

Table of Contents

Foreword	V
How to use this Commentary	VII
List of Contributors	XXVII
Table of Cases	XXXI
Abbreviations	LXXI
Abbreviated bibliography	LXXV
Status of the CISG	LXXXI
Introduction to the CISG	1
I. General Remarks	1
II. Legislative History	2
1. The search for an international sales law: driving forces and objectives	2
2. From the UNIDROIT Initiative to the Hague Uniform Laws	2
3. The drafting process and the adoption of the CISG	4
III. Content and Legal Nature	5
1. Legal nature of the CISG	5
2. Structure and content at a glance	6
3. Main Principles	7
IV. The CISG's Global Reach and Grounds for Success	8
V. Impact on International and Regional Harmonization and National Modernization	9
VI. Application in Practice	12
1. The original scepticism	12
2. Increasing role in practice	13
3. Commodity Trade	14
VII. Advantages of the CISG	15
VIII. Working with the CISG	16
IX. Contract Drafting	16
X. Electronic Commerce	17
Preamble	19
Part I. Sphere of Application and General Provisions	
Chapter I. Sphere of Application	21
Article 1	21
I. Importance and Role of the Provision	22
1. General	22
2. Drafting history	27
3. Importance of provision	27
II. Detailed Commentary	28
1. Sales contracts	28
2. Goods	31
3. Internationality	33
4. Automatic application if international sales contract	35
5. Territorial application – Contracting States	36
6. Application by operation of conflict of laws	37
III. Comparable Rules	38
Article 2	39
I. Importance and Role of the Provision	40
II. Detailed Commentary	41
1. Consumer sales	41
2. Sales by auction	47
3. Sales on execution or otherwise by authority of law	49
4. Sales of stocks, shares, investment securities, negotiable instruments or money	49
5. Sales of ships, vessels, hovercraft or aircraft	50

Table of Contents

6. Sales of electricity	52
7. Burden of proof	53
III. Comparable Rules	53
Article 3	54
I. Importance and Role of the Provision	54
1. General	54
2. Drafting history	55
II. Detailed Commentary	55
1. Contracts for the sale of goods to be manufactured or produced	55
2. Service Contracts	58
3. Software	60
4. Burden of proof	61
III. Comparable Rules	62
Article 4	63
I. Importance and Role of the Provision	64
1. General	64
2. Drafting history	65
II. Detailed Commentary	66
1. Matters explicitly governed by the Convention	66
2. Matters explicitly excluded from the Convention	69
3. Other (non)contentious matters	78
III. Comparable Rules	89
Article 5	91
I. Importance and Role of the Provision	91
1. General	91
2. Drafting History	92
II. Detailed Commentary	92
1. Death or personal injury caused by the goods	92
2. Death or personal injury caused by other means	93
3. Death or personal injury of third parties	93
4. Liability for property damage	95
5. Concurrent remedies	97
III. Comparable Rules	99
Article 6	101
I. Importance and Role of the Provision	101
1. General	101
2. Drafting history	102
II. Detailed Commentary	103
1. Party autonomy	103
2. Methods of opting out	104
3. Derogation from or modification or exclusion of the CISG	105
4. Opting in – agreements to apply the CISG	110
III. Comparable Rules	110
Chapter II. General Provisions	112
Article 7	112
I. Importance and Role of the Provision	113
II. Detailed Commentary	114
1. Interpretation of the Convention (Art. 7(1))	114
2. Gap-filling within the CISG (Art. 7.2)	134
III. Comparable Rules	144
Article 8	146
I. Importance and Role of Provision	147
1. Introduction	147
2. Legislative history	149
II. Detailed Commentary	149
1. First Paragraph	149
2. The second paragraph: The reasonable understanding	155
3. The third paragraph	157

