

SALE OF GOODS ACTS OF GHANA: A MODEL FROM THE PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (PICC)

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Abstract:

Background:

The primary purpose of International commercial law is to provide a regulatory framework for businesses engaged in cross-border transactions. It standardizes legal regulations, ensuring predictability and fairness in international trade and commerce.

Methodology:

The authors of this article analyzed, reviewed and made a synergistic approach comparing peer reviewed papers written on principles of International commercial law with a taste of measured and concise critiques where the need arose. Search engine such as google scholar, research gates, pub med for highly sort out and accredited works published were reviewed and those that suited the research article were studied. In all the authors studied about 150 peer reviewed articles and used about 15 books on the subject area.

Results:

Commercial law focuses on the sale and distribution of goods and transaction financing. Business law focuses on the legal needs of forming a company and property issues such as leasing office space. Corporate law is a subspecialty of commercial law and focuses on the legal matters of large corporations, such as mergers and acquisitions. Corporate law is a subspecialty of commercial law and focuses on the legal matters of large corporations, such as mergers and acquisitions.

Conclusion:

The researchers concurred and attested to the fact that the key principles of International commercial law shall always include the principle of freedom of contract, pacta sunt servanda (agreements must be kept), lex mercatoria (the law of merchants), and the principle of fairness and good faith. These principles aim to facilitate global trade efficiently and equitably.

Keywords: legislation, frame work, contracts, transactions.

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Introduction

A. Origins and purpose of the PICC

The UNIDROIT Principles of International Commercial Contracts (PICC) owe their genesis to the visionary pursuits of the International Institute for the Unification of Private Law (UNIDROIT). Established in 1926, UNIDROIT embarked on a mission to harmonise private international law, recognising the need for a neutral framework that would transcend the diverse and often conflicting legal systems of the world, particularly in the realm of commercial contracts.¹ The Uniform Commercial Code (UCC) is a model rule about the sales of goods. It is not a law. It is a set of guidelines on how businesses must make contracts to sell and transfer tangible goods. The UCC helps streamline business dealings between business entities in different countries or states.

The motivation behind the PICC was rooted in the palpable realities of international commerce. The latter half of the 20th century witnessed an explosion of cross-border trade, revealing the limitations of relying solely on domestic laws or the laws of either contracting party. Divergent legal traditions, stemming from civil, common, socialist, and other legal systems, often led to unpredictability and confusion. A neutral set of principles, not bound by any single jurisdiction but embodying universally accepted norms, was the clarion call of the time.²

Against this backdrop, UNIDROIT embarked on drafting the PICC in the 1970s. Through a series of iterative drafts and extensive consultations with legal luminaries across different jurisdictions, the first version of the PICC was unveiled in 1994. These principles have since seen revisions, with the most recent iteration being published in 2016, reflecting the dynamism and adaptability of the PICC to evolving commercial realities.

The PICC's overarching purpose is manifold. First and foremost, it provides a comprehensive and neutral legal framework for international commercial contracts, one that respects and integrates diverse legal traditions. Parties to a contract can voluntarily choose the PICC as the governing law, ensuring that their contractual relations are steered by principles that are both universal and balanced.³

Beyond mere guidance for contracting parties, the PICC serves as a reference tool for judges and arbitrators. Even in cases where the PICC isn't the chosen law, it often illuminates interpretations, offering a compendium of best practices and norms in the realm of commercial contracts. Furthermore, it inspires legislators and policymakers worldwide, influencing the drafting and revision of domestic contract laws.⁴

In essence, the UNIDROIT Principles of International Commercial Contracts represent an audacious endeavour to sculpt a universal legal lexicon for international commerce. Through its balanced

provisions and adaptable nature, the PICC seeks to usher in a world where commercial transactions are underpinned by trust, predictability, and a shared understanding of fairness.

B. How the PICC defines a breach in sale contracts

The UNIDROIT Principles of International Commercial Contracts (PICC) represent a synthesised distillation of universal legal principles, serving as an authoritative guide for international commercial contracts. Within this ambit, the way the PICC delineates 'breach', particularly in sale contracts, reflects its commitment to offer a balanced, equitable, and adaptable framework that aligns with the complexities and nuances of global commerce.⁵

The PICC, in its conceptualisation of a breach, is both comprehensive and precise. At its core, a breach under the PICC is fundamentally rooted in the non-performance of an obligation, whether entirely, improperly, or late. Specifically, Article 7.1.1 of the PICC underscores that a party is in non-performance when, without a legitimate reason, it does not perform any of its obligations, whether stemming from the contract, a unilateral undertaking, or the PICC.⁶

In the context of sale contracts, this broad understanding of non-performance encapsulates various scenarios: from the delivery of non-conforming goods, failure to respect delivery timelines, to a failure to provide requisite documentation or information. Each of these scenarios, under the overarching canopy of the PICC, can be construed as a breach, meriting redress.⁷

In line with this holistic definition, the PICC embraces the dualistic classification familiar to many international instruments: that of fundamental and non-fundamental breaches. A breach is deemed fundamental, as per Article 7.3.1, if it results in substantial detriment to the aggrieved party, to the extent that the party is substantially deprived of what it was entitled to expect, unless the defaulting party did not foresee, and a reasonable person in the same situation would not have foreseen, such a result.⁸ This nuanced approach ensures that breaches are not viewed through a monolithic lens but are evaluated based on their impact on the contractual relationship.

