



Universiteit
Leiden
The Netherlands

Enforced performance of commercial sales contracts in the Netherlands, Singapore and China

Kemp, P.C.M.

Citation

Kemp, P. C. M. (2020, January 23). *Enforced performance of commercial sales contracts in the Netherlands, Singapore and China*. Eleven International Publishing, Den Haag. Retrieved from <https://hdl.handle.net/1887/83262>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/83262>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/83262> holds various files of this Leiden University dissertation.

Author: Kemp, P.C.M.

Title: Enforced performance of commercial sales contracts in the Netherlands, Singapore and China

Issue Date: 2020-01-23

Enforced performance of commercial sales contracts
in the Netherlands, Singapore and China

Published, sold and distributed by Eleven International Publishing
P.O. Box 85576
2508 CG The Hague
The Netherlands
Tel.: +31 70 33 070 33
Fax: +31 70 33 070 30
e-mail: sales@elevenpub.nl
www.elevenpub.com

Sold and distributed in USA and Canada
Independent Publishers Group
814 N. Franklin Street
Chicago, IL 60610, USA
Order Placement: +1 800 888 4741
Fax: +1 312 337 5985
orders@ipgbook.com
www.ipgbook.com

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

The commercial edition of this book is published by Eleven International Publishing.
ISBN 978-94-6236-987-0; ISBN 978-94-6094-444-4 (E-book).

© 2019 Paula Kemp | Eleven International Publishing

This publication is protected by international copyright law.
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system,
or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or
otherwise, without the prior permission of the publisher.

Printed in the Netherlands

ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS, SINGAPORE AND CHINA

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 23 januari 2020
klokke 16.15 uur

door

PAULA CATHERINA MARIA KEMP

geboren te Kampen

in 1982

Promotores: prof. mr. dr. H.B. Krans
 prof. mr. dr. M.H. Wissink (Rijksuniversiteit Groningen)

Promotiecommissie: prof. mr. dr. A.G. Castermans
 prof. mr. dr. J. Hijma
 prof. dr. Y. Li (Erasmus University Rotterdam)
 prof. A.F.H. Loke (City University of Hong Kong,
 Hong Kong SAR)

TABLE OF CONTENTS

Acknowledgements	ix
Abbreviations	xi
Table of cases	xiii
Table of figures	xxiii
1 Introduction	1
1.1 Introduction	1
1.2 Research questions	8
1.3 Relevance	10
1.4 Approach	11
1.5 Terminology	15
2 Historical and contemporary fundaments of sales law	23
2.1 Introduction	23
2.2 Civil Code in the Netherlands	23
2.3 English common law roots in Singapore	26
2.4 A mixture of legal and cultural traditions in China	30
2.5 Conclusions	35
3 Ambit of a commercial sales contract	39
3.1 Introduction	39
3.2 Concept of a sales contract	39
3.3 Goods subject to sales law	49
3.4 Formation of an enforceable commercial sales contract	60
3.4.1 Introduction	60
3.4.2 Offer and acceptance model	62
3.4.3 Definiteness of the obligations assumed in an offer	70
3.4.4 Binding effect of offer and acceptance	80
3.4.5 Synallagmatic performances, cause or valuable consideration	87
3.4.6 Conclusions	95
3.5 Conclusions	98

TABLE OF CONTENTS

4 General availability of enforced performance	101
4.1 Introduction	101
4.2 Historical and contemporary underpinnings of enforced performance	102
4.2.1 Introduction	102
4.2.2 Primary status of performance in the Netherlands	103
4.2.3 Exceptional nature of enforced performance in Singapore	116
4.2.4 A compromise of principles in China	125
4.2.5 Conclusions	143
4.3 Payment of the agreed price	148
4.3.1 Introduction	148
4.3.2 The right of action to obtain the agreed price in the Netherlands	149
4.3.3 An action for the price in Singapore	151
4.3.4 Right to demand payment in China	154
4.3.5 Conclusions	155
4.4 Non-monetary obligations	160
4.4.1 Introduction	160
4.4.2 Right to enforced performance in the Netherlands	161
4.4.3 The discretionary remedy in Singapore	164
4.4.4 Mixed approaches in China	175
4.4.5 Conclusions	179
4.5 Ancillary performance obligations arising from the principle of good faith	185
4.6 Conclusions	193
5 Specific failures to bring about a certain state of affairs	199
5.1 Introduction	199
5.2 Non-delivery of the goods	200
5.3 Failure in taking delivery of the goods	210
5.4 Discrepancy in quantity and quality	217
5.4.1 Introduction	217
5.4.2 Shortfall in goods	219
5.4.3 Repair and replacement	224
5.4.4 Inspection and notification duties	237
5.4.5 Conclusions	243
5.5 Conclusions	247