Table of Contents

III. Comparable Rules	159
Article 9	162
I. Importance and Role of the Provision	162
1. Introduction	162
2. Art. 9 in the context of the CISG: Hierarchy of rules	163
3. Validity	164
II. Detailed Commentary	165
1. Practices established between the parties: Art. 9(1)	165
2. Agreed usages (Art. 9(1))	167
3. International usages of trade: Art. 9(2)	168
4. Conflict between usages	176
5. Procedural aspects/burden of proof	177
6. Extended application of Art. 9	178
7. CISG and other instruments as usages of trade	178
III. Comparable Rules	181
Article 10	182
I. Importance and Role of the Provision	182
II. Detailed Commentary	183
1. Autonomous versus domestic meaning of “place of business”	183
2. Essential elements of the term “place of business”	184
3. Place of business that has the “closest relationship to the contract and its performance” ...	187
4. Crucial factors for the determination of “the place of business that has the closest to the contract relationship”	188
5. “Having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract”	189
6. Art. 10(b)	190
III. Comparable Rules	190
Article 11	191
I. Importance and Role of the Provision	191
II. Detailed Commentary	193
1. Freedom of form	193
2. Freedom of evidence	196
3. Agreement of the parties requiring writing or evidence in writing	198
4. Electronic form and evidence	199
III. Comparable Rules	199
Article 12	201
I. Importance and Role of the Provision	201
1. Introduction	201
2. Drafting history	201
II. Detailed Commentary	202
1. Scope of Art. 12	202
2. Art. 96 reservation	203
III. Comparable Rules	206
Article 13	207
I. Importance and Role of the Provision	207
II. Detailed Commentary	208
1. Scope of Art. 13	208
2. Expansive interpretation of Art. 13: fax and electronic means	208
3. Interpretation of Art. 13 in light of other international uniform law instruments	210
III. Comparable Rules	211
Part II. Formation of the Contract	
Introduction to Articles 14–24	213
I. Sphere of application and possibility of reservation according to Article 92	213
1. Possibility of Reservation	213
2. Temporal sphere of application	215
II. Scope of application	215
1. Introduction	215
2. Standard Contract Terms	216

Table of Contents

3. Other modes of contract conclusion	218
4. Commercial letter of confirmation	219
III. Exclusion of Part II	220
Article 14	222
I. Importance and Role of the Provision	223
II. Detailed Commentary	225
1. Proposal addressed to specific persons; invitation to make an offer	225
2. Intention to be bound	227
3. The specificity requirement	230
4. The requirement of indication of the purchase price and price determination absent such indication	235
5. Offer containing a clause excluding Part II	237
6. Incorporation of standard contract terms	238
III. Comparable Rules	241
Article 15	243
I. Importance and Role of the Provision	243
II. Detailed Commentary	246
1. Withdrawal	246
2. Death, insolvency and lack of legal capacity of the offeror	249
III. Comparable Rules	249
Article 16	251
I. Importance and Role of the Provision	251
II. Detailed commentary	253
1. Revocation (para. 1)	253
2. The end of the offeror's right to revoke	254
3. The Irrevocability of the offer (para. 2) as per the offer itself	256
4. Irrevocability of the offer (para. 2) due to the offeree's justified reliance and the prohibition of venire contra factum proprium	259
5. Damages in case of revocation	261
III. Comparable Rules	261
Article 17	263
I. Importance and Role of the Provision	263
II. Detailed Commentary	264
1. Rejection	264
2. Legal effects of the rejection	266
III. Comparable Rules	267
Article 18	268
I. Importance and Role of the Provision	269
II. Detailed Commentary	271
1. Acceptance by express declaration, acceptance by conduct, silence and inactivity	271
2. Effectiveness of the declaration of acceptance	275
3. Time for acceptance (para. 2)	279
4. Burden of proof	282
III. Comparable Rules	283
Article 19	284
I. Importance and Role of the Provision	285
II. Detailed commentary	287
1. Reply containing additions or different terms	287
2. Objection	296
3. Burden of proof	298
III. Comparable Rules	299
Article 20	300
I. Importance and Role of the Provision	300
II. Detailed Commentary	301
1. Beginning of the period for acceptance (para. 1)	301
2. Calculation and expiry of the period of time (para. 2)	303
3. The rule in Art. 20(2) as general principle upon which the CISG is based	305
III. Comparable Rules	305

