

S U M M A R Y

of the decisions of the Committee appointed by the Council for the unification of the Law of Sale and approved at the sessions of the Committee held in

Paris (October 1930), Berlin (February 1931), Rome (March-April 1931), Stockholm (September 1931), Rome (March-April 1932), Cambridge (June-July 1932), Paris (December 1932), Bordighera (April 1933), Copenhagen (June-July 1933).

(Replacing documents Nos. 25,33,45,48,57,62; translation of doc. N° 69)
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Preliminary Observations

References to pages in the minutes of the meetings held at Paris, Berlin, Rome, Stockholm, Cambridge, Bordighera and

Copenhagen are denoted by the names of the places and arabic numerals; the second meetings at Rome and Paris are referred to as Rome A and Paris A. The figures of document No. 62 are followed in general; where a change has been made, this is indicated by the prefix " ex ".

The following abbreviations are also used:

Stulz: Pactum reservati dominii by M. Stulz,

Annex V of the Berlin minutes (doc. No. 21).

London: Summary of the London meeting (doc. No. 34).

It is understood that the decisions of the Committee which are enumerated hereafter are provisional.

I.- Scope of the law

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(Rome A 33-37, Cambridge 1-4, Bordighera 9-15, 17, London 9s)

1.- (3-5) The present law applies to sales of corporeal movables, excluding:

a) stocks and shares, negotiable instruments and money.

b) ships, vessels used for inland navigation and aircraft (Rome A 37, Cambridge 3, Bordighera 9).

2.- For the purposes of the present law, contracts for the delivery of goods to be manufactured or produced are deemed to be sales, if the seller undertakes to supply the materials necessary for such manufacture or production (Cambridge 3, Bordighera 9s).

3.- (6) The provisions in this law concerning defects in goods shall not apply to sales of livestock (Rome A 31, Cambridge 3, Bordighera 9).

4.- (10) The present law shall apply regardless of the commercial or civil character of the parties or of the contract, and shall govern sales both of specific and unascertained goods (Cambridge 8, Paris A 1s, Bordighera 9).

5.- The present law does not deal with the effects of the conclusion of the contract on the ownership of the goods (Bordighera 9s).

6.- (1) The present law shall apply where the business establishments or, in default thereof, the abital places of residence of the seller and the buyer are in two different countries.

The test is the domicile or usual place of residence of the party at the time he dispatches his last (first)

written communication leading to the conclusion of the contract or, if the contract is concluded by some other act, at the time of such act.

Where a sale is concluded through an agent, the principal is deemed to be a party.

A corporation which concludes a sale in its own name is deemed to be a party thereto even where such corporation act as a branch of a corporation domiciled in another country.

The nationality of the parties is immaterial. (Rome A 34, Cambridge 1s, Bordighera 10-12, 14s.) Reserved .

7..

The present law shall apply where, by the contract, goods are required to be transferred from one country to another, or where, for such purpose, they are in course of transit from one country to another (Rome A 34, Cambridge 1s.) Reserved.

8..

The present law shall apply where the seller is aware that the buyer intends the goods to be transported to another country (Rome A 34, Cambridge 1s). Reserved.

206.. (2) With a view to widening the scope of the law, it is intended later to propose provisions which would enable States to apply the law to internal sales as well (Rome A 34, 20, Cambridge 1).

- 9.- The present law shall apply to a sale of rights accruing to the seller under a contract of sale in pursuance of which goods have been or are to be imported from another country, provided that the buyer is aware of these facts (Rome A 34, Cambridge 1s, Bordighera 15). Reserved.

II.- General provisions
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(Cambridge 4, 12s, Rome A 1, 9, Bordighera 13s, Copenhagen 1s, 4)

- 10.- (13) The parties may entirely exclude the application of the present law provided that they expressly specify the country whose laws are to govern their contract.

The parties may derogate partially from the provisions of the present law provided that they have agreed on alternative provisions, either by expressly mentioning them or by referring to specific rules.

Where clauses or formulas used in trade are employed, the courts shall construe them in accordance with the usages of trade (Rome A 1, 9, Bordighera 12ss, Copenhagen 1s).
In case of any conflict between the present law and usage, the latter shall prevail (Bordighera 14). Reserved.

11.-

- 209.- (11) The Committee is of opinion that it is not within its competence to regulate the law of Prize and that the latter cannot be affected by its decisions (Berlin 22).

211.- The law will specify what usages are contemplated by article 11 (Copenhagen 1s).

- 12.. The parties shall at all times be bound by the rules of the present law concerning the formation of the contract; they may, however, make their contract in some other form than that prescribed by the present law (Bordighera 13).
- 12a.. (15) The expression "communication without undue delay" (dans un bref délai) means a communication by letter, telegram or telephone in accordance with the usages of trade (Rome A 12, Bordighera 14, Copenhagen 8).
- 12b.. (16) A current price is the price on the market or markets to which the buyer would go in the ordinary course of business to satisfy his requirements in that class of goods (Cambridge 12s, Bordighera 14).
- 12c.. (17) National law, within the meaning of the present law, is the law of that country which, by the rules of private international law, is competent to regulate the matter.
- Such national law will mainly regulate the details of the obligations to hand over the goods and to pay the purchase price. (Reserved).
- In this law, conditions of the contract of sale mean those conditions which form an integral part of the contract, general conditions (Geschäftsbedingungen) and usages of trade (Reserved) Cambridge 4, Bordighera 14).
- 12d.. By "bankruptcy" is meant any proceeding which has as its object an organised distribution of assets to creditors (Copenhagen 4).

III.- Formation and Form of the contract

(Text revised by M. Hamel)

A.- Formation of the contract (Paris 1s, Berlin 1-4, Stockholm 2-6)

Section 1.- The offer

13.- (18) Failing proof to the contrary, invitations addressed to unspecified persons (newspaper notices, advertisements, placards etc.) are not offers within the meaning of the following rules (Stockholm 2).

14.- (19) (1) Where a time is fixed within which an offer must be accepted, the offer binds the offeror until the expiration of that time. Nevertheless the offer may be revoked, if the revocation is communicated to the offeree either prior to or simultaneously with the offer.

(2) Failing proof to the contrary, the time fixed is that within which the offeror is to receive the acceptance of his offer, and not that within which such acceptance is to be dispatched to his address (Paris 1, Berlin 1s, Stockholm 2).

15.- (20) (1) If no time is fixed for acceptance, the offer may be revoked at any time, provided that the revocation reaches the offeree before he has dispatched his acceptance.

(2) The offer lapses if the offeree does not accept it within such a period as is reasonably required for a decision (Berlin 2, Paris 1s, Stockholm 3).

16.- (21) Subject to the provisions of Art. 24 and to the purpose being consistent therewith, an offer, once dispatched, remains valid, notwithstanding that, after its dispatch, the offeror dies or becomes incapable of contracting (Paris 2, Stockholm 3)

- 17.-- (22) An offer made by an agent is valid notwithstanding that the agent has exceeded his powers (Paris 2).

Section 2.- The acceptance

- 18.-- (23) The acceptance of an offer may be revoked at any time before it reaches the offeror (Stockholm 4).

- 19.-- (27) (1) An acceptance of an offer which reaches the offeror out of time shall be deemed to be a counter offer.

(2) An acceptance containing additions, limitations or other modifications of the offer shall likewise be deemed to be a counter offer.

