

SPECIFIC PERFORMANCE OF INTERNATIONAL SALE CONTRACT: ENGLISH LAW, MYANMAR LAW AND CISG

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Abstract

Specific performance means the execution of a contract according to the precise terms agreed upon. Specific performance is an order of a court which requires a party to perform a specific act according to the agreed contract terms instead of paying damages. Under English Law, in the case of a sales contract, if the goods are unique and impossible to obtain elsewhere and the term of specific performance is granted as an exceptional remedy and is granted by the discretion of the court in very limited circumstances. Under the United Nations Convention on Contracts for the International Sale of Goods (hereinafter the CISG), specific performance is the primary remedy rather than damages, which intends to keep the contract continued. It appears that the remedies which are available for the buyer for breach of contract are different from form to form. However, under the English sale law there remedies are very limited such as termination and damages. Under Myanmar Sale of Goods Act 1930, in order to claim a specific performance subject to the provisions of Chapter II of the Specific Relief Act. These remedies to be more elaborated in the Vienna Convention 1980 on Contract for the International Sale of Goods (CISG) compared with English Sale of Goods Act 1979 and Myanmar Sale of Goods Act 1930. This will be followed by identifying which system of law contains the more appropriate rules to be applied to international sales of commodities and international sales of manufactured goods.

Keywords: Specific Performance, Sales Contract, Breach, Inadequate Damages, Remedies

Introduction

Remedies being an important issue in contracts and specific performance being the remedy that has raised much controversy, it is interesting to examine this remedy. In order to reach a unified rule the divergence of the rules regulating specific performance in legal systems should be examined and reasons for this difference be clarified.

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The general purpose of all contract remedies is to place the aggrieved party in as good a position as he would have enjoyed had the other party performed his obligations arising from the contract. This means that all contract remedies seek to protect one's contractual rights. Specific performance is one of those remedies available to the aggrieved party, the purpose of which is to help the creditor obtain--as much as possible--the actual subject matter of his bargain. Specific performance means the execution of a contract according to the precise terms agreed upon. But granting specific performance is not kept of restrictions in all legal systems. Common Law and Civil Law have different approaches to this matter, a fact that rendered agreement on specific performance rules in the Convention a difficult matter.

This paper examines the provisions regarding specific performance in the Convention in attempt to reveal the divergence of approaches between Common Law and Civil Law by means of a comparative study of the two systems. The purpose is to assess the extent to which uniformity is achieved in the Convention.

The study shows that the solution adopted regarding specific performance was a compromise that threatens uniformity to a certain degree. The purpose is to highlight the differences between English Law, Myanmar Law and CISG in order to mess whether a unified rule was reached in this regard and propose certain amendments that help achieve better the purpose of unification.

Material and Methods

In the presentation of comparative study on different remedies as well as international convention, English law and Myanmar law. A comparative methods are applied in this paper. The materials are books, articles (including on the internet), conventions, treaties and case-law.

Right to Specific Performance

The primary remedy for non – delivery, and in general non – performance, under CISG is not damages. The Convention recognizes the remedy of specific performance. This is provided in article 46 of the Convention where “the buyer may require performance by the seller of his

obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.”¹ Therefore, the buyer has a right to require the seller to perform his obligations regarding delivery of the goods or documents if the seller has not yet delivered them.

Unlike the Sale of Goods Act, the Convention also provides a right in favor of the seller. Furthermore, specific performance under the Convention is an option available to the buyer to require a defaulting seller to perform his obligations. It is not, like under the provisions of English law, a discretionary remedy granted by the courts. An aggrieved buyer thus, is not required to resort to a court to enforce performance of the contract by the other party.