Table of Contents

Article 21	307
I. Importance and Role of the Provision	307
II. Detailed Commentary	308
1. Late acceptance and approval by the offeror	308
2. Lateness due to delays in transmission (Art. 21(2))	311
3. Opportunity for speculation	314
4. Burden of proof	315
III. Comparable Rules	316
Article 22	317
I. Importance and Role of the Provision	317
II. Detailed Commentary	318
1. Withdrawal	318
2. Effects of a withdrawal	320
III. Comparable Rules	321
Article 23	322
I. Importance and Role of the Provision	322
II. Detailed Commentary	323
1. Time of contract conclusion	323
2. Place of contract conclusion	324
III. Comparable Rules	325
Article 24	326
I. Importance and Role of the Provision	326
II. Detailed Commentary	328
1. “Oral” declarations	328
2. Declarations by “other means”	330
3. Preventing declarations from reaching the addressee	333
4. Burden of proof	334
III. Comparable Rules	334

Part III. Sale of Goods

Chapter I. General Provisions	337
Article 25	337
I. Importance and Role of the Provision	338
II. Detailed Commentary	338
1. Departure from domestic laws	339
2. Requirements for fundamental breach	340
3. Examples of fundamental breach	345
III. Comparable Rules	352
Article 26	356
I. Importance and Role of the Provision	356
II. Detailed Commentary	357
1. Form of notice	357
2. The possibility of implicit notice	359
3. Time period for notice to be given	361
4. Risk of non-delivery of notice	362
III. Comparable Rules	362
Article 27	364
I. Importance and Role of the Provision	364
II. Detailed Commentary	365
1. Dispatch rule and allocation of risk	365
2. Effect of dispatch of notice	366
3. Proof of dispatch	368
4. Applicability to telephonic communications	368
5. Applicability to email communications	369
6. Derogating from Art. 27	369
7. Appropriateness of the means of communication	370
III. Comparable Rules	371

Table of Contents

Article 28	373
I. Importance and Role of the Provision	373
II. Detailed Commentary	374
1. Specific performance under municipal law	375
2. The provisions of the Convention	378
3. Derogation from Art. 28 and party autonomy	381
4. Seller's right to require payment of the price	382
III. Comparable Rules	382
Article 29	384
I. Importance and Role of the Provision	384
II. Detailed Commentary	385
1. Contract modification	385
2. The "pre-existing duty rule" at common law	388
3. No-oral-modification clauses	389
III. Comparable Rules	392
Chapter II. Obligations of the Seller	393
Article 30	393
I. Importance and Role of the Provision	393
1. Subject matter	393
2. Primary obligations of the seller	394
3. National laws	395
4. Vienna Conference	395
II. Detailed Commentary	396
1. Seller's obligation to deliver	396
2. Seller's obligation to transfer property	396
3. Seller's obligation to hand over documents	399
4. Party autonomy	399
III. Comparable Rules	401
1. Incoterms	401
2. PICC and PECL	406
3. DCFR	407
Section I. Delivery the goods and handing over of documents	409
Article 31	409
I. Importance and Role of the Provision	410
1. Subject matter	410
2. Breach of contract	411
3. Further context	411
4. National laws	411
5. Vienna Conference	411
II. Detailed Commentary	412
1. Obligation to deliver	412
2. Sales involving carriage of the goods	412
3. Kinds of acts of delivery	416
4. Place of delivery	422
5. Further obligations of the seller	427
III. Comparable Rules	432
1. Incoterms	432
2. PICC and PECL	438
3. DCFR	439
Article 32	442
I. Importance and Role of the Provision	442
1. Subject matter	442
2. Breach of contract	443
3. Further context	444
4. National laws	444
5. Vienna Conference	444