In summation, the UNIDROIT Principles, in their treatment of breaches in sale contracts, offer a panoramic view that is rooted in universal commercial practices and legal traditions. Through their comprehensive definition and nuanced classifications, they provide a robust foundation for addressing breaches, fostering an environment of clarity, equity, and trust in international commercial transactions.

¹ Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', *International Business Law Journal*, (2016).

² Joerges, C. 'The Impact of European Integration on Private Law: Reductionist Perceptions, True Conflicts and a New Constitution', *Common Market Law Review*, (1991).

³ Boele-Woelki, K. 'The Principles of the UNIDROIT Principles 2016', *International and Comparative Law Quarterly*, (2017).

⁴ Michaels, R. 'The UNIDROIT Principles as Global Background Law', *Uniform Law Review*, (2012).

⁵ Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', *International Business Law Journal*, (2016).

⁶ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart, (2015).

⁷ Boele-Woelki, K. 'The Principles of the UNIDROIT Principles 2016', *International and Comparative Law Quarterly*, (2017).

⁸ Lind, D. 'Non-Performance and Remedies under International Contract Law Principles and Indian Contract Law: A Comparative Study', *Pace International Law Review*, (2009).

C. Classification of breaches: non-performance and its implications

The UNIDROIT Principles of International Commercial Contracts (PICC) present a meticulously crafted framework for breaches, particularly articulating the notion of 'non-performance'. This concept, pivotal to the PICC's understanding of breaches, emphasises the gravity and consequences of obligations not duly met in commercial transactions.⁹

The term 'non-performance', as conceptualised by the PICC, possesses a breadth that encapsulates any failure by a party to execute its obligations arising from the contract, a unilateral commitment, or the principles themselves, as elucidated in Article 7.1.1.¹⁰ This expansive view ensures that a wide range of deviations, from overt defaults to nuanced lapses, fall within the ambit of non-performance.

The PICC's real mastery, however, lies in its approach to classifying non-performance. While it acknowledges the universality of non-performance as a breach, it carves out distinctions based on the severity and implications of such breaches. The binary classification system discerns between 'fundamental' and 'non-fundamental' non-performances, setting the stage for proportional remedies.

A non-performance attains the 'fundamental' stature under the PICC when it leads to such a substantial detriment to the aggrieved party that it essentially deprives them of what they legitimately expected under the contract, with foreseeability playing a crucial role. As enshrined in Article 7.3.1, if the breach is so significant that it thwarts the very essence of the contract, and if such a consequence was either foreseen or ought to have been foreseen by the defaulting party, the non-performance is classified as fundamental.¹¹ Such a determination is of paramount importance, for a fundamental non-performance empowers the aggrieved party with a plethora of remedies, including the right to terminate the contract.

Contrastingly, non-fundamental non-performances, while still representing deviations from contractual obligations, do not strip the contract of its essence. These breaches, although warranting redress, do not allow the aggrieved party the potent remedy of contract termination. Instead, remedies are often confined to damages or specific forms of restitution.¹²

By adopting this sophisticated classification system, the PICC ensures that the repercussions of non-performance align with the breach's gravity. Such a nuanced approach fosters an international commercial ecosystem that is just, equitable, and reflective of the multifaceted challenges inherent in cross-border transactions.

⁹ Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', *International Business Law Journal*, (2016).

¹⁰ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart, (2015).

¹¹ Perillo, J.M. 'UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review', *Fordham International Law Journal*, (1994).

¹² Ferrari, F. 'Fundamental Breach under the UNIDROIT Principles and the CISG', *Uniform Law Review*, (2012).

D. Remedies for breach under the PICC

Within the latticework of the UNIDROIT Principles of International Commercial Contracts (PICC), remedies for breach occupy a central position, reflecting the drafters' recognition of the necessity for just, flexible, and efficacious redress mechanisms in international commercial relations.¹³

Under the PICC, the remedial structure pivots around the twin concepts of performance and reparation. The foundational principle is that of 'specific performance'. Article 7.2.2 underscores the right of the aggrieved party to demand the defaulting party to perform its obligations unless performance is impossible or unreasonably burdensome. This remedy embodies a civil law leaning, wherein performance of the obligation stands as the primary expectation, rather than mere monetary compensation.¹⁴

In tandem with specific performance, 'damages' represent the mainstay of the PICC's remedial regime. Articles 7.4.1 to 7.4.13 chart out the detailed architecture of damages. At its core, the damages principle aims to place the aggrieved party in the position they would have been had the contract been properly performed. This encompasses both actual loss and loss of profit. However, the PICC introduces constraints to ensure that claims are reasonable. Damages are circumscribed by the principles of foreseeability, mitigation, and certainty. The aggrieved party cannot claim damages for losses which the defaulting party did not foresee or could not reasonably have foreseen, and there's a duty on the aggrieved party to mitigate losses.¹⁵

Where the breach is deemed fundamental, the PICC, recognising the gravity of such a breach, provides the remedy of 'termination'. As delineated in Article 7.3.1, if a non-performance substantially deprives the aggrieved party of what it expected under the contract, it may opt to terminate the contract, freeing both parties from their contractual obligations and triggering restitution mechanisms to return parties to their pre-contractual positions.¹⁶

