



Ethiopian Sales Law in the Light of International Laws and Principles of Contract

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Abstract

Contract laws are determinant factors in fostering both domestic and international trade. The better a country has efficient contract rules, the more it attracts trade and investment. This paper is aiming to provide a comparative analysis of the Ethiopian sales law in the light of CISG, PECL, and UNIDROIT Principles. It analyzes the different possibilities of application of these instruments in comparison to Ethiopian law of sales. Major finding of the article revealed that, except few provisions, Ethiopia's sales law was adopted considering the then time international standards and principles of contract. The paper also strives to forward specific recommendations on amending outdated provisions in the Ethiopian contract and sales law.

Keywords

CISG, PECL, UNIDROIT Principles, Ethiopian Sales Law, International Sales Contract, Formation of Contract, Performance, The Passing of Risk, Remedies of Non-Performance of a Contract

Subject Areas: Law

1. Introduction

In the course of globalization and the advance in technology, World trade is becoming more and more integrated. Due to this, the need to harmonize trade laws by minimizing diversities in various aspects of commerce becomes essential. Some scholars further the argument, and suggest that when the world becomes one market, this market will require one law [1]. Accordingly, attempts were made by the International community to harmonize international commercial laws and result in the promulgations of the United Nation Convention on International Sale of Goods, herein after CISG [2], UNIDROIT Principles of International Commercial Contracts, herein after UNIDROIT [3], and Principles of European Contract law, herein after PECL [4].

Ethiopia is one of the fortunate countries in the World for the reason that, its Law of Sales and the overall Code Civil was drafted by the Codification Commission of Ethiopia, along with the technical assistance of a prominent French legal scholar, Professor Rene David [5] in the late 1960's. Hence, The Ethiopian Law of Sales includes detail rules regulating sale, which is adopted based on International laws and Principles of contracts considering the country's context.

This research has a general objective of examining International laws and principles of contract, in contrast to Ethiopian sales law to depict whether or not Ethiopians legislations are drafted in a way of promoting international trade and the country's economic development.

The study will focus in assessing the national and international laws regulating sales contract. Hence, it may hopefully contribute much in creating awareness on the trader and the public about international trade in goods. It will also have certain contributions for the legislative body, the judges, and the lawyers in their practical cases. The study will might also serve as a basis and may call the attention of those who want to conduct further enquires in the field. Finally, it may help for students and instructors and can serve as a reference material in the academic sphere.

1) Origin, development and purposes of CSIG

The preparation to harmonize law of sales regulating international transactions started in 1930 in Rome, when the International Institute for the Unification of Private Law set up a special commission to draft a uniform law [6]. Passing through several versions and updates, in 1964, the commission came up with draft uniform Sales Law, and handed it to a diplomatic conference in Hague, which result in the adoption of two conventions. These two conventions were the Uniform Law on the International Sale of Goods (ULIS) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). In 1966, the United Nations Commission on International Trade Law (UNCITRAL) was founded with the task to attempt a revision of the Hague Conventions, and to create a better uniform set of rules for international commerce [6]. The commission after establishing a working group came up with drafts rectifying the conventions' failures. ULIS and ULF were being criticized by States for their failure to include developing and socialist countries during the drafting process. Besides the conventions had deficiencies in addressing all aspects of issues in relation to international commerce. Then after, it adopts the United Nations Convention on Contracts for the International Sale of Goods, at a diplomatic conference held in 1980 in Vienna. The convention is now serving as an obligatory legal instrument in cross-boundary sale of goods and currently around 84 countries of the Globe are members to CSIG [7]. The CSIG is a convention; hence it's a binding instrument on member states of the convention on the field of trans-boundary commercial matters. The convention is just a comprehensive code of legal norms in the international sale of goods. CSIG encompasses 101 articles segmented in to four parts.