Table of Contents

II. Detailed Commentary	444
1. Notice of consignment	444
2. Carriage of the goods	447
3. Information regarding insurance	450
III. Comparable rules	452
1. Incoterms	452
2. PICC and PECL	455
3. DCFR	455
Article 33	456
I. Importance and Role of the Provision	456
1. Subject matter	456
2. Breach of contract	457
3. Further context	458
4. National laws	458
5. Vienna Conference	459
II. Detailed Commentary	459
1. Party autonomy	459
2. Time for delivery	459
3. Art. 33(a), (b) and (c)	460
4. Part-deliveries	467
III. Comparable Rules	468
1. Incoterms	468
2. PICC and PECL	469
3. DCFR	469
Article 34	471
I. Importance and Role of the Provision	471
1. Subject matter	471
2. Breach of contract	471
3. Further context	472
4. National laws	472
5. Vienna Conference	473
II. Detailed Commentary	473
1. Handing over of documents	473
2. Right to cure	477
III. Comparable Rules	479
1. Incoterms	479
2. PICC and PECL	480
3. DCFR	480
Section II. Conformity of the goods and third party claims	482
Introduction to Articles 35–44	482
I. Importance of Section II in Practice	482
II. Structure of Section II	482
III. Differences Between the Liability Regimes for Non-conformity and Defects in Title	483
IV. Differences in the Remedial Systems for Other Breaches	483
V. Relationship to the National Remedies	484
Article 35	485
I. Importance and Role of Provision	487
1. Overview on the content	487
2. History	488
3. Terminology	488
4. Art. 35 as part of the CISG's liability regime for non-conformity	488
II. Detailed Commentary	489
1. The concept of non-conformity	489
2. Art. 35(1)	496
3. Art. 35(2)	502
4. Art. 35(3)	524
5. Exclusion of express and implied obligations as to conformity	527
6. Burden of proof	528
7. Relationship to the non-contractual remedies under national law	536

Table of Contents

III. Comparable Rules	538
Article 36	539
I. Importance and Role of the Provision	539
II. Detailed Commentary	540
1. Art. 36(1)	540
2. Art. 36(2)	541
3. Burden of proof	543
III. Comparable Rules	544
Article 37	546
I. Importance and Role of the Provision	546
II. Detailed Commentary	547
1. Prerequisites for the right to cure under Art. 37	547
2. Means of cure	549
3. Legal consequences	550
4. Burden of proof	551
III. Comparable Rules	551
Article 38	552
I. Importance and Role of the Provision	553
1. Content	553
2. Purpose of the duty to examine	553
3. Art. 38 as part of the CISG's notification regime	554
4. History of the provision and its character	555
II. Detailed Commentary	555
1. General remarks	555
2. Prevailing contractual agreements, practices and usages	556
3. Scope of the examination duty	558
4. Extent of the examination duty	560
5. Place of examination	568
6. Time period for examination	568
7. Examination in contract involving carriage: Art. 38(2)	576
8. Art. 38(3)	578
9. Costs of the examination duty	581
10. Sanctions	581
11. Waiver of the examination duty	583
12. Burden of proof	583
III. Comparable Provisions	584
Article 39	586
I. Importance and Role of the Provision	587
1. General remarks	587
2. Drafting history	588
3. Purpose of the notice requirement	588
4. Art. 39 as part of the CISG's examination and notification regime	589
II. Detailed Commentary	590
1. Introduction	590
2. Prevailing contractual agreements, practices and usages	591
3. Scope of application	592
4. Notice	593
5. The two years cut-off date in Art. 39	609
6. Consequence of a failure to give notice	610
7. Exceptions	610
8. Waiver and exclusions of the right to invoke belated notice	610
9. Relationship with statutes of limitation	613
10. Acceptance of the goods as conforming	614
11. Burden of proof	614
III. Comparable Rules	616
Article 40	618
I. Importance and Role of the Provision	618
II. Detailed Commentary	619
1. General remarks	619