6 Barriers to the availability of enforced performance	251
6.1 Introduction	251
6.2 Impediments	252
6.2.1 Introduction	252
6.2.2 Initial impossibility	254
6.2.3 Subsequent impossibility	264
6.2.4 Hardship and performance being unreasonably burdensome or expensive	275
6.2.5 Conclusions	288
6.3 Delayed request for delivery	292
6.4 Limitation of the action	298
6.4.1 Introduction	298
6.4.2 The limitation period itself	299
6.4.3 Modification by agreement	305
6.4.4 Renewal and extension of limitation periods	308
6.4.5 The effects of expiration	311
6.4.6 Conclusions	314
6.5 Duty to mitigate in the form of a precautionary cover transaction	316
6.6 Supervision on enforcement	321
6.7 Conclusions	327
7 Enforcement measures	333
7.1 Introduction	333
7.2 Action for handing over the goods	334
7.3 Obtaining substitute goods at the expense of the seller	339
7.4 Judicial penalty	344
7.5 Contractual penalty	348
7.6 Conclusions	357
8 Derogatory agreements	361
9 Conclusions and recommendations	369
10 Summary	389
11 Samenvatting (Dutch summary)	397
Bibliography	405

TABLE OF CONTENTS

Curriculum Vitae	425
Index	427

ACKNOWLEDGEMENTS

This dissertation is the result of four years of research into the question of whether parties to a commercial sales contract are entitled to obtain the very thing they bargained for under the law of the Netherlands, Singapore and China and how the national solutions relate to the approaches taken by international contract and sales law instruments. This research has been a daunting but an extremely rewarding challenge, and it would not have been possible without the valuable and constant support received from my supervisors Professor Bart Krans and Professor Mark Wissink, who were always full of excitement and encouragement for my work. I am greatly indebted to them and would like to extend a heartfelt thanks for their valuable suggestions, unrelenting patience, profound belief in my work, and their guidance every step of the way. I have truly enjoyed each discussion.

For the first three years of my research, I lived and worked in Singapore. This would not have been possible without the support of Professor YEO Tiong Min. I would like to thank him for my appointment as Visiting Scholar at the Singapore Management University School of Law. This position allowed me to deepen my knowledge of Singapore law, to attend interesting discussions, and to visit seminars abroad on various contract law topics. I would also like to thank Dr. Garry Low for advice and invaluable comments on my work. During my stay in Singapore, I was also fortunate and honoured to meet Professor GOH Yihan, Professor THANG Hang Wu, Professor Locknie HSU, Associated Professor YIP Man, and many others. I am grateful for the new and indispensable insights they have provided me with. I would also like to give special thanks to Professor Maartje Visser for her kindness and incredibly warm reception.

As for my work on the contract law of China, I was fortunate to receive invaluable comments from Dr. XIONG Hao and Dr. JIANG Hao. I would like to thank them for reading my work, providing me with useful research advice and raising interesting points of discussion. I would also like to thank Dr. Michael Ng for giving me the opportunity to present my research at the Centre For Chinese Law, University of Hong Kong.

My deepest appreciation and gratitude are for the members of the Doctorate Committee, Professor A.G. Castermans, Professor J. Hijma, Professor Y. Li and Professor A.F.H. Loke. I truly appreciate their time and efforts in reviewing my dissertation and providing me with detailed insightful comments.

A very special massive thanks is due to Danny McGraddy for his invaluable advice, painstaking work in checking my drafts and always being so supportive. I would also like to express my gratitude to Jolien Spoelstra, Floor van Beek, Martina Mettberg-Lemière, Suzan Winkels-Koerselman, Joke Driessen and Minos van Joolingen for helping in whatever way they could during this challenging period. Finally to Rogier, who has been by my side

ACKNOWLEDGEMENTS

throughout this PhD, living every single minute of it, and without whom, I would not have the courage to embark on this journey. And to darling Zoë Lynn. The only thing that made me forget the tiredness was seeing her unbridled appetite; that feeling of being swept away by a desire for life.

The research was concluded on 1 July 2019.

ABBREVIATIONS

AC	Law Reports, Appeal Cases (Third Series) (1891)-(England & Wales)
AELA	Application of English Law Act (Cap 7A, 1994 Rev Ed) (Singapore)
ALL ER	All England Law Reports (England & Wales)
art/arts	article/articles
BCLC	Butterworths Company Laws Cases (United Kingdom)
BW	Burgerlijk Wetboek of 1992 (Dutch Civil Code)
CCL	Contract Law of the People's Republic of China (1999)
CH	High Court (Chancery Division) (England & Wales); or Law Reports, Chancery Division (England & Wales)
Ch.D.	Law Reports, Chancery Division (1875-1890) (England & Wales)
ch/chs	chapter/chapters
CHN	China
CIETAC	China International Economic and Trade Arbitration Commission
CISG	UN Convention on the International Sale of Goods
Co	Cooperation
CPFTA	Consumer Protection (Fair Trading) Act (Cap 52A, 2004 Rev Ed) (Singapore)
CPL	Civil Procedure Law of the People's Republic of China (2017)
DCC	Dutch Civil Code
DCFR	Draft Common Frame of Reference prepared by the Study Group on a European Civil Code (2008)
e.g.	<i>exempli grati</i> (for example)
E.R.	English Reports (England & Wales)
ECL	Economic Contract Law of the People's Republic of China (1981, as amended in 1983)
ECLI	European Case Law Identifier
ed/eds	editor/editors
edn	edition
et al	and others
EWHC	High Court of Justice in England, together with the Court of Appeal and the Crown Court (England & Wales)
FCA	Federal Court of Australia
FEC	Foreign Economic Contract Law of the People's Republic of China (1985)
ff	and following