2) Origin, development and purposes of UNIDROIT principles

The very purpose of the incorporation of the International Institute for the Unification of Private Law in 1930 was to harmonize trade laws. Austrian scholar, Ernst Rabel, initiated the ideas [8]. The UNIDROIT principles (1994) set forth general rules for international commercial contracts. They Contributes much for the interpretation of CISG. The principles also serve as a model for national and international legislators in relation to commerce and contracts laws. The latest edition of the UNIDROIT Principles was approved in May 2011 and is the edition to which references have been made in this document. UNIDROIT principles are soft laws and have only a persuasive value. They are just non-legislative instruments of harmonization of laws [3]. They aim to aspire to be a model for national and international legislators and provide contracting parties with an international restatement of general principles of international contract law. In short, they are the heart of modern *lex-mercatoria*. The principles are strictly, for commercial international contracts and composed of a preamble and 119 articles divided in to seven chapters. Each article is accompanied by comments, which are intended to explain the reasons for black letter rule.

3) Origin, development and purposes of PECL

The Commission on European Contract chaired by Prof. Ole Lando formulated the PECL [9]. Its contents are very close to UNIDROIT Principles. PECL drafted with the intention of becoming the future European civil code and to be applied as general rules of contract law in the European Community. The first part of the PECL was published in 1995. The second in 1999, and the final part was published in 2003. The PECL as its name implies is a product of regional attempt to harmonize trade laws in the European community. These principles differ from UNIDROIT in that they cover all civil and commercial contracts. Their aim is to facilitate trade within the European Union and to strengthen the single European market [10]. PECL has 134 articles organized in se-

venteen chapters. CISG does not have official commentary but the UNIDROIT principles and PECL have commentaries that would help in providing illustrations and interpretations to the meaning of the provisions.

2. General Introduction to Ethiopian Law of Sales

Sale contracts in Ethiopia, regulated by the Ethiopian Civil Code, herein after CC [11], Book V (Special Contracts), Title XV (Contracts Relating to the Assignment of Rights), Chapter 1 (Sale), starting from Art. 2266-2407 accompanied by the general rules of contract in the code (Art. 1675-2026). The Ethiopian Sales law of the code civil has four sections. Section one clarify formation of contract. Section two is about performance of contract. Under this section, the sole and common obligations of the buyer and seller dealt briefly. Non-performance of contract and its remedies expound under section three. Finally, the last section addresses the various forms of sale contract.

The first point to understand is that, Ethiopia yet not adopted CISG. Hence, the convention is applicable on international sale contracts made by an Ethiopian only, when parties wish to be ruled by CISG in their choice of law clause of the contract or when the rules of private international law leads to the convention. In all other cases, the *lex-causae* would be either *lex-loci contractus* or *lex-loci solutions*, depending on the conflict of laws rules of the forum state. So, for an international sale contract made between an Ethiopian and a foreigner, the governing law might be The Ethiopian law of sales. Hence, it is wise for the foreigner to know in advance the rules of sale under the Ethiopian legal system before getting into a sale transaction. I hope, this paper would contribute much for those who wants to do business in Ethiopia by providing them a short analysis of Ethiopian Law of Sale in comparison to International commercial Instruments. However, in the long run considering the country's request to be a member of World trade Organization and its progress towards free market economy, acceding to the convention is a matter of necessity to the country. Once Ethiopia become a party to the CISG, all contracts for the international sale of goods concluded between an Ethiopian entrepreneur and an entrepreneur domiciled in another contracting State would fall under the CISG, absent a choice to the contrary [12]. This avoids recourse to rules of private international law to determine the law applicable to the contract, adding significantly to the certainty and predictability of international sales contracts and eliminating unnecessary disputes on procedural matters.

3. Scope of Application

Before discussing the geographical and subject matter demarcation of these legal instruments, it is wise first to see what it means by contract of sale. CSIG does not give the definition of sales contract. According to Ethiopian Sales Law, Art. 2266 CC, it is defined as a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him. Sale under CSIG and the principles has almost same connotation. For a contract to be regarded as sales contract it must be made with consideration, except for UNIDROIT.