- 218.-- (23) The practical effects of Art. 18 are to be examined by experts (Berlin 3).

- 219.-- (24) Risk of loss of acceptance. - as regards the risk of loss of the acceptance, the experts are to examine the practical consequences involved in the various possible solutions (Berlin 3, Stockholm 5).

- 219a.-- (25) Death and incapacity of the parties while the acceptance is in transit. Same decision as to the effect of death and incapacity of the parties while the acceptance is in transit (Berlin 3, Stockholm 5).

- 219b.-- (26) Time of formation of contract. The question whether the contract is complete at the time of the dispatch or at the time of the receipt of the acceptance is to be submitted to experts (Berlin 2, Stockholm 5).

20.- (28) When, by reason of abnormal circumstances, an acceptance which was dispatched in due time reaches the offeror after the due date, the offeror must, upon learning of the delay, or, at latest, upon receipt of the acceptance, inform the acceptor thereof; failing which the acceptance will be deemed to have arrived in due time.

21.- (30) An acceptance must be express; nevertheless the silence of the offeree shall be deemed to be an acceptance if this is in accordance with the course of business between the parties (Berlin 3, Stockholm 6).

22.- (31) (1) Where the seller and the buyer belong to the same trade society or organisation, there is a presumption that they both intended to be bound by the general business regulations of such society or organisation.

(2) Stipulations of a general character employed by one of the parties in his business transactions will be binding on the other party if he has expressly accepted them or if his silence must be deemed to be an acceptance within the meaning of Art. 21 (Stockholm 6, Bordighera 14).

23.- (32) Where a contract is concluded without reference to any particular accessory or ancillary terms, the parties shall be deemed to have excluded such terms from the contract (Berlin 3s).

220.-

The experts are to be asked whether Art. 20 is also suitable to the Anglo-American legal system (Stockholm 5).

221.- (29) The experts are to be asked what solution applies where the maker of an offer which is not binding on him fails to answer an acceptance of that offer (Stockholm 6).

- 24.- (33) If the offeror is adjudicated a bankrupt and a trustee has been appointed on behalf of his creditors, an offer previously made by him cannot be accepted by the offeree (Berlin 4).
- 25.- (35) In the event of either party becoming bankrupt, a valid contract previously concluded may be enforced by or against his creditors (Berlin 4).

B.- Form of the contract (Paris 2s, Berlin 4, Stockholm 6)

- 26.- (36) No particular form is prescribed for a contract of sale; it may be proved by parol evidence (Paris 2s, Stockholm 6).
- 27.- (37) A contract of sale may be concluded by telegram. When dispatching his telegram, the sender may file a copy with the telegraph office, which will return it to him certified. Where a contract concluded by telegram is confirmed by letter, the addressee, should he disapprove of its contents, must immediately inform the sender; otherwise the contract shall be deemed to be concluded in accordance with the letter of confirmation (Berlin 4, Stockholm 6).

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- 224.- (34) Bankruptcy of the offeree. The question is reserved (Berlin 4).
- 227.- (38) The decision of the Committee concerning the conclusion of contracts by telephone is reserved (Stockholm 6).

IV.- The obligations of seller and buyer
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1. General provisions

(Rome A 5s, Cambridge 7, 12, Paris A 4, Bordighera 2, 16-24, Copenhagen 6, 8, 12, 14, 16-18).

28. ex43. (40) The seller undertakes to place the goods at the disposal of the buyer. The seller is bound to deliver to the buyer, simultaneously with the goods and their accessories, any written documents concerning the goods which, according to the usage of the trade, must be attached thereto (Paris 7, Rome A 3, Cambridge 8, Paris A 2, 5, Bordighera 1, Copenhagen 21, 6).

29. ex78 para 1 (79/80) The buyer undertakes to accept delivery and to pay the price of the goods (Stockholm 7, Paris A 19, 21, Bordighera 15, 20ss, Copenhagen 6).

30. ex28. Unless otherwise provided by the contract or by usage of trade, delivery of the goods and payment of the price are concurrent conditions (Bordighera 2).

30a. ex29. (39) Where the delivery of the goods is required to be concurrent with the payment of the price, the seller shall be entitled to retain the goods until payment of the purchase price, and the buyer shall be entitled to retain the purchase price until receipt of the goods (Rome A 5s, Cambridge 7, 12, Paris A 4, Bordighera 16, Copenhagen 16).

Where goods are to be dispatched from the place of delivery, the seller shall not be entitled to postpone dispatch merely because the purchase price has not been paid, but he may withhold delivery of the goods to the buyer at their destination (Bordighera 18).

30b. ex51. (49) The seller may postpone delivery of the goods notwithstanding that the buyer is entitled to time for payment of the purchase price, whenever the financial position of the buyer has, subsequent to the conclusion of the contract, become so difficult that the seller has good reason to fear that payment will not be made on the agreed date (Paris 8, 12, Rome A 5s, Cambridge 7, 15s, Bordighera 2, Copenhagen 8).

30c. ex52. (50) If, in the circumstances detailed in the preceding article, the seller has undertaken to send the goods to the buyer and has already sent them, the seller, upon learning of the change in the buyer's position, may, without prejudice to the rules concerning the contract of carriage, withhold delivery to the buyer, notwithstanding that the latter already holds a bill of lading or other document of title.

Nevertheless, the seller shall not be entitled to withhold delivery, if requested to deliver by a third party who is duly in possession of the aforesaid bill of lading or other document of title, unless the said bill or document contains reservations concerning the effects of its negotiation, or unless the seller can establish that there has been collusion between the buyer and the holder of the said bill or document (Rome A 15s, 12, Cambridge 7, 12, Paris A 5, Bordighera 2s).

30d. ex85 (2) new. Where the buyer is bound under the contract to pay the purchase price before receiving the goods or documents, he may defer payment until the seller shall give him adequate security for due delivery, whenever the financial position

230b.

In the final draft Arts. 30b and 30d will be combined (Copenhagen 8).

of the seller has, subsequent to the conclusion of the contract, become so difficult that the buyer has good reason to fear that delivery will not be made on the agreed date (Copenhagen 8, 14).

30e. ex30. Subject to the provisions of the contract or the circumstances, the buyer is not bound to pay the purchase price until he has had an opportunity of examining the goods, notwithstanding that the sale is on terms of cash on delivery (Bordighera 16).

(85) Where, under the contract or by usage of trade, delivery may be made by handing over or endorsing a document of title to the buyer so that the seller thereafter ceases to have any further right to dispose of the goods, the contract of sale shall be deemed to contain a provision for payment of the price against the said document; in this event the buyer shall not be entitled to withhold payment on the ground that he has had no opportunity of examining the goods (Stockholm 9, Paris A 19s, Bordighera 16ss).

30f. ex54 (52) Whenever, prior to the date agreed upon for performance of the contract, either party so conducts himself as to disclose an intention to repudiate the whole of the contract, the other party may avoid the contract provided that he does so without undue delay (Rome A 6s, Cambridge 8, 12, Paris A 5, Bordighera 4, Copenhagen 14, 17s).

Supplementary rules relating to delay in performance and avoidance

of the contract

(Bordighera 1, 4, 6, 23ss) (Title reserved Bordighera 23)

31.- (102) Where the buyer fails to take delivery or to pay the purchase price of the goods, it shall be the duty of the seller to preserve them on behalf of the buyer, unless he shall previously have exercised his right of sale in replacement or avoided the contract. He is entitled to retain the goods until he shall have recovered from the buyer the cost of preserving them (Bordighera 23s).

