Contract

When the buyer wrongfully rejects the goods, wrongfully revokes an acceptance of the goods, repudiates the contracts or fails to make payment due on or before delivery, the seller may cancel the contract. Such action puts to an end to the contract by discharging all obligations on both sides that are still unperformed, but the seller retains any remedy with respect to the breach by the buyer. Cancellation reverts the seller with title of goods. In this regard therefore, the seller may only cancel the contract if the buyers breach substantially impairs the value of the contract to the seller.¹¹⁸

II.2.2.3 Seller's remedy to resale the goods

When the buyer wrongfully rejects or revokes acceptance of the goods or fail to pay the sums due on or before delivery, the seller may resale the goods for his own benefits, if he does so in good faith and in commercially reasonable manner. Furthermore, notice of resale must be given to the buyer in relation to resale of goods arising from breach of contract. He may also recover the difference between the resale price and any other

¹¹⁶ CHARLES L.KNAPP, NATHAN M.CRYSTAL, *Rules of contract law, selection from the uniform commercial code and the restatement (second) of contracts*; page 104, little brown & company (CANADA) limited ISBN 0-316-49927-7.

¹¹⁷ *Idem*, page 891

¹¹⁸ *Supra note* 103, page 367,

damages. In this respect, the seller may have the right to retain any profit made as a result of resale.¹¹⁹

The resale must be public or private; a public resale must be at the usual place for such sale and should be by auction. If the resale procedure is not followed, the resale price will not be conclusive and the seller will then have to prove the market price. Unidentified goods may be resold only at the private sale unless there is a recognized market for public sale.

The seller can carry out a resale of goods if he has reason to treat the contract of sale as cancelled due to the buyer's breach, he may also resale the goods and recover any deficiency between proceeds of the resale and the price owed to him by the buyer as damages.¹²⁰ In addition to the above, the goods to be resold as far as possible on the same terms and conditions as those provided in the contract of sale.

II.2.2.4. Seller's remedy to stop delivery when the buyer is insolvent

If the seller discovers that the buyer has received the goods while insolvent, the seller may reclaim the goods upon demand after their receipt. This right granted to the seller is based on the constructive deceit on the part of the buyer in this respect receiving goods while insolvent is equivalent to false representation of the solvency.

Furthermore, where the seller discovers that the buyer is insolvent, he may refuse to deliver the goods and exercise his right to stop the goods in transit if the goods have been delivered to the carrier for shipment.¹²¹ If the buyer repudiates a sale contract or fails to make payment due before delivery the seller has the right to stop delivery of any large shipment of goods such as Carload, a truckload, or planeload.¹²²

The seller can also claim the goods when he discovers that the buyer has received goods on credit. On the other hand however, if the buyer's business is subjected to the insolvency proceedings, the seller must be notified of that decision and his or her rights for payment

¹¹⁹ PAUL M BARNES, *The sales contract, seller's remedies*, available at scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=2570, as accessed on 27th May 2014.

¹²⁰ DENNIS CAMPBELL, Remedies for international sellers of goods, available at <http://www.jurispub.com/cart.php?m=productdetail&p=6868>, as accessed on 27th May 2014.

¹²¹ Section 2-705 of American Uniform Commercial Code, Official text and comments, Michigan, KF897, A15 U55, 2007 edition.

¹²² *Supra note 87*, page 892.

must be respected in case the goods supplied to the buyer cannot be returned back to the seller.¹²³ However, the seller can supply the goods when the buyer paid cash for all goods.

II.3. Damages for breach of contract for international sale of goods

Damages for breach of contract for international sale of goods are a consequence of breach of the contract by the seller or the buyer. According to the Article 45 of the CISG, the buyer may exercise his right to claim damages if the seller fails to perform any of his obligation under the contract.¹²⁴ In addition to the above, if the buyer fails to perform his obligations as enshrined in the CISG, the seller will also have the right to claim damages in accordance with Article 61(1-2).¹²⁵

Furthermore, subject to an enforceable exemption clause a breach of contract entitles the injured party to damages to compensate for the loss suffered as a result of the breach. In this regard, every failure to perform the primary obligation is a breach of the contract, the secondary obligation on the part of the contract breaker to which it gives rise, the implication is that the party at the default must pay monetary compensation to the other party for the loss sustained by him, in consequence of the breach. Where the events resulting from the failure by one party to perform a primary obligation has the effect of depriving the other party of substantially the whole benefit which was the intention of the parties that he should obtain from the contract the party not in default may elect to put an end to all primary obligation remaining un performed.¹²⁶

In addition to the above, the aim of contractual damages is to compensate the injured party for the loss suffered as a result of the other party's breach of the contract, contractual damages are not punitive, and where the innocent party has suffered no loss, it is not generally considered possible to recover damages which transfer the benefit gained by the

¹²³ Article 44 of the law N° 12/2009 of 26/5/2009 relating to the commercial recovery and settling issues arising from insolvency.O.G N° Special of 26/05/2009.

¹²⁴ *Supra note 1*, Article 45.

¹²⁵ *Supra note 1*, Article 61.

¹²⁶ *Supra note 87*, page 399.

guilty party as a result of such breach of the contract, even if that breach was deliberate the innocent party can recover only for his actual loss.¹²⁷

II.3.1. Types of damages available in case of breach of contract under CISG

There are several damages for breach of the contract for international sale of goods. However, the damages are claimed by the aggrieved party depending on the nature of the breach. In this regard therefore, the damages may lead to reduction or modification if the injured party has also breached the contract. Damages are monetary awards, and they include;

1. Compensatory damages

These are damages for a monetary amount that is intended to compensate the non-breaching party for losses due to the breach. Compensatory damages also aim at providing the plaintiff with monetary amount necessary to replace what was lost.¹²⁸ The aim is to “make the injured party whole again”. Expectation damages are also categorized under compensatory damages and they are intended to cover what the injured party expected to receive from the contract in other words these are damages recoverable from a breach of contract from a breaching party, the purpose of expectation is to put the injured party in a position he would have occupied had the contract fulfilled.¹²⁹

2. Liquidation damages

These kinds of damages are specifically provided for in the contract. These are available when damages may be hard to foresee and must be a fair estimate of what damages might be in case of breach, it is determined during contract formation. In some case, the parties foreseeing the possibility of breach may attempt in the contract to asses in advance the damages payable. Such provisions for liquidated damages will be valid if it is genuine pre-

¹²⁷ *Idem*, page 427.

¹²⁸ Compensatory damages available at legal-dictionary.freedictionary.com/compensatory-damages, as accessed on 24th may 2014.

¹²⁹ Expectation damages, available at en-wikipedia.org/wiki/expectation-damages, as accessed on 24th May 2014.

estimate of loss and not a penalty inserted to make it a bad bargain for the party in the breach not to carry out his part of the contract.¹³⁰

However, if the parties to the contract do not discuss the amount of damages that they may be appropriate, and a breach arises, it will fall to the courts to assess the amount of damages. In this regard, the problem may arise in some cases where a party to the contract tries to protect his position by insisting on a large sum of damages to compensate him in the event of breach by another party. In such a case, the courts may decide that the agreement is not a genuine attempt to estimate the appropriate amount of damages, but is actually a penalty designed to compel performance by the other party.¹³¹

3. Restitutionary damages

These are not really legal damages per se, but rather are an equitable remedy to prevent the breaching party from being unjustly enriched. For example, if one party has delivered goods but the other party failed. Damages can be claimed for any failure of buyer or seller to perform the contractual obligations. Accordingly, the aggrieved party can recover damages from the party in breach even though the breach has not been "fundamental."¹³² Furthermore, article 81(2) of the CISG creates right to claim restitution from the party in the breach of the contract. However, restitution can be done concurrently when both parties breached the contract.

4. Incidental damages

Incidental damages includes expenses that the buyer incurs in receiving, transporting, and storing goods shipped by the seller that do not conform to those called for in the contract. Furthermore, incidental damages include any reasonable expenses or charges that the

¹³⁰ KEITH ABBOTT, NORMAN PENDLEBURY, KEVIN WARD MAN, *Business Law*, Page 256, the lower building, 11 York Road, London SE1 7 NY, 370 LEXINGTON, Avenue, NY,10017-6503, 7th edition 2002.

¹³¹ *Supra note 37*.

