

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

OVERVIEW

1. Pursuant to this provision, the Convention does not deal with liability for death or personal injury caused by the goods to any person,¹ regardless of whether the injured party is the buyer or a third party. Consequently, national law applies to those matters.

SCOPE OF THE EXCLUSION

2. Article 5 declares that the Convention does not govern liability for death or personal injury “to any person”.² Although this can be read to exclude a buyer’s claim against the seller for pecuniary loss resulting from the buyer’s liability to third parties for personal injury caused by the goods, one court has applied the Convention to such a claim.³

3. According to part of the case law, any claims for damage to property caused by non-conforming goods are governed by the Convention and do not fall within scope of the article 5 exclusion.⁴ This excludes any concurrent domestic remedies for damage to property. Consequently, in those cases where the Convention applies, it requires a buyer to notify the seller of the lack of conformity that caused the damage to property in order for the buyer not to lose its claim.⁵ Where the damage to property is not “caused by the goods”, as where the buyer’s property is damaged by delivery of the goods, the liability issue must be settled on the basis of applicable domestic law.

4. According to some courts, however, the Convention does not deal with concurrent tort claims⁶ or claims based on the seller’s negligent or fraudulent misrepresentation,⁷ thus not pre-empting any such claim, but rather leaving it to the applicable domestic law to determine the prerequisites of any such claim.

Notes

¹See CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995] (see full text of the decision).

²CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995].

³See CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993] (see full text of the decision).

⁴See CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995].

⁵See CLOUT case No. 280 [Thüringer Oberlandesgericht, Germany, 26 May 1998]; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995].

⁶U.S. District Court, Eastern District of Arkansas, United States, 23 December 2009, available on the Internet at www.cisg.law.pace.edu; CLOUT Case No. 579 [U.S. Southern District Court for New York, United States, 10 May 2002]; CLOUT case No. 420 [U.S. District Court, Eastern District of Pennsylvania, United States, 29 August 2000].

⁷U.S. District Court, Eastern District of Arkansas, United States, 23 December 2009, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Southern District of Ohio, United States, 26 March 2009, available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Southern District of Ohio, United States, 10 October 2006, available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 579 [U.S. District Court, Southern District of New York, United States, 10 May 2002].