32.- (93-141) Where the goods have been delivered to the buyer and he refuses to accept them, it shall be his duty to preserve them on behalf of the seller; he is entitled to retain the goods until he shall have recovered from the seller the cost of preserving them.

Where goods dispatched to the buyer have been placed at his disposal at their destination, the buyer, should he refuse to accept them, is bound to take possession of them on behalf of the seller, provided that this may be done without payment of the purchase price and without expense and serious inconvenience. This provision does not apply where the seller or a person authorised to take charge of the goods on his behalf is present at such destination (Stockholm 10, Rome A 26, Cambridge 17, Paris A 23, Bordighera 19, 24).

33.- (103/6) Where there is a current price for the goods, the party who, under Arts. 31 and 32, is bound to preserve them, may, after giving notice, sell them at such price on behalf of the other party, either through a broker officially authorised to conduct such sales or through a duly qualified

public auctioneer (Bordighera 24, Copenhagen 12).

Where there is no current price for the goods the party who, under Arts. 31 and 32, is bound to take care of them, may, after giving notice, sell them by private treaty. Should the other party prove that the party having the duty to preserve the goods could have sold them at a higher price, he shall be entitled to a refund of that price (Stockholm 12s, Paris A 23, Bordighera 24).

34.- (103) Where, under Arts. 31 and 32, the goods are perishable, or where their retention would involve unreasonable expense, the party having the duty to preserve them is bound to sell them in accordance with the preceding article (Bordighera 24)

35.- (102) The party who, under Arts. 31 and 32, is bound preserve goods, is entitled to store them at the expense of the other party in the warehouse of a third party (Stockholm 12, Paris A 23, Bordighera 21, 24, Copenhagen 12).

36.- (55) The avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due.

Where either party has performed his part of the contract either totally or partially, such party may claim restitution.

Where there has been performance by both parties under the contract, each may withhold restitution until the other shall make restitution (Rome A 14, Paris A 5ss, Bordighera 7, 21, 28s).

37.- (56) Where goods have been delivered to the buyer either wholly or in part, and he has exercised his right to avoid the contract, he shall be entitled to rely on such avoidance if the goods have perished or deteriorated without any fault on his part (Rome A 14, Paris A 5ss, Bordighera 29).

38.- (57) The buyer shall not be entitled to avoid the contract if he has transformed the goods into goods of another kind, unless the defect which was the ground of his avoidance was one which he could not have discovered otherwise than in the course of or subsequent to such transformation (Paris A 5ss, Bordighera 25, 29). Wording reserved.

39.- (57) A buyer who has disposed of goods to a third person shall not be entitled to avoid the contract where, by reason of such disposal, he fails to return the goods to the seller, or where such third person has transformed the goods into goods of another kind or has been responsible for their destruction or deterioration (Paris A 7, Bordighera 25, 29).

Wording reserved.

40.- (57) Where, through his own fault, a buyer has destroyed or caused deterioration of an essential part of the goods or has modified their essential qualities, the preceding articles shall apply.

Otherwise, the contract may be avoided, but the buyer or third party is bound to indemnify the seller for the damage caused (Paris A 7, Bordighera 29). Wording reserved.

41.- Non-essential modification of the goods does not disentitle the buyer to avoid the contract, but where the buyer is responsible for such modification he is liable to the seller in damages should he exercise that right (Paris A 7, Bordighera 25, 29) Wording reserved.

42.- The purchase price bears interest from the date of payment (Bordighera 30).

241.-
A new paragraph will deal with the case where goods perish or deteriorate prior to avoidance by the buyer (Bordighera 29s).

2.- The obligations of the seller

(Paris 3-12, Berlin 5-12, Rome 2-10, Stockholm 18, Rome A 1-19, 37-41, Cambridge 4-12, 15s, 20-22, Paris A 1-11, Bordighera 1-8, 25-31, London 5-9, Copenhagen 19-22).

1.- The obligation to deliver.

43.- (new) Delivery means the performance of those acts incumbent upon the seller to enable the goods to be handed over to the buyer. What those acts are depends on the nature of the contract.

In the case of a sale with obligation to dispatch, delivery shall be effected by handing over the goods to the first carrier or forwarding agent, or, if the first part of the journey is by sea, by placing them on board. Where, under the contract or by usage of trade, the seller is entitled to tender to the buyer a bill of lading for the goods, it shall be sufficient to consign the goods to the buyer (Rome A 37, Cambridge 4, 10, Paris A 13, Bordighera 1, 6, 19, Copenhagen 19-21).

A.- Place of delivery

44.- (41) In the absence of agreement or usage to the contrary, the seller is bound to deliver the goods at the place where, when the contract is concluded, he has his business establishment or, in default thereof, at his ordinary residence.

If the contract be for the sale of specific goods which, to the knowledge of the parties at the time of the conclusion of the contract, are in some other place, such place is the place of delivery. The same rule applies in the same conditions where the contract is for the sale of

unascertained good to be taken from a given stock or bulk, or which the seller undertakes to produce or manufacture in a certain place (Paris 6, Rome A 2, 4, Bordighera 1, 5s, Copenhagen 19).

45.- (42) The sale is said to be with obligation to dispatch when the seller is bound to dispatch goods from the place where, under the agreement between the parties or by usage of trade, or failing both, under Art. 44, the goods must be delivered (Rome A 37, Cambridge 4, 10, Paris A 13, Bordighera 1, 6, Copenhagen 19s).

46.- (43) The sale is said to be with delivery at destination when the seller undertakes to deliver goods at a place to which they are required by the contract to be transported (Rome A 37, Cambridge 5, 10, Paris A 3, Bordighera 1, Copenhagen 21). Provisionally deleted.

47.- (44) Where goods are required by the contract to be transported, if there is any doubt as to the place of delivery, there is a presumption that the parties intended delivery to be made at the place from which the goods were required to be dispatched (Berlin 15, 25, Stockholm 19s, Cambridge 10, Paris A 3, Bordighera 6, Copenhagen 21).

247.- (45) Provisions concerning sale "free warehouse" are to be inserted here (Cambridge 5).

B.- Date of delivery

- 48.- (46) Where the parties have agreed on a date for delivery, or where such date is fixed by usage of trade, such agreement or usage shall conclusively fix the date at which the seller is bound to deliver the goods, provided that the date thus fixed is determined or determinable by the calendar or is related to a definite event the exact date of which can be ascertained by the parties (Bordighera 1).
- 49.- (47) Where the period of time within which delivery must take place is specified, the seller may fix the exact date of delivery, unless the circumstances indicate that such choice was reserved to the buyer (Paris A 4, Bordighera 1s, 5).

Wording reserved.

- 50.- (48) Where the date of delivery is not fixed in accordance with the preceding articles, the seller is bound to deliver within a reasonable time after the conclusion of the contract, regard being had to the nature of the goods and the other circumstances (Rome A 3, Paris A 4, Bordighera 1s).

C.- Sanctions in the event of non-delivery and delay in delivery

- 53.- (51) Subject to the provisions of Arts. 55 and 56 the buyer shall be entitled to require specific performance of the contract where such performance is possible and his right to demand specific performance is recognised by the law administered by the court to which he shall apply (Paris 5, 8s, Rome 2s, Rome A 9s, 17, 38, Cambridge 8, 12, 21, Paris A 5).