The availability of such performance-oriented buyers’ remedies, however, is limited by Article 28, which provides that, in enforcing a party’s right to require performance under the CISG, “a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.”²

In one very recent decision, a buyer had placed equipment orders that were marked “urgent” and the seller had delivered the equipment between two and four months after the orders were placed. When the buyer claimed damages for late delivery, the court noted that the buyer had not made a demand for performance as provided in Article 46(1) (nor, the court noted, had the buyer fixed an additional period of time for delivery under Article 47(1)); as a result, the court held, the buyer had failed to establish that the seller’s deliveries were late. Perhaps the decision illustrates a point made in the UNCITRAL Case Digest, based upon suggestions found in the Secretariat Commentary to the Draft Convention: “under Article 46(1), a clear declaration that the buyer requests the performance of a contractual obligation is needed.” But even if such a demand for performance is required before a buyer can assert a right to performance under Article 46(1), the buyer in the

¹ Article 46(1) of the CISG, 1980.

² Harry M. Flechtner, Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law, *Buyer’s Remedies in General and Buyer’s Performance-Oriented Remedies*, p-342.

case was not asserting such a right - rather, it was seeking damages for late delivery.¹

Thus, the buyer usually should not bring its action for specific performance in a common law court. The CISG provision gives the buyer the right to seek specific performance, rather than damages, but does not require it to do so. Thus, any preference for this remedy must arise from buyer's perspective, not from the courts. Even in civil law jurisdictions, buyers will often prefer to recover damages and purchase substitute goods, because of the expense and delays inherent in litigation. Even if a court should prefer specific performance, buyers can terminate this option by declaring the contract 'avoided', which is an inconsistent remedy. If specific performance is sought in a civil law court, it will usually apply CISG Article 46 and order the seller to perform its obligations.

In English Sales Law, traditionally, the main application of the rules of specific performance was in land disputes. Specific performance of contracts between vendors and purchasers of real estate was specifically assigned to the Chancery Division. However, English courts have extended the remedy to cases of sale of goods in Section 52 of the Sale of Goods Act 1979.²

Specific performance of the terms of a contract is an extraordinary remedy, granted in very limited circumstances.

Generally, Section 52(1) of the Act, "in any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the plaintiff's application, declare by its judgment or decree that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages."³ The relief is limited to actions brought with respect to delivery of 'specific' or 'ascertained goods'. The discretion provided for the courts, to award specific enforcement of the

¹ Harry M. Flechtner, Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law, *Buyer's Remedies in General and Buyer's Performance-Oriented Remedies*, p-345.

² Kouros Majdzadeh Khandani, *Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?*, *Manchester Law Review*, Vol.,1:98, p-102.

³ Section 52(1) of the Sale of Goods Act, 1979.

contract, would be available as a remedy to the aggrieved buyer only if the court thinks it is appropriate. Thus, the court is not simply bound to grant such an order – per se. For this reason, the remedy is generally granted based on the requirements.

Under Section 52(1); it will be appreciated that the remedy of specific performance is discretionary and will only be granted where damages would be insufficient. Thus in *Behnke v Bede Shipping Co* [1927] 1 KB 649 a ship owner agreed to buy a ship called *The City* which he required immediately and which satisfied all relevant shipping regulations in terms of equipment. There was only one other ship available. An order for specific performance was made since damages would not have been an adequate remedy in this case.¹

Moreover, Section 52(1) limits specific performance to those circumstances involving "specific" or "ascertained" goods. In other words, it applies to goods "identified and agreed on at the time a contract of sale is made" or "identified in accordance with the agreement after the time a contract of sale is made." It is meant to apply in limited circumstances involving limited types of goods. However, the mere fact that specific or ascertained goods are involved is no guarantee that the court will exercise its discretion and order specific performance, including instances where the buyer was put to significant hardship in obtaining any sort of replacement good, such as custom machinery or a ship.