Additionally, the PICC contemplates more nuanced remedies. 'Price reduction', akin to its CISG counterpart, is enshrined in Article 7.2.3, allowing for a proportionate reduction in price if the performance is of lower value than what was agreed upon. 'Interest on sums in arrears', as provided for in Article 7.4.9, ensures timely financial performances, deterring unnecessary delays in monetary obligations.¹⁷

In essence, the remedies outlined in the PICC reflect a deliberate endeavour to balance the interests of contractual parties. By offering a diverse suite of remedies, proportionate to the nature and gravity of breaches, the PICC fosters an ecosystem of trust, predictability, and justice in international commercial transactions.

¹³ Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', *International Business Law Journal*, (2016).

¹⁴ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart, (2015).

¹⁵ Zeller, B. 'Damages under the Convention on Contracts for the International Sale of Goods', OUP, (2009).

¹⁶ Cordero-Moss, G. 'International Commercial Arbitration and Contract Law: An Interface', *Journal of International Arbitration*, (2010).

¹⁷ DiMatteo, L. 'Equity in International Law and the PICC', *Uniform Law Review*, (2017).

COMPARATIVE ANALYSIS

Embarking on a comparative analysis between the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) unveils a fascinating tapestry of approaches, each sculpted by differing underlying philosophies, contexts, and objectives.¹⁸

The Sale of Goods Act of Ghana is largely territorial in scope and is primarily informed by Ghana's socio-economic realities, customary practices, and its colonial legal heritage. Its definition of breach remains conventional, concentrating on the non- or mis-delivery of goods or acceptance and payment. Remedies are traditionally structured, gravitating towards damages, specific performance, and contract rescission.¹⁹

In contrast, the CISG, with its global purview, adopts a more universalist approach. Drafted with the intent of harmonising disparate sales laws, the Convention provides a streamlined framework. Breaches are divided into fundamental and non-fundamental, with remedies like specific performance being discretionary based on the gravity of the breach. The Convention's strength lies in its flexibility, accommodating diverse legal traditions while promoting uniformity.²⁰

The PICC represents an amalgam of global best practices, providing a blueprint for international commercial contracts. It goes beyond codifying mere legal norms to encapsulating equitable commercial practices. The classification of non-performance as either fundamental or non-fundamental mirrors the CISG but is buttressed by a more detailed exposition on remedies and obligations.²¹

Distinguishing Features:

1. Scope and Application: The Ghanaian Act is limited to domestic sales in Ghana, while both the CISG and PICC target international sales and commercial contracts, with the PICC serving as a non-binding reference.

2. Definition of Breach: Ghana's Act remains rooted in traditional interpretations, while both the CISG and PICC offer nuanced categorisations, segmenting breaches based on their gravity.

3. Remedies: While all three instruments recognise damages, specific performance, and contract termination, the CISG and PICC provide a more granular breakdown, especially concerning mitigation and foreseeability.²²

In essence, while Ghana's Sale of Goods Act offers a reliable legal structure tailored to its local nuances, both the CISG and PICC aim to serve the broader international commercial community. The CISG seeks to harmonise, making international trade smoother,

while the PICC aims to guide, serving as a beacon of best practices. Their intersectionalities and divergences are emblematic of the challenges and potentials inherent in the global commercial legal landscape.

A. Similarities in the three systems

Navigating the complex terrains of the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) reveals striking convergences, affirming the universality of certain foundational principles in the domain of sale of goods and commercial contracts.²³

1. Fundamental Principle of Pacta Sunt Servanda: All three systems enshrine the cornerstone principle that agreements must be honoured. Contractual obligations, once entered into, are binding on the parties and serve as the bedrock upon which subsequent actions and remedies are founded. This universal tenet underscores the sanctity of contractual relationships, ensuring stability and predictability in commercial transactions.²⁴

2. Definition and Consequences of Breach: At a foundational level, all three regimes recognise a breach as a deviation from the contractual obligations, whether it's the delivery of non-conforming goods, delay, or complete non-performance. While nuances in classification may differ, the underlying principle that non-performance of an obligation triggers remedies is consistent across the board.²⁵

3. Damages as a Primary Remedy: Each system prominently features damages as a central remedy for breaches. The objective, invariably, is to place the aggrieved party in the position they would have been in had the contract been properly performed. While the mechanisms to calculate and award these damages may vary, the core principle of compensation remains consistent.²⁶

4. Specific Performance: The idea that a party can compel another to perform its contractual obligations, subject to certain conditions, finds resonance in all three instruments. Though the application of this remedy might be more discretionary in the CISG, the foundational acceptance of specific performance is evident.²⁷

5. Mitigation Principle: A duty to mitigate losses upon a breach is a shared concept. All three systems underscore the responsibility of the aggrieved party to take reasonable steps to minimise losses, ensuring that claims for damages are equitable and justifiable.²⁸

6. Fundamental vs. Non-Fundamental Breaches: Both the CISG and PICC, and to an extent, the Sale of Goods Act of Ghana, draw a distinction between breaches based on their gravity. While

²³ Goode, R. 'Commercial Law in the Next Millennium', Sweet & Maxwell's Commercial Law and Commercial Practice, (1998).