Table of Contents

2. Prevailing contractual agreements, practices and usages	619
3. Scope of application	620
4. Seller's actual or constructive knowledge	620
5. Disclosure to the buyer	623
6. Legal consequences and contractual modifications	624
7. Burden of proof	624
III. Comparable Rules	625
Article 41	626
I. Importance and Role of the Provision	626
II. Detailed Commentary	627
1. General remarks	627
2. Third party rights and claims	628
3. Time of the defects in title	631
4. Exclusion of liability	632
5. Remedies for defects in title	633
6. Art. 41 and domestic rules providing for nullity of the contract	635
7. Burden of proof	635
III. Comparable Rules	636
Article 42	637
I. Importance and Role of the Provision	638
II. Detailed Commentary	639
1. General remarks	639
2. Third party rights and claims	640
3. Based on industrial property or other intellectual property	641
4. Territorial limitations	642
5. Relevant time	644
6. Seller's actual or constructive knowledge	644
7. Exceptions from liability under Art. 42(2)	646
8. Remedies	649
9. Burden of proof	650
III. Comparable Rules	650
Article 43	652
I. Importance and Role of the Provision	652
II. Detailed Commentary	653
1. General remarks	653
2. Notice	653
3. Notice period	654
4. Legal consequences of a failure to give notice	656
5. Exclusion of reliance on a failure to give notice in time: Art. 43(2)	657
6. Burden of proof	657
III. Comparable Rules	657
Article 44	658
I. Importance and Role of the Provision	658
II. Detailed Commentary	659
1. General remarks	659
2. Scope of application	660
3. Reasonable excuse	661
4. Legal consequences	665
5. Burden of proof	667
III. Comparable Rules	667
Section III. Remedies for breach of contract by the seller	668
Article 45	668
I. Importance and Role of the Provision	668
II. Detailed Commentary	669
1. System of remedies (para. 1)	669
2. Damages and other remedies (para. 2)	671
3. No period of grace (para. 3)	672
III. Comparable Rules	672

Table of Contents

Article 46	673
I. Importance and Role of the Provision	674
1. Purpose	674
2. Outline	674
3. Distinction between Art. 46(1) and Art. 46(2), (3): The concept of non-conformity	675
II. Detailed Commentary	676
1. General claim for performance (Art. 46(1))	676
2. Substitute delivery (Art. 46(2))	680
3. Repair (Art. 46(3))	685
4. Burden of proof	687
III. Comparable Rules	687
Article 47	688
I. Importance and Role of the Provision	688
II. Detailed Commentary	689
1. Requirements	689
2. Consequences	691
3. Burden of proof	694
III. Comparable Rules	695
Article 48	696
I. Importance and Role of the Provision	697
II. Detailed Commentary	697
1. Right to cure under Art. 48(1)	697
2. Right to cure under Art. 48(2)	701
3. Burden of proof	704
III. Comparable Rules	704
Article 49	705
I. Importance and Role of the Provision	706
II. Detailed Commentary	707
1. Outline of the requirements	707
2. Avoidance for fundamental breach (Art. 49(1)(a))	707
3. Avoidance using the Nachfrist-procedure (Art. 49(1)(b))	717
4. Declaration of avoidance and time limits	721
5. Burden of proof	726
6. Effects of avoidance	727
III. Comparable Rules	727
Article 50	729
I. Importance and Role of the Provision	730
1. History of the provision	730
2. Importance of the provision	731
3. Nature of the remedy	731
4. Position in the system of remedies	732
II. Detailed Commentary	732
1. Requirements	732
2. Legal consequences	738
3. Burden of proof	744
4. Interaction with other remedies	745
III. Comparable Rules	746
Article 51	747
I. Importance and Role of the Provision	747
1. The general rule: narrowing the view under Art. 51(1)	747
2. The exception: re-expanding the view under Art. 51(2)	748
3. Application to instalment contracts	748
II. Detailed Commentary	749
1. Prerequisites	749
2. Legal consequences	752
3. Burden of proof	757
III. Comparable Rules	758

Table of Contents

Article 52	759
I. Importance and Role of the Provision	759
II. Detailed Commentary	760
1. Early delivery	760
2. Excessive delivery	764
III. Comparable Rules	770
1. Early delivery	770
2. Excessive delivery	770
Chapter III. Obligations of the Buyer	771
Article 53	771
I. Importance and Role of the Provision	771
II. Detailed Commentary	772
1. Overview	772
2. Purchase price	772
3. Payment arrangements	773
4. Payment clauses	774
5. Duty to take delivery	776
6. Further duties	776
7. Choice of payment debt	776
8. Practical considerations	777
III. Comparable Rules	777
Section I. Payment of the price	778
Article 54	778
I. Importance and Role of the Provision	778
II. Detailed Commentary	779
1. Scope of the duty	779
2. Currency	781
3. The buyer's breach of his obligation(s)	784
4. Practical questions	784
III. Comparable Rules	785
Article 55	786
I. Importance and Role of the Provision	786
II. Detailed Commentary	787
1. When does it apply?	787
2. How does it apply?	789
3. Burden of proof	790
III. Comparable Rules	790
Article 56	792
I. Importance and Role of the Provision	792
II. Detailed Commentary	792
1. Overview	792
2. Practical considerations	793
IV. Comparable Rules	793
Article 57	794
I. Importance and Role of the Provision	794
II. Detailed Commentary	796
1. Overview	796
2. Party agreement (Art. 57(1) first sentence)	796
3. Payment at the seller's place of business (Art 57(1)(a), (2))	798
4. Payment against the handing over of the goods or of documents (Art. 57(1)(b))	800
5. Place of payment of monetary claims other than the purchase price	803
6. Practical considerations	804
III. Comparable Rules	804
Article 58	806
I. Importance and Role of the Provision	806
II. Detailed Commentary	808
1. Buyer's right to examine the goods (Art. 58(3))	808

