

THE LAW
OF DAMAGES IN
INTERNATIONAL
SALES

THE CISG AND OTHER
INTERNATIONAL INSTRUMENTS

SECOND EDITION

Djakhongir Saidov

THE LAW OF DAMAGES IN INTERNATIONAL SALES

The second edition of this internationally acclaimed book explores damages for breach of an international sales contract, one of the most important and frequently invoked remedies. The focus is on the international contract law instruments such as the Convention on Contracts for the International Sale of Goods (CISG), the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law. The book draws on the experience of some major legal systems and engages with legal scholarship on the international instruments and on contract damages, providing the most comprehensive, in-depth and thorough examination of damages under the instruments to date. The second edition is updated, reflecting the latest developments in legal thinking on contract damages. It incorporates about 60 new cases and now covers more than 370 cases decided by courts and arbitration tribunals from around the world. The new edition is substantially revised, covering new topics such as damages for a documentary breach. Truly international in spirit, this book is analytically rigorous and practically oriented, offering distinctive analyses of and solutions to some of the most challenging problems surrounding contract damages. This book will be of interest to practitioners involved in international commercial transactions, scholars and students worldwide interested in international commercial and comparative contract law.

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The CISG and Other International Instruments

Second Edition

Djakhongir Saidov

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To my parents and the memory of Oijon

Preface to the Second Edition

THERE HAVE BEEN many developments in the law of contract damages since the publication of the first edition of this book more than a decade ago. The legal scene surrounding the international instruments, that are the subject of this book, has also advanced. A substantial number of cases on damages for breach of contract has been decided under the UN Convention on Contracts for the International Sale of Goods 1980 (CISG) since the first edition was published. Approximately 60 additional cases (decided mainly under the CISG) are included in this edition. The CISG Advisory Council has adopted its second Opinion on damages (CISG-AC Opinion No 8) which is now taken into account. At the time of the initial publication of this book, the UNIDROIT Principles of International Commercial Contracts (UPICC) were in their (second) 2004 edition, whereas now they are in their (fourth) 2016 edition. Although the subsequent two revisions of the UPICC have not affected the remedy of damages for breach of contract, this book draws on the latest version of the UPICC and, of course, on any new cases on damages decided under the UPICC.

The book in this second edition is substantially revised and updated. There is a new section on damages for a documentary breach. Some notable revisions include those dealing with: the ‘performance interest’ and gain-based damages; some categories of loss, such as ‘fixed’ and ‘variable’ costs and lost profits; the ‘commodities trading’ context; the impact of trade terms on the assessment of damages (with Incoterms 2020 taken into account); aspects of causation and mitigation; the assessment of the buyer’s damages for non-conforming goods. The comparative angle is strengthened further as some of the latest cases in English sales and contract law are drawn on, providing further insights (additional to those flowing from the experience of the international instruments) into the complexities that surround contract damages and international sales. Turning specifically to the CISG, this new edition reveals, even more strongly and fully than the first, how detailed and well-developed the CISG regime on damages has become. This point becomes evident if the Convention’s provisions, cases decided under it and legal scholarship that incorporates the most advanced legal thinking on contract damages are viewed in an integrated way. From this perspective, the Convention’s regime on damages has proven to be robust and viable, making the CISG a highly competitive and effective international sales law. Because the CISG is regularly applied in numerous fora worldwide, it is

tested in a wider range of and more diverse commercial and legal contexts than those in which national sales laws are applied. This means that all legal systems will find something valuable to learn from the Convention's rich experience on damages.

This book is based on the materials that were available to me as at 31 August 2020.

Djakhongir Saidov
London, 5 September 2020

Preface to the First Edition

RECENT DECADES HAVE witnessed an increasing scholarly interest in the law of contract damages in the context of various legal systems. This book seeks to contribute to the existing body of scholarship on this subject by exploring the remedy of damages under the UN Convention on Contracts for the International Sale of Goods (CISG) and, to a somewhat lesser extent, under the UNIDROIT Principles of International Commercial Contracts (UPICC) and the Principles of European Contract Law (PECL). In writing it, I aimed to provide a comprehensive treatment of these instruments' provisions on damages for breach of contract taking into account cases that have thus far been decided under the instruments in various domestic jurisdictions and arbitration tribunals. Having been written against the background of the experience of some major legal systems, the book engages with the issues and problems raised in domestic systems to the extent relevant to the international instruments' remedy of damages. I hope that the book will be of use not only to scholars, practitioners and students interested in the law of the international instruments but also to those interested in contract damages.

This book is a product of several years of research. During that period, I have benefited greatly from the help, comments and criticism of many people. I would like to thank Alastair Mullis, Michael Bridge, Ralph Cunnington, Albert Kritzer, Nelson Enonchong, Sarah Green, TT Arvind, Kyriaki Noussia, and Frank Meisel – all of whom, at various points in time, have kindly read earlier chapters of this book. I am very grateful to Tanya Corrigan for her immense help in preparing the book for publication. I also wish to thank the Birmingham Law School, University of Birmingham, for generously granting me the study leave which enabled me to complete this project. I owe much to Richard Hart for his encouragement, support and patience. Above all, I would like to thank my parents and parents-in-law, my wife, Sanam, daughter, Malika, and sister, Anora, without whom none of this would have been possible.

The book is based on the materials that were available to me up to 31 January 2008.

Djakhongir Saidov
Birmingham, 31 January 2008

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