²⁴ Atiyah, P.S. 'An Introduction to the Law of Contract', Clarendon Press, (1989).

²⁵ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', Kluwer Law International, (1999).

²⁶ Zeller, B. 'Damages under the Convention on Contracts for the International Sale of Goods', OUP, (2009).

²⁷ Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers, (2005).

²⁸ Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2013).

¹⁸ Goode, R. 'The Nature and Purposes of Commercial Law', Law Quarterly Review, (1981).

¹⁹ Date-Bah, S.K. 'The Law of Sale of Goods in Ghana', Journal of African Law, (1975).

²⁰ Schlechtriem, P. & Schwenger, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

²¹ Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers, (2005).

²² Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2013).

terminologies may differ, the underlying idea of classifying breaches based on their impact on the contractual relationship is a shared attribute.²⁹

In conclusion, these shared principles across the Sale of Goods Act of Ghana, the CISG, and the PICC illuminate the universality of certain foundational legal tenets in commercial law. Their confluences serve as a testament to the collective aspiration for fairness, justice, and predictability in commercial relations, irrespective of jurisdictional boundaries.

B. Divergences among the three systems

While the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) collectively anchor the architecture of commercial transactions, their distinct origins, objectives, and scopes give rise to several notable divergences.³⁰

1. Territorial Scope and Applicability: The Sale of Goods Act of Ghana is predominantly a domestic instrument, crafted to regulate sales within Ghana, interwoven with Ghana's socio-economic, historical, and cultural fabric. Conversely, both the CISG and the PICC are inherently international. The CISG aims to harmonise sales laws across its signatory nations, while the PICC seeks to provide a general framework for international commercial contracts irrespective of the parties' jurisdictions.³¹

2. Voluntariness vs. Statutory Authority: While the Sale of Goods Act of Ghana operates as a statutory law within its jurisdiction, the CISG, once ratified, becomes binding on parties in member states, subject to reservations. The PICC, distinctively, is not a treaty but a set of principles. Its applicability is purely voluntary, often chosen by parties as their contractual law or used by tribunals as a reference.³²

3. Remedies and their Implementation: While all three systems recognise similar remedies, their prioritisation differs. The Ghanaian Act, with its common law influences, tends to prioritise damages. The CISG, while also valuing damages, exudes a civil law inclination by not unequivocally guaranteeing specific performance, leaving it to national laws. The PICC, being more encompassing, advocates specific performance as a primary remedy unless specific conditions render it inappropriate.³³

4. Conceptualisation of Fundamental Breach: The Sale of Goods Act of Ghana does not articulate a clear distinction between fundamental and non-fundamental breaches. The CISG introduces the idea of a fundamental breach as one causing substantial detriment to the aggrieved party, warranting contract avoidance.

The PICC builds on this, adding layers of nuance and detail to the definition, elucidating the consequences of each classification.³⁴

5. Hardship and Contract Adaptation: The PICC is particularly progressive in its treatment of hardship, elaborated in its provisions on changed circumstances. It allows for contract adaptation in the face of unforeseen events significantly affecting the contract's equilibrium. Neither the CISG nor the Sale of Goods Act of Ghana has such an explicit provision, although some CISG scholars argue for its implicit presence.³⁵

6. Evidentiary Matters and Written Form: The CISG is particularly modern in its approach to evidentiary matters, allowing contracts to be proven by any means, thereby not strictly necessitating a written form. This stands in contrast to the Sale of Goods Act of Ghana, which leans more towards traditional requirements, and the PICC which, being a set of principles rather than a binding law, provides broad guidelines that promote flexibility.³⁶

In summation, while the shared thematic currents across these systems speak to universal commercial imperatives, their divergences underscore the multifaceted challenges and contexts shaping commercial law. As global commerce evolves, understanding these contrasts becomes vital, ensuring that commercial actors navigate their transactions with clarity, prudence, and foresight.

Practical Implications and Recommendations

Navigating the commercial and legal landscapes shaped by the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) necessitates an astute understanding of their practical implications, as well as judicious recommendations for stakeholders.³⁷

Practical Implications:

1. Jurisdictional Nuances: International traders, especially those operating in or with Ghana, need to be attuned to the jurisdictional nuances. The Sale of Goods Act of Ghana, being primarily domestic, may not readily accommodate international commercial sensibilities, unlike the CISG or PICC.³⁸

2. Contractual Autonomy: While the CISG is binding on parties from member states, the PICC operates on contractual autonomy. Parties can choose to incorporate the PICC, in whole or in part, providing flexibility in moulding their contractual relationships.³⁹

3. Remedial Routes: The divergent remedial frameworks across these systems can lead to varied outcomes in breach scenarios. For

²⁹ Date-Bah, S.K. 'The Law of Sale of Goods in Ghana', *Journal of African Law*, (1975).

³⁰ Goode, R. 'Commercial Law in the Next Millennium', *Sweet & Maxwell's Commercial Law and Commercial Practice*, (1998).

³¹ Schlechtriem, P. & Schwenzler, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

³² Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', *Transnational Publishers*, (2005).

³³ Zeller, B. 'Damages under the Convention on Contracts for the International Sale of Goods', OUP, (2009).