The court will not normally grant specific performance of a contract for the sale of unidentified goods, but its power to grant an injunction may have much the same effect. The following case illustrates; *Sky Petroleum v VIP Petroleum*². In March 1970 the plaintiffs agreed to buy from the defendants all the petrol they required at their filling stations. The agreement was for ten years. In December 1973, when the petrol crisis was at its height, the defendants said they would terminate the agreement on the grounds that the plaintiffs were in breach of contract, having exceeded the credit provisions. This would have meant that the plaintiffs would lose their only

¹ Denis Keenan, Smith & Keenan's Advanced Business Law, 10th Edition, Pitman, 1997, p-316.

² [1974] 1 All ER 954

source of petrol supplies and they applied for an injunction to restrain the defendants from withholding the supply. It was held by Goulding J that the injunction would be granted, even though in this case it had the same effect as specific performance. Thus, the court will order this if it thinks fit to do so.

Based on these decisions, English case law is unsettled on this point. The precise scope of when a court might have the power or discretion to grant specific performance is therefore unclear. Any new regime to be implemented in the CISG or other sales laws would have the opportunity to clarify English law on this point.

Under Myanmar Sale of Goods Act, 1930 where a contract has been broken, the innocent party can claim damages or specific performance if he treats the contract still subsists. If he claims specific performance, cases comes within one of the clauses of Section12 of Specific Relief Act, 1877. Even though a portion of subject-matter of the contract has been ceased at the time of performing the contract, a decree for specific performance may be enforced under Section13 of Specific Relief Act. If the unperformed part is small, the parties have to obey the provisions of Section 14. If the unperformed part is large, they may have to follow the provisions of Section 15. If the contract can be separated, specific performance may be awarded separately under Section16. When the purchaser has faced the problem of imperfect title of vendor, they should apply the case under Section 18. The court may award compensation in substitution of specific performance if it thinks fit under Section 19. Moreover when damages are stipulated in certain contract, it cannot be precluded the passing the decree for specific performance under Section 20. Cases which may be enforced specific performance of contract is stated in Section 12 of the Specific Relief Act.

Conditions Required by CISG

CISG gives to the buyer who has not received the agreed performance from the seller a specifically enforceable right to ‘require performance’ by the seller. The reference to the seller’s “obligations” is not limited, and so include court compulsion to provide goods of the agreed description quantity, quality,

and title (including intellectual property rights), as well as adhering to the agreed time, place & manner of delivery.¹

The provision permits the buyer to seek specific performance but *does not require* it to do so. The buyer may still elect between seeking performance and seeking damages. But by seeking a performance the claimant does not lose any right to claim damages since Article 45(2) states that ‘the buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies’. Equally, the seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement under Article 62. The seller like the buyer also does not lose the right to claim damages under Article 61(2).² Under English law, however, the buyer is not prohibited from claiming damages when he has already resorted to specific performance.

In either case, the buyer must first notify the seller that the goods are non-conforming with notice required by Article 39 or within a reasonable time thereafter and, if he is asking substitute goods, the non-conformity must amount to a fundamental breach. Also, the buyer cannot have avoided the contract or resorted to some other inconsistent remedy.³ The seller’s remedies are also set out together with the buyer’s in the CISG and generally do not discriminate between types of breaches by the buyer.

A buyer’s right to demand a remedy is set forth in Article 46, which authorizes several options to the buyer. A buyer can demand specific performance when the seller has failed to perform, unless he or she has resorted to an inconsistent remedy. In the event the seller has performed, but the goods fail to conform, a buyer can demand re-delivery provided certain requirements are met and for the buyer to request the seller to cure a non-conforming delivery by repair.

¹ Ralph H. Folsom, Michael W. Gordon, John A. Spanogle, JR, *Principles of International Business Transactions, Trade & Economic Relations*, Consise Hornbooks, Thomson*West, 2005, p-62.

² Indira Carr, *International Trade Law*, 3rd Edition, Cavendish, 2005, p-87-88.

³ Ray August, Don Mayer, Michael Bixby, *International Business Law (Text, Cases, and Readings)*, 6th Edition, Pearson, 2013, p- 600.