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- 249.- It is desirable to examine whether the order of Arts. 49 and 50 should not be inverted (Bordighera 2).

Where the seller fails to deliver in accordance with the agreement, usage of trade and the present law, the buyer is entitled, subject to the provisions of Arts. 38 - 42, to avoid the contract. The seller is in no case entitled to a period of grace from the courts (Paris 3s, Berlin 5, 10, Rome 8, A 13).

In any event, the buyer may also claim damages in accordance with Arts. 63 - 70 (Paris 5, Berlin 6s, 11, Rome 8, Rome A 12, 14, Paris A 5, Bordighera 4).

1) Specific performance of the contract.

55.- (53) Notwithstanding that the law of the country recognises his right to require delivery of the goods after the date fixed for delivery, the buyer shall not be entitled to require such delivery where the contract is for the sale of goods respecting which purchase by way of replacement is in accordance with the usage of trade or where the buyer can make such a purchase without difficulty or considerable risk. He retains in such a case his right to avoid the contract and claim damages (Rome A 9s, 38, Cambridge 8, 12, Paris A 10, Bordighera 4).

56.- (54) Where the buyer shall elect to require specific performance of the contract, he must notify the seller to this effect without undue delay; otherwise he shall be entitled only to avoid the contract, in accordance with Arts. 36-42, without prejudice to his right to damages under Arts. 66-70 (Rome A 10, 17, Paris 11, Berlin 8, Rome A 12, 16, Paris A 10, Bordighera 4).

56a.-

If, through circumstances which the seller could not have prevented by taking reasonable steps, a proportion of the goods has perished before delivery, the seller shall be exempted to that extent and the purchase price shall be proportionally reduced.

The seller shall be entitled to avoid the contract if he cannot reasonably be required to deliver the remainder.

The rights of the buyer in such a case are determined by Art. 62 (Copenhagen 21s).

2) Avoidance of the contract.

57.-

Where delivery is not effected at the time fixed by the contract or by usage of trade or at the expiration of the reasonable period of time provided for in Art. 50, the buyer shall be entitled to avoid the contract on that ground only if it appears from the contract or the circumstances that the date of delivery was an essential condition of the contract. In case of dispute the burden of proof is on the buyer (Rome A 13, Cambridge 8, 12, 20s, Paris A 8s).

58.-

(60) Where, in the circumstances mentioned in the preceding article, the date of delivery is not an essential condition of the contract, the buyer must allow the seller a further period of time of reasonable duration, stipulating that on the expiration of that period he will refuse to accept the goods. If the period thus fixed by the buyer is not of reasonable duration, the seller must without undue delay, notify the buyer that he will only deliver at the expiration of a reasonable period; failing such notification, the seller is bound to accept the period fixed by the buyer.

Should the seller not deliver the goods at the expiration of this further period, the contract shall ipso facto be avoided (Paris 4s, Berlin 11, Paris A 9, Bordighera 6).

59.-

(61) Where goods are delivered by the seller on a date later than that fixed by the contract, usage of trade or the present law, the buyer may avoid the contract, but he must elect to do so without undue delay and prove by reference to the circumstances or the terms of the contract, that the date of delivery was an essential condition of the contract.

There the date of delivery is not an essential condition of the contract, the buyer can only claim damages for the delay, in accordance with Arts. 63 and 64 (Paris A 9).

- 60.- (62) Terms in a contract relating to the date of delivery of goods which have an international market price shall be deemed to be essential for the purposes of the three preceding articles (Rome A 13, 38, Cambridge 8, 12, Paris A 9).
- 61.- (58) In contracts for delivery by instalments, the buyer shall be entitled to avoid the contract for the future where, by reason of default in delivering the instalments already due, he has good reason to fear that future deliveries will not be made; but he shall not be entitled to avoid the contract in respect of deliveries already made, unless he proves that, by reason of the interdependence of all the deliveries stipulated for in the contract, the absence of certain deliveries deprives the deliveries already made of all value (Paris 5, Rome A 13s, 38, Paris A 6, Bordighera 7).
- 62.- (63) The buyer shall be entitled to avoid the contract, where the goods sold have perished in part or have deteriorated in such circumstances that he cannot reasonably be required to accept the rest (Rome A 8, 38, Bordighera 7, 30s, Copenhagen 21s).

3) Damages.

a) Delay in delivery not involving avoidance of the contract.

63.- (64) Where, in circumstances not falling within Art. 30b, delivery has been delayed, the seller shall, notwithstanding that the time for delivery has been extended in accordance with Art. 58, be liable in damages equal to the actual loss suffered by the buyer and to the profit of which he has been deprived, provided always that the damages shall not exceed the amount which the parties could reasonably have contemplated at the time of the conclusion of the contract (Rome A 19, Paris A 10, Bordighera 6s).

64.- (65) The seller shall not be liable under the preceding article, if he proves that the delay was due to circumstances which constituted an insurmountable obstacle and which he was not bound to contemplate at the time of the conclusion of the contract.

How far circumstances other than those defined in the preceding paragraph may, in the same conditions, enable the seller to escape liability shall be determined by the particular national laws applicable (Berlin 12, Rome 8, Cambridge 9, 11s, Paris A 10).

In view of the great diversity between the laws of the various countries the Committee has felt unable to propose an international rule on this point; in its unanimous view, however, it is not on that account less desirable that unification of the various laws should be achieved on this point (Bordighera 7).

65.- (66) In the case referred to in the preceding article, it shall be the duty of the seller, as soon as he foresees the delay and notwithstanding the communications contemplated by

Art. 74, to notify the buyer of the impossibility of delivering on the date fixed and to state the probable length of the delay. He shall be liable to the buyer for any damage caused by his negligence in performing this duty.

Where the seller, in notifying the buyer of the impossibility of delivering on the date fixed, is unable reasonably to indicate the length of the delay, the impossibility shall be deemed to be final and the seller or the buyer may avoid the contract. The seller may thereupon claim exemption from damages in accordance with article 66 (Paris 3, 4 10, Bordighera 7, 27).

b) Avoidance on account of delay or failure to deliver.

- 66.- (67) Where the contract is avoided on account of delay or default in delivery of the goods, the seller shall be liable for the damage caused to the buyer by the non-delivery, unless he proves that such non-delivery was due to circumstances which constituted an insurmountable obstacle and which he was not bound to contemplate at the time of the conclusion of the contract.

How far circumstances other than those defined in the preceding paragraph may, in the same conditions, exempt the seller from liability shall be determined by the particular national laws applicable (Paris 3, 8, Rome 3, 4 8s, Cambridge 9, Paris 4 10, Bordighera 8; see art. 64, para. 3).

- 67.- (68) Where the contract is avoided on account of delay or default in the delivery of goods for which there is a current price, the damages payable by the seller shall equal the difference between the price fixed in the contract and the current price which prevailed immediately after the date upon which the buyer was entitled to avoid the contract or upon which

the contract was ipso facto avoided. Regard should further be had to the normal cost of replacement.

The damages may be increased to the equivalent of the total loss actually incurred by the buyer, provided that the latter establishes that the seller was in a position to contemplate such loss at the time of the conclusion of the contract (Rome 4, Berlin 9, 11, Paris 9s, Rome A 14s, 38, Cambridge 11s, Bordighera 8).

