

International Sales Contract

Abstract

The objective of this thesis is to describe the ways of avoidance of the contract available under the United Nations Convention on Contracts for the International Sale of Goods (hereinafter the “Convention”) and to make an analysis of its key term “fundamental breach of contract” as it is defined in its article 25.

The thesis is composed of the introduction, three main chapters and the conclusion.

The first chapter introduces the Convention itself. It describes the process of its creation, and points out the fact, that the final text of the Vienna Convention is a result of many compromises, which were supposed to ensure its global acceptance. This goal, was in the end achieved, but at the price of the Convention containing many terms which were vague and ambiguous, making it hard to interpret. Later in this chapter I also deal with the conditions, which have to be met for the Convention to be applied, (and its exceptions) and in the end I shortly address the problem of the uniform application of the Convention.

The second chapter then deals with the interpretation of the term “fundamental breach of the contract” as one of the conditions of the just avoidance of the contract. This chapter is then divided into three parts. The first part handles the term of the breach of contract by the party in the breach and describes the situations, when it results in substantial detriment of the innocent party, as the first element of the fundamental breach. The second part then deals with its second element, namely the foreseeability of the detriment. The final part then introduces the typical cases, when the breach will be held as a fundamental one, with regard to both the scholarly writing and the case law.

The third chapter then advances to the core of the thesis, namely the avoidance of the contract under the Convention. It introduces all of the possible ways, how can the contract can be avoided – both from the position of the buyer and the seller. Firstly the avoidance of the contract for the fundamental breach of the other party is described, as a main but risky type of the avoidance. Then I proceed to the avoidance of the contract due to the failure of the other party to fulfill its obligations under the contract in the reasonable additional period set by the innocent party. This is the most effective way to avoid the contract, as it does not require the innocent party to prove, that the

fundamental breach took place, which as described in the chapter two, can sometimes be very problematic. Later, the issue of avoidance of the contract for the so called “anticipatory breach” is addressed, together with the cases of avoidance in the installment contracts. As one of the conditions of an effective declaration of avoidance of the contract is its notification to the party in breach, the form and other general issues of this notice are also dealt with. Lastly, the chapter describes the situations, when the innocent party can lose its right to avoid the contract, namely because it does not declare the contract avoided in time or because it is not possible for the buyer to return the delivered goods to the seller.

In the very last part of this thesis, the conclusion, I then evaluate all the ways of the avoidance of the contract under the Convention and its general application, together with the relevant case law and introduce my own ideas, as to when I think the Convention shall be applied and where it will only result in problems (mainly relating to its ambiguous terms) for the parties to the contract.