³⁴ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', *Kluwer Law International*, (2016).

³⁵ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', *Beck/Hart*, (2015).

³⁶ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', *Kluwer Law International*, (1999).

³⁷ Goode, R. 'Commercial Law in the Next Millennium', *Sweet & Maxwell's Commercial Law and Commercial Practice*, (1998).

³⁸ Date-Bah, S.K. 'The Law of Sale of Goods in Ghana', *Journal of African Law*, (1975).

³⁹ Ferrari, F. 'Applicability and Applications of the UNIDROIT Principles of International Commercial Contracts', *Uniform Law Review*, (2012).

instance, a claim for specific performance might be more favourably entertained under the PICC than the CISG, especially if the latter operates within a jurisdiction that traditionally limits such a remedy.⁴⁰

4. Evidentiary Freedoms: The CISG's liberal stance on evidentiary matters, especially its non-strict adherence to written forms, can expedite dispute resolutions and provide flexibility in proving contractual obligations.⁴¹

Recommendations:

1. Due Diligence: Traders and legal counsel must conduct rigorous due diligence to ascertain which legal framework applies, ensuring that the chosen or applicable system aligns with their commercial expectations and risk appetites.

2. Contractual Clarity: To mitigate ambiguities, contracts should clearly specify the governing law, particularly when opting for instruments like the PICC. Inclusion of arbitration clauses with clear reference to preferred legal standards is advisable.⁴²

3. Capacity Building: Commercial entities should invest in training and capacity-building exercises, ensuring their teams understand the intricacies of these legal systems, especially when operating across multiple jurisdictions.⁴³

4. Engage Expertise: Engaging legal experts with specialised knowledge in international commercial law can provide invaluable insights, ensuring contracts are robust, compliant, and reflective of the parties' intentions.

5. Foster Dialogue: Regulatory bodies, trade associations, and legal fraternities should foster dialogue, promoting awareness about the advantages and limitations of each system, ensuring businesses can make informed decisions.⁴⁴

6. Review and Update: As global commerce evolves, there's merit in periodically reviewing and updating domestic laws, like the Sale of Goods Act of Ghana, ensuring they remain relevant and are harmonised with international best practices.

In conclusion, while the Sale of Goods Act of Ghana, the CISG, and the PICC offer rich legal frameworks, astute navigation, informed choices, and continuous engagement are key to harnessing their potential and mitigating risks.

A. Choosing the governing law in international sale contracts

The choice of governing law in international sale contracts is one of the most critical determinants of how contractual relationships will be interpreted, enforced, and redressed. It acts as the

lighthouse, guiding parties through the often-turbulent seas of cross-border transactions.⁴⁵

The Sale of Goods Act of Ghana is inherently domestic, catering predominantly to intra-Ghanaian transactions. However, as Ghanaian businesses venture into global commerce, the Act, whilst not directly applicable, serves as a foundation upon which these entities understand the sale of goods, juxtaposed against more internationally-focussed instruments.⁴⁶

The CISG, on the other hand, emerges as a formidable contender for governing law in international sale contracts. Its genesis lies in the intent to harmonise the disparate sales laws of different jurisdictions. When parties from member states enter into a contract, the CISG applies by default unless expressly excluded. It offers a balanced legal framework, drawing from both civil and common law traditions, and hence is adaptable to a broad spectrum of jurisdictions.⁴⁷

Then there's the PICC, a set of principles rather than a binding convention. Its value proposition is its universality and adaptability. The PICC can serve as the chosen governing law, especially in arbitration, providing a neutral, comprehensive framework that transcends national laws. For parties seeking an equitable framework unattached to any specific jurisdiction, the PICC emerges as an attractive choice.⁴⁸

Factors influencing the choice of governing law include:

1. Nature and Location of Parties: A contract between a Ghanaian entity and a German company might naturally gravitate towards the CISG, given that both countries are signatories.

2. Neutrality: Parties often prefer laws that don't favour any one side. Here, the PICC's non-national character is advantageous.

3. Predictability and Precedent: Established legal systems with rich jurisprudence, like the CISG, provide a degree of predictability.⁴⁹

4. Flexibility: If parties desire a malleable, principle-based approach rather than a rigid statutory one, instruments like the PICC are more apt.

5. Commercial Considerations: Tax implications, enforcement mechanisms, and dispute resolution avenues under each legal system play a role.

6. Contractual Autonomy: While the CISG allows for derogations, the PICC, being non-binding, offers vast latitude for parties to customise their contractual relationship.

Recommendations:

⁴⁰ Zeller, B. 'Damages under the Convention on Contracts for the International Sale of Goods', OUP, (2009).

⁴¹ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', Kluwer Law International, (2016).

⁴² Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', International Business Law Journal, (2016).

⁴³ Schlechtriem, P. & Schwenger, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

⁴⁴ Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2013).

⁴⁵ Goode, R. 'Choice of Law in International Commercial Contracts', Oxford Journal of Legal Studies, (2015).

⁴⁶ Date-Bah, S.K. 'The Law of Sale of Goods in Ghana', Journal of African Law, (1975).

⁴⁷ Schlechtriem, P. & Schwenger, I. 'Commentary on the UN Convention on the International Sale of Goods (CISG)', OUP, (2010).