68. (69) Where a current price for the goods is quoted on a market or exchange, the buyer, if he was without culpable delay and as a prudent business man effected a purchase by way of replacement, may take the price of such a purchase as the basis for calculating the damage he has suffered.

If he does not effect a purchase by way of replacement without culpable delay in the following cases:

1.- where usage of trade requires such a purchase to be made;

2.- where such purchase may be made without difficulty or considerable risk and replacement appears to be necessary to mitigate the damage,

the damages shall not be higher than would ensue if the goods had been duly replaced (Paris 10, Berlin 9, Rome A 15, 17s, 39, Cambridge 12, Copenhagen 16).

69. (70) Where there is no current price for the goods the damages shall be equal to the loss actually incurred by the buyer and to the profit of which he is deprived by the non-performance of the contract, provided always that such damages

268. It will be necessary for the experts to define the term "market" (Rome A 23).

shall not exceed the amount which could reasonably have been contemplated at the time of the conclusion of the contract (Rome A 19, Paris A 11).

- 70.- (71) Where a period of time is fixed by the contract or by usage of trade for the delivery of goods for which there is current price, and where, before the expiration of such period, the seller notifies the buyer, in accordance with Art. 30f, that he will not deliver the goods, the damages shall be calculated on the basis of the current price of the goods on the last day of such period.

Where the seller gives such notification notwithstanding that no period of time was fixed by the contract or by usage of trade, the damages shall be calculated on the basis of the date when the buyer avoided the contract (Rome A 18, Paris A 11).

II.- Other obligations

- 71.- (72) Preservation of the goods sold. Expenses.

When the risk has passed to the buyer, it shall be the duty of the seller to ensure the preservation of the goods pending their delivery.

- 72.- (73) He is bound to incur the necessary expenses, but shall be entitled to a refund of those expenses (Paris 6s, Bordighera 26s).

- 73.- (74) Charges: Delivery charges, such as weighing and measuring, are payable by the seller; removal charges are payable by the buyer.

Charges for carriage are payable by the buyer; nevertheless, where the sale is with delivery at destination, the cost of carriage to the place of delivery is payable by the seller (Paris 6, Berlin 24, Rome 4 3, Cambridge 8, Paris 11 5, Bordighera 27).

74.. (75) Obligation to communicate to the buyer certain information concerning the goods sold: The seller is bound to inform the buyer as soon as it comes to his knowledge, of any circumstance calculated to prevent or delay the delivery of the goods (Paris 8, Bordighera 27).

75.. (76) Conclusion of the contract of carriage: Apart from agreement to the contrary, the seller is bound to conclude with the carrier such contract as the nature of the goods and other market conditions require (Paris 6, Bordighera 27).

76.. (77) Insurance during transit: The seller is bound to furnish the buyer with the information requisite to effect insurance of the goods during transit, where, from the circumstances, he must be aware that it is usual to insure them, and provided that he is not bound to effect such insurance himself (Paris 7, Bordighera 27).

77.. The non-performance of the preceding obligations and of all those which might be imposed on the seller by agreement or usage shall give a right to damages equal to the loss caused, unless their performance is prevented by an insurmountable obstacle which could not have been contemplated at the time of the conclusion of the contract.

Where the obligation not performed is an essential one, the buyer may avoid the contract; he shall also be entitled to damages in accordance with para. 1 of the present article.

An obligation is essential where it appears that the buyer would not have concluded the contract without such an undertaking (Bordighera 25, 27).

III.- Obligations of the buyer

(Stockholm 7-13, Paris A 19-23, Bordighera 15-22, 30, Copenhagen 6-19).

I - OBLIGATIONS

=====

1) The price.

- 79.- (79) Where a sale is concluded but no price is fixed, the buyer is bound to pay the price demanded by the seller. Where, however, the buyer shows that such price is excessive, he is bound to pay the price usually demanded by the seller, or, failing this, a reasonable price, estimated where possible by the price generally charged for the goods (Stockholm 7, Paris A 19, 21, Bordighera 15, Copenhagen 7).
- 80.- (83) If the contract provides for a price according to the weight of the goods, such price shall, apart from any agreement or usage to the contrary, be fixed by reference to the net weight (Stockholm 7s, Paris A 22, Bordighera 15, Copenhagen 7).
- 82.- (115) Where, in contracts which require goods to be transported from one country to another, import duties are payable by the seller, and where, after the conclusion of the contract, such duties are increased, the amount of such increase shall be added to the purchase price, unless there is an agreement to the contrary; conversely, a reduction in such duties shall be deducted from the purchase price (Paris A 22, Bordighera 15, 31, Copenhagen 7).
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- 282.- Where the seller is prevented by vis maior from dispatching the goods, any increase in import duties shall be borne by the buyer (Copenhagen 7).

2) Place and date of payment.

83.- (86) The buyer is bound to pay the purchase price at the place of business or residence of the seller, except where the agreement is for cash on delivery or cash against documents, or where the parties have agreed to fulfil their mutual obligations elsewhere (Stockholm 8, Paris A 20, 22, Bordighera 16, Copenhagen 8).

If, in consequence of a change in the business or residential address of the seller subsequent to the conclusion of the contract, the cost or risk of consignment is increased, such increase shall be borne by the seller (Copenhagen 8).

84.- (84) Where the parties agreed on a date for payment, or where such date is fixed by usage of trade, such agreement or usage shall itself conclusively fix the date upon which the buyer is bound to pay the purchase price (Paris A 20, Bordighera 17s, Copenhagen 8).

85.- (84) Where, in a sale on credit, the date of payment is not fixed in accordance with the preceding article, the buyer is bound to pay the purchase price without undue delay after the receipt of the goods or of the documents enabling him to obtain delivery thereof (Paris A 21, Bordighera 17s, Copenhagen 8).

II - SANCTIONS (cf. Copenhagen 19)
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85a. ex 78 para. 2 (79/80) By the obligation to pay the purchase price is meant also the obligation of the buyer to take the necessary steps to provide for or secure such payment, as for instance to accept a bill of exchange, to procure a documentary credit, to give a banker's guarantee or other

guarantee (Stockholm 7, Paris A 19, 21, Bordighera 15, 20ss, Copenhagen 7). Wording and place reserved.

85b.- ex 89.- (92) Where the contract reserves to the buyer a right subsequently to determine the form, measurement or other feature of the goods (sale by specification) but he fails to make such specification, either on the date expressly or impliedly agreed upon, or after receipt of a communication from the seller following the lapse of a reasonable period of time, the seller may either

- a) make the specification himself in accordance with the requirements of the buyer as known to himself, or
- b) avoid the contract and claim damages in accordance with Art. 95ss, without making any specification.

In the first alternative, the seller is bound to notify the buyer of the contents of his specification and to afford him a reasonable opportunity to submit a different specification. Should the buyer not avail himself of such opportunity, the specification made by the seller shall be binding (Paris A 21s, Bordighera 19, 30, Copenhagen 12, 17).

1. Payment of the purchase price (Copenhagen 16)

87.- (95) Where the buyer fails to pay the purchase price in accordance with the terms of the contract, the seller shall be entitled to sue for the price if his right to do so is recognised by the law administered by the court to which he applies (Bordighera 21, Copenhagen 9, 16).

Instead of demanding payment of the purchase price, the seller may avoid the contract in accordance with the provisions of Articles 90ss (Copenhagen 16s).

In either event the seller shall be entitled to damages in accordance with Articles 95ss.

The provisions of Articles 33 and 35 shall apply.

