

Fundamental breach according to the cisg

[Law](#), [Common Law](#)



Article 25 A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result. (CISG 1980)

Used when: One of the parties suffers damages due to a breach of contract. The breach becomes fundamental when it is due to the other parties fault.

This article could be interpreted as to whether or not the breaching party was ' guilty' of any form of neglect which caused the damages. If they could have prevented the damages, by handling reasonably, they are guilty of a fundamental breach of contract. Case: Tribunal: Court of Arbitration of the ICC Case#: 7531 of 1994 Seller's Country: China (defendant) Buyer's Country: Austria (claimant) Goods involved: Scaffold fittings Summary of the case: The plaintiff bought 80. 00 scaffold fittings from the Chinese seller. Upon delivery it turned out a substantial amount of the fittings were of bad quality. The buyer was only able to sell the goods partially and at a reduced price. Sorting out the good ones from the bad ones would have added an estimated third of the purchase-price. The Tribunal ruled in favour of the plaintiff as ' an important part' of the fittings did not conform to the sample which therefore resulted in a fundamental breach of contract.

What was the effect of Article 25: It was proven that the plaintiff had suffered substantial damages due to the breach of contract. This enabled him to use art 25 and sue for damages. ? Article 35 (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the

contract. 2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they: (a) are fit for the purposes for which goods of the same description would ordinarily be used; (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement; (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model; (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods. 3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity. (CISG 1980) Used when: This article is used when the goods delivered are not fit for the purpose intended for them or when they are not of the same quality as the sample provided by the seller. They also need to be packed in a manner adequate to preserve and protect the goods. If they are not fit for purpose due to adequate packing, this is the seller's fault. Note though that fitness for purpose is a broad term. For instance if meat has been purchased by a butcher in France he might deem the goods unfit as he meant to use them for Kosher meat. This does not count as the seller could not have foreseen this, unless it was mentioned.

When selling it to a butcher in Israel however, the seller could have/ should have known these requirements. In fitness for purpose we look at the average quality required for products, unless expressly mentioned otherwise.

Case: Tribunal: Bundesgerichtshof (Federal Supreme Court) Case#: VIII ZR 159/94 Seller's Country: Switzerland (Plaintiff) Buyer's Country: Germany (Defendant) Goods involved: New Zealand Mussels Summary of the case: In this case the buyer bought mussels from a Swiss seller; the buyer later found they contained a cadmium level higher than the German health authorities allowed. Therefore he was not allowed to sell and he refused to pay due to a lack of conformity.

The courts decided that though the cadmium levels in the mussels was higher than allowed in Germany, they were still eatable and did meet the standard required by the Swiss health authorities. It was therefore decided that the goods were of the required quality and the buyer should have mentioned the maximum cadmium levels allowed. What was the effect of Article 35: In this case it meant that the products did meet the required standard for quality of goods and the buyer had to pay for the products. ? Article 36 (1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time. 2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics. (CISG 1980) Used when: The goods sold initially seem to be in good order, however after some time a lack of quality shows. This is only viable when the reason for this is due the sellers fault (e. g. When cars are

sold and the paint starts to faint a month after the buyer obtained them, this could be the sellers fault due to using the wrong paint). Case:

Tribunal: Bundesgerichtshof [Federal Supreme Court] Case#: VIII ZR 67/04

Seller's Country: Belgium (Plaintiff) Buyer's Country: Germany (Defendant)

Goods involved: Frozen Pork Summary of the case: The buyer bought the goods to sell them on into Bosnia- Herzegovina. There were to be three deliveries of pork. In between deliveries a new ordinance was enacted in Germany (due to concerns regarding contamination of the meat) which stated that Belgian pork was no longer marketable unless a health certificated was provided. The defendants refuse to pay after they had been prohibited to resale the meats, which were then taken by customs and ultimately disposed of.

The plaintiff argued that the risk had passed to the buyer when the goods were transported and therefor was liable for the events that took place. The court held however, that if the concerns were regarding to the harmfulness of the foodstuff to human health, the goods cannot be sold and therefor lack the required fitness for purpose. What was the effect of Article 36: Art 36 could be used in this case because the meat would already have been contaminated upon leaving the seller. Despite the fact that it was not detected until much later, when the risk had already passed to the buyer, the seller was still responsible as it was an initial breach of contract. ?

Reference List: CISG 1980, United Nations, Accessed 26th of march 2013, ;
<http://www.cisg.law.pace.edu>;