Table of Contents

2. Time the purchase price becomes due	810
3. Divergent agreements	814
4. Documents	815
5. Rights of retention (Arts 58(1) second sentence and 58(2))	816
6. Payment ahead of time, part payment	817
7. Application to other buyer's obligations	817
8. Practical considerations	817
III. Comparable Rules	818
Article 59	820
I. Importance and Role of the Provision	820
II. Detailed Commentary	820
III. Comparable Rules	821
Section II. Taking delivery	822
Article 60	822
I. Importance and Role of the Provision	822
II. Detailed Commentary	822
1. Content of the duty to take delivery	822
2. Refusal to take delivery	824
3. Practical considerations	825
III. Comparable Rules	825
Section III. Remedies for breach of contract by the buyer	826
Introduction to Articles 61–65	826
Article 61	827
I. Importance and Role of the Provision	827
II. Detailed Commentary	827
1. Remedies available to the seller (Art. 61(1))	827
2. Damages can be cumulated with other remedies (Art. 61(2))	828
3. Court may not grant a period of grace (Art. 61(3))	829
III. Comparable Rules	830
Article 62	831
I. Importance and Role of the Provision	831
II. Detailed Commentary	832
1. The right to specific performance	832
2. Limitations on the right to specific performance	833
III. Comparable Rules	834
Article 63	836
I. Importance and Role of the Provision	836
II. Detailed Commentary	836
1. The fixing of an additional period of time of reasonable length (63(1))	836
2. The suspension of other remedies during the additional period of time (63(2))	838
III. Comparable Rules	839
Article 64	840
I. Importance and Role of the Provision	840
II. Detailed Commentary	841
1. The right to declare the contract avoided (64(1))	841
2. Losing the right to declare the contract avoided (Art. 64(2))	842
III. Comparable Rules	844
Article 65	845
I. Importance and Role of the Provision	845
II. Detailed Commentary	846
1. Purpose of Art. 65 and the mechanism it sets in place	846
2. Criticism of Art. 65 – a cumbersome process which will not be used most of the time	847
III. Comparable Rules	849

Table of Contents

Chapter IV. Passing of Risk	850
Article 66	850
I. Importance and Role of the Provision	850
II. Detailed Commentary	851
1. Price-risk	851
2. The risk transferred but reduced through the use of a remedy for the buyer	852
3. An act or omission by the seller – posterior alleviation of risk	853
4. Determining which risks are transferred to the buyer	855
5. Contractual risk	859
6. Damage caused by the goods themselves	859
III. Comparable Rules	860
Article 67	861
I. Importance and Role of the Provision	861
II. Detailed Commentary	862
1. Handing over the goods	862
2. Clearly identifying the goods	864
3. Art. 67's relationship with terms agreed by the parties	865
III. Comparable rules	870
Article 68	871
I. Importance and Role of the Provision	871
II. Detailed Commentary	871
1. Terminology	871
2. Carrier and documents	872
3. Retroactive allocation of risk	872
4. Loss or damage to the goods	872
III. Comparable Rules	874
Article 69	875
I. Importance and Role of the Provision	875
II. Commentary	876
1. Goods placed at buyer's disposal – at the seller's place of business	876
2. Goods placed at buyer's disposal – other than at the seller's place of business	877
3. Identification	877
4. Incoterms	877
III. Comparable Rules	878
Article 70	879
I. Importance and Role of the Provision	879
II. Detailed Commentary	880
III. Comparable Rules	881
Chapter V. Provisions Common to the Obligations of the Seller and of the Buyer	882
Section I. Anticipatory breach and instalment contracts	882
Introduction to Articles 71–73	882
Article 71	886
I. Importance and Role of the Provision	887
II. Detailed Commentary	888
1. The exercise of the right of suspension	888
2. Stoppage in transit	907
3. Suspension and burden of proof	909
4. Adequate assurance	910
5. Cessation of suspension	913
6. Damages	915
III. Comparable Rules	916
Article 72	919
I. Importance and Role of the Provision	919
II. Detailed Commentary	920
1. General	920
2. The relationship between Art. 72 paras 1 and 3	921

