

**DAMAGES UNDER CISG:  
ATTORNEYS' FEES AND OTHER LOSSES IN  
INTERNATIONAL COMMERCIAL LAW**

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AND KEITH WILLIAM DIENER\*\*

ABSTRACT

This Article examines judicial, arbitral, and scholarly interpretations of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") Article 74 and the recoverability of attorneys' fees in CISG-governed contract disputes. The divergence in these interpretations and the locus of the resulting controversy is the *Zapata* decision of the U.S. Seventh Circuit Court of Appeals and the Court's ruling that attorneys' fees are not a recoverable loss under Article 74. Post-*Zapata*, mounting evidence exists of the lack of harmonization and uniformity on this interpretative issue. This Article analyzes the adjudicated outcomes of CISG-governed contract disputes in courts and arbitral tribunals throughout the world where attorneys' fees were sought and reveals that almost all forums outside the U.S. award attorneys' fees for litigation in CISG disputes. The debate is framed in the context of the significant disagreement among scholars as to the proper interpretation of Article 74's loss provision as it relates to attorneys' fees recovery. The disarray posed by discordant interpretations of this issue creates both practical and moral imperatives to adopt a consistent and coherent understanding of Article 74's loss provision on the recoverability of attorneys' fees. An excavation of the ethical and legal considerations underlying this interpretative issue demonstrates that the goals of harmonization, as well as the CISG, are best achieved by rejecting the *Zapata* rationale. Construing the loss provision of Article 74 to accord with its plain meaning does include attorneys' fee recovery.

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# Damages Under The Cisg

**Peter J. Mazzacano**



## **Damages Under The Cisg:**

*Damages Under the Convention on Contracts for the International Sale of Goods* Bruno Zeller, 2009 This work presents a practical and detailed analysis of the methods used to determine and calculate damages under the United Nations Convention on Contracts for the International Sale of Goods CISG *Assessment of Damages Under the Convention on Contracts for the International Sale of Goods (CISG)* Rahand Raouf Ali, 2012 **The Law of Damages in International Sales** Djakhongir Saidov, 2021-02-25 Saidov has produced a detailed and highly readable text that considers in turn the methods of limiting damages the determination of loss and the calculation of damages It will doubtless become a first point of reference for academics and practitioners alike Martin J Doris Edinburgh Law Review The second edition of this internationally acclaimed book explores damages for breach of an international sales contract one of the most important and frequently invoked remedies The focus is on the international contract law instruments such as the Convention on Contracts for the International Sale of Goods CISG the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law The book draws on the experience of some major legal systems and engages with legal scholarship on the international instruments and on contract damages providing the most comprehensive in depth and thorough examination of damages under the instruments to date The second edition is updated reflecting the latest developments in legal thinking on contract damages It incorporates around 60 new cases and now covers more than 370 cases decided by courts and arbitration tribunals from around the world The new edition is substantially revised including new commentary on damages for a documentary breach Truly international in spirit this book is analytically rigorous and practically oriented offering distinctive analyses of and solutions to some of the most challenging problems surrounding contract damages

**Damages Under the UN Sale of Goods Convention** Peter J. Mazzacano, 2014 This article provides an overview of damages under the United Nations Convention on Contracts for the International Sale of Goods CISG and compares how they differ from what might be typical under Canadian provincial sale of goods law CISG Article 74 establishes the basic principles concerning recovery and the calculation of damages and it reflects the general principle of full compensation not unlike the Supreme Court's actual loss In contrast with the common law system which requires that a loss be contemplated by both parties the CISG makes it clear that it is foreseeability of the breaching party that is of legal significance In addition the CISG's foreseeability test is both subjective and objective the party may be held liable not only for losses which it actually foresaw but also for losses which it ought to have foreseen Thus to make a party liable it is not necessary to prove that the party actually foresaw the loss in question as long as it was in a position to reasonably foresee the loss **Uniform Law for International Sales Under the 1980 United Nations Convention** John Honnold, 2009-01-01 n explicit recognition of Professor Honnold's unique understanding of the Convention's development and the issues that occupied those who drafted and finalized the text the substantial new textual material incorporated into this new edition is set in bold italics allowing the

reader to distinguish the work of the editor from text preserved from earlier editions and thus identifying the material that carries Professor Honnold's special authority. Over three decades Professor Honnold's almost intuitive grasp of the instrument has guided governments, tribunals, scholars and practitioners towards an enlightened international understanding of the treaty. This new edition provides tribunals, practitioners and scholars with even more invaluable insights into the meaning of each article of the Convention.

**Consequential Damages in the International Sale of Goods** Eric C. Schneider, 2011. Two courts have applied consequential damage provisions found in international conventions. A court in the United States recently applied provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or Convention. In 1980 the German Supreme Court applied a substantively similar consequential damage provision of the earlier Hague Convention on the International Sale of Goods (H CISG) in a decision that has predictive value for future applications of the CISG. This Article will analyze whether these two courts approached consequential damages in a manner that is more consistent with prior national law than with the development of a unified international approach to international sales disputes. Section 2 of this Article explores a U.S. district court's approach to damages under the CISG in the case of *Delchi Carrier SpA v. Rotorex Corp.* After analyzing the rationale behind the damage award in *Delchi*, Section 3 discusses a German Supreme Court decision applying a provision analogous to the CISG. Finally, Section 4 concludes that the U.S. court applied the international CISG provisions in a manner consistent with its national law while the German Court elevated international principles over national law. Because of the U.S. court's inability to set aside its own national thinking, this case represents an unfortunate first decision on the subject of consequential damages under the CISG.