¹³² KEN ALAMANCE, Types of contract available for breach of contract, available at www.legalmatch.com/law.library/article/types-damages-availble-for-breach-of-contract.html, as accessed on 24th May 2014.

buyer has to pay in obtaining substitute goods.¹³³ In this regard therefore, these damages must be commercially recoverable.

Furthermore, if the buyer is contracted to purchase a given item at a given price and the seller breaches when the market price has increased the purchaser is entitled to damages of the difference in price at the date of signing the contract and date the seller breached the contract. This ordinarily provides full compensation because the purchaser may go out to the market and purchase the goods at no cost except the original unpaid contract price plus the damages to which he is entitled.¹³⁴

5. Consequential damages

In certain situations an injured buyer is able to recover consequential damages resulting from seller's breach which includes; buyers lost profits caused by the sellers breach of the contract, any loss resulting from general or particular requirements and needs of which the seller at the times of contracting had reason to know and which could not reasonable be prevented by the cover or otherwise.¹³⁵

In this regard, the buyer must be able to show that the seller knew or should have known at the time of the contract was made that the buyer would suffer special damages if the seller did not perform his obligation. The buyer must also show that have not prevented by obtaining substitute goods, the most familiar consequential damages are losses that produce harm to the person or property caused by the failure of the product, to deal with consequential damages the following should be considered;

In the event of the breach of the contract by the seller, the buyer shall not be entitled to any consequential loss except when goods sold are consumer goods in this case personal injuries shall be recoverable. In the event of breach of contract of sale, the buyer shall be

¹³³MICHAEL B.METZGER, JANE P.MALLOR, JAMES BARNES, THOMAS BOWERS AND MICHAEL J.PHILLIPS, *Business law and Regulatory environment, cases and concepts*, Lusk series, page 896, business Publication, Richard D. IRWIN, home wood, Illinois, 60430, 6th edition ,1986.

¹³⁴JOHN D.CALAMARI & JOSEPH M. PERILLO, *Contracts hand book series and basic legal text*, Page 551, Mutshell Series of West Publishing Company, St Paul, Minnesota 55165, February, 1977.

¹³⁵*Supra note* 95.

entitled to recover consequential damages in addition to all other rights and any cost lost on the contract to resell the goods if the buyer is unable to recover.¹³⁶

II.3.2 Damages for non conformity of the goods

The buyer may require delivery of substitute goods when the goods delivered were not in conformity with the contract and lack of conformity constitutes a fundamental breach. If the seller fails or refuses to deliver the goods called for in the contract, the buyer has an option of recovering damages of non delivery.¹³⁷ Thus instead of covering, the buyer can get the difference between contract price of the goods and the market price at the time he runs of the seller's breach.

In addition to the above, where a buyer has lawfully rejected the goods provided for in the contract and makes a new agreement with the seller for the sale and purchase of the same goods at a reduced price, then although the buyer can sue under the original contract, the principle of mitigation of damages allows the court to take account of any profit made by the buyer on the subsequent contract provided that the subsequent contract is a part of the continuous dealing between parties.¹³⁸

II.3.3 Damages for defective goods

The cases of damages arising from defective goods may rise difficult problems of availability when the seller delivers incomplete goods with defects. If the buyer accepts defective goods and wants to hold the seller liable, the buyer must give the seller a notice of defect within the reasonable time after the buyer discovers the defect, the buyer is entitled to recover the volume of the goods would have had if they would have been warranted.

The cost of remedying the defect is the amount awarded as a compensation for failure to render the promised performance that means the seller here is liable to the buyer for a reasonable cost of doing what he promised to do and have willful declined to do so.¹³⁹ In addition to the above, the buyer can arrange to have someone else to rectify the goods with

¹³⁶ SCOTT J.BURN HARM, *Drafting a contract, a guide to practical application of the principles of the contract*, page 196, published by Michie Company law publisher's charlottes Ville Virginia, 2nd edition 1993.

¹³⁷ *Supra* note 15, page 897.

¹³⁸ *Supra* note 103, Page 337.

¹³⁹ *Supra* note 9.

defect and communicate to the seller the cost incurred that he will be entitled to recover from the seller.

Furthermore, whether the delivery of defective goods amounts to a fundamental breach depends upon whether the substantiality of the detriment caused by defective performance is established in accordance with article 25 of CISG. On the other hand however, the delivery of defective goods is not generally considered as a fundamental breach of contract provided that any defects can be rectified by the seller through repair in accordance with article 46 (3) of the CISG.¹⁴⁰

II.3.4 Damages for non-delivery

The CISG imposes an obligation to the seller to deliver the goods and hand over the document in conformity with Articles 31-33. In this respect, the seller is obliged to abide by the above mentioned provisions by delivering at the right place and on the time prescribed in the contract. Furthermore, article 47 (1) gives a chance to the seller for additional reasonable time to perform his obligation. However, when the seller fails to comply with this provision, the buyer can declare the contract void in accordance with Article 49 (1) (b) and claim damages for non delivery due to the seller's failure to deliver the goods.¹⁴¹

Based on the above provisions therefore, the seller will be subjected to the damages for non delivery when he wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery, the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract. Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the

¹⁴⁰ Unicitral Digest case law on the United Nations Convention on Contracts for International Sales of Goods, Page 228, March, 2012 edition.

¹⁴¹ *Idem*, Page 236.

time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver.¹⁴²

II.4. Damages for breach of the contract accruing from the loss incurred by the parties

Under the CISG, the aggrieved party to the contract has the right to claim damages of amount equal to the loss suffered, such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of conclusion of the contract. In this section, damages for loss suffered by the parties are discussed in relation to the stipulations of Article 74 of the CISG.

II. 4.1. Damages for loss of expectation

Contractual damages are usually awarded to compensate for injured parties loss of expectation, that is to say what the injured party would have received had the contract properly performed. In this respect, where a party sustained loss by a reason of breach of contract he is so far as money can do it, to be placed in the same situation with respect to damages.¹⁴³ The injured party is entitled to receive the damages equivalent to the difference in value between what injured party expected to receive and what he actually did receive, that is to say in relation to the defective goods, the damages for loss of expectation would be the difference in value between goods as promised and the goods actually received.

II.4.2 Damages for reliance loss

The injured party may wish to claim for reliance loss (wasted expenditure) the expenses incurred in preparing to perform or performing the contracts which have been wasted as a result of the breach, in this regard, the aggrieved party will be entitled to claim damages for the loss suffered when expectation or profit is too speculative. The injured party will also be forced to claim his reliance interest damages where expectation or profit under the contract is too speculative to establish. On the other hand however, if a party alleges that it

¹⁴² Section 51 of UK sales of goods Act of 1979.

¹⁴³ *Supra note 87*, Page 435.

has been damaged by the breach of the contract by another party, he is bound to exercise the reasonable care and diligence to avoid loss which could have been prevented by a reasonable effort on his part.¹⁴⁴

II.4.3. Loss of profits as a consequence of breach of contract under CISG

As mentioned above, parties to the contract for sale of goods can only claim damages for loss of profits when all conditions set out in the Article 74 of CISG are met. In this respect, damages for breach of contract by one party consists of the sum equal to loss, including the loss of profits suffered by either party as a consequence of breach of the contract. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of conclusion of the contract, in the light of facts and materials of which he then knew or ought to have known as possible consequences of the breach of the contract.¹⁴⁵

Furthermore loss of profits, as an element of special damages may be recovered for a breach of contract when the loss is direct and natural consequences of breach of the contract or it is reasonable probable that the profit would have been earned except for the breach and the amount of loss can be shown with a reasonable certainty.¹⁴⁶

II.5. Exemption from liability

As discussed in the above sections, the breach of contract for international sale of goods by one of the parties gives either party the right to claim for remedies and damages accruing from the failure of the breaching party to comply with the provisions of the contract. Further to the above, parties to the contract can only be exempted from liability if reasons for breach of contract of sale of goods are a result of force majeure. In this regard, Article 2:615 of UCC states that exemption from liability will be reasonable when the breaching party have not been assumed the risk of supervening event or some known contingency

¹⁴⁴ DONALD B. KING, CALVIN A. KUENZEL, BRAND FORD STONE, *Cases and Materials Series, Analysis and Skills Series*, Page 292, Mathew Bender and Company, 11th Penn Plaza, New York, Webster street, OAKLAND, CA 94612, 415-71000, 1275 ROAD WAY, ALBANY, 1987.