ABBREVIATIONS

GPL	General Principles of Civil Law of the People's Republic of China (1986)
HL	House of Lords
<i>i.a.</i>	<i>inter altri</i> (among others)
<i>i.e.</i>	<i>id est</i> (that is)
<i>ibid</i>	the same place
ICC	International Court of Arbitration
INCOTERMS*	International Commercial Terms of the ICC revised in 2019
KG	Kort geding (interim relief proceedings in the Netherlands)
Ltd	Limited
MJL	Malayan Law Journal
NJ	Nederlandse Jurisprudentie (Dutch case law)
NL	Netherlands
PACL	Principles of Asian Contract Law (draft articles 2016)
para/paras	paragraph/paragraphs
PECL	Principles of European Contract Law (1999)
PICC	UNIDROIT Principles of International Commercial Contracts (2004)
Pte Ltd	Private Limited
QB	Law Reports, Queen's Bench (England & Wales)
RJDC	Reports of Judicial Decisions China People's Courts
S&S	Schip & Schade (Ship & Damages) (Dutch law journal)
s/ss	section/sections
SCC	Supreme Court of Canada
SCPC	Renmin Fayuan nlixuan (selected cases of the People's Courts (China))
SGA	Sale of Goods Act (Cap 393, 1999 Rev Ed) (Singapore)
SGCA	Singapore Court of Appeal
SGHC	Singapore High Court
SGP	Singapore
SLR	Singapore Law Review
SLR(R)	Singapore Law Reports (Reissue)
SPC	Supreme People's Court (China)
UKSC	United Kingdom Supreme Court
UNIDROIT	Institute International pour l'Unification du Droit Privé/International Institute for the Unification of Private Law
v	versus; or volume
W	Weekblad van het recht (Dutch law journal)
WLR	Weekly Law Reports (England); or Weekly Law Reports (Singapore)
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie (Dutch law journal)

TABLE OF CASES

China

- Binhai Entertainment Co Ltd of Haikou City, Hainan Province v Hainan Huaxin Realty Management Co Ltd [2001] SPC 16 May 2001
- Changchun Foreign Economic and Trade Co v Changchun Chaouang Real Estate Development Co [1993] Changchun Intermediate People's Court and Jilin High People's Court (1993) SCPC (1992–1996 Collection) 202
- Daqing Kaiming Wind Power Tower Manufacturing Co Ltd v Huarui Wind Power Technology (Group) Co Ltd [2015] SPC Gazette 2015, issue 11
- Fuping Steel Rolling Co of Shaanxi Longmen Iron & Steel Co Ltd v Shaanxi Coke Chemical Co Ltd [2012] Shaanxi Higher People's Court 27 November 2012
- Jiangsu Nanjing Xinyu House Property Development Limited Company v Feng Yumei [2004] Nanjing Intermediate Court 6 September (2004) SPC Gazette 2006, issue 6
- Latex Gloves [1999] China International Economic and Trade Arbitration Commission [CIETAC] 13 January 1999 <<http://cisgw3.law.pace.edu/cases/990113c1.html>>
- Wen Wufa v Guilin [1992] Commerce Bureau Guangxi Guilin Xiufeng District People's Court and Guilin Intermediate People's Court (1991) RJDC 1992, 1027

The Netherlands

- ABB v Staat Dutch Supreme Court 4 October 1996, ECLI:NL:HR:1996:ZC2158, NJ 1997, 65
- ABN AMRO v Malhi Dutch Supreme Court 5 April 2002, ECLI:NL:PHR:2002:AD8186, NJ 2003, 124
- Artist de Laboureur Dutch Supreme Court 9 February 1923, ECLI:NL:HR:1923:175, NJ 1923, 676
- Baris v Riezenkamp Dutch Supreme Court 15 November 1957, ECLI:NL:PHR:1957:AG2023, NJ 1958, 67
- Batavus v Vriend's Tweewielercentrum Dutch Supreme Court 16 September 2011, ECLI:NL:HR:2011:BQ2213, NJ 2011, 572
- Beliën v provincie Noord-Brabant Dutch Supreme Court 24 March 1995, ECLI:NL:HR:1995:ZC1674, NJ 1995, 569
- Briljant Schreuders v ABP Dutch Supreme Court 20 February 1998, ECLI:NL:HR:1998:ZC2587, NJ 1998, 493
- Brocacef v Simons Dutch Supreme Court 23 March 2007, ECLI:NL:HR:2007:AZ3531, NJ 2007, 176
- Bunde v Erckens Dutch Supreme Court 17 December 1976, ECLI:NL:PHR:1976:AC5835, NJ 1977, 241

*ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS,
SINGAPORE AND CHINA*

- CBB v JPO Projecten Dutch Supreme Court 12 August 2005, ECLI:NL:HR:2005:AT7337, NJ 2005, 467
- Claas v Van Tongeren Dutch Supreme Court 28 June 1985, ECLI:NL:PHR:1985:AC8976, NJ 1986, 356
- Coolwijk v Kroes Dutch Supreme Court 28 May 1982, ECLI:NL:PHR:1982:AG4391, NJ 1983, 2
- Corporate Web Solutions v Dutch company and Vendorlink BV Court of first instance Midden-Nederland 25 March 2015, ECLI:NL:RBMNE:2015:1096
- De Beeldbrigade v Hulskamp Dutch Supreme Court 27 April 2012, ECLI:NL:HR:2012:BV1301, NJ 2012, 293
- De Ruijterij v MBO Ruiters Dutch Supreme Court 14 June 1996, ECLI:NL:HR:1996:ZC2105, NJ 1997, 481
- District Court Amsterdam 20 June 1876, W. 4212
- District Court Arnhem 4 March 1999, ECLI:NL:RBARN:1999:BP4960
- District Court Breda 16 August 2006, ECLI:NL:RBBRE:2006:AY6407, NJF 2006, 444
- District Court Gelderland 18 December 2015, ECLI:NL:RBGEL:2015:8280
- District Court Noord Holland 6 March 2013, ECLI:NL:RBNHO:2013:BZ5985
- District Court Rotterdam 10 January 1921, ECLI:NL:RBROT:1921:46, NJ 1921, 384
- District Court Rotterdam 24 June 2015, ECLI:NL:RBROT:2015:4417
- District Court Utrecht 23 September 2009, ECLI:NL:RBUTR:2009:BJ8421, NJF 2010, 44
- Dutch Court of Appeal Amsterdam 19 October 1877, W. 4200
- Dutch Court of Appeal Amsterdam 14 April 1919, NJ 1919, 1101
- Dutch Court of Appeal Arnhem 4 January 1972, ECLI:NL:GHARN:1972:AB6792, NJ 1973, 207
- Dutch Court of Appeal 's-Gravenhage 8 April 1921, NJ 1921, 1151
- Dutch Court of Appeal 's-Gravenhage 30 May 2000, ECLI:NL:GHSGR:2000:AK4304, S&S 2001/54
- Dutch Supreme Court 21 June 1957, NJ 1959, 91
- Dutch Supreme Court 19 December 1958, NJ 1959, 129
- Dutch Supreme Court 27 February 1980, ECLI:NL:HR:1980:AC6832, NJ 1980, 352
- Dutch Supreme Court 21 October 1983, NJ 1984, 804
- Dutch Supreme Court 29 June 1990, ECLI:NL:PHR:1990:AD1189, NJ 1991, 337
- Dutch Supreme Court 31 October 2003, ECLI:NL:HR:2003:AL8168, NJ 2006, 112
- Dutch Supreme Court 7 December 2018, ECLI:NL:PHR:2018:692, NJB 2018, 2302
- Endlich v Construction machinery Dutch Supreme Court 22 October 2004, ECLI:NL:PHR:2004:AO9494, NJ 2006, 597
- Equinix v Rooq et al District Court Overijssel 7 January 2015, ECLI:NL:RBOVE:2015:363, JOR 2015, 96