The buyer shall in no case be entitled to a period of grace from the courts (Paris A 21, Bordighera 20, Copenhagen 9, 11s, 17).

88.- Where a buyer who is in arrears with the payment of the purchase price asks the seller whether he intends to make delivery and the seller fails to answer without undue delay, the contract shall ipso facto be avoided (Bordighera 20, Copenhagen 10s, 13, 17).

2.- Avoidance of the contract

90.- (96/7) Where a buyer has failed to pay the purchase price in accordance with the contract, the contract may be avoided by a mere declaration to that effect by the seller subject to the provisions of Articles 91 and 92. Where, however, the goods have been delivered unconditionally to the buyer, this right shall no longer exist (Stockholm 12, Paris A 21, 23, Bordighera 21, Copenhagen 12).

91.- (99) Where the buyer tenders a payment on a date later than that agreed upon, the seller shall be entitled to avoid the contract only if he elects to do so without undue delay (Paris A 21, Bordighera 21, Copenhagen 10, 13).

91a.- In the case contemplated by Article 30b the seller shall be entitled to require the buyer to furnish without

290.-
The sanctions for failure to take delivery and for failure to pay the purchase price are governed by different rules (Copenhagen 16).

undue delay adequate security for future payment. If the buyer delays unduly, the seller shall be entitled to avoid the contract and claim damages for non-performance (Copenhagen 14).

91b.- Where the buyer fails to take delivery of the goods in accordance with the terms of the contract, the seller shall subject to the provisions of Arts. 31 et seq., be entitled to avoid the contract, if the failure of the buyer is ground for thinking that he will not pay the purchase price, or when it appears from the circumstances that acceptance of the goods was an essential condition of the contract (Copenhagen 16, 13).

92.- (98) In contracts for delivery by instalments, the seller shall be entitled to avoid the contract for the future on the ground of non-payment of the amounts due, if he has good reason to fear that future payments will not be made (Paris A 21, Bordighera 21, Copenhagen 14).

3.- Damages

a) Delay in taking delivery or in paying the purchase price, not involving avoidance of the contract.

95.- (101) In case of delay the seller is entitled only to interest on arrears: provided that, where, in consequence of such delay, the seller has suffered damage (including loss of profits), exceeding the interest on arrears, the buyer shall be liable to the seller for such damage in so far as he contemplated or could reasonably have contemplated it at the time of the conclusion of the contract (Stockholm 11, Paris A 22s, Bordighera 22, Copenhagen 14s, 17).

(88) The rate of interest shall be equal to the official discount rate of the country of the buyer plus 1%. Compound interest shall not be allowed except where there is a current account between the parties (Stockholm 8, Paris A 22, Copenhagen 8, 15).

95a.- The buyer shall be excused from liability for the special damages contemplated by the preceding article if he proves that the delay was due to circumstances which constituted an insurmountable obstacle and which he was not bound to contemplate at the time of the conclusion of the contract.

How far circumstances other than those defined in the preceding paragraph may, in the same conditions exempt the buyer from liability shall be determined by the particular national laws applicable (Copenhagen 15) Wording reserved.

In view of the great diversity between the laws of the various countries, the Committee has felt unable to propose an international rule on this point; in its unanimous view, however, it is not on that account less desirable that unification of the various laws should be achieved on this point.

b) Avoidance on account of delay or default in taking delivery or paying the purchase price.

95b.- Where the contract is avoided on account of delay or default, the buyer shall be liable for the damage resulting to the seller except when he proves that the delay or default

95c.- The final wording of Art. 95c. para. 1, second sentence, will make it clear that the provision only applies where the seller has avoided the contract (Copenhagen 15).

in taking delivery or paying the purchase price was due to circumstances which constituted an insurmountable obstacle and which he was not bound to contemplate at the time of the conclusion of the contract.

How far circumstances other than those defined in the preceding paragraph may, in the same conditions, exempt the buyer from liability shall be determined by the particular national laws applicable (Copenhagen 15) Wording reserved.

95c.-

Where there is a current price for the goods the damages payable by the buyer shall be equal to the difference between the price agreed upon and the current price prevailing immediately after the contract was avoided. In the case contemplated by Art. 30, if a definite date is prescribed for delivery, the price to be taken into account shall be the current price prevailing immediately after that date (Copenhagen 15). Wording reserved.

The damages may be increased to the equivalent of the total loss actually suffered by the seller, provided the latter can establish that the buyer contemplated or could reasonably have contemplated such loss at the time of the conclusion of the contract (Copenhagen 15s).

95d.-

Where there is a current price for the goods, the seller, if he has without culpable delay and as a prudent businessman, effected a sale in replacement, may take the price realised by such sale as the basis for calculating the damage which he has suffered.

If the seller does not effect a sale by way of replacement without culpable delay in the following cases:

- 1.- where usage of trade requires such a sale to be made:

2.- where the sale may be effected without serious difficulty, and replacement appears to be necessary to mitigate the damage,

the damages shall not be higher than would ensue if replacement had been duly made (Copenhagen 16).

95e.- Where there is no current price for the goods the damages shall be equal to the loss actually sustained by the seller and to the profit of which he has been deprived by the non-performance of the contract, provided that such damage shall not exceed the amount which could reasonably have been contemplated at the time of the conclusion of the contract (Copenhagen 16). Place reserved.

IV.- Passing of risk

(Berlin 17-20, 23-28, Rome 10-12, Stockholm 17-21, Paris A 22, Bordighera 20, 27, 28, 31, 32, 34).

96.- (112) The mere fact that the parties have inserted terms in their contract concerning expenses, and in particular the fact that they have agreed that such expenses shall be borne by the seller, shall not of itself suffice to transfer the risk (Stockholm 20, Bordighera 31).

97.- (113) Where the goods are not delivered owing to circumstances for which the seller is not responsible, the risk passes

296.- (110) Cases of restraint of princes shall be regarded not as cases of risk, but as cases of impossibility (Berlin 20).

297.- (111) Risk of delay in delivery during transit, where it cannot be imputed to either of the parties, shall be treated as risk of loss (Cf. Art. 116, French Commercial Code) (Berlin 24, Bordighera 28).

to the buyer; in the case however of a sale of unascertained goods, the risk does not pass unless goods of the contract description have been appropriated to the buyer and clearly set aside for the performance of the contract.

The seller is bound to notify the buyer that the goods have been appropriated; it shall suffice that such notification is dispatched (Stockholm 19, Bordighera 31).

98.- (118) Once the goods are delivered, the risk passes to the buyer, who, accordingly, notwithstanding that any of them perish, deteriorate or are lost, is bound to pay the purchase price (Stockholm 18, Bordighera 20, 28).

99.- (128) Notwithstanding the provisions of Art. 98, where goods are sold free on board, the risk does not pass to the buyer until they are placed on board the vessel, even if the seller is obliged to dispatch them to the port of loading from a place mentioned in Art. 45 or agreed upon by the parties.

Where, under the terms of the contract or by usage, the seller is entitled to present the buyer with a bill of lading for the goods, the risk passes when the goods are handed over to the shipowners (Stockholm 20s, Bordighera 31).

100.- (122) Where goods are sold on cost and freight or cost insurance and freight terms, the risk passes to the buyer when the goods are shipped. In the case of through transport commencing by land, where, under the contract or by usage, the seller is entitled to present to the buyer a through bill of lading or other document covering the period of transit, the risk passes to the buyer as soon as the goods are in the hands of the agent or carrier in the manner mentioned in no. 117. In case of dispute, the seller

must prove that he consigned the goods to the buyer (Stockholm 21, Bordighera 32, 34). Last sentence reserved.