The right to require delivery of substitute goods depends on the nature of breach. Substitute goods may only be requested in case of a fundamental breach.

“If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under Article 39 or within a reasonable time thereafter.”¹

“In any event, the buyer loses the right to rely on lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless the time-limit is inconsistent with a contractual period of guarantee.”²

If the seller delivers substitute goods, the question arises as to whether the buyer may claim damages for the extra costs of reparation carried out by itself, or shall the buyer offer to the seller the opportunity to carry these works out.

Therefore, the buyer may require delivery of substitute goods in case of non-conformity amounting to a fundamental breach in the case of non-unique goods. The remedy is not parallel in the common law.

The seller can require the payment of the purchase price under Article 62 CISG and has a legally enforceable remedy. In regard to the purchase price claim under Article 62 CISG two issues may arise: first, it is controversial whether the limitation in claiming specific performance under Article 28 CISG is also applicable in regard to the payment of the purchase price. That the limitation of specific performance was only to be applicable in regard to the buyer's remedies and the seller's right to require the taking of the delivery.³

¹ Article 46(2) of the CISG, 1980.

² Article 39(2) of the CISG, 1980.

³ Peter Schlechtriem, Petra Butler, *UN Law on International Sales, The UN Convention on the International Sale of Goods*, Springer, 2009, p-173.

The second issue is whether the buyer can hold the seller's duty to mitigate loss in its entirety or in parts against the seller. Cases where it is anticipated in which the buyer notifies the seller early that he or she will not be able to take delivery of the ordered goods which still has to be manufactured by the seller and the seller nonetheless produces the goods and tries to enforce the contract with an action for specific performance of the purchase price.¹

In some cases, the seller may claim payment of the price even where the goods have not been delivered. So, in a case where the buyer clearly refused to take delivery of the goods, the seller has insisted in obtaining payment for the goods that were ready for shipment at its premises, and the court has accepted such a claim.²

The seller can require the acceptance of the goods. The duty to accept the goods has the same weight as the duty to apply the purchase price. Courts in common law countries do not need to impose specific performance in form of acceptance if the courts would not do it under their domestic law- Article 28 CISG is unquestionably applicable.³

Therefore, under the CISG, the buyer has the right to request redelivery of substitute goods only if the lack of conformity constitutes a fundamental breach. In such a case, he needs first to give the seller notice of the non-conformity within a period of two years from the date on which the goods were delivered to him. Otherwise, he loses his right to claim non-conformity. Unlike the common law, delivery of substitute goods may also be requested for non-conforming non-unique goods.

Specific performance in the consumer sales contract is granted under Section 23 of the Consumer Protection Act, 2015. The UK Sale of Goods Act 1979 does not permit either repair or replacement as a proper remedy of the buyer. However, the Consumer which has a right to repair or replacement in

¹ Peter Schlechtriem, Petra Butler, UN Law on International Sales, The UN Convention on the International Sale of Goods, Springer, 2009, p-173.

² Fabio Bortolotti, Professor of International Commercial Law, University of Turin, Remedies Available to the Seller and Seller's Right to Require Specific Performance, p-338.

³ Peter Schlechtriem, Petra Butler, UN Law on International Sales, The UN Convention on the International Sale of Goods, Springer, 2009, p-174.

the case of consumer sales was provided in the Consumers Protection Act, 2015.

The question then arises as to whether the buyer can recover the damages if it repaired the goods itself. Therefore, the seller shall be notified in due time on the defects of the product and require reparation by the seller. The buyer is entitled to undertake reparation and claim damages only where it timely notifies the seller of the defect and the seller does not repair (or refuses to repair) the goods. Thus, if the demand is made, failure of the seller to repair may result in future avoidance of the contract. However, only after the time for remedying has passed in accordance with Article 47, can a buyer seek the right of avoidance of the contract.