- Gerritse v Ontvanger Dutch Supreme Court 12 May 1989, ECLI:NL:HR:2000:AA5863, NJ 1990, 130
- Hajzian Dutch Supreme Court 14 January 1983, ECLI:NL:HR:1983:AG4523, NJ 1983, 457
- Haviltex Dutch Supreme Court 13 March 1981, ECLI:NL:HR:1981:AG4158, NJ 1981, 635
- Intres v Walt Disney Company Dutch Supreme Court 1 December 1995, ECLI:NL:HR:1995:ZC1899, NJ 1996, 510
- Kriek v Smit Dutch Supreme Court 12 June 1987, ECLI:NL:HR:1987:AC2558, NJ 1988, 150
- Lauppe v Lelystad District Court Zwolle 27 March 1985, KG 1985, 124
- Lundiform v Mexx Europe BV Dutch Supreme Court 5 April 2013, ECLI:NL:HR:2013:BY8101, NJ 2013, 214
- Meegdes v Meegdes Dutch Supreme Court 21 December 1956, NJ 1957, 126
- Meyer Europe v Pont Meyer Dutch Supreme Court 19 January 2007, ECLI:NL:HR:2007:AZ3178, NJ 2007, 575
- Mol v Meijer Dutch Supreme Court 4 February 2000, ECLI:NL:PHR:2000:AA4728, NJ 2000, 562
- Multi Vastgoed v Nethou Dutch Supreme Court 5 January 2001, ECLI:NL:PHR:2001:AA9311, NJ 2001, 79
- Nieuwe Dam and Pereboomsloot v VVE et al Dutch Supreme Court 19 November 2010, ECLI:NL:HR:2010:BN7084, NJB 2010, 2202
- NVB v Helder Dutch Supreme Court 27 April 1984, ECLI:NL:PHR:1984:AG4797, NJ 1984, 679
- Oostenbroek v Nekami Dutch Supreme Court 8 December 1989, ECLI:NL:HR:1989:AG6222, NJ 1990, 474
- Oosterhuis v Unigro Dutch Supreme Court 21 May 1976, ECLI:NL:PHR:1976:AC5738, NJ 1977, 73
- Petermann v Frans Maas Dutch Supreme Court 2 February 2001, ECLI:NL:PHR:2001:AA9767, NJ 2001, 200
- Plas v Valburg Dutch Supreme Court 18 June 1982, ECLI:NL:PHR:1982:AG4405, NJ 1983, 723
- Ploum v Smeets II Dutch Supreme Court 25 March 2011, ECLI:NL:HR:2011:BP8991, NJ 2013, 5
- Pluto Sport v VOF Marber et al District Court 's-Gravenhage 22 November 2011, ECLI:NL:RBSGR:2010:BO4625
- Polak v Zwolsman Dutch Supreme Court 14 June 1968, ECLI:NL:PHR:1968:AC3608, NJ 1968, 331
- Poot v ABP Dutch Supreme Court 2 December 1994, ECLI:NL:HR:1994:ZC1564, NJ 1995, 288
- Pouw v Visser Dutch Supreme Court 29 June 2007, ECLI:NL:HR:2007:AZ7617, NJ 2008, 606

*ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS,
SINGAPORE AND CHINA*

- Ritzen v Hoekstra Dutch Supreme Court 22 April 1983, ECLI:NL:PHR:1983:AG4575,
NJ 1984, 145
- Staat v Shell Dutch Supreme Court 30 September 1994, ECLI:NL:HR:1994:ZC1460,
NJ 1996, 196
- Stichting Waterpakt v Staat Dutch Supreme Court 21 March 2003, ECLI:NL:PHR:
2003:AE8462, NJ 2003, 691
- Stierkalf arrest Dutch Supreme Court 7 March 1980, ECLI:NL:PHR:1980:AB7443,
NJ 1980, 353
- Stuyvers' Beheer v Eugster Dutch Supreme Court 15 May 1981, ECLI:NL:HR:1981:AG4190,
NJ 1982, 85
- Vaderschapsactie Dutch Supreme Court 22 September 2000, ECLI:NL:HR:2000:AA7204,
NJ 2001, 647
- Van Beers v Van Daalen Dutch Supreme Court 21 December 2001, ECLI:NL:HR:
2001:AD5352, NJ 2002, 60
- Van Dalsen v Kampen Dutch Supreme Court 14 November 2007, ECLI:NL:HR:2008:
BF0407, NJ 2008, 588
- Van de Steeg v Rabobank Dutch Supreme Court 8 Februari 2013, ECLI:NL:HR:2013:
BY4600, NJ 2014, 497
- Van den Bos v Provincial Insurance Company Limited Dutch Supreme Court 29 September
1995, ECLI:NL:HR:1995:ZC1827, NJ 1996, 89
- Van der Gun v Farmex Dutch Supreme Court 22 May 1981, ECLI:NL:PHR:1981:AG4192,
NJ 1982, 59
- Van der Leest v Gemeente Veghel Dutch Supreme Court 4 September 2008, ECLI:NL:HR:
2008:BD3127, NJ 2010, 272
- Van Genk v De Wild Dutch Supreme Court 21 June 1996, ECLI:NL:HR:1996:ZC2107,
NJ 1997, 327
- Van Oosterom v Majoor Dutch Supreme Court 16 January 1981, ECLI:NL:PHR:1981:
AG4132, NJ 1981, 426
- Verheijen Seed v Rijk Zwaan Dutch Supreme Court 23 Februari 1990, ECLI:NL:PHR:
1990:AD104, NJ 1990, 663
- Visser v Erven Kroon Dutch Supreme Court 12 November 1999, ECLI:NL:PHR:1999:
AA3369, NJ 2000, 67
- Vodafone v ETC Dutch Supreme Court 19 October 2007, ECLI:NL:HR:2007:BA7024,
NJ 2007, 565
- Vogelaar v Skil Dutch Supreme Court 31 May 1991, ECLI:NL:HR:1991:ZC0255,
NJ 1991, 647
- VSH v Shell Dutch Supreme Court 23 October 1987, ECLI:NL:PHR:1987:AD0018,
NJ 1988, 1017

X v Bell Microproducts Dutch Supreme Court 27 April 2012, ECLI:NL:HR:2012:BV1299,
NJ 2012, 294