*Law of International Business in Australasia* Robin Burnett, Vivienne Bath, 2009. This book is a successor to Robin Burnett's *Law of International Business Transactions*. It provides an up-to-date analysis of the legal environment for international trade and covers the changes made to payment and letters of credit by reason of the adoption of the UCP 600 which became effective in 2007 and other means of payment which are currently used, the provisions and possible adoption of the UNCITRAL Draft Convention on the Carriage of Goods Wholly or Partly by Sea, recent developments in the law relating to international sale of goods, the question of international arbitration and other means of dispute resolution and the strategies and issues of international operations while incorporating and building on the comprehensive information and material in the previous book. It will assist practitioners and students in their understanding of the legal and practical aspects of international and overseas trade and operations.

*Damages under CISG* Szenográczy Zita, 2005. Honnold's Uniform Law for International Sales under the 1980 United Nations Convention John Honnold, Harry M. Flechtner, 2021-08-09. The United Nations Convention on Contracts for the International Sale of Goods (CISG) has become the key framework for drafting international sales contracts and resolving resulting disputes. The remarkable progress of this epoch-making uniform international law calls for a new edition, the fifth of the late Professor Honnold's preeminent commentary now issued under the authoritative hand of Harry M.

Flechtner editor of the fourth edition and a National Correspondent for the United States at UNCITRAL Professor Flechtner updates Professor Honnold's in depth article by article exposition addressing newly arising issues and taking into account the numerous decisions and scholarly analyses that have focused on the CISG in the twelve years since the last edition in 2009 Also expertly updated is Professor Honnold's masterly overview of the development and implementation of the text of the CISG as well as his authoritative insights into the underlying principles and purposes of the treaty Taking into account the myriad variations among distinct legal systems the commentary expertly treats all crucial aspects of sales contracts including the following delivery of the goods and handing over of documents conformity of the goods and third party claims obligations of the parties payment of the price taking delivery anticipatory breach instalment contracts remedies for breach of contract damages interest exemptions limits and effects of avoidance preservation of the goods and risk of loss The CISG is widely regarded as the most significant body of international sales law and the most successful international commercial treaty in history This new edition provides tribunals practitioners and scholars invaluable up to date insights into the meaning of each article of the Convention The multitude of authorities consulted many dating from the past few years will continue to influence the promotion of international sales contract uniformity encourage the settlement of disputes and help to reinforce consensus in the application of the Convention The Limits to the Right to Claim Consequential Damages Under the CISG and the Danish Sale of Goods Act - Focusing on Loss of Profit and Loss of Goodwill Christina Delfs Legaard,2012

Litigation of International Disputes in U.S. Courts Ved P. Nanda,David K. Pansius,2008 Guide to the International Sale of Goods Convention William A. Hancock,2010 **The Law of Sales and Secured Financing** John Honnold,2002 This casebook provides detailed information on legal aspects of sales and secured financing The casebook provides the tools for fast easy on point research Part of the University Casebook Series it includes selected cases designed to illustrate the development of a body of law on a particular subject Text and explanatory materials designed for law study accompany the cases Damages Under International Sales Stanislav Krivopousko,2003 Collected courses of the Hague Academy of International Law Hague Academy of International Law,2007 **Sales, Leases, and Electronic Commerce** John Edward Murray,Harry M. Flechtner,2003 Features the original Article 2 with its new judicial interpretations and refinements Includes new cases and problems based on current cases Explores Article 2 revisions emphasizing substantively revised sections such as the solution to the battle of forms or the decision to retain a substantively changed statute of frauds Analyzes the history of the contract tort dichotomy underlying product liability law and the effort of the proposed Article 2 revision to clarify that body of law Examines warranties and disclaimers risk of loss rejection revocation of acceptance cure remedies and other traditional structures Understanding Sales, Leases, and Licenses in a Global Perspective Michael Rustad,2008 This book analyzes the full range of complex legal issues that arise from domestic and international sales leases and licenses The author outlines preventive law tactics and planning strategies for all important aspects of domestic and

cross border sales leases and licenses The concepts of international contract law are illustrated through the activities of a hypothetical import export company The use of the hypothetical teaches practical as well as doctrinal principles of domestic and international contract law This book uses practical examples and explanations to compare and contrast UCC Article 2 with CISG but also places licensing and leases in a global context The book is divided into three parts so that individual instructors may select particular subjects which they wish to cover in the order of their choosing Each chapter provides helpful hints practice points and practice problems in an accessible format This comparative commercial law book is the first to provide extensive coverage of procedural cultural and localization issues in cross border commerce The book is appropriate for a course in international contract law sales and leases or comparative commercial law      **Commercial Transactions** Lynn M. LoPucki, 2003 This comprehensive overview of the law applicable to commercial transactions uses the systems approach to explain the realities of commercial practice and relationship between the rules And The transactions they govern Among the continuing strengths of this casebook extraordinary authorship all four co authors are distinguished in the field skillful use of the systems approach to put the code in context and show how the law is applied in actual transactions teachable problems prefaced by straightforward textual explanations flexibility for structuring a course of various credits or approaches cutting edge coverage organization into assignment units which reduces preparation time for instructors This revision introduces the ALI NCCUSL amendments to UCC Articles 2 2A 3 4 and 9 with no confusing older section numbers more even coverage results from trimming material on secured credit and adding assignments To The sales and payment systems portions assignments in the payment systems sections that address Automated Clearinghouse Payments and Securitization major new cases covering all UCC articles Articles 9 cases such as *Grabowski v Deere Company* Teacher s Manual with additional guidance for presenting problems      Sales Transactions John Honnold, Curtis R. Reitz, 2001      **Commercial Litigation in New York State Courts** Robert L. Haig, 1995

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