

ABSTRACT

This thesis examines the interpretation and application of the buyer's remedy of avoidance under the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG). The main research question focusses on 'How is the remedy established, exercised and what are the consequences of avoidance?' The aim of the examination is to determine whether the remedy is suitable for international sale of goods transactions. For the purposes of this thesis 'suitable' is defined as meaning that the remedy must be capable of being applied to contracts for different types of goods and contracts commonly bought and sold in international trade. Additionally the remedy must one that the parties can lawfully establish and exercise swiftly and with certainty.

Using doctrinal and comparative research strategies the thesis responds to criticisms that the remedy is overly 'complicated', the reason being that certain rules only apply to specific types of breaches; that the exercise of the remedy requires giving notice; that the buyer needs to fix an additional time for performance; and that the remedy is limited by the seller's right to cure the breach. The most serious criticism is that the remedy's main requirement of 'fundamental breach' is too strict making it difficult for the parties to establish. The thesis negates these contentions arguing instead that if the CISG's mechanisms for interpretation are correctly applied by the courts the buyer's remedy of avoidance could be exercised swiftly and with certainty. The mechanisms used to support this position are: art 6 (party autonomy), art 7 (general principles), art 8 (parties' conduct and intentions) and art 9 (usages). The thesis will respond to academic commentators who argue that English law would provide the buyer and seller with more certainty and swifter termination rights than the CISG. It will also examine the legitimacy of 'soft law' such as the UNIDROIT Principles 2010 as a method of filling in the gaps and ambiguities in the wording of the CISG. Word Count: 85269