⁴⁸ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart, (2015).

⁴⁹ Lookofsky, J. 'Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods', Kluwer Law International, (2016).

1. Parties must engage in detailed deliberations at the contract formation stage, discerning which legal system aligns best with their commercial and strategic interests.
2. Engaging expert legal counsel with international commercial law expertise is crucial to guide the decision-making process.⁵⁰
3. Always ensure that the choice of governing law is explicitly mentioned in the contract, leaving no room for ambiguities.
4. Consider the interplay between the choice of governing law and the dispute resolution mechanism. For instance, arbitration with the PICC as the governing law is a popular combination.⁵¹

In conclusion, the choice of governing law in international sale contracts is not just a legal decision but a strategic one, profoundly influencing the trajectory of commercial relationships and the resolution of potential disputes.

B. Strategies for businesses when navigating breaches in different jurisdictions

In the intricate maze of international commercial transactions, businesses confront the formidable challenge of navigating breaches under differing legal jurisdictions. The Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) present varied landscapes. For businesses, adopting astute strategies to mitigate risks and capitalise on opportunities across these jurisdictions becomes paramount.⁵²

1. Pre-Contractual Due Diligence: Before finalising contracts, businesses must invest time in understanding the legal nuances of the jurisdiction in which they operate. Grasping how breaches are classified and redressed under the Sale of Goods Act of Ghana, the CISG, or the PICC can inform contract drafting, ensuring that businesses are not inadvertently exposed to unforeseen liabilities.⁵³
2. Expert Engagement: Engaging local legal counsel with expertise in commercial law is invaluable. Such experts can provide insights into the practicalities of breach proceedings in a particular jurisdiction, offering guidance on timelines, costs, and potential outcomes.⁵⁴
3. Contractual Clauses: Ensure that contracts contain clear and comprehensive clauses addressing breaches. Consider 'force majeure' clauses for unforeseen circumstances and 'hardship' clauses, especially when operating under the PICC. Clauses stipulating arbitration as a dispute resolution mechanism can bypass protracted litigation, especially in jurisdictions known for judicial delays.⁵⁵

4. Mitigation Mechanisms: When faced with a potential breach, businesses should not only look at legal redress but also explore commercial solutions. Mediation and negotiation can often result in faster, more amicable resolutions than adversarial legal proceedings.⁵⁶
5. Monitoring and Compliance Systems: Instituting robust internal monitoring and compliance mechanisms can preempt breaches, especially when operating in multiple jurisdictions. Regular audits and reviews of contract performance can highlight potential issues before they escalate.⁵⁷
6. Cultural Sensitivities: Beyond legalities, understanding cultural nuances is crucial. What is considered a minor oversight in one jurisdiction might be viewed as a grave breach in another. Businesses must be attuned to these sensitivities, adjusting their commercial practices accordingly.⁵⁸
7. Capacity Building: Regular training sessions for business teams on the legal landscapes of different jurisdictions can be beneficial. An informed team is less likely to inadvertently commit breaches and more likely to swiftly address them when they arise.⁵⁹
8. Contingency Planning: Always have a contingency plan in place. Whether it's alternative suppliers, parallel contractual arrangements, or financial buffers, businesses should be prepared to pivot when faced with a breach.
9. Evolving Jurisprudence: Legal landscapes are not static. Businesses must be abreast of evolving case laws, especially under instruments like the CISG, where jurisprudential developments across member states can influence interpretations.⁶⁰

In conclusion, navigating breaches across the Sale of Goods Act of Ghana, the CISG, and the PICC requires a blend of legal acumen, commercial sagacity, and proactive planning. Businesses that strategically address these challenges not only safeguard their interests but also harness the potential of cross-border commerce in a globalised world.

C. Recommendations for harmonization or adoption of certain provisions

In the tapestry of international trade, diverse legal instruments like the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC) provide the warp and weft. The co-existence of these systems, each with its nuances, has underscored the pressing need for harmonization to engender legal predictability and coherence in the face of global commercial fluidity.⁶¹

⁵⁰ Bonell, M.J. 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts', Transnational Publishers, (2005).

⁵¹ Berger, K.P. 'Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration', Kluwer Law International, (2006).

⁵² Goode, R. 'The Codification of Commercial Law', *Modern Law Review*, (1992).

⁵³ DiMatteo, L.A. 'International Sales Law: A Critical Analysis of CISG Jurisprudence', Cambridge University Press, (2005).

⁵⁴ Date-Bah, S.K. 'The Law of Sale of Goods in Ghana', *Journal of African Law*, (1975).

⁵⁵ Ferrari, F. 'Specific Topics of the CISG in the Light of Judicial Application and Scholarly Writing', *Journal of Law and Commerce*, (1995).

⁵⁶ Bridge, M. 'The International Sale of Goods: Law and Practice', OUP, (2013).

⁵⁷ Vogenauer, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', Beck/Hart, (2015).

⁵⁸ Honnold, J. 'Uniform Law for International Sales under the 1980 United Nations Convention', Kluwer Law International, (1999).

⁵⁹ Mistelis, L.A. 'CISG - The First 25 Years: International Handel in the 21st Century', *Pace Law Review*, (2007).