The seller can also make a cover sale and claim damages, instead of acceptance. In some circumstances the seller might have to make a cover sale to mitigate loss. However, a damages claim then excludes a claim for specific performance.¹

The obvious difference between Section 52 and Article 46 is the difference in emphasis on who may pursue the remedy. Specific performance under the SGA is a remedy granted by the court, in its discretion; yet under the CISG, it is the option of the buyer to require specific performance on the part of the seller, without any requirement of resorting to a court. Applicable under Articles 46(2) and (3): Article 46 (2) restricts a buyer's right to demand that the seller deliver goods in substitution for a non-conforming delivery to cases where the lack of conformity in the original goods constitutes a fundamental breach of contract; Article 46 (3) limits a buyer's right to demand that the seller repair non-conforming goods to situations where such repair is not "unreasonable in the circumstances." There is no counterpart in common law.

Conditions Provided by the Act

In English sales law, specific performance is usually a remedy sought only by a buyer, since specific performance for the seller is usually receipt of the purchase price, which can almost always be compensated for by damages

¹ Peter Schlechtriem, Petra Butler, *UN Law on International Sales, The UN Convention on the International Sale of Goods*, Springer, 2009, p-174.

or by an action for payment of the purchase price under Section 49 of the SGA.

In some circumstances, a seller would prefer to force the buyer to take delivery of the goods rather than trying to sell the goods elsewhere and trying to recover any losses through an award of damages. A seller could have contracted to supply all of the requirements of the buyer's manufacturing business over an extended period of time (therefore the goods are neither specific nor necessarily ascertained) for a contracted price. The seller may have made a significant initial investment and the market price might vary in such a way as to make any damage award speculative.¹

Under these circumstances, the seller has some justification to seek specific performance, while the actual position under English law is unclear on whether a court would have the ability to make such a decree.

For the purpose of granting an order to compel a defaulting seller to perform his undertaking to deliver the goods, the subject matter of the contract of sale must be specific or ascertained.

Section 61(1) of the SGA, 1979 defines specific goods mean 'goods identified and agreed on at the time of contract of sale is made'. By the agreement of the parties, specific goods are allocated as the unique goods which have to be delivered by the seller in discharging his obligations under the contract of sale. Therefore, the goods are likely to become specific by means of express descriptions in the contract of sale.

Moreover, these types of goods are presumed as specific goods, for the purpose of application of Section 52. As far as ascertained goods are concerned, no statutory definition is provided. However, the expression 'ascertained goods' is defined by case law. In *In Re Wait*, Atkin LJ stated that 'ascertained probably means identified in accordance with the agreement after the time a contract of sale is made. In the case of goods forming part of a bulk,

¹ Peter A. Piliounis, Cambridge University, 12 Pace International Law Review, 2000, The Remedies of Specific Performance, Price Reduction and Additional Time under CISG: Are these worthwhile changes or additions to English Sales Law?, p- 8.

the ascertainment would not be done unless that part is actually separated from the bulk.¹

Another important aspect of specific performance under English law is the discretionary nature of the order. In addition to the equitable remedy of specific performance, this element is also provided in Section 52 of the Act which uses the following formulation: if the court thinks fit, as indicated by case law, the remedy of specific performance is not a right for the aggrieved party to seek. In fact, it is an equitable discretion vested in courts when they enforce performance of a contract. This power is limited by the fact that the decision of the court. Indeed, specific performance will only be granted if it is just and equitable to do so.²

Basically, it is established that damages are the most adequate remedy when there is a contract for sale of goods which are readily available in the market. Generally, there is no specific rule to identify what damages would be an adequate remedy. The case often cited as an example is the case of the contract for sale of unique goods.