¹⁴⁵ Ljubca Tomic & Jelena bogdanovic, *Liability for damages for the breach of contract for the international sale of goods*, available at <http://www.google.rw>, as accessed on 18th May 2014.

¹⁴⁶ Loss profits, available at <http://www.westnet.smith/damages.html>, as accessed on 24th May 2014.

and the occurrence of supervening event must have rendered the performance of the contract commercially impracticable.¹⁴⁷

On the other hand, Article 79 of the CISG presents different conditions for exemption from liability of breach of the contract. In this regard, the either party should fail to perform or properly perform their obligations under the contract due to an impediment, such impediment should not have been reasonable foreseeable at the time of making contract, be un avoidable and out of control of party seeking to benefit from it, and notice of such impediment together with its effect on the ability to perform should be given to either party.¹⁴⁸

Under both CISG and UCC, the parties seeking exemption must establish the occurrence of unforeseen event that the party was not able to control or prevent, so as to avoid the liability.¹⁴⁹ In conclusion therefore, the effect for breach of contract for international sale of goods by two parties or third party leads the negative consequences not only to contracting parties but also consumers and manufacturers are negatively affected by such breach. The consequences for breach of contract for international sale of goods are not limited to the contracting parties; it goes beyond and affects the economies of the contracting parties when the breach leads to the loss of revenues that were expected from the parties' proper compliance of the contract.

¹⁴⁷ Article 2:615 of Uniform Commercial Code

¹⁴⁸ *Supra note 1*, Article 79.

¹⁴⁹ AMBROSE, PETER, ATIPO, *Force majeure in international business, a comparative assessment of force majeure under UCC and CISG*, 1997.

CHAPTER III. SETTLEMENT OF DISPUTES ARISING FROM BREACH OF CONTRACT FOR INTERNATIONAL SALE OF GOODS

This chapter discusses the role of arbitration tribunals and courts of law in settling disputes arising from the breach of contract for international sale of goods. Furthermore, it deals with execution of foreign judgments in CISG member states.

III.1. Arbitration procedure in International Commercial Arbitration

Arbitration is the process whereby the third party determines a dispute between two or more parties in exercise of a jurisdictional mandate entrusted to him by disputing parties.¹⁵⁰ In settlement of disputes arising from breach of contract for international sale of goods, the victimized party to this contract can refer his case to arbitration tribunal or to the courts of law in order to have legal remedy. In cases where the parties choose to refer their case to arbitration tribunal other than courts of law they have to consider the procedure provided by UNICITRAL Model law for effective settlement of their disputes.

III.1.1. Ways of determining place of arbitration under UNICITRAL Model law

Pursuant to Article 1 of UNCITRAL Model Law on International Commercial Arbitration, international commercial arbitration is applicable subject to any agreement in force between States, if the parties' places of business are in different States; or one of the places is situated outside the State in which the parties have their places of business, the place of arbitration if determined in, or pursuant to, the arbitration agreement; any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected, or the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.¹⁵¹

¹⁵⁰ GEORGIOS PETROCHILOS, *Procedural law in international arbitration*, Oxford private international law series, page 3, United States, Oxford University press Inc. New York, 2004.

¹⁵¹ Article 1 of UNCITRAL Model Law on International Commercial Arbitration of 1985 as amended and adopted in 2006.

In addition to the above, if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; if a party does not have a place of business, reference is to be made to his habitual residence. Furthermore, the commercial character of arbitration depends principally on the nature of the underlying disputes and perhaps, also on the remedies required.¹⁵²

III.1.2. Rights of the parties to determine the place of arbitration and the number of arbitrators

The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

The parties are free to determine the number of arbitrators. They are also free to agree on a procedure of appointing the arbitrator or arbitrators, parties are also free to agree on a procedure for challenging an arbitrator. In arbitration proceeding parties shall be treated with equality and each party has full opportunity of presenting his case. On the other hand Article 7 of Kigali arbitration rules, provides that parties have the right to be represented by persons of their choice if they have agreed that the arbitration shall be administered by Kigali arbitration center.¹⁵³

In addition to the above also, the parties can agree on a settlement of the dispute, the arbitral tribunal issues an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.¹⁵⁴

¹⁵² *Supra note 150*, page 5.

¹⁵³ Article 7 of Kigali Arbitration rules, Published in Official gazette N° 22 Bis of 28th May 2012.

¹⁵⁴ Article 36 of United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as revised in 2010.

III.1.3. Determination of the law applicable to the arbitration agreement

At the time of concluding the contract for international sale of goods the parties normally choose CISG as the law governing contract. The parties are also free to choose CISG to govern the arbitration agreement contained within the contract. This law governs the validity of arbitration agreement, the scope of agreement and whether certain disputes can be submitted to the arbitration.¹⁵⁵

In addition to the above, Nils argued that the sales contract is governed by the CISG; when the CISG was specifically chosen by the parties and there is evidence of the parties will to have the arbitration agreement governed by the CISG.¹⁵⁶

III.1.4. Applicability of the CISG in arbitration proceedings

It is paramount to analyze the application of CISG in arbitration proceedings. In this regard, for the CISG to be applicable in the arbitration preceding the two parties to the contract must have mentioned such provision in the contract. According to Article 27 of KIAC rules, the parties are free to agree on the rules of the law to be applied by arbitration tribunal to the substance of the case. However, when the parties failed to mention the law that will be applicable to the case at the time of conclusion of the contract, or in the absence of such agreement the arbitral tribunal shall apply the rules of law which it determines to be appropriate.¹⁵⁷

Furthermore, when disputes arise between parties whose contract fall within scope of the CISG, the parties to the case shall choose either domestic law or CISG to be applied by arbitrators in settling their disputes, failure to do so gives arbitral tribunal a discretionary power to determine the law applicable to the case.¹⁵⁸ When CISG governs the contract and arbitration agreement, the parties to the contract for international sale of goods are

¹⁵⁵DAYLAN MC KIMMIE & JESSE KENEDY, *The law applicable to the application agreement*, available at <http://www.lexology.com/author/905/> Daylan & Jesse, as accessed on 30th May 2014.

¹⁵⁶NILS SCHMIDT-AHRENDTS, *CISG and arbitration*, available at www.cisg.law.pace.edu/cisgbiblio/Schmidt-Ahrendts.html, as accessed on 30th May 2014.

¹⁵⁷ *Supra note 153*, Article 27.

¹⁵⁸ *Idem*.

confident enough that they will be compensated for the loss incurred during arbitration proceedings. In this respect, the parties to contract governed by CISG are lucky enough when it comes to the enforcement of arbitral award, because most the CISG member states are signatory to the New York Convention on the recognition and enforcement of foreign arbitral award. This means that it will be easy for the party subjected to arbitral award to have arbitral award enforced and executed in accordance with Article 3 of the new York convention, which states that each contracting state shall recognize the arbitral award as binding and enforce them in accordance with the rules of the territory where the award is relied upon.¹⁵⁹

III.1.5. Advantages of arbitration in international sale of goods

Arbitration is a form of alternative dispute resolution in which the two parties agree not to take their disputes to court, but instead to resolve the disputes by hiring arbitrators to hear both sides.¹⁶⁰ That is why many people in international business transactions resort to arbitration other than courts of law.

There are several reasons as to why the parties to the contract for international sale of goods prefer to lodge their claims on breach of contract in arbitration instead of referring their matter to courts of law. The main reason is that arbitration is more flexible than litigation and arbitration case can also be resolved quickly law than suit.¹⁶¹

Further to the above, arbitration provides more privacy than litigation. In this respect arbitration participants may agree to keep the final resolution and sensitive information completely private. This can be based on the fact that in arbitration, there is no public hearing and thus no public record. The parties may agree as part of their pre-dispute arbitration clause that they will maintain such disputes in confidence.¹⁶²

¹⁵⁹ Article 3 of the United Nations Convention on recognition and enforcement of foreign arbitral award adopted at New York on 10th June 1958.

¹⁶⁰JEAN MURRAY, What are the benefits and drawbacks of arbitration, available at <http://biztaxlaw.about.com/od/glossaryag/arbitration.html>, as accessed on 28th may 2014.

¹⁶¹ *Idem*.