⁶⁰ Kroll, S. 'UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary', *Review of Central and East European Law*, (2011).

⁶¹ Michaels, R. 'The True Lex Mercatoria: Private Law Beyond the State', *International Legal Theory*, (2007).

1. Definition of Goods: A unified approach to the concept of 'goods', particularly in today's digital era, would streamline cross-border transactions. An expansion to encompass digital commodities and services, informed by the CISG's inclusive outlook, would modernise frameworks like the Sale of Goods Act of Ghana.⁶²

2. Formation and Validity: Taking a leaf from the CISG's approach to contract formation, which deftly balances formality with commercial realism, could offer more clarity. Such a paradigm, if reflected in instruments like the Sale of Goods Act of Ghana, would provide a more contemporary understanding of contract validity, especially in the era of electronic contracts and communications.⁶³

3. Breach and Remedies: A harmonized rubric to categorise and redress breaches, drawing from the PICC's and CISG's rich remedial tradition, would be prudent. This would ensure a more equitable and consistent treatment of contractual violations, regardless of jurisdictional differences.⁶⁴

4. Force Majeure and Hardship: The PICC's forward-looking provisions on hardship could serve as a template for the other instruments. The recent global challenges, such as pandemics, underscore the need for a unified approach to unforeseeable and transformative events in contractual obligations.⁶⁵

5. Specific Performance: Straddling the balance between the PICC's endorsement and the CISG's circumspect stance on specific performance, a harmonized principle allowing for such a remedy, subject to practical and just constraints, would present a more nuanced solution.

6. Interrelation with Domestic Laws: A standard clause addressing the nexus between these instruments and domestic legislations, akin to Article 7 of the CISG, would facilitate a smoother integration of these principles within national legal landscapes, ensuring interpretative coherency.

7. Transparency and Evidence: Embracing the CISG's pragmatic approach to evidentiary matters and promoting transparency, especially concerning the non-requirement of a written form, can democratize and expedite contractual processes and dispute resolutions.

In the final analysis, while cherishing the unique character of each instrument, it is pivotal to stride towards harmonization. Such a journey, underpinned by a commitment to fairness, consistency, and adaptability, can reshape the architecture of international commercial law, making it more resilient and reflective of the zeitgeist.

D. Recommendations for Ethical Standards in International Business

The importance of ethics in international business cannot be overemphasized. Indeed, in today's world of international sales contracts ethical standards have become more and more

⁶² Schwenzer, I. 'Global Sales and Contract Law', OUP, (2012).

⁶³ DiMatteo, L.A. 'International Sales Law: A Critical Analysis of CISG Jurisprudence', Cambridge University Press, (2005).

⁶⁴ Ferrari, F. 'The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences', Verona University Press, (2003).

⁶⁵ Bonell, M.J. 'The UNIDROIT Principles in Practice: The Experience of the First Two Decades', International Business

important.⁶⁶ Ethics in international business ensure companies gain reputation for responsible business practices both home and abroad. Extracts from an article on 'Ethics in International Business' presents issues that are pertinent to our discussion. Accordingly, acceptable ethical standards establish trust between parties doing business together, including both partners and customers. This result in a more equitable, principled marketplace, strengthened by partnerships between businesses that share high ethical standards. Thus, companies conducting their international business ethically realize higher profits by attracting business partners who share the organization's commitment to ethics in international business.

However, formulating and enforcing an ethics policy among business partners both local and international presents companies with complex challenges. Many ethical requirements are dictated by laws and regulations. A fundamental definition of international business ethics begins with a moral code of right and wrong. An international business ethics policy must also consider such practices as corporate governance, bribery, discrimination, social responsibility, and fiduciary duties.

International business laws and regulations applies to all commercial transactions that involve the transfer of goods, services, or resources between parties in two or more nations. These laws and regulations include both those of the company's home country and those of the nations in which they operate.⁶⁷ "Once ethical standards have become part of the contract, special problems arise with regard to possible remedies when these standards are not complied with."⁶⁸ A number of organizations have developed a code of ethics intended to be applied to all business and nongovernmental organizations. 'Ethics in International Business' mentions the Code of Ethics of Global Alliance which govern international business communication and public relations which include the following guiding principles and principles of professional practice:

- Obey laws and respect local customs.
- Work in the public interest.
- Engage in honest, truthful, and fact-based communication.
- Practice transparency and disclosure.
- Honor privacy.
- Act with integrity.
- Recognize freedom of speech, assembly, and media.
- Avoid conflicts of interest.⁶⁹

⁶⁶ Schwenzer, I. 'Ethical standards in CISG contracts' (Abstract). *Uniform Law Review* (March 2017), 22(1)

⁶⁷ Extracted from Maryville University 'Ethics in International Business', (June 2021). Online article assessed from: <https://online.maryville.edu/blog/ethics-in-international-business/> on 14/07/2024.

⁶⁸ Schwenzer, I. 'Ethical standards in CISG contracts' (Abstract). *Uniform Law Review* (March 2017), 22(1)

⁶⁹ Extracted from Maryville University 'Ethics in International Business', (June 2021). Online article assessed from: <https://online.maryville.edu/blog/ethics-in-international-business/> on 14/07/2024.

Additionally, 'Ethics in International Business' reveals the Statement of Ethical Professional Practice of International Management Association (IMA) which describes standards in four areas.