101.- (123) In the case of goods shipped in bulk, the risk passes to each of the buyers in proportion to his share as soon as the seller has sent him the bill of lading or other notice indicating that the goods have been shipped (Stockholm 21, Bordighera 32, 34).

VI.- The seller's undertaking against defects in the goods

(Rome 13-21, Rome A 23-32, 35s, Cambridge 16-20, Paris 12-18, Bordighera 8,9,11,31,33,34, Copenhagen 21-23, London 1-5).

102.- (126) The seller undertakes that the goods shall be free from defects.

I.- Definition of defects

103.- (126) The undertaking shall apply:

1) where the goods do not possess the qualities necessary for their ordinary or commercial use:

2) where the goods do not possess the qualities necessary for a particular purpose expressly or impliedly contemplated by the contract;

3) where the goods do not possess the qualities and characteristics described in the contract including any express undertaking contained therein.

The absence of any immaterial quality or characteristic shall not be taken into account (Rome 13, 15, 18, Rome A 25, Cambridge 16, Paris A 12, Bordighera 8).

104.- (127) In sales by sample or by model the undertaking shall apply whenever the bulk does not correspond in quality with the sample or model.

Provided that it shall not be required to correspond absolutely exactly, except where the parties have made a definite and clear stipulation to that effect.

Where the sample is inconsistent with the description of the goods in the contract, the sample shall prevail; where two are different but not inconsistent, the goods must combine the qualities of both (Rome A 31s, Cambridge 16, Paris A 12).

105.- (128) It shall not be a sale by sample or model where the seller proves that such sample or model was merely submitted to the buyer by way of information, and that no undertaking was given that the goods would correspond thereto (Rome A 32, Cambridge 16, Paris A 12).

106.- (130) Where goods are sold by weight, volume, measure or quantity, the seller is bound by the present provisions concerning undertaking against defects, whenever the goods delivered do not correspond with the weight, volume, measure or quantity specified by the contract so that they are no longer fit for their ordinary or commercial use or for the special use contemplated by the said contract. In such a case the corresponding rules as to defects in the goods are alone applicable (Cambridge 19, Paris A 12, Bordighera 31, 33, Copenhagen 22s).

107.- (131) Whether the goods are defective or correspond with the sample or model shall be determined by their condition at the time when the risk passes. Nevertheless, where defects which occur thereafter are caused by the seller or by a person for whose acts he is responsible, the seller shall be

305.- (129) A definition of sale by sample and sale by model will be inserted in the draft (Cambridge 16).

liable for such defects (Rome 15, A 32, Cambridge 16, Paris A 12). Reserved.

- 108.- (132) The seller shall not be liable for defects of which he proves that the buyer was aware at the time of the conclusion of the contract. The same rule shall apply where the buyer is grossly negligent in not being aware of such defects. In the latter case, however, the seller shall nevertheless be bound by his undertaking if he has promised qualities which do not exist or if he has in bad faith concealed the existence of defects; the burden of proof shall be on the buyer (Rome 15s, Cambridge 16, Paris A 13).

II.- Ascertainment and notification of defects

- 109.- (133) On receipt of the goods the buyer is bound to examine them or cause them to be examined without undue delay.
- Where the goods are required to be transported, the buyer is bound to examine them without undue delay at their destination. Where the goods are redispached by the buyer, they must be examined at the first place where such examination is reasonably possible. The form of the examination shall be determined by the agreement between the parties or, failing such agreement, by the laws of the country or the usage of such place.

Where the buyer intends to rely on such examination, he must give adequate notice to the seller or his representative to be present thereat, except where the goods are in danger of perishing (Rome 16, A 26, Cambridge 16, Paris A 13s).

- 110.- (134) Where the examination reveals a defect in the goods, the buyer is bound to notify the seller of the defect without undue delay.

Where the buyer fails to give such notification, he shall not be entitled to rely on any defects. Nevertheless, where a defect subsequently appears which could not have been revealed by a mere examination, the buyer may rely thereon, provided he notifies the seller thereof without undue delay.

In notifying the defect, the buyer must state its exact nature in accordance with usage and good faith (Rome 16, A 25s, Cambridge 19, Paris A 14, Bordighera 8, 33s).

111.- (135) The seller shall not be entitled to rely on the foregoing provisions where he has fraudulently concealed defects (Rome 21, A 30, Paris A 14s).

III.- Sanctions for defects

112.- (136) The buyer shall not be entitled to require the seller to deliver other goods free from defects, except in cases where, failing delivery of the goods, he could claim specific performance, in accordance with articles 53, 55 and 56 concerning the obligations of the seller (Rome A 28, Cambridge 17, Paris 12, 15).

113.- (137) The seller shall be entitled to deliver other goods to replace those whose defects have been notified by the buyer, where such delivery may be made within the time limits fixed by the contract (Rome 20, A 28, Cambridge 17, Paris A 15).

114.- Where, under the contract, the seller is bound to produce or manufacture goods in accordance with the special orders of the buyer, he shall be entitled and bound to repair within a reasonable time any defect of which he has been notified.

314.- It is understood that para. 1 of this article merely establishes a presumption (Bordighera 34).

The buyer may thereupon exercise the rights respecting defects in goods which are given to him by Art. 115 hereof but only after the expiration of the reasonable period of time referred to in the preceeding paragraph. He may, however, claim any damages to which he may be entitled by reason of the loss he suffered through the former defective delivery (Bordighera 9, 11, 34).

115.- (138) A buyer who has duly notified the existence of defects may elect:

- either to avoid the contract with or without damages in accordance with Art. 122;
- or claim a reduction of the purchase price;
- or retain the goods and claim damages for the loss caused to him by the defects (Rome 18, A 26, Cambridge 17, Paris A 15, 18).

116.- (139) The buyer shall retain his rights with regard to defects in goods, notwithstanding that such goods perish or deteriorate without fault on his part after the risk has passed.

The buyer shall lose such rights if he transforms the goods into goods of another kind, except where redhibitory defects are not revealed until such transformation takes place.

The buyer shall lose such rights if he is responsible for the destruction or essential deterioration of the goods. Where the buyer disposes of the goods to a third party, he shall lose such rights, if that third party transforms the goods into goods of another kind or is responsible for their destruction or essential deterioration.

The buyer shall not lose his rights if the deterioration is of a non-essential character; but where the buyer is

responsible for the deterioration he shall be liable in damages to the seller (Rome 18s, A 27, Cambridge 17s, Paris A 15, Bordighera 8).

117.- (140) The buyer must bring his action within X years from the date when the goods were delivered to him, except where he is prevented from doing so by the fraud of the seller. After the expiration of this period the buyer shall retain the right to plead the defects in the goods by way of defence.

Nevertheless the contract may provide that the undertaking shall cease to be effective after the lapse of a period of X months from the date of the delivery of the goods to the buyer (Rome 21, A 30, Paris A 16, 18).

1) Avoidance of the contract

118.- (142) Where the buyer elects to avoid the contract, each party is bound to restore the other to his position prior to the contract. The purchase price shall bear interest from the date of payment (Rome A 27, Cambridge 17, Paris A 16, Bordighera 8).