CISG

As it is provided in the preamble and Art. 1(1) of CISG, In order for a contract to fall under the scope of the convention, its subject matter should be an international sale of goods. Initially there should be a sale of goods and this sale of goods needs to be an international and commercial in nature. The term international here implies that parties to the contract need to reside in different states. In short, the contract should be a cross-boundary economic dealing. Goods under CISG are movable and tangible objects with the exception of the exclusions. Under CISG Art 2, the Exclusions are: sale of goods for consumption purposes, sales by auction, forced sales, sales of negotiable instruments, ships, aircraft, and electricity. The goods are excluded because few of them have a separate legal regime to be regulated (e.g. auction, sale of aircrafts) and the rest are excluded because either they are national civil contracts and are not commercial in nature or the transaction has nothing to do with the purpose of CISG which is promotion of trade. CSIG applies on international sale of goods when the buyer and the seller are resident in two different sates and both sates are contracting states or when when the rules of private international law lead to the application of the law of a Contracting State, (CISG, Art. 1(1)a). By virtue of Art. 1(1)(b) of CISG, Parties can also determine the in/applicability of the convention in their choice of law clause of their contract based on the principle of party autonomy. Matters of validity such as illegality, mistake, and duress are excluded from the ambit of the convention [2]. Besides the effect of goods sold is to be addressed by domestic laws of a given country, CSIG does not regulate such matters.

4. UNDRIT Principles and PECL

As stated under Art. 1 of UNDRIT Principles and PECL Art. 1:101, the principles applied when the parties have agreed that their contract be governed by them, or when the parties have agreed that their contract be governed by general principles of law, the *lex-mercatoria* the like. Both principles can also be functional when the parties have not chosen any law to govern their contract. PECL do not make distinctions between civil or commercial contracts, but UNDRIT principles only apply for commercial contracts and the principles via Art. 3.1 do not deal with invalidity arising from lack of capacity, authority, or legality. Issues of illegality and immorality are also excluded under PECL Art. 4, 101.

5. The Ethiopian Sales Law

As it is already pointed out above, contract of sale is an agreement whereby the seller transfers or agrees to transfer the property in goods to the buyer and the latter agrees to pay the price of the goods to the seller. And law of sales regulates this relationship of the buyer and seller. In the Ethiopian sales law, Art. 2267(1) CC, the subject matter of sale contract is restricted to corporeal chattels (goods) excluding immovable and incorporeal properties. However, special corporeal chattels like aircrafts and ships are regulated under special laws. The exclusion was made for economic reasons and it is because of their special requirement of transferring ownership. In this Instance, it has similarity with CISG.

The Ethiopian sales law regulates every domestic sales of goods takes place in the country. Besides, it will also govern an international sale contract when it is selected to be *lex-causae* by the private international laws of the forum state or when parties decided to be ruled by Ethiopian sales law in their choice of law clause. Finally yet importantly, CISG and PECL do not deal with issues of validity. This exception would appear to cover matters such as illegality; mistake and duress. However, the Ethiopian law has detail provisions to regulate such matters (Art. 1698-1719 CC.). Accordingly, parties in a sale contract needs to fulfill the basic requirements of a contract. *i.e.* consent, capacity, object and form of a contract if the law requires it to be made in written form. A brief analysis will be made on this under the title formation of a contract.

6. Formation of Contract under CSIG, UNIDROIT Principles, PECL & Ethiopian Law of Sales

6.1. On Pre-Contractual Negotiations

Pre-contractual negotiations are not dealt under the convention. Matters such as dispute over title and issues of failure to keep promise of concluding contract are more of non-contractual. The Ethiopian code civil also adopts similar approach. For instance under Art. 2055 CC, a person commits a tortious act when he declared his intention of entering in to a contract and having induced others to incur expense with a view to concluding a contract with him, he arbitrarily abandons his intention. However, PECL and UNDRIT Principles take another approach and govern pre-contractual negotiations in their provisions.