Section 52 of the Act does not express the condition that the goods should be unique, but review of case law indicates that the courts have exercised the test of uniqueness for years. In this respect, as Swinfen Eady MR stated in *Whiteley Ltd v McGregor*³, the power granted to the courts to order the delivery of a particular chattel is discretionary, and should not be exercised 'when the chattel is an ordinary article of commerce and of no special value or interest.'⁴

As in *Falcke v Gray*⁴ which involved a contract for sale of two china jars, the court refused to order specific performance on the merits of the case. Thus, in terms of contract for sale of goods, the remedy would not be awarded where the goods are not unique. It means that the goods must be irreplaceable and not to be available on the market. In this way, the chattels such as an

¹ Kourosh Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, *Manchester Law Review*, Vol.,1:98, p-103.

² *Ibid*, Kourosh Majdzadeh Khandani, p-107.

³ [1918] 2 KB 808, 819.

⁴ [1859] 4 Drew 651.

Adam door, a stone from Westminster Bridge, or a particular painting or an article are deemed to be unique.

Occasionally, there are cases in which the chattel is not an ordinary article of commerce, but the court refuses to order specific performance on the basis that the chattel can be obtained from another manufacturer, therefore it is not unique.

Generally, the courts, in exercise of their discretion, consider several factors such as: circumstances of the case, conduct of the parties, the undue hardship that may be inflicted on the defendant, impossibility, unfairness, inadequacy of consideration and other elements. English courts grant the specific enforcement of a contract in cases where any of the mentioned factors are involved.¹

To summarize, the availability of specific performance must depend on the appropriateness of that remedy in relation to circumstances of each case. On one hand, the aggrieved party has to exercise his right to mitigate the loss, and on the other hand, he should be reasonably compensated by the most appropriate remedy, if the breaching party had performed his obligations. So, when damages would not be an adequate remedy, the courts will readily exercise discretion and order specific performance of a contract.

The specific performance remedy is further extended under Article 48 and 37 of the CISG. This remedy is referred to as 'the seller's right to cure'. The exercise of this right is subject to its not causing the buyer unreasonable inconvenience or unreasonable expense.

Where a non-conforming tender is made before the contract date of delivery, the seller has the right to remedy any lack of conformity, 'provided the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense'. The cure may be repair, replacement or making up

¹ Kourosh Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, *Manchester Law Review*, Vol.,1:98, p-110.

a shortage in quantity. If the seller cures the non-conformity, it is still liable to the buyer for any damages caused by the defects.¹

Under English law, there is no such concept. The circumstances in which avoidance will be precluded differ under the CISG and under English law. The seller's right to cure under the SGA is not expressly provided for, as it is under the CISG.

It would seem that the seller's right to cure is, limited under the SGA. However, despite the absence of any clear right to cure in English law, cure is 'common enough in countless unlitigated examples of contracting parties settling their differences'. Hence, it is also arguable on this basis that the seller's right to cure would represent a meaningful addition to English sales law.

The concepts of specific performance and right to cure are in fact two sides of the same coin, in the sense that English courts are likely to give priority to the remedy of damages. In the case of non-delivery, that an aggrieved buyer be compensated by means of damages rather than requiring his seller to deliver the goods despite all the difficulties. Provided that the existence of the right to cure is recognized, damages would be practically more helpful where the buyer demands that the seller substitutes or repairs the defective goods.²

In brief, specific performance under the CISG is an option available to the buyer to require a defaulting seller to perform his obligations. Under the common law, it is a discretionary remedy granted by the courts. In other words, it would be available to an aggrieved buyer only if the court thinks it is appropriate. In the case of non-conforming goods which amount to a fundamental breach of contract under the CISG, the buyer may require the seller to deliver substitute goods, but if the breach is not fundamental, the remedy available is repair. Under the Sale and Supply of Goods Act, the

¹ Ralph H. Folsom, Michael W. Gordon, John A. Spanogle, JR, Principles of International Business Transactions, Trade & Economic Relations, Consise Hornbooks, Thomson*West,2005, p-45.