119.- (143) Where the buyer elects to claim a reduction in the purchase price, such reduction shall be commensurate with any decline which, by reason of defects, may have resulted in the value of the goods since the conclusion of the contract (Rome 19, Rome A 27s). Reserved.

120.- (144) In contracts for delivery by instalments, the buyer shall be entitled to avoid the contract for the future on the ground of defects notified in previous deliveries, whenever he has good reason to fear that future deliveries will also be defective; but he shall not be entitled to avoid the

contract in respect of previous deliveries that were free from defects, except where he proves that, by reason of the interdependence of all the deliveries stipulated for in the contract, the defects in certain deliveries deprive the remaining past deliveries of all value (Rome A 32, Cambridge 17, Paris A 16).

2) Reduction of the price

121.- (145) Where the buyer elects not to avoid the contract, he shall be entitled to claim a reduction in the purchase price corresponding to the decrease in value caused by the defect (Cambridge 18, Paris A 16s, Bordighera 8).

3) Damages

122.- (146) The buyer shall be entitled to damages:

- 1.- where he avoids the contract;
- 2.- where, without avoiding the contract or claiming a reduction in the purchase price, he claims compensation for the damage caused to him by the defect (Cambridge 18, Paris A 16ss).

123.- (147/148) Where the buyer avoids the contract, damages shall be calculated in accordance with Arts. 66 et seq.- Where the buyer does not avoid the contract but merely claims damages for the loss caused to him by the defect, such damages shall be calculated in accordance with the provisions of Art. 63 (Cambridge 18, Rome A 29, Bordighera 8, 11).

124.- (149) The buyer shall not be entitled to damages where the

324.- (150) Defects in the goods and mistake in law. The committee favours a solution which would avoid any clash between the legal remedies available on the one hand in respect of mistake on the part of a contracting party and on the other in respect of defects in the goods (Rome 20).

seller proves that the defects in the goods delivered were due to circumstances which constituted an insurmountable obstacle and which he was not bound to contemplate at the time of the conclusion of the contract.

How far circumstances other than those defined in the preceding paragraph may in the same conditions exempt the seller from liability shall be determined by the particular national laws applicable (Rome 19s, A 29, 35, Cambridge 18, Paris A 17, Bordighera 8, 33).

In view of the great diversity between the laws of the various countries the Committee has felt unable to propose an international rule on this point; in its unanimous view, however, it is not on that account less desirable that unification should be reached on this point (Bordighera 8, 7).

VI.- Letters of trust and documentary credits

(Rome 1s, Stockholm 14-16, Rome A 11, 22, Cambridge 13s, Copenhagen 2-5)

Letters of trust

125.- (152) Where a bank, having opened a credit available against delivery of documents (documentary credit) and having received documents relating to the goods specified in that

325.- (151) The Committee is of the opinion that it would be a considerable advantage if letters of trust were also used outside England, in order to facilitate credit in international trade. It considers that it might be useful to lay down international provisions concerning them (Stockholm 14, Rome A 22).

The Committee thinks it desirable not to regulate these questions in the law of sale itself, but in a special law. (Rome A 22, Copenhagen 2).

letter, delivers such documents to the buyer to enable him to resell, manufacture or otherwise deal with the goods, such delivery shall in no way restrict or affect in any manner whatsoever the rights of the bank holding the said documents, provided that such delivery is made under a letter of trust or similar document, signed and delivered to the bank by the buyer and acknowledging that the buyer holds the documents and the goods represented thereby on behalf of the bank and that he is proceeding to resell the goods on the instruction of the bank. (Stockholm 14s, Cambridge 13, Copenhagen 3s).

126.. (153) Documents and goods covered as aforesaid by a letter of trust shall not be seized under a judicial process for the benefit of any creditor of the buyer or of his trustee or assignee in bankruptcy (Cambridge 14, Copenhagen 4s).

127.. (154) The bank shall lose its rights under a letter of trust if the buyer resells the documents, except where there has been collusion with the second buyer (Cambridge 13s, Copenhagen 5). Wording reserved.

128.. (155) Where the laws of the country in which the buyer has his place of business require compulsory registration of a letter of trust, such letter of trust shall not be set up against any creditor of the buyer or against his trustee in bankruptcy, unless the bank shall within ... days of the delivery of the document or goods to the buyer, register a declaration, signed by or on behalf of the bank, to the effect that a letter of trust has been given by the buyer, and specifying in general terms the class or classes of goods covered by such letter (Cambridge 14, Copenhagen 3, 5). Wording reserved.

328..
Art. 128 will appear in the draft in parenthesis, so that the experts may decide as to its expediency (Copenhagen 5).

Annex: questions concerning the passing of the property

(Paris 12s, Berlin 13-17, 21-23, Rome A 19-22, Paris A 21, Bordighera 35)

Protection of the seller against creditors of the buyer

a) goods delivered after buyer declared insolvent.

131.- (165) The Committee will submit to the experts, along with the draft, the following resolution:

Where goods are delivered to a buyer or firm previously declared bankrupt and the price has not been paid, the seller may claim the return of the goods sold, unless the creditors of the bankrupt pay the price or, if payment is not yet due, declare their intention to accept liability and, should the seller require it, furnish satisfactory security (Rome A 6, 20, Bordighera 35).

b) goods delivered before buyer declared bankrupt.

Pactum reservati dominii

Berlin 14-17, Rome A 31s, Bordighera 35)

132.- (167) Scope. The pactum reservati dominii shall apply only in strictly defined cases (Berlin 14).

331.- (161) No general rule will be laid down with regard to the passing of the property; only specific questions will be dealt with (Rome A 19, Paris A 31).

331a.- (164) Protection of buyer against seller's creditors:

The Committee takes the view that these questions should be dealt with by the laws of particular countries (Rome A 20, Bordighera 35).

133.- (168) Form. To be valid the pactum must be in writing (Berlin 15).

134.- (169) Registration.

a) An international code should not prescribe registration.

b) Where registration is prescribed by a national law, the pactum shall be of no effect unless it is registered within thirty days after the arrival of the goods for registration (Berlin 14, Stulz 3).

135.- (171) Risk. Unless the risk has previously passed to the buyer, it passes when he obtains possession of the goods (Berlin 16, Stulz 4).

136.- (172) Right to recover possession of the goods. The seller shall not be entitled to recover possession of the goods unless he simultaneously abandons the contract.

137.- (173) Bankruptcy of the buyer. The pactum reservati dominii shall be valid where the buyer becomes bankrupt.

333a.- The pactum reservati dominii will be dealt with in a special law, distinct from the law of sale (Bordighera 35).

333b.- (166) A provision will be inserted declaring the validity of the pactum reservati dominii (Rome A 22).

337.- (170) Scope. The Committee is inclined to restrict the kinds of goods which may be sold subject to the pactum reservati dominii to certain specified articles, (machines, appliances, automobiles) but has not yet come to a decision on the point (Berlin 15).

138.- (174) Protection of third parties who acquire in good faith.

This question should not be regulated by international code (Berlin 16).

139.- (175) Conflict of pactum with seller's privileges. National

laws governing the coexistence of the pactum and the seller's lien shall not invalidate the pactum.

..

338.- (176) An enquiry is desirable as to whether, in estimating national and international credit, creditors take account of stock in trade, or whether they give credit regardless of the same (Berlin 17).

339.- (175) Other decisions of Art. 139 are reserved (Berlin 17).