¹⁶² ALAN FREEMAN, *Arbitration v. Litigation*, available at <http://www.insidecounsel.com/2012/04/19/litigation-arbitration-v-ligation> as accessed on 28th may 2014.

The parties to the contract for international sale of goods may also refer their disputes in arbitration due to the fact that they participated in the selection of arbitrators. They may also prefer arbitration based on the fact that there is no need of formal evidence; the parties only rely to the arbitrator's skills and expertise to sort out evidence. In addition to the above, when parties wish to have an ongoing business relationship; they can take their claims to arbitration because arbitration may be more conducive to success and the decisions of arbitrators are final and cannot be subjected to appeal.¹⁶³ In conclusion therefore, the parties to the contract for international sale of goods may wish to refer their disputes in arbitral tribunals due to its efficiency in commercial dispute settlement. Hence this saves money and time of the disputing parties.

III.2. Implication of CISG in courts decisions

This section highlights ways in which disputes arising from breach of contract for international sale of goods are settled in courts of law. Furthermore, ways in which provisions of CISG are applied by courts in rendering judgments are emphasized.

III.2.1. Application of CISG in dispute settlement between seller and the buyer

As far as the settlement of disputes arising between the seller and the buyer are concerned, CISG is mostly applied by the courts due to its nature of neutrality. This gives confidence to the seller and the buyer at the time of the conclusion of the contract that they will have fair justice when the dispute arises. Furthermore, as a commercial uniform law, CISG is commonly applied by courts of its member states, in case disputes arose between parties from different CISG member states. In this respect, the practical example can be taken from a case law whereby an Argentinean buyer and a German seller concluded a contract, containing a clause for the sale of dried mushrooms to be shipped to the buyer. In the course of their transport to FOB (Free On Board) Buenos Aires, the goods deteriorated. The buyer sued the seller claiming lack of conformity of the goods. If it happens that the goods in the contract were not perishable, the buyer would have requested the seller for repair or remedying the defect without referring the matter to the court. However, due to the fact

¹⁶³ *Idem*

that mushroom are perishable the buyer chose to seize the court claiming the damages for non conformity of the goods. In accordance with Article 67 CISG, the court held that the risk passed to the buyer when the goods were handed over to the first carrier for transmission to the buyer in keeping with the contract of sale.¹⁶⁴ In addition, the court held that the Contract clause obliged the seller to hand over the goods to the carrier and to pay the freight. However, the contract clause does not affect the passing of the risk. Further, it should be noted that the buyer, pursuant to the provisions of contract of sale, had taken out an insurance policy for transportation risks.

In accordance with Article 66, the court held that the buyer, after passing of the risk, was not discharged from his obligation to pay the purchase price, even in the event of loss or damage to the goods, unless the loss or damage was due to an act or omission of the seller. In this case, the damage of the goods occurred after the passing of the risk to the buyer, who did not adduce that it was owing to an act or omission of the seller. Accordingly, the court dismissed the action.¹⁶⁵

Further to the above case, when one of the parties to the contract for international sale of goods breach the contract and the aggrieved party seizes the court for dispute settlement, the CISG is automatically applied to handle the case based on the fact that the CISG was the law that governed the contract between the seller and the buyer.

III.2.2. Jurisdiction of courts in determining the law applicable to the case

The parties to the contract of sale of goods to be assured that they will have justice in case of breach of contract for international sale of goods, they should know jurisdiction of the courts in which CISG is applicable or not applicable. In this respect, the court can determine to apply CISG in settlement of dispute between two parties when place of business is presumed to be the place of delivery in accordance with substantive rules provided in

¹⁶⁴ Chamber of Commercial Appeals of Argentina (*Cámara Nacional de Apelaciones en lo Comercial*) Case comment by Wolfgang Rosch 31 October 1995, available at <http://cisgw3.law.pace.edu/cases/951031a1.html.as> accessed on 23rd November 2013.

¹⁶⁵ ARGENTINA Cámara Nacional de Apelaciones en lo Comercial [Appellate Court] Case no 47.448, between Germany Defendant (buyer) and Argentina Plaintiff (seller) on the sale of Dehydrated mushrooms, decided by judges: José Luis Monti and Bindo B. Caviglione Fraga, decision 19951031 (31 October 1995), available at <http://cisgw3.law.pace.edu/cases/951031a1.html.as> accessed on 23rd November 2013.

article 31 of the CISG. This rule is concerned with the seller's obligation of not deliver the goods at any place except the place of performance mentioned within the contract.¹⁶⁶

Further to the above, the courts shall have jurisdiction to determine the CISG as the law applicable to case when the disputes arising from the contract can be settled using general principles of the law.¹⁶⁷ In the absence of such principles the court can determine to apply other law by virtue of the rules of private international law contained in Article 1(b) and Article 7(2) of the CISG.

On the other hand, parties to other international commercial contracts that do not fall within the scope of CISG, are free to choose the law that govern their contract of which is the same law that will be applied by courts in the settlement of disputes between parties. In addition to the above, in situation where parties do not choose the law applicable to their contract, the court has jurisdiction to determine the law applicable to their case. On the other hand however, when the disputing parties who failed to mention the law applicable to their contract are for example, from European Union, the seized court shall have jurisdiction to determine the law applicable to the case in accordance with Article 4(a) of the European regulation determining the law applicable to contractual obligations, which states that in absence of the parties choice of the law applicable to their contract, the contract for sale of goods shall be governed by the law of the country where the seller has his habitual residence.¹⁶⁸

Furthermore, for the contracts governed by CISG, the court can determine to apply CISG in the settlement of the dispute between parties, if the parties places of business or habitual residence provided in Article 10(a-b) are within the countries that are party to the CISG. In conclusion therefore, in the absence of the parties' choice of law applicable to their contract, the courts are given a degree of discretion to determine the law of the country that is most closely connected to the contract.

¹⁶⁶Ronald A. Brand, *when substantive law rules affect jurisdictional result*, available at <http://www.uncitral.org/pdf/english/CISG25/Brand.pdf>, as accessed on 29th November 2013.

¹⁶⁷Governing law and Jurisdiction, available at <http://www.out-law.com/topics/dispute-resolution-and-international-arbitration/governing-law-law-and-jurisdiction-rome-I>, as accessed on 3th May 2014.

¹⁶⁸ Article 4 of the regulation (EC)N^o 593/2008 of the European Parliament and the council of 17th June 2008 on the law applicable to the contractual obligations (Rome I), adopted on 17th December 2009.

III.2.3. Impact of Court decisions on the seller and the buyer under CISG

The impact of court decisions on parties to the contract for international sale of goods are summarized in a case where German buyer (plaintiff) and a Slovenian seller (defendant) were in a long-term contractual relationship for the sale of doors and door frames, which were being produced by the seller for the buyer and then sold upon individual orders by the buyer.

The dispute arose after the buyer paid 18.000,00 Deutsche Marks in advance on 4 June 2001. On 8 June 2001, the seller issued a pro-forma invoice from which an offer for the sale of 119 doors and 123 door frames was evident, although at a higher price. The seller thereupon delivered a consignment of 22 doors and 174 door frames, although the buyer had made it known that always needed approximately the same number of doors and door frames so that could deliver kits consisting of a door and a door frame to the buyer.¹⁶⁹

The court of first instance stated that the seller was aware that he was supposed to deliver approximately the same number of doors and door frames in order for the buyer to make kits. It added that the seller knew of the buyer's contractual relation with the end buyer under which it was under an obligation to deliver kits consisting of a door and a doorframe. It rejected the seller's assertion that the buyer failed to specify the goods to which the advance payment referred and, therefore, the seller had chosen the goods itself from a consignment, previously prepared for the buyer. The court ruled that, considering that the goods had indeed been specified in the pro-forma invoice and that the seller knew that the buyer needed the same number of doors and door frames, the seller had failed to comply with its contractual obligation to deliver goods in conformity with the contract.