² Kouros Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, Manchester Law Review, Vol.,1:98, p-114.

buyer has the right to require the seller to repair or replace (substitute) the goods but only if it is possible to do so and is not disproportionate in comparison to other remedies. Substitution of goods may be demanded by the buyer only when the lack of conformity of the goods constitutes a fundamental breach. Under the CISG, the buyer may issue a notice to the seller fixing an additional, reasonable period of time, called the *Nachfrist* principles for the seller to deliver the goods. Failure of the seller to deliver within this additional time gives the buyer the option to repudiate the contract. No such notice is required under English law. When a delivery is delayed, the contract may be repudiated without giving any notice to the seller.

Findings

The specific performance is the primary remedy rather than damages, which intends to keep the contract continued. The Convention gives the right to require specific performance to both the seller and the buyer. Under the UK Sale of Goods Act, provides that in a contract for the sale of specific or ascertained goods, the court may order specific performance by the seller instead of requiring him to pay damages.

Therefore, specific performance is the primary remedy preferred by civil law jurisdictions. Thus, it is clear that CISG provisions on this class of remedy are likely to be interpreted in favour of civil law countries. Also noted, is that English law rules on specific performance are more restrictive than CISG provisions in that specific performance is limited to specified circumstances, while on the other hand, the Convention has established the remedy of specific performance as a right for the injured buyer, thus the scope of its application is broader than under English law. Hence, it can be said that specific performance is established on the limitations imposed by English law; and on the other hand, on the permissive attitude of the CISG.

Conclusion

In conclusion, there are many differences between the UK legislation encompassed by the Sales of Good Act and that provided for in the Convention. Such differences are often seen to be irreconcilable in many events given that there are different approaches in the UK towards certain

concepts. Certainly, the CISG seems to be much more geared towards civil law concepts of contract law and its associated provisions than it is towards the common law and the provisions of the Sales of Goods Act. Furthermore, there are many provisions, most importantly those governing the validity of a contract that are covered by the Sales of Good Act but not covered by the Convention. However, the fact is that the globalised nature of the world means that increased harmonization must be called for. The fact that the UK is not part of the Convention is often a much-quoted fact detracting from the importance of the Convention, as it is important to try and harmonize laws to encourage further trade in the process. Nevertheless it is difficult to see how the UK with its rich history of legislation in the Sales of Goods Act and case law could adopt the Vienna Convention without some difficulty.

In light of the current trends of globalization and liberalization of international trade, countries which have not yet ratified the CISG, including Myanmar, should seriously consider including such a move in their future plans and policies. One of the advantages to be gained from such a move would be that in trading with other CISG members, the issue of conflicts of law would not arise and the need for negotiation over terms would be eliminated as the law is uniform. This is a factor which would have a positive impact on the country's trade with foreign countries, since parties where the CISG is used have a preference to conduct business with other partners who are based in countries where the CISG is recognized. Given this, it is recommended that Myanmar should ratify the CISG and adopt an implementing statute that makes the CISG part of Myanmar law, for example, The Myanmar Sale of Goods (United Nations Convention) Act. (Incidentally, the Sale of Goods (United Nations Convention) Act has been in use in Singapore since its ratification of the CISG) Meanwhile, Myanmar needs to update the Myanmar Sale of Goods Act, 1930 in order to bring it in line with current international law. Given that the Act is derived from the UK Sale of Goods Act, this could be achieved through following the UK example and supplementing the Myanmar Sale of Goods Act, with further legislation addressing such matters as the supply of services which is an important element of international commerce today.

Therefore, as a result of the paper, the sales contracts are most essential in international business transactions and have to amend the Myanmar Sales of Goods inclusive with other related laws or in line with international sales contract by comparing with UK and CISG contracting States.

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Links

<http://cisgw3.law.pace.edu/cisg/biblio/bulter6.html>

<http://www.uncitral.org>

<http://www.en.wikipedia.org/wiki/cisg>

<http://cisgw3.law.pace.edu>

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