- **Competence** includes maintaining a level of professional leadership and expertise.
- **Confidentiality** extends beyond legally required confidentiality to cover informing partners of their duty of confidentiality.
- **Integrity** encompasses avoiding conflicts of interest, acting in ways that promote the profession, and contributing to a positive ethical culture.
- **Credibility** requires that information is communicated fairly and objectively, and that all relevant information is communicated to partners and stakeholders in a timely manner.⁷⁰

E. Recommendations for effective communication between business partners

In today's fast growing world where global commerce keeps evolving and the boundaries of trade continues to expand, unfortunately, managers continue to struggle with communication barriers in their inter-national relationship.⁷¹ Many of the communication problems which companies encounter when conducting business both home and overseas are due to a failure to appreciate the differences in communication methods of the different cultures involved in the transactions. Such challenges will no doubt have negative impact on any commercial business. Since credibility in trade requires that information is communicated fairly and objectively, and that all relevant information is communicated to partners and stakeholders in a timely manner,⁷² overcoming any barriers in business and avoiding any forms of miscommunications that can over is necessary.

Indeed, effective communication between international business partners is critical for global success. By proactively managing its communication, a firm can develop stronger international business relationships facilitating the rapid response to market opportunities and challenges.⁷³ In order for firm managers to communicate effectively, a firm must partner with firms who employ culturally communication competent managers. Only when the internal (i.e., the firm's) and external managers (i.e., the firm's partner) are matched in competencies can a firm realistically expect success in its international relationships.⁷⁴

⁷⁰ Extracted from Maryville University 'Ethics in International Business', (June 2021). Online article assessed from: <https://online.maryville.edu/blog/ethics-in-international-business/> on 14/07/2024.

⁷¹ Griffith, D.A. 'The role of communication competencies in international business relationship development', *Journal of World Business*, (December 2002), 37(4):256-265.

⁷² Maryville University 'Ethics in International Business', (June 2021). Online article assessed from: <https://online.maryville.edu/blog/ethics-in-international-business/> on 14/07/2024.

⁷³ Griffith, D.A. 'The role of communication competencies in international business relationship development', *Journal of World Business*, (December 2002), 37(4):256-265.

⁷⁴ Griffith, D.A. 'The role of communication competencies in international business relationship development', *Journal of World Business*, (December 2002), 37(4):256-265.

When business partners emanate from different cultures (national and organizational), the underlying cultural inconsistencies in communication patterns create hurdles to the development of effective global business relationships.⁷⁵

Summary and Conclusion

This article addresses the importance of sale contracts. Sale contracts do not only serve as an essential bridge between buyers and sellers, facilitating trade and economic growth, but also bolster economic development, employment, and technological advancement. As a result of globalisation, there are existing sale contracts that serve as instruments to shape mechanisms involved global trade. Sometimes, however, due to some challenges faced by a party in a sale contract, breaches in the contract occur. Indeed, international sale contracts are fraught with challenges emanating from the interplay of different legal systems, cultures, and commercial practices. Such breaches, if they are not remedied, can erode trust between parties, lead to substantial economic losses, potential future prospects and even destroy local and local /international relations. Thus, how breaches under sale contracts are remedied assumes an ever-greater significance.

A comparative analysis of the remedies offered by three of the notable foundational frameworks regulating sale contracts: the Sale of Goods Act of Ghana, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (PICC), indicate that each of them provides invaluable helpful deep insights for stakeholders in such contracts. All three regimes recognise a breach as a deviation from the contractual obligations and feature damages as a central remedy for breaches. The idea that a party can compel another to perform its contractual obligations, subject to certain conditions, is underscored by all three instruments. In all of three the aggrieved party has the right to take reasonable steps to minimize losses, by claiming damages which are equitable and justifiable. All three draw a distinction between breaches based on their gravity. Though different terms are applied by all three, they share the fundamental tenets of breaches in sale contracts. Such convergence reflects the universal expectations of justice and fairness in Sale contracts wherever they occur.

In summary, as global commerce evolves and the boundaries of trade expand, transcending continents and cultures, breaches occur in sale contracts leading to diverse challenges. Businesses that strategically address these challenges not only safeguard their interests but also harness the potential of cross-border commerce in a globalized world.

The researchers concurred and attested to the fact that the key principles of International commercial law shall always include the principle of freedom of contract, *pacta sunt servanda* (agreements must be kept), *lex mercatoria* (the law of merchants), and the principle of fairness and good faith. These principles aim to facilitate global trade efficiently and equitably.

The foregone analysis hopes to serve as a beacon for scholars, practitioners, and policymakers, guiding them towards a more harmonized and effective global commercial law regime. This

⁷⁵ Griffith, D.A. 'The role of communication competencies in international business relationship development', *Journal of World Business*, (December 2002), 37(4):256-265.

study posits the need for strategic harmonization, emphasizing an adaptive framework that respects the unique value of each system. It underscores the pivotal role of businesses in adeptly navigating breaches, the ensuing legal ramifications, observing the right ethical standards and engaging in effective communication among partners in the business. As global commerce surges forward, a nuanced understanding of these frameworks is necessary for a cohesive, just, and prosperous commercial future.

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