The court of appeal applied the CISG under Article 1(1) (a), because both of the parties had their places of business in contracting States. It ruled that the seller had indeed breached the contract by delivering 22 doors and 174 door frames. In the court's opinion, this constituted a fundamental breach under Article 25 CISG as the buyer had been deprived of

¹⁶⁹ Slovenia 14 December 2005 Higher Court [Appellate Court] in Ljubljana (*Door and door jamb case*) available at <http://cisgw3.law.pace.edu/cases/051214sv.html>, as accessed on 23rd October 2013.

what it was entitled to expect under the contract, namely that it was unable to assemble kits for resale. The buyer was therefore entitled to declare the contract avoided under Article 49(1) (a). Because the seller knew about the facts relating to the lack of conformity of the goods, the court further ruled that under Article 40, the seller was not entitled to rely on the buyer's delay in giving notice thereof.¹⁷⁰

The court stated that, although the court of first instance ruled on the consequences of the breach applying the Slovenian Obligation code, it contains the same provisions as CISG in Article 81(2), namely that a party who has performed the contract may claim restitution from the other party of whatever the first party has supplied or paid under the contract. Therefore, it upheld the decision of the court of first instance ordering the seller to make restitution of the received part of the price for the goods. After having avoided the contract, the buyer also attempted to return the delivered goods to the seller, who refused to take them. Therefore, the buyer holds them according to Article 88 to minimize the storage costs. The court found that the buyer had done so in an appropriate manner and that it had received an appropriate price. It further ruled that the seller is liable to the buyer for reimbursement of the costs it had suffered by storing the goods.¹⁷¹

The court additionally found that, under Article 78 CISG, the buyer is entitled to interest on the sum in arrears. After consulting Article 7(2) CISG and applying the conflict-of-law rules of the forum, it found that the Slovenian law is applicable to determining the interest rate. The appellate court therefore rejected the appeal and confirmed the decision of the court of first instance.¹⁷² It's upon the above facts of the case and the decision of the court that one may realize the impact of court decisions to contracting parties when CISG is applied to the case.

¹⁷⁰ *Idem*.

¹⁷¹ Case law on UNICITRAL Text (A/CN.9/SER.C/ABSTRACT/118, CLOUT Abstract no 1153,) available at <http://cisg3.law.pace.edu/cases/051214sv.html>, as accessed on 3rd November 2013.

¹⁷² *Idem*.

III.3. Settlement of disputes of breach of contract for sale of goods in CISG non member states

Pursuant to Article 1 (a) of CISG, the parties are bound by this Convention when their states are CISG member states. In this regard, if one of the parties breaches the contract of sale of goods, the victimized party can refer his case to the competent court or arbitration tribunal in conformity with Article 10 of CISG. On the other hand, it's paramount to know where disputes between parties to the contract of sale of goods from CISG non member states can be settled. The decided case below is a good example that shows how disputes arising from breach of contract for international sale of goods in different non member states to CISG are settled by competent courts in Rwanda. Today Rwanda has adopted a law authorizing accession to CISG. However, during adjudication of the case mentioned below, Rwanda was still non member state to CISG.

III.3.1. Merits of the case

A seller (APOLLO TUBES LTD) whose place of business was in St Antoine-Goodland-Mauritius entered into a contract of sale with a Rwandan buyer (NZIZERA Alexandre the owner of quincaillerie Omega) whose place of business was in Kigali-Rwanda.¹⁷³

On 18th January 2010, the two parties concluded a contract of sale of hardware materials, at the total contract price equivalent to 22,070 USD. The two parties agreed that the payment shall be made into two installments; the first installment equivalent to 11,035 USD was paid at the date of delivery of goods by means of the Bank money transfer, the 2nd Installment was supposed to be paid in the same manner. However, after the delivery of the goods the buyer failed to pay 2nd installment as agreed upon in the contract by the two parties, hence breach of contract for international sale of goods. The seller requested the buyer to pay the remaining amount in good faith within a period of more than 2 years. However, the buyer (NZIZERA Alexandre) did not pay the seller (APOLLO TUBES LTD) as agreed in the contract.¹⁷⁴

¹⁷³ Contract for supply of hardware materials conclude between (APPOLO LTD Mauritius seller) and NZIZERA Alexandre (owner of quincaillerie omega) Rwandan buyer.

¹⁷⁴ NYARUGENGE Commercial Court, Case law No R.Com 0155/13/TC/NYE 0f 7/6/2013, P. 1, un published.

After the breach of contract by the buyer, the seller represented by his lawyer Me BIMENYIMANA Eric lodged his claim against the buyer for breach of an obligation to pay the second installment equivalent to 11,035 USD of the contract price in NYARUGENGE Commercial court. The Plaintiff's lawyer also requested the court to order the seller to pay 6,759 USD as an interest for payment delays of 35 months effective from the date the payment of the 2nd installment was supposed to be done.

Furthermore, the plaintiff's lawyer also requested the court to order the seller to pay the following amount;

- 500,000Rwf per month as a fine for forced execution of the judgment in case the buyer fails to comply with the decision of the court on due time.
- 2,500,000Rwf for plaintiff's wasted time during the court proceedings and 2,000,000Rwf for advocate fees. Later on, the buyer represented by his lawyer Me ZITONI Pierre Claver filed counterclaim arguing that the 2nd installment of the principal debt claimed by the seller was paid in cash at hand to third party (JITENDRA KUMAR TIWARI SANJAY) and submitted it to the seller.¹⁷⁵

In addition to above, the buyer's lawyer requested the court to order the seller to pay neither a guarantee of 30 million Rwandan francs that will be subjected to damages payable to the buyer in case the seller lost the case, due to the fact that the seller was a foreigner and has no properties nor place of business in Rwanda. However, the court ordered the seller to deposit 1 million Rwandan francs to the account of Ministry of justice.

III.3.1.1. Court findings

Pursuant to Article 64 of the law N° 45/2011 of 25/11/2011 governing contracts in Rwanda, the court found that the contract between two parties was concluded in conformity with the law and binds the seller and the buyer without any compromise whatsoever. In addition to the above, the Court found out that the buyer did not deny to have received the goods delivered to him by APOLLO TUBES LTD.

¹⁷⁵ *Idem*, page 2

Based on Article 144 of the above mentioned law, the Court found that the requested interest by the buyer has a legal basis and starts to accrue from date the buyer failed to meet terms of the contract.¹⁷⁶ The court also found that the request made by the buyer's Lawyer to summon the third party (JITENDRA KUMAR TIWARI SANJAY) has no legal basis, hence rejected the request basing on Article 117 of the law No 21/2012 of 14/06/2012 relating to Civil Commercial, Labor and administrative Procedure. The court rejected the above mentioned request due to the fact the third party has no interest in the case. The court also found that the seller has deposited the 1 million Rwandan francs as ordered by the court.¹⁷⁷

III.3.1.2. Court decision on the damages requested by the seller

The court dismissed the buyer's counterclaim due to the fact that the mode of payment provided by the contract was the bank money transfer rather than the payment in hand to the third party. Pursuant to Article 9 of the law N° 21/2012 of 14/06/2012 relating to Civil Commercial Labor and Administrative Procedure, the court rejected the counter claim due to the buyer's failure to provide evidence for proof of payment of the 2nd Installment of the principal debt the buyer owed to the seller, hence the Court ordered the Buyer (NZIZERA Alexandre) to pay APOLLO TUBE LTD amount equivalent to 11,035 USD of the principal debt, 6,163 USD of interest for delay of payment and 1,000,000Rwf fees incurred by the seller in hiring a lawyer to represent him in the court.¹⁷⁸

Furthermore, the Court ordered the buyer to pay 100,000Rwf per day for the delay of payment in case of the buyer failed to execute the decision of the court judgment. On the other hand, the court ordered reimbursement of 1 million paid as guarantee to APOLLO TUBES LTD and Court fees equivalent to 6,000Rwf.

Though Rwanda and Mauritius were non member states to CISG at the time of rendering the final judgment the contract of sale of goods concluded between a Mauritius seller and a Rwandan buyer has an international character due to the fact that the two parties are from

¹⁷⁶ *Supra note* 5, Articles 144.

¹⁷⁷ Article 117 of the Law n°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labor and Administrative Procedure. Official Gazette N° 29 of 16/07/2012.

¹⁷⁸ *Idem*, article 9.

two different states. This statement is similar to the stipulations Article 1(1) of which provides that the Convention applies to contracts of sale of goods between parties whose places of business are in different States; when the States are Contracting States or when the rules of private international law lead to the application of the law of a Contracting State. In this regard therefore, the rules of private international law are enshrined in the domestic law of the above mentioned states.