6.2. Offer and Acceptance

What makes these legal instruments common in the process of the formation of a contract is in all of them, CISG 14-24, UNDRIT Principles Art. 1, PECL Art. 2, and Civil Code of Ethiopia 1679-1695, a contract is said to be formed when the parties agreed on two concurrent declarations of intention, offer and acceptance. Once an acceptance is made by the offeree and becomes effective, a contract is said to be concluded and the parties will be bound by their commitments. The rules on withdrawal of acceptance are also identical. But there is a difference as to the meaning of offer and acceptance. PECL Article 2:201 establishes the minimum essential elements that must be found in order for a proposal to amount to an offer. These requirements are: 1) the terms must be sufficiently clear; and 2) the offeror must indicate his intention to be bound in case of its acceptance [13]. The PECL and UNIDROIT Principles Article 2.2 do not set requirements for the definiteness of an offer as does the CISG. Under the CISG, for an offer to be considered sufficiently definite it must identify the goods, quantity, and price. But, there are situations under CISG Art 14 and 55, for a contract to be made without the price element as long as it is determinable. Besides, under CISG Art. 14(2) and the Ethiopian sales law Art. 1687 of CC, a public declaration of intention is not an offer, but it is under PECL Art 2.201(3) and UNDRIT Art. 2. Furthermore, in relation to the effect of notice dispatch rule is recognized under PECL Art. 1.303(4), whereas recipient rule is ac-

cepted under UNDRUIT Art. 1.9(2). A mere agreement is a contract under the UNDRUIT Art. 3.2, but it isn't under CISG and Ethiopian sales law. Moreover, UNDRUIT rules out the criteria of consideration of a contract, unlike the convention Art. 29(1). A contract with an impossible object from the outset is void in Ethiopian sales law (1714 CC), but it is valid under UNDRUIT (Art. 3.3(1) comment 1 & 2 of UNDRUIT).

6.3. Form of a Contract

No form is required under CISG Art. 11, PECL Art. 2.101 and UNDRUIT Art. 1.2 principles. A contract may be concluded either verbally or in writing, including electronic correspondence. Concerning modification of contract except UNDRUIT, in all of them a written contract can only be varied only in writing. CISG Art. 29(2), Art. 2:106 of PECL permit modifications only in writing. But, under UNDRUIT Art. 3.1.2 a contract can be created, modified or terminated in any form parties agreed. In the Ethiopian sales law too, Art. 1721 of the Civil Code, a contract made in a special form shall only be varied in the same form. Once the contract is duly made, its provisions will bind the contractants as though they were laws.

7. Performance of Contract under the CSIG, UNIDROIT Principles, PECL & the Ethiopian Sales Law

A contract of sale produces reciprocal obligations for both contracting parties in such a way that each of the parties commits itself to a performance with the purpose of obtaining the compliance with the commitment of the other party [14]. The rights of the buyer are obligations to the seller. Similarly, the rights of the seller are implied in the contractual duties of the buyer. Hence the express terms of the agreement defines parties' reciprocal obligations. Therefore, in this part I will focus on the provisions of these commercial law instruments, which are useful in identifying the seller's obligation, the obligation of the buyer and common obligation of the buyer and the seller in a sale contract.

8. Obligation of the Seller

Unless otherwise parties agreed, in contract of sale the seller's obligations include delivering the goods, providing any documentation, warranty, and transferring the property.

Obligation to deliver the thing: The primary duty of the seller is delivering the goods to the buyer in accordance with the terms parties agreed (Art. 31 CSIG, Art. 2274-2280 CC). Place and time of delivery determines the transfer of risk and even non-performance. The place and time of delivery is the place where parties agreed it to be, but if the place of delivery is not fixed by or determinable from the contract, s/he shall deliver at his/her place of business or habitual residence (PECL Art. 7.101(1)b and (3), UNDRUIT Principles Art. 6.1.6). The Ethiopian sales law also adopts this approach under Art. 2279, nevertheless, in case of specific thing, place of delivery is the place where such thing is located, Art. (2280). Under CISG if the sale involves carriage of goods the seller shall deliver to the first carrier and in case of identifiable goods the place where such items are found, is the place of delivery. In other cases place of delivery is business place or residence of the seller. Delivery must also have to be made within the agreed time. As provided in Art. 33 of CISG and Art. 7.102 of PECL, when parties fail to fix the time, s/he shall deliver at a date determinable from the contract or within a reasonable time. The Ethiopian sales law is somehow different in this scenario. In the code, Delivery might be takes place when buyer requires Art. 2276, or when simultaneously when payment made Art. 2278 or Where the parties have agreed that delivery shall take place during a given period, it shall be for the seller to fix the exact date of delivery unless it appears from the circumstances that it is for the buyer to do so Art. 2277. Pursuant to Art. 85 of CSIG, and Art. 2320 of CC, seller has also a duty to preserve the goods when buyer fails to take delivery.