Singapore

Abdul Jalil bin Ahmad bin Talib and others v A Formation Construction Pte Ltd [2006]
4 SLR(R) 778 (SGHC)

Adani Wilmar Ltd v Cooperative Centrale Raiffeisen-Boerenleenbank BA (“Rabobank
Nederland”) [2002] 2 SLR (R) 216

Alliance Concrete Singapore Pte Ltd v Sato Kogyo (S) Pte Ltd [2014] SGCA 35

Allplus Holdings Pte Ltd and others v Phoon Wui Nyen (Pan Weiyuan) [2016] SGHC 144

Bakery Mart Pte Ltd (in receivership) v Sincere Watch Ltd [2003] 3 SLR(R) 462 (SGCA)

Bankers & Traders Insurance Co Ltd v Insurance Services [1968–1970] SLR (R) 360

Bocotra Construction Pte Ltd and others v Attorney-General [1995] SGCA 51, (1995)
2 SLR(R) 282

British and Malayan Trustees Ltd v Sindo Realty Pte Ltd (in liquidation) and other actions
[1998] SGHC 92, (1998) 1 SLR(R) 903

Chew Ai Hua Sandra v Woo Kah Wai and another (Chesney Real Estate Pte Ltd, third
party) [2013] SGHC 120, (2013) 3 SLR 1088

Chia Ee Lin Evelyn v Teh Guek Ngor Engelin née Tan [2004] 4 SLR (R) 330 (SGHC)

Chiang Hong (Pte) Ltd v Ong Boon Pok Realty (Pte) Ltd [1983–1984] SLR (R) 481 (SGCA)

China resources (S) Pte Ltd v Magenta Resources (S) Pte Ltd [1997] (1997) 1 SLR (R) 103
(SGCA)

Chng Weng Wah v Goh Bak Heng [2016] SGCA 9, (2016) 2 SLR 464

Chua Chay Lee v Premier Properties Pte Ltd [2002] 2 SLR(R) 464 (SGCA)

Chua Kim Leng (Cai Jinling) v Philip Securities Pte Ltd [2006] SGHC 221

Chua Kwok Fun Kevin and another v Etions Management Consultants Pte Ltd and others
[1999] SGHC 84, (1999) 1 SLR(R) 1088

Chuan Hiap Seng (1979) Pte Ltd v Progress Manufacturing Pte Ltd [1995] SGHC 17, (2015)
1 SLR(R) 122

Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd [1992] SGCA 35, (1992)
2 SLR(R) 1

Chung Khiaw Bank Ltd v Bajaj Textiles Ltd [1968–1970] SLR(R) 78 (SGGC)

Chwee Kin Keong v Digilandmall.com Pte Ltd [2004] SGHC 71, (2004) 2 SLR(R) 594

Chwee Kin Keong v Digilandmall.com Pte Ltd [2005] SGCA 2, (2005) 1 SLR(R) 502

CIFG Special Assets Capital I Ltd v Polimet Pte Ltd [2017] SGHC 22

CLAAS Medical Centre Pte Ltd v Ng Boon Ching [2010] SGCA 3, (2010) 2 SLR 386

Coastland Properties Pte Ltd v Lin Geok Choo [1999] SGHC 293

Computer-Aided Design (Asia) Pte Ltd v Sime Darby Singapore Ltd t/a Sime Darby Systems
[1993] SGHC 195

*ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS,
SINGAPORE AND CHINA*

- Cooperative Centrale Raiffeisen-Boerenleenbank BA (Trading as Rabobank International),
Singapore Branch v Motorola Electronics Pte Ltd [2011] 2 SLR 63 (SGCA)
- Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd [2009] 4 SLR(R) 769
- De Beers Jewellery Pte Ltd [2002] 1 SLR (R) 418
- Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal [2014]
3 SLR 277
- EC Investment Holding Pte Ltd v Ridout Residence Pte Ltd & Anor (Orion Oil Limited
& Anor, Intervenors) [2010] SGHC 270
- EC Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others and another appeal
[2012] SGCA 50, (2012) 1 SLR 32
- eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd [2013] 2 SLR 1200
- Excelsior Hotel Pte Ltd v Hiap Bee (Singapore) Pte Ltd (OCBC Finance (Singapore) Ltd,
intervener) [1989] SGHC 84, (1989) 2 SLR(R) 322
- Export Services Singapore Pte Ltd v Idemitsu Chemicals Southeast Asia Pte Ltd [1998]
1 SLR 93
- Federal Computer Services Sdn Bhd v Ang Jee Hai Eric [1991] 2 SLR(R) 427
- Foo Jong Peng and others v Phua Kiah Mai and another [2012] SGCA 55
- Foo Song Mee v Ho Kian Seng [2011] SGCA 45
- Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd [2006] 1 SLR(R) 927
- Fujifilm (Singapore) Pte Ltd (Formerly Known As Fuji Photo Film (Singapore) Pte Ltd)
v Ultimate Packaging Pte Ltd [2012] SGDC 468
- Gay Choon Ing v Loh Sze Ti Terence Peter [2009] 2 SLR(R) 332
- Glahe International Expo AG v ACS Computer Pte Ltd [1998] 2 SLR(R) 764 (SGHC)
- Glahe International Expo AG v ACS Computer Pte Ltd [1999] 1 SLR (R) 945 (SGCA)
- Goh Guan v AspenTech, Inc [2009] 3 SLR(R) 590
- Gold Coin Ltd v Tay Kim Wee [1985–1986] SLR(R) 575
- Govindaraju and another v Ganasesan and another [1994] SGCA 125, (1994) 3 SLR(R) 815
- Grossner Jens v Raffles Holdings Ltd [2004] 1 SLR (R) 202
- Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA [2003] 1 SLR(R) 157
- Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna [2016] SGCA 19,
(2016) 2 SLR 1083
- Ho Seng Lee Construction Pte Ltd v Nian Chuan Construction Pte Ltd [2001] 2 SLR(R) 184
- Holcim (Singapore) Pte Ltd v Precise Development Pte Ltd [2011] SGCA 1 (2011) 2 SLR 106
- Holiday Inns Inc v Hotel Enterprises Ltd [1975–1977] SLR 336 (SGHC)
- Hon Chin Kong v Yip Fook Mun [2017] SGHC 286
- Hong Leong Finance Ltd v Tan Gin Huay, [1999] SGCA 1, (1999) SLR(R) 755
- HSBC Institutional Trust Services Ltd v Toshin Development Singapore Pte Ltd [2012]
SGCA 48, (2012) 4 SLR 738
- Indian Overseas Bank v Cheng Lai Geok [1991] 2 SLR (R) 574 (SGHC)