III.4. Execution of foreign judgments in civil and commercial matters

Pursuant to the stipulations of Article 4 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters; if one of the parties breached a contract of sale for international sale of goods and the plaintiff seized the competent court or arbitration centre for redress, a decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State; if the decision was given by a court considered to have jurisdiction within the meaning of above mentioned Convention, and if it is no longer subject to ordinary forms of review in the State of origin. In addition, to be enforceable in the State addressed, a decision must be enforceable in the State of origin.¹⁷⁹

On the other hand however, Article 5 of the above mentioned convention provides that the recognition or enforcement of a decision may nevertheless be refused in any of the following cases;

- If recognition or enforcement of the decision is manifestly incompatible with the public policy of the State addressed or if the decision resulted from proceedings incompatible with the requirements of due process of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case;
- If the decision was obtained by fraud in the procedural sense;
- If proceedings between the same parties, based on the same facts and having the same purpose are pending before a court of the State addressed and those

¹⁷⁹ Article 4 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1st February 1971, entered into force on 20th August 1979.

proceedings were the first to be instituted, or have resulted in a decision by a court of the State addressed, or have resulted in a decision by a court of another State which would be entitled to recognition and enforcement under the law of the State addressed.¹⁸⁰

III.4.1. Execution of foreign judgments in Rwanda

Execution of foreign judgment in Rwanda is governed by the law relating to organization functioning and jurisdiction of courts in Rwanda. In this respect, if the party to whom the execution is to be made has his place of business in Rwanda, the victimized party seeking execution of such judgment will request for execution of decisions taken by foreign courts in the High court of Rwanda, which is the competent court with jurisdiction to hear and decide on matters of execution of foreign judgment pursuant to Article 91 of the above mentioned law, which stipulates that High court shall hear complaints which require execution of cases and decisions taken by foreign courts.¹⁸¹

The examination of such applications is conducted by considering; whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; whether the case was finally heard and determined in accordance with the laws of the country of origin; whether a copy of the judgment is by all means authentic in accordance with such laws; whether the right of defense was respected.

In addition to the above, the party seeking execution of foreign judgment in Rwanda has to meet conditions set forth in Article 92 of the same law, which provides that authentic deeds which have proof to have been written by foreign authorities may also be executed in Rwanda by the High Court if they have the following evidence; if the reasons for seeking the execution of the authentic deeds are not contrary to public order as well as legal tenets of

¹⁸⁰ *Idem*, Article 5.

¹⁸¹ Article 91 of the organic law N° 51/2008 of 9/9/2008 determining organization functioning and jurisdiction of courts. O.G Special n° of 10 September 2008.

Rwandan Public laws; if according to the Country in which they were written, they have all necessary evidence to prove their authenticity.¹⁸²

III.4.2. Case law on execution of foreign judgments in commercial matters in Rwanda

As mentioned above, any person seeking execution of foreign judgment in commercial matters has to seize the Rwandan commercial High court for redress in conformity with the law determining organization, functioning and jurisdiction of Courts. A practical example has been drawn from the case N^o R.G.10/3093/A decided by BELGIAN Primary court of Bruxelles 73rd chamber, where the plaintiff (s.a.r.l AFRICA EDGE, Belgian Company) Vs Mr. ABDULMOHAMED Noorali Bandali whose place of business was in RWANDA-Kigali city.¹⁸³

Based on the above mentioned Articles the Plaintiff filed a case in Rwandan commercial high court seeking execution of the foreign judgment.¹⁸⁴ After analyzing and examining the case, the Rwandan commercial High Court has rendered the judgment basing on Article 13 of the organic law N^o 06/2012 of 14/9/2012 determining organization, functioning and jurisdiction of courts, which states that the Commercial High Court shall hear in the first instance, complaints against decisions and judgments rendered by Foreign Courts on commercial, financial and fiscal cases which require the exequatur on the Rwandan territory.¹⁸⁵

In this regard, the court declared that the case has been filed in conformity with all legal requirements, hence ordered for its execution in Rwandan territory without any compromise whatsoever.

Basing on the above provisions however, article 204 of the Rwandan Law n^o21/2012 of 14/06/2012 relating to the Civil, Commercial, Labor and Administrative Procedure stipulates that except where international agreements provide otherwise, judgments ruled by foreign courts and foreign deeds issued by foreign officials shall not be subject to

¹⁸²*Idem*, Article 92.

¹⁸³BELGIAN Primary Court of Bruxelles 73rd chamber, case N^o R.G.10/3093/A, un published.

¹⁸⁴ Rwandan commercial High Court, EXEQUATUR case N^o RC 0M 0015/13/HCC, un published.

¹⁸⁵ Article 13 of the Organic Law N^o 06/2012 of 14/9/2012 determining the organization, functioning and jurisdiction of commercial courts, published in *Official Gazette* n^o45 of 05/11/2012.

execution in Rwanda, unless they are rendered enforceable by the competent Court.¹⁸⁶ It's upon this provision that foreign judgments have to be approved first by High court in order to be recognized and executed in Rwanda.

In conclusion therefore, even though Rwanda was not signatory to CISG at the time of rendering judgment, the execution of foreign judgment would have been taken place; if the party to whom the execution of foreign judgment was addressed to, was a Rwandan citizen and has no places of business in any signatory states to CISG and when it would have been proven beyond doubt that his place of residence or domicile was in Rwanda, the foreign judgments rendered basing on CISG provisions would have been enforced and executed in Rwanda in accordance with the above mentioned laws.

¹⁸⁶ Article 204 of the Law n°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labor and Administrative Procedure, Official Gazette n° 29 of 16/07/2012.

General Conclusion

As previously stated, the United Nations Convention on Contracts for the International Sale of Goods is a treaty that is a uniform international sales law. The CISG allows exporters to avoid choice of law issues, as the CISG offers "accepted substantive rules on which contracting parties, courts, and arbitrators may rely". Furthermore, contract for international sale of goods applies between parties whose places of business are in different States. The transaction has an international character when the parties have their places of business in different States at the time the contract is concluded.

The CISG contract imposes on the seller an obligation to deliver goods or transfer any document referring to the goods in property to the buyer on time and in quality. The seller must also deliver goods which are free from any industrial property or intellectual property. On the hand however, the buyer is obliged to take the goods and pay the price in legal currency and on time specified in the contract. In addition to the above, the carrier is obliged to carry the goods to the places of destination and deliver it to the consignee pursuant to Article 11 of Rotterdam rules.

The impact of the breach of contract for international sale of goods was the core part of this research. In this regard therefore, it was found out that the breach of contract occurs where a party to the contract fails to perform precisely and exactly his obligations. Contract may be breached by one party or both parties. However, this research found out that the failure to abide by the contract results in legal consequences when the contract breach is fundamental.

Furthermore, we noted that the release from obligation, restitution of what has been already performed, the duty to preserve the goods and avoidance are the consequences of breach of a valid contract. In this research, we also found out that Price reduction is also a consequence of breach of contract for international sale of goods. It is applicable where the seller has delivered non-conforming goods and the buyer elects to accept them in spite of non-conformity. Damage for non acceptance is also a consequence of breach of contract for international sale of goods in sense that if the buyer neglects to pay the seller, the seller

may lodge a claim against him for non acceptance in accordance with the loss incurred. Furthermore, where the seller refuses to deliver the goods to the buyer, the seller will be liable for damages for non delivery.

Finally, the parties to the contract for international sale goods can suffer the consequences of loss of expectation in case of breach of contract for sale of goods. The loss suffered includes also reliance loss and loss of profit. Based on the above mentioned consequences of breach of contract for internal sale of goods, it was found out that both parties to the contract are affected by breach of contract hence realization of the impact for breach of contract for international sale of goods.

In the course of conducting this research also, settlement of disputes arising from breach of contract for international sale of goods in arbitration tribunals were emphasized pursuant to the UNICITRAL model law on international commercial arbitration; arbitration in this regard is applicable subject to any agreement in force between states. In addition to the above, it was found out that CISG is applied in arbitration proceedings if the arbitration clause contained in the contract or sales contract is governed by CISG or if there is evidence of the parties will to have the arbitration agreement governed by CISG.