Seller's delivery of documentation: These documents include documents of title, bills of lading, warehouse receipts, insurance policies, invoices, certificate of origin, and certificate of inspection or quality. As such, the seller is duty bound to hand them over to the buyer at the time and place and in the form required in the contract. This is clearly provided under Art. 34 CISG and Art. 2301 and 2302 CC.

Transfer of ownership: Pursuant to Art 30 cum. Art. 41 and 42 of CISG, although the seller is not required to transfer property, s/he must deliver goods that are free from any claim of a third party. In the case of a sale contract, since the title in question would be ownership, the transferor (seller) should have an ownership title that s/he can transfer to the transferee (buyer). Ownership title of corporeal chattels is effected up on delivery of the thing; hence, making delivery is a principal requirement for the transfer of ownership. So, the seller shall

take all necessary steps for transferring title to the buyer in addition to warranting against dispossession.

Warranty against Defects in the Thing and Non-Conformity: In sales contract, nonconformity refers to the seller's duty of delivering the goods to the buyer strictly in accordance with the terms of the contract. And the thing shall not be deemed to conform to the contract when there is deviation from their agreement in the terms of the contract (quality, quantity and packaging even time), or it does not fit for ordinary purposes or for a particular purpose made known to the seller. This obligation of the seller is recognized in almost all the instruments (CISG Art. 35, Art. PECL, 5.6 and 2287-2300 CC). The UNIDROIT Art. 5.6.1 employs a general criterion of reasonable quality to determine conformity of goods. Seller shall deliver reasonable quality of goods in good faith (Art, 1.7.1). The buyer after examining and inspecting the goods (Art. 38 & 39 CISG, Art. 1.62 UNIDROIT Principles), s/he shall notify if s/he found nonconformity immediately. The extent of such period is not fixed in the Ethiopian Sales law (Art. 2292), then after s/he can resort to the remedies.

9. Obligation of the Buyer

The obligation of the buyer can be succinctly summarized as the obligation to take delivery and pay for the goods. Buyer's obligations are set out in Articles 53-60 of CISG, chapter 7 of PECL, chapter 6 of UNIDROIT Principles and Art. 2303-2313 of Ethiopian civil code.

Payment of price: Art. 53 of CISG provides the buyer's obligation of paying the price of the goods and taking delivery of them as required by the contract. S/he is also required to cover any costs of payment. Such costs might include costs of bank commission in making monetary transfer, costs of opening a letter of credit account in a bank, tariff for example, if a government charged a tariff on the export of money, the buyer would be responsible for that extra cost (unless they agreed to the contrary) as part of the payment of the price. The buyer's obligation to pay the price includes, taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made CISG Art. 54 and CC Art. 2304. Hence, all issues in relation to payment such as, issues of money remittance, currency and exchange control must have to be addressed by the buyer. Furthermore, under CISG Art. 55, when parties fail to set price or if it is not determinable, it is presumed that they have agreed at a price of goods charged when they made the contract. Art. 2306 & 2307 CC (in the code price gap in a contract can be filled considering market price or invoice of the seller). Similar rules also found under UNIDROIT comment on Art. 5.7. Payment is due at the time the goods, or documents representing the goods, are put into the buyer's control, CISG Art. 58. Under Art. 7.102 PECL a party shall perform in a reasonable time is after conclusion of the contract.

Taking delivery: Pursuant to CISG Art. 61 & 64(1)a, PECL Art. 7.1.2, UNIDROIT Principles Art 6.1 and Art. 2349 CC, taking delivery is another obligation of the buyer and failure entail breach of a contract. This obligation does not come bare; rather the obligation to take delivery is only imposed if the thing in question is one that is agreed up on the contract. If it is not or if the goods are defective or has conformity issues, there would be no forcing the buyer to take delivery of the thing that he has not agreed to take. The duty of taking delivery extends to the level of taking such steps that may be necessary on the part of the buyer for completing the delivery of the thing sold (CISG Art. 60(a) & Art. 2313, 2334 CC).