Table of Contents

3. The standard of prognosis	922
4. The nature of events giving rise to the right to avoid	923
5. Burden of proof	926
6. Notice under Art. 72(2); burden of proof	926
7. Adequate assurance; burden of proof	929
8. Refusal to perform (Art. 72(3)); burden of proof	930
9. Damages and mitigation of loss	933
III. Comparable Rules	935
Article 73	937
I. Importance and Role of the Provision	937
II. Detailed Commentary	938
1. Definition	938
2. Art. 73(1)	942
3. Art. 73(2)	945
4. Art. 73(3)	952
III. Comparable Rules	954
Section II. Damages	956
Article 74	956
I. Importance and Role of the Provision	957
1. General remarks	957
2. Drafting history	959
II. Detailed Commentary	960
1. Specific requirements	960
2. Limitations on damages	966
3. Calculation of damages	973
4. Specific cases	980
5. Other matters	989
III. Comparable Rules	991
Article 75	992
I. Importance and Role of the Provision	992
1. General remarks	992
2. Drafting history	993
II. Detailed Commentary	994
1. Specific requirements	994
2. Calculating damages	999
3. Special considerations	1001
III. Comparable Rules	1003
Article 76	1005
I. Importance and Role of the Provision	1005
1. General remarks	1005
2. Drafting history	1007
II. Detailed Commentary	1007
1. Specific requirements	1007
2. Calculating damages	1010
3. Special consideration; anticipatory breach	1012
III. Comparable Rules	1014
Article 77	1015
I. Importance and Role of the Provision	1015
1. General remarks	1015
2. Drafting history	1016
II. Detailed Commentary	1016
1. Scope of application	1016
2. Extent of a duty	1018
3. Legal consequences	1023
III. Comparable Rules	1026

Table of Contents

Section III. Interest	1027
Article 78	1027
I. Drafting History, Importance and Role of the Provision	1028
II. Detailed Commentary	1029
1. Scope and Requirements	1029
2. Calculation	1032
3. Modalities of Payment	1038
4. Cessation of an Interest Claim	1038
III. Comparable Rules	1038
Section IV. Exemption	1039
Article 79	1039
I. Importance and Role of the Provision	1041
II. Detailed Commentary	1042
1. Scope of application of the norm	1042
2. Prerequisites of exemption	1055
3. Exemption from liability for the conduct of third persons	1062
4. Risk allocation in specific cases	1066
5. Contractual risk allocation	1075
6. Duty to notify	1077
7. Burden of proof	1077
III. Comparable Rules	1078
Article 80	1080
I. Importance and Role of the Provision	1080
II. Detailed Commentary	1082
1. Prerequisites of exemption for non-performance	1082
2. Legal consequences	1085
3. Burden of proof	1088
III. Comparable Rules	1089
Section V. Effects of avoidance	1090
Article 81	1090
I. Importance and Role of the Provision	1091
1. Drafting history	1091
2. Basis of right of avoidance	1091
3. Release from performance obligations	1092
4. Surviving provisions	1092
5. New rights and duties	1094
6. Related contracts	1095
7. Agreements to avoid	1096
8. Property	1096
II. Detailed Commentary	1097
1. Restitution of performance	1097
2. Partial restitution	1098
3. Concurrency and security	1099
4. Place of restitution of goods	1099
5. Place of restitution of price	1101
6. Costs connected with restitution	1101
7. Exempted parties	1102
8. Time of restitution	1102
9. Risk	1103
III. Comparable Rules	1104
Article 82	1106
I. Importance and Role of the Provision	1107
1. Drafting history	1107
2. Time available for avoidance	1107
3. Availability of avoidance	1108
4. Substitute goods	1108
5. Loss of avoidance right in other cases	1109