Furthermore, CISG is applied by the courts of law when settling disputes between the seller and the buyer whose contract of sale is governed by the CISG. In this respect, an example has been drawn from the summarized cases mentioned below. One of those cases is a case where by an Argentinean buyer and a German seller concluded a contract of sale of dried mushroom to be shipped by the buyer and in the course of transport the goods deteriorated, when this case referred to court for settlement the court applied Article 67 of CISG and held that goods passed to the buyer when it was first handed over to the first carrier for transmission to the buyer and hence the court dismissed the buyer's action basing on the Article 66 of CISG.

In addition to the above, a German buyer and Slovenian seller who were in long term contractual relationship for sale of doors and door frames, the disputes arose when the seller failed to deliver the exact number of doors as per contract clause, the matter were referred to court of 1st instance, hence the court ruled that the breach of contract was

fundamental in accordance with Article 25 of CISG and therefore, the buyer was entitled to declare the contract voided under Article 49(1)(a). Thereafter, the seller appealed and the appellate court rejected appeal and adds interest on the sum of arrears based on Article 78 of CISG.

On the other hand however, we found out that business people from CISG non member states can also have justice in case their contract has international character. In this regard, an example has been taken in the case where a Mauritius company (APOLLO TUBES LTD) lodged a case of breach of contract for sale of hardware materials against a Rwandan business man (NZIZERA Alaxandre) in NYARUGENGE Commercial Court. After analyzing the case the court based on Article 9 of the law N° 21/2012 of 14/06/2012 relating to Civil Commercial Labor and Administrative Procedure, rejected NZIZERA's counterclaim and ruled in favor of APOLLO TUBES LTD. In this respect, we noted that business men from CISG non member states are also protected by the domestic laws. On this note, the above mentioned case has been rendered before Rwanda's accession to CISG; hence Rwanda was non member state to the CISG during the time of court proceedings.

After settlement of disputes between sellers and buyers by courts and commercial tribunals, the parties to the contract for international sale of goods seeks the execution of judgment in accordance with Article 4 of the Convention on the recognition and enforcement of foreign judgment in civil and commercial matters; when the Court has jurisdiction and if the case is no longer subject to ordinary forms of review in the states of origin, enforceable in the state addressed and state of origin.

On the other hand, recognition and execution of foreign judgments in Rwanda can be applicable when a party concerned seized the High Court in accordance with Article 91 of the law relating to organization functioning and jurisdiction of courts, the party seeking execution of foreign judgment also must meet conditions set forth in Article 92 of the same law. In this regard therefore, the enforcement of foreign judgment can be done in accordance with Article 204 of the law no 21/2012 of 14/06/2012 relating to civil commercial labor and administrative procedure which provides for the execution and enforceability of foreign judgment in Rwanda.

Based on the above findings of this research, the researcher has critically analyzed the impact of breach of contract for international sale of goods by paying specific attention to the applicability of CISG, effects of breach of contract for international sale of goods to the buyer and seller and ways of overcoming such effects by the victimized party to the contract. In this regard therefore, the stated problems have been addressed in effective manner. However, this research has not exhausted all the impact for breach of contract for international sale of goods. On this note, other issues related to this research that has not been addressed were left for further research and gives room for other scholars to conduct their research in this field.

BIBLIOGRAPHY

I.LEGISLATIONS

A. Rwandan laws and regulations

1. Organic law N° 51/2008 of 9/9/2008 determining organization, functioning and jurisdiction of courts, O.G Special n° 10 of September 2008.
2. Organic Law N° 06/2012 of 14/9/2012 determining the organization, functioning and jurisdiction of commercial courts, Official Gazette n°45 of 05/11/2012.
3. Law N° 068/2013 of 30/8/2013 Authorizing accession to the United Nations convention on contracts for international sale of goods adopted in Vienna in 1980, Official Gazette N° 51 of 23/2013.
4. Law N°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labor and Administrative Procedure, Official Gazette N° 29 of 16/07/2012.
5. Law N° 45/2011 of 25/11/2011 governing contracts in Rwanda, Official Gazette n° 04bis of 23/01/2012.
6. Law N° 12/2007 of 27/03/2007 on Public Procurement, Official Gazette N° 8 of 15th April 2007, as modified and complemented by the Law N° 05/2013 of 13/02/2013, Official Gazette N° 16 of 22/4/2013.
7. Law N° 12/2009 of 26/5/2009 relating to the commercial recovery and settling issues arising from insolvency, O.G N° Special of 26/05/2009.

B. International Legislations

1. United Nations Convention on Contracts for the International Sale of Goods, Vienna 11 April 1980, S.Treaty Document Number 98-9 (1984), UN Document Number A/CONF 97/19, 1489 UNTS 3.
2. United Nations Convention on the Use of Electronic Communications in international contracts, adopted by United Nations General Assembly, New York 23rd November 2005.
3. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, adopted by United Nations, New York, 11th December 2008.
4. United Nations Convention on recognition and enforcement of foreign arbitral award adopted at New York on 10th June 1958.

5. Convention on the Limitation Period in the International Sale of Goods, (New York, 14th June 1974).
6. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters concluded on 1st February 1971 and entered into force on 20th August 1979.
7. Convention relating to Uniform Law on the Formation of Contracts for the International Sale of Goods, (Hague, 1 July 1964).
8. UNCITRAL Model Law on International Commercial Arbitration of 1985 as amended and adopted in 2006.
9. Directive 2000/35/EC of the European Parliament on combating late payment in commercial transactions, Luxembourg, 29 June 2000.
10. Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 1979 (SDR Protocol).
11. UNIDROIT (ed.) Unidroit Principles of International Commercial Contracts, Rome April, 2004.

C. Foreign laws

1. American Uniform Commercial Code sales act, 2007 edition.
2. United Kingdom Sales of Goods Act, enacted by queen's most excellent majesty on 18th April 1973.
3. United Kingdom sale of goods act, The Revised Statutes of Saskatchewan, 1978(effective February 26, 1979) as amended by the Statutes of Saskatchewan, 1979-80.

II. Case Law

1. BELGIAN Primary court of Bruxelles 73rd chamber, case N^o R.G.10/3093/A, un published.
2. NYARUGENGE Commercial Court, Case Law N^o R.Com 0155/13/TC/NYE Of 7/6/2013, un published.

III. Text Books

1. ALLAN E. FARNSWORTH, WILLIAM F. YOUNG, *Contract case and materials*, University case book series, 4th edition 1988.
2. AMBROSE PETER ATIPO, *Force majeure in international business, a comparative assessment of force majeure under UCC and CISG*, 1997.
3. BRUNO ZELLER, *CISG and the Unification of International Trade Law*, 270 Madison Ave, New York, NY 10016, 2007.
4. CHARTERED INSTITUTE OF PURCHASING AND SUPPLY, *Effective negotiation in Purchase and Supply, The official CPIS Course book*, page 56, Easton house, Easton on hill, Starmford, Lincolnshire PE9 3NZ, 2011.
5. DONALD B. KING, CALVIN A. KUENZEL, BRAND FORD STONE, *Cases and Materials Series*, analysis and skills series, Mathew Bender and Company 11th Penn Plaza, New York NY Webster street, OAKLAND, CA 94612, 415-71000, 1275 ROAD WAY, ALBANY, 1987.
6. GEORGIOS PETROCHILOS, *Procedural law in international arbitration, Oxford private international law series*, United States, Oxford University press Inc. New York, 2004
7. HONNOLD JOHN, *Uniform Law for International Sales under the 1980 United Nations Convention*, University of Pennsylvania, United States, Balton Center, 3rd ed. (1999).
8. JILL POOLE, *Case book on Contract law Blackstone press limited*, Adeline Place, London, W128AA, United Kingdom, 5th edition, 2001.
9. JOHN D. CALAMARI & JOSEPH M. PERILLO, *Contracts hand book series and basic legal text*, Mutshell Series of West Publishing Company, St Paul, Minnesota 55165, and February, 1977.
10. KEITH ABBOTT, NORMAN PENDLEBURY, Kevin ward man, *Business Law*, the lower building, 11 york Road, London SE1 7 NY, 370 LEXINGTON, Avenue, NY, 10017-6503, 7th edition 2002.
11. LARRY A. DIMATTEO HUBE HURST, *Critical Issues in the Formation of Contracts under the CISG*, (June 2011).
12. LOUIS F. DEL DUCA EGON GUTTMAN & ALPHONSE M SQUILLANTE, *Problems and Materials on Sales under the Uniform Commercial Code and the Convention on*

International Sale of Goods, Commercial transaction volume II, Anderson Publishing Company, United States, 1993.