10. Common Obligations of Seller and Buyer

These obligations are those of which are shared by both parties in common and includes like obligation to pay expenses, obligation to preserve the thing and obligation to bear unpreventable risk of loss and deterioration. As a rule, Art, 7.112 PECL, Art 6.1.11 UNIDROIT Principles, each party shall bear the costs of performance of its obligation. Under the Ethiopian sales law, Art. 2314 CC, the costs of forming the contract shall be borne by the buyer and both parties have a duty to preserve the thing until delivery takes place (Art. 2320 and 2321 CC). With regard to transportation, its costs and even risk transfer it will be determined based on the incoterms parties agreed. Incoterms are set of three letter standard trade terms used in international sale of goods to regulate issues of conformity, delivery, transfer of risk, division of costs and so on.

11. The Passing of Risk: CISG, UNIDROIT Principles & PECL

Risk is part of life. According to Roth, risk as a legal concept refers to "accidental injury to the goods. It therefore covers theft, seizure, destruction, damage, and deterioration" [15]. The rules on risk transfer determines the time when financial responsibility for damaged or destroyed goods passes from the seller to the buyer. Part III,

chapter IV of CISG addresses this issue. Accordingly, the risk passes to the buyer at the time agreed upon by the parties; otherwise according to the prevailing usage, if any. In the absence of any agreement or usage, the risk passes to the buyer according to the CISG's rules (Articles 67-69). Hence, under Art. 67, if a contract of sale involves carriage of goods and seller is not bound to hand them over at a particular place, risk passes to the buyer when goods are handed to the carrier. When goods are sold while they are already in transit risk passes to the buyer when s/he concludes the contract [2]. Article 69 of CISG governs in situations not covered by Articles 67 or 68. In these cases, risk is transferred at the time when goods are delivered to the buyer or he failed to take delivery.

12. Comparison to the Ethiopia Sales Law

It adopts similar approach with the convention and risk transfers from the seller to the buyer in three cases: at the time of delivery, when there is late in taking delivery by the buyer and when the goods are handed to the carrier with respect to goods subject to voyage and this is provided in Art. 1758 & 2324, 2325 and 2326 respectively.

12.1. Non-Performance of a Contract

Non-performance as defined under UNDRUIT Principles Art. 7.1.1, CISG Art. 61, and PECL Art. 8:101(1) and 1:301(4), is failure by a party to perform any of its obligations under the contract, including defective performance or late performance. It is defined so as to include defective performances as well as complete failure to perform. Under the Ethiopian civil code too, Art. 1771 cum. 2329 ff, a sale contract is said to be non-performed when a party fails to carry out his/her obligations under the contract.

12.2. Remedies of Non-Performance of a Contract

CISG: Under Art. 45(1) of CISG, the buyer remedies in the event of breach of the seller include specific performance, avoidance, compensatory damages, and reduction in price. Similarly, pursuant to Art. 61(1) of the convention the seller remedies are specific performance, avoidance, and damages. The CISG makes specific performance available to both the seller (Art. 46) and the buyer (Art. 62). Besides damages can be a sole remedy, may also be awarded in addition to cancellation, or forced performance. For the sake of putting the aggrieved party into as good a position as he would have been had the contract been performed as agreed, the aggrieved party has, therefore, always a right to claim for damages in addition to a claim for specific performance or avoidance. Damages include both for expenses incurred and for the loss of profit and its amount will be determined on the criteria of foreseeability and mitigation and this is provided explicitly under Art. 74 and 77 of CISG. Pursuant to Art. 78 of CISG, the right to receive interest is also available in addition to the right to damages.