Table of Contents

6. Avoidance and risk	1109
7. Avoidance by the seller	1112
II. Detailed Commentary	1112
1. Comparison with ULIS	1112
2. The condition of the goods: general	1113
3. Partial avoidance	1113
4. Deterioration of the goods	1114
5. Exceptions to restitutionary requirement for avoidance	1115
III. Comparable Rules	1117
Article 83	1118
I. Importance and Role of the Provision	1118
1. Drafting history	1118
2. General	1118
II. Detailed Commentary	1118
III. Comparable Rules	1120
Article 84	1121
I. Importance and Role of the Provision	1121
1. Drafting history	1121
2. General	1122
II. Detailed Commentary	1122
1. Concurrency	1122
2. Set-off	1123
3. Payment of interest	1124
4. Currency of interest	1127
5. Accounting for benefits from the goods	1127
III. Comparable Rules	1128
Section VI. Preservation of Goods	1129
Introduction to Articles 85–88	1129
Article 85	1131
I. Importance and Role of the Provision	1131
1. The function of Art. 85	1131
2. Legislative history	1132
II. Detailed Commentary	1133
1. Conditions	1133
2. Consequences	1134
III. Comparable Rules	1138
Article 86	1140
I. Importance and Role of the Provision	1140
1. The function of Art. 86	1140
2. Legislative history	1141
II. Detailed Commentary	1142
1. Buyer's duty to preserve the goods (Art. 86(1))	1142
2. Buyer's duty to take possession of the goods (Art. 86(2))	1144
III. Comparable Rules	1147
Article 87	1148
I. Importance and Role of the Provision	1148
1. The function of Art. 87	1148
2. Legislative history	1148
II. Detailed Commentary	1149
1. Condition	1149
2. Consequences	1149
III. Comparable Rules	1151
Article 88	1153
I. Importance and Role of the Provision	1154
1. The function of Art. 88	1154
2. Legislative history	1155

Table of Contents

II. Detailed Commentary	1155
1. Right of self-help sale (Art. 88(1))	1155
2. Duty of emergency sales (Art. 88(2))	1159
3. Use of proceeds of sale (Art. 88(3))	1162
III. Comparable Rules	1164
1. Self-help and emergency sales	1164
2. Electronic notice	1164
 Part IV. Final Provisions	
Article 89	1167
I. Importance and Role of the Provision	1167
II. Comparable Rules	1167
Article 90	1168
I. Importance and Role of the Provision	1168
II. Detailed Commentary	1168
III. Comparable Rules	1171
Article 91	1172
I. Importance and Role of the Provision	1172
II. Comparable Rules	1173
Article 92	1174
I. Importance and Role of the Provision	1174
II. Detailed Commentary	1175
Illustration 1.	1175
Illustration 2.	1175
Illustration 3.	1176
Article 93	1177
I. Importance and Role of the Provision	1177
II. Detailed Commentary	1177
III. Comparable Rules	1179
Article 94	1181
I. Importance and Role of the Provision	1181
II. Detailed Commentary	1182
III. Comparable Rules	1184
Article 95	1185
I. Importance and Role of the Provision	1185
II. Detailed Commentary	1186
Illustration 1.	1186
Illustration 2.	1186
Illustration 3.	1186
Illustration 4.	1187
Illustration 5.	1187
Illustration 6.	1189
Illustration 7.	1189
III. Comparable Rules	1190
Article 96	1191
I. Importance and Role of the Provision	1191
II. Detailed Commentary	1191
III. Comparable Rules	1194
Article 97	1195
Importance and Role of the Provision	1195
Article 98	1196
Importance and Role of the Provision	1196
Article 99	1197
Importance and Role of the Provision	1198
Article 100	1199
Importance and Role of the Provision	1199

Table of Contents

Article 101 1200
 Importance and Role of the Provision 1200
 Importance and Role of the Text 1201
Bibliography 1203
Index 1235