13. MICHAEL B.METZGER, JANE P.MALLOR, JAMES BARNES, THOMAS BOWERS AND MICHAEL J.PHILLIPS, *Business law and Regulatory environment, cases and concepts*, Lusk series, business Publication, Richard D. IRWIN, home wood, Illinois, 60430, 6th edition, 1986
14. ORKUN ARKSELI, *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, published by New York Cambridge university press, September 2013.
15. PETER HUBER & ALASTAIR MULLIS, *The CISG, New textbook for students and practitioners*, European Law Publishers, 2007.
16. RONALD A. ANDERSON, FOX IVAN, DAVID P.TWOMEY, *Business Law, UCC Comprehensive volume*, south western publishing co, concinnati, Ohio Dallas west CHICAGO ILL DALLAS PELHAM MANOR N.Y ALTO,CALIF, 12th edition, 1984.
17. SCHLECHTRIEM PETER & MATTHEW BENDER, *The Seller's Obligations Under the United Nations Convention on Contracts for the International Sale of Goods*, Vienna 1986.
18. SCOTT J.BURN HARM, *Drafting a contract, a guide to practical application of the principles of the contract*, published by Michie Company law publisher's charlottes Ville Virginia, 2nd edition 1993.
19. SMITH KEENANS, *Law for Business*, Bell & Bain Limited, Glasgow, 90 Tottenham, Court Road, London, 12th edition 2003.
20. VINCZE ANDREA, *Unidroit principles of international commercial contracts with official commentary* (Hungary, October 2004).

IV. Internet Sources

1. ALAN FREEMAN, *Arbitration v. litigation*, available at <http://www.insidecounsel.com/2012/04/19/litigation-arbitration-v-ligation> as accessed on 28th may 2014.
2. ALEXANDER LORENZ, *"Fundamental Breach under the CISG"* Published by Pace institute of International Commercial Law, available at <http://www.cisgw3.law.pace.edu>, as accessed on 14th February 2013.

3. ALLISON E.BUTLER, *Apractical guide to CISG Negotiations with through litigation 2007 supplement2*, available at <http://cisg3.law.pace.edu/cisg/biblio/butler6.html>, as accessed on 15th October 2013.
4. ARGENTINA *Cámara Nacional de Apelaciones en lo Comercial [Appellate Court] Case no 47.448, between Germany Defendant (buyer) and Argentina Plaintiff(seller) on the sale of Dehydrated mushrooms, decided by judges:): José Luis Monti and Bindo B. Caviglione Fraga, decision 19951031 (31 October 1995)*, available at <http://cisgw3.law.pace.edu/cases/951031a1.html>, as accessed on 23rd November 2013.
5. *Case law on UNCITRAL texts [A/CN.9/SER.C/ABSTRACTS/118], CLOUT abstract no. 1153*, available at <http://cisg3.law.pace.edu/cases/051214sv.html>, as accessed on 3rd November 2013.
6. Chamber of Commercial Appeals of Argentina (*Cámara Nacional de Apelaciones en lo Comercial*) *Case comment by Wolfgang Rosch 31 October 1995*, available at <http://cisgw3.law.pace.edu/cases/951031a1.html>, as accessed on 23rd November 2013.
7. CHENGWEI LUI, *Effects of avoidance perspectives from cisg, unidroit, principles and PECL and case law*, available at www.cisg.iaw.pace.edu/cisg/biblio/lui/2.html, as accessed on 12th May 2014.
8. CISG article .58. *See generally Lief Sevón, Obligations of the Buyer under the Vienna Convention on the International Sale of Goods, and SUOMALAINEN LAKIMIESTEN YHDISTYS:—TIDSKRIFT UTGIVEN AV JURIDISKA FORENINGEN I FINLAND 327-43 (1990)*, available at <http://cisgw3.law.pace.edu/cisg/biblio/sevon.html>, as accessed on 11th December 2013.
9. *Compensatory damages* available at [legal-dictionary.freedictionary.com/compensatory damages](http://legal-dictionary.freedictionary.com/compensatory-damages), as accessed on 24th May 2014.
10. DAYLAN MC KIMMIE & JESSE KENEDY, *The law applicable to the application agreement*, available at <http://www.lexology.com/author/905/> Daylan & Jesse, as accessed on 30th May 2014.
11. DENNIS CAMPBELL, *Remedies for international sellers of goods*, available at <http://www.jurispub.com/cart.php?m=productdetail> & p=6868, as accessed on 27th May 2014.
12. Enderlein F & Maskow D, *International Sales Law - United Nations Convention on Contracts for the International Sale of Goods (1992 New York)* <<http://cisgw3.law.pace.edu/cisg/biblio/enderlein.html>>, as accessed on 17th December 2013.

13. Expectation damages, available at en-wikipedia.org/wiki/expectation_damages, as accessed on 24th May 2014.
14. Governing law and Jurisdiction, available at <http://www.out-law.com/topics/dispute-resolution-and-international-arbitration/governign-law-law-and-jurisdiction-rome-I>, as accessed on 3th May 2014.
15. Henry Deeb Gabriel, *the buyer's performance under the cisg: articles 53-60 trends in the decisions*, available at <http://www.uncitral.org/pdf/english/CISG25/Gabriel.pdf>, as accessed on 2nd December 2013.
16. JEAN MURRAY, *What are the benefits and drawbacks of arbitration*, available at <http://biztaxlaw.about.com/od/glossaryag/arbitration.html>, as accessed on 28th may 2014.
17. Ken lawmance, *Breach of Contract*, article published by legal match, available at http://legalmatch.com/law-library/artcle/breach_of_contract.html, as accessed on 19th march 2013.
18. Ljubca Tomic & Jelena bogdanovic, *Liability for damages for the breach of contract for the international sale of goods*, available at <http://www.google.rw>, as accessed on 18th May 2014.
19. Loss profits, available at <http://www.westnet/smith/damages.html>, as accessed on 24th May 2014.
20. MAARTJE BIJL, *Fundamental breach in documentary sales contract*, the doctrine of strict compliance with underlying sales contract, available at www.cisg.law.edu/cisg.biblio/bijil.html#*, as accessed on 15th October 2013.
21. *Material breach law and legal definitions*, available at <http://www.definitions.uslegal.com/m/materials-breach>, as accessed on 12th may 2014.
22. PIIA KALAMEES, *Hierarchy of Buyer's Remedies in Case of Lack of Conformity of the Goods*, available at <http://www.jurdicainternational.eu/index.php?id=14839>, as accessed on 13th November 2013.
23. RONALD A BRAND, *when substantive law rules affect jurisdictional result*, available at <http://www.uncitral.org/pdf/english/CISG25/Brand.pdf>, as accessed on 29th November 2013.

24. Slovenia 14 December 2005 Higher Court [Appellate Court] in Ljubljana (*Door and door jamb case*) available at <http://cisgw3.law.pace.edu/cases/051214sv.html>, as accessed on 23rd October 2013.
25. *The original eleven states that ratified CISG Convention were: Argentina, China, Egypt, Hungary, Italy, Lesotho, Syria, United JOHN DELATRE FALCONBRIDGE, section 2-4 of UK Sales of goods act of 1979, a selection of cases from on the sale of goods, available at <http://www.amazon.com/gp/product/B00088GTSG>, as accessed on 15th November 2014.*
26. The PECL Comments explain that if the offeror does not perform the contract he could become liable for non-performance, and would have to pay damages under the relevant PECL provisions contained in chapter 9, section 5, available at <http://www.cisg.law.pace.edu/cisg/text/peclcomp16.html#cnpc>, as accessed on 13th November 2013.
27. *Types of contract breaches*, available at lawfirms.com/resource/business/types_of_contract_of_breach.html, as accessed on 12th May 2014.
28. *Uncitral Digest of case law on the United Nations Convention on the International Sale of goods art. 31*, at http://www.uncitral.org/uncitral/en/case_law/digests/cisg.html, as accessed on 8th September 2013.
29. *UNCITRAL, Digest of case law on the United Nations Convention on the International Sale of Goods ("Digest"), Article 1-A/CN.9/SER.C/DIGEST/CISG*, available at http://www.uncitral.org/english/clout/digest_cisg_e.htm, as accessed on 14th November 2013.