Arts. 49 and 64 of the CISG provide an aggrieved the right to declare the contract avoided. It is however required for the breach to be a fundamental one. For remedy of avoidance and substitute delivery the breach needs to be fundamental and the reason is because of CISG's design of preserving the contract notwithstanding breach. The rules on **Nachfrist** principle, where the aggrieved has the option of fixing an additional period of time for the breaching party to perform his/her obligations, and during that period he may not resort to any other remedy for the breach, unless he receives notice that the other party will not perform, the rules on Right to cure mistakes (Art. 48) and reduction of price in case of non-conformity (Art 50) are indication of the convention's motive of keeping contractual promises of parties. And pursuant to Art. 25, there is a fundamental breach when non-performance deprives substantial entitlement the other party expects from the contract. The aggrieved party must have lost its interest in the contract due to non/incorrect performance. Consequences of avoidance are four, and all are dealt under Art. 81(1), 81(2), 75, 85 & 86 CISG. The UNDRUIT under Art. 3:17 explicitly states that avoidance has a retroactive effect in the form of restitution and damages and this rule is recognized in all. Moreover, a party has a remedy of suspending performance in cases of anticipatory breach if, after conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his/her obligations [2]. In general the remedies of nonperformance under the convention includes right to specific performance, right to avoid the contract, right to damages, right to suspend performance, right to repair, substitute delivery, right to payment, and right to diminution of price.

UNDRUIT Principles: Chapter 7 governs non-performance and it is divided into four sections made up of 31 articles. Section I is about curing mistakes and additional period for performance, section II, addresses specific

performance, section III encompasses rules on termination (which is avoidance under CISG) and its effects and the last section regulates damages. Except variance in depth, the rules are almost similar with CISG. The difference is CISG Art. 78 deals with interest payments but does not refer to the rate of interest. But, the UNIDROIT Principle under Art. 7.4.9 provides for rate of interest and so does PECL Art. 9:508. Unlike CISG Art. 79, UNIDROIT has specific rules on hardship (Art. 6.12 ff). Hardship differs from force majeure in that the former refers a situation where the performance of a party becomes much more burdensome, but not impossible, whereas force majeure makes the performance of a party impossible, at least temporarily [1].

PECL: PECL Art. 8:101 states the remedies available as: “(1) whenever a party does not perform an obligation under the contract and the nonperformance is not excused under Article 8:108, the aggrieved party may resort to any of the remedies set out in Chapter 9.(2) A breach is said to be non-excused when its act caused the other party’s nonperformance. A non-performance which is not excused may give the aggrieved party the right to claim performance-recovery of money due (Art. 9:101) or specific performance (Art. 9:102)-to claim damages and interests (Arts. 9:501 through 9:510), to withhold its own performance (Art. 9:201), to terminate the contract (Arts. 9:301 through 9:309) and to reduce its own performance (Art. 9:401). But if the breach is excused he can resort to remedies under chapter 9 but not damages and performance. Besides, it is to be noted that the PECL similarly provides the additional remedies as contained in the CISG. Such remedies are cure by non-performing party (Art. 8:104), assurance of performance in case of anticipatory non-performance (Art. 8:105) and notice fixing additional period for non-performance (Art. 8:106) of PECL.

The difference with UNIDROIT is that, the UNIDROIT Principles grant the non-performing party the right to cure even if the aggrieved party has rightfully terminated the contract (Art. 7.1.4 UNIDROIT Principles), while according to the PECL the non-performing party may cure only where the time of performance has not yet arrived or the delay would not be such as to constitute a fundamental breach (Art. 8.104 PECL); and when we compare Art. 7.1.6 of UNIDROIT Principles with that of Art. 8.109 of PECL, we can deduce that the UNIDROIT Principles state in general terms that exemption clauses may not be invoked if it would be grossly unfair to do so, while the PECL also make provision for the invalidity of such clauses where non-performance is intentional.

Still further examples are that even in case of total and permanent impediment the UNIDROIT Principles make termination dependent on the initiative of the parties (Art. 7.1.7(4)), while the European Principles provide for automatic termination of the contract in such cases (Art. 9.303(4)); that according to the UNIDROIT Principles in case of termination either party may claim restitution of whatever it has supplied either in kind or in the form of an allowance in money (Art. 7.3.6), while the European Principles grant the right to recovery only in a limited number of cases, *i.e.* where a party has paid for a performance which it did not receive or has properly rejected (Art. 9.307), or where a party has supplied property or rendered another performance for which it has not received payment (Arts. 9.308 and 9.309); and that the UNIDROIT Principles restrict the non-performing party’s liability to foreseeable losses, (Art. 7.4.4 of UNIDROIT Principles), while the European Principles provide for an exception to this limitation in cases in which non-performance was international or grossly negligent (Art. 9.503 of PECL).

13. Comparison to Ethiopian Sales Law

Ethiopian sales law under Art. 1771 CC, primarily acknowledges three types of remedies in case of contractual breach just like CISG. These remedies are specific performance (1776), cancellation of contract which is avoidance under CISG (1784 & 1785) and/or damages.

However, for the creditor before resorting to these remedies he needs first to give a default notice to the debtor. By virtue of Art. 1772 ff and 2328 CC, unless it is a compulsory date, court may grant to the seller a period of grace to perform his obligation. In the notice, the creditor shall fix a period of time to the debtor after the expiry of which he will not accept performance. Here it seems that the code employs the Nachfrist principle of CISG. Pursuant to Art. 2329 and 2323 specific performance is the primary remedy the code bestows to the obligor in case of breach where s/he has a particular interest on the infringer. But the buyer cannot demand forced performance if purchase in replacement is possible and the same holds to the seller if compensatory sale is conceivable [11]. Concerning cancellation of the contract, similar with CISG parties can only resort to it when there is a fundamental non-performance. The cumulative reading of Art. 1785 and 2336-2353 tell us that a creditor cannot cancel a contract unless it is reasonable to believe that s/he would not entered in to the contract without the term which the other party has failed to execute. In short, there needs to be a fundamental breach of the term

of a contract. Art. 8.103 of PECL has also same kind of notion in this regard. Accordingly, the grounds of cancellation by the buyer are failure of the seller to transfer title (2341), dispossession (2342), defect (2343). Seller can also cancel the contract when there is non-payment (2348) and default in taking delivery (2349). Both parties can also cancel the contract in cases of anticipatory breach (2352 CC.) and impossibility of performance (2353). But, in all these cases regard shall be made in preserving the contract by giving remedies to the innocent contractant. The last remedy the creditor has in time of breach is monetary compensation. Damages can be ordered no matter the contract is upheld or cancelled as long as loss occurred due to the breach. As provided in Art. 2360 CC, and Art. 3.18 of the UNDRUIT principles, right to damages arises irrespective of whether or not the contract has been avoided. The amount of damages will be assessed on case-by-case bases depending on the cause of the breach and the loss resulted. Damages will be assessed in the code differently when the contract is upheld (2391 & 1790-1805) and when it is cancelled (2362-2367). And the rules are similar with CISG, the difference is, in case of late payment the code grants 9% interest to the seller, but under the convention no rate is fixed. Moreover, the grounds of force majeure are different in these legal instruments. Under Art. 1791-1794 of the code, UNDRUIT Art. 7.1.7 and Art. 79 of CISG a party is relieved from paying damages if the breach is caused by force majeure (unforeseen circumstances that absolutely prevents the performance of the contract). But the grounds of force majeure are listed under the code but not under CISG. These cases of force majeure which are prescribed under the Ethiopian sales law includes but not limited to natural catastrophe, death of the debtor, an official ban preventing performance, and war.

14. Conclusion and the Way Forward

One of the most important aims of any contract law in general and sales law in particular is to create an environment, wherein the participants can operate with the maximum of security and certainty. This can be done by ensuring that the rules are fair, consistent, certain and not plagued by complexities. Accordingly, Ethiopia has a structured sales law but for it to be competitive in the global level, I recommend for the country to accede to the CISG and adopt the rules from there. The CISG is an instrument that is created to remove legal barriers to trade and promote the development of international trade in goods. It also has supportive rules on e-commerce. Moreover, many countries have relied on the CISG to reform their national laws. Ethiopia can also accede to the convention and use rules of it to govern both domestic and international sales contract. This will fortify the country's hope to join World Trade Organization.

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