- Indian Overseas Bank v Cheng Lai Geok [1993] 1 SLR (R) 32 (SGCA)
Indulge Food Pte Ltd v Torabi Marashi Bahram [2010] 2 SLR 540 (SGHC)
iTronic Holdings Pte Ltd v Tan Swee Leon [2016] SGHC 77
Kajima Overseas Asia Pte Ltd v Glenn Industries Pty Ltd [1997] SGHC 11
Koh Lin Yee v Terrestrial Pte Ltd [2015] SGCA 6
Kong Swee Eng v Rolles Rudolf Jurgen August [2011] SGHC 300, (2010) 1 SLR 873
Lee Chee Wei v Tan Hor Peow Victor [2006] SGHC 116
Lee Chee Wei v Tan Hor Peow Victor and others and another appeal [2007] SGCA 22,
(2007) 3 SLR(R) 537
Lee Cheng Kang and another v Lee Tian Kai [1996] SGCA 4, (1996) 1 SLR(R) 87
Lee Christina v Lee Eunice and another (executors of the estate of Lee Teck Soon, deceased)
[1993] SGCA 56, (1993) 2 SLR(R) 644
Lee Seng Heng and others v Guardian Assurance Co Ltd [1932] SLR 110
Lim Beng Cheng v Lim Ngee Sing [2016] SGHC 282, (2015) SLR 524
Lim Check Meng v Orchard Credit Pte Ltd [1997] 3 SLR 795
Lim Kim Som v Sherriffa Taibah [1994] 1 SLR(R) 233 (SGCH)
Lim Xue Shan v Ong Kim Cheong [1990] 2 SLR(R) 102
Loh Wee Tin v Transvic Investment Pte Ltd [1995] 2 SLR (R) 251
Magenta Resources (S) Pte Ltd v China Resources (S) Pte Ltd [1996] 2 SLR (R) 316 (SGHC)
Management Corporation Strata Title Plan No 1166 v Chubb Singapore Pte Ltd [1999]
SGHC 192, (1999) 2 SLR(R) 1035
Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd [2002]
1 SLR (R) 418
Meng Leong Development Pte Ltd v Jip Hong Trading Co Pte Ltd [1983-1984] SGCA 24,
(1984) 6 SLR (R) 668
Metropolitan Electric Supply Co Ltd v Ginder [1901] 2 Ch 799
MP Bilt Pte Ltd v Edy Yumianto [1999] 2 SLR(R) 655
MP Bilt Pte Ltd v Oey Widarto [1999] 1 SLR (R) 908 (SGHC)
New Dennis Arthur & Anor v Greesh Ghai Monty & Anor [2012] SGHC 122
Ng Giap Hon v Westcomb Securities Pte Ltd [2009] 3 SLR (R) 518
Ng Lay Choo Marion v Lok Lai Oi [1995] SGCA 67, (1995) 3 SLR(R) 77
Norwest Holdings Pte Ltd (in liquidation) v Newport Mining Ltd [2010] 3 SLR 956 (SGHC)
Ong Chay Tong & Sons (Pte) Ltd v Ong Hoo Eng [2009] 1 SLR(R) 305 SGCA
Orchard Twelve Investments Pte Ltd v Golden Bay Realty Pte Ltd [1985–1986] SLR(R) 723
Oversea-Chinese Banking Corp Ltd v Daewoo Singapore Pte Ltd and another [2000]
SGHC 104
Overseas Union Insurance Ltd v Turegum Insurance Co [2001] 3 SLR 330 SGHC
Philips Hong Kong Limited v The Attorney General of Hong Kong [1993] 1 HKLR 296
Phoenix Heights Estate (Pte) Ltd v Lee Kay Guan [1981–1982] SLR(R) 484

*ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS,
SINGAPORE AND CHINA*

Premier Properties Pte Ltd v Tan Soo Tiong & ors [2000] SGHC 12
Pub 1997 Pte Ltd v Scorpion [1994] 1 SLR(R) 437
R1 International Pte Ltd v Lonstroff AG [2014] SGCA 56, (2015) 1 SLR 521
Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim [2007] 2 SLR(R) 655
Rainforest Trading Ltd v State Bank of India Singapore [2012] 2 SLR 713
RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd [2007] 4 SLR (R) 413 (SGCA)
Re Estate of Tan Kow Quee [2007] 2 SLR(R) 417
Regina v Willans [1858] 3 Ky 16
Robert Chua Teck Chew v Goh Eng Wah [2009] SGCA 40
SAL Industrial Leasing Ltd v Teck Koon (Motor) Trading [1998] 1 SLR(R) 501 (SGCA)
Seraya Energy Pte Ltd v Denka Advantech Pte Ltd and another suit (YTL PowerSeraya
Pte Ltd, third party) [2019] SGHC 2
Simgood v MLC Shipbuilding [2015] SGHC 303
Straits Advisors Pte Ltd v Behringer Holdings (Pte) Ltd [2010] 1 SLR 760
Sun Qi v Syscon Pte Ltd [2013] SGHC 38
Sunny Daisy Ltd WBG Network (Singapore) Pte Ltd [2006] SGHC 130
T2 Networks Pte Ltd v Nasioncom v Nasioncom Sdn Bhd [2008] 2 SLR (R) 1
Tay Ah Poon and another v Chionh Hai Guan and another [1997] 1 SLR (R) 596 (SGCA)
Tay Joo Sing v Ku Yu Sang [1994] SGCA 45, (1994) 1 SLR(R) 765
TeH Guek Ngor Engelin née Tan v Chia Ee Lin Evelyn [2005] 3 SLR (R) 22 (SGCA)
The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd [2015] SGCA 21, (2015) 3 SLR 695
The Vishva Apurva [1992] 1 SLR(R) 912
Toh Tiong Huat v PM Gunasaykaran [1995] 3 SLR(R) 627
Tomongo Shipping Co Ltd v Heng Holdings SEA (Pte) Ltd [1997] 1 SLR(R) 263 (SGHC)
WBG Network (S) Pte Ltd v Sunny Daisy Ltd [2007] SGCA 1, (2007) 1 SLR(R) 1133
Win Supreme Investment (S) Pte Ltd Joharah bte Abdul Wahab [1996] 3 SLR (R) 583
Wong Lai Keen v Allgreen Properties Ltd [2009] 1 SLR (R) 148
Xia Zhengyan v Geng Changqing [2015] 3 SLR 732
Yeo Long Seng v Lucky Park (Pte) Ltd [1968–1970] SGHC 20, (1970) SLR(R) 859
Yeoh Wee Liat v Wong Lock Chee and another suit [2013] SGHC 153, (2013) 4 SLR 508
Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd
[2008] SGCA 27, (2008) 3 SLR(R) 1029

Other jurisdictions and arbitration

Austria: Oberster Gerichtshof nr 5, 21 June 2005 Ob 45/05m

Australia: Castel Electronics Pty v Toshiba Singapore Pte Ltd (2010) FCA 1028

Canada: Bhasin v Hrynew [2014] SCC 71

England and Wales: Abbot v Blair [1860] 8 WR 672

AG of Bengal v Ranee Surnomoye Dossee [1863] 15 E.R. 811

- Associated Japanese Bank (International) Ltd v Crédit du Nord SA [1989] 1 WLR 255
Bankers Trust Co v PT Jakarta International Hotels & Development [1999] 1 Lloyds's Rep 910
Bell v Lever Brothers Ltd [1932] AC 161
Beswick v Beswick [1968] AC 58, (1967) 2 All ER 1197 (HL)
British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Rlys Co of London Ltd [1912] AC 673
Cassell & Co Ltd v Broome [1972] AC 1027
Cavendish Square Holding BV v Makdessi [2016] AC 1172
Chartbook Ltd v Persimmon Homes Ltd [2009] 1 AC 1101
Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1997] 2 WLR 898
Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1998] AC 1, (1997) 3 All ER 297
Couturier v Hastie [1856] 5 HL Cas 673, 10 E.R. 1065
Cud v Rutter [1720] 1 P Wms 570, 24 E.R. 521
Dent v Bennett [1839] 41 E.R. 105
Dickson v Dodds [1876] 2 Ch D 463
Douglas v Sidmouth Rly & Harbour Co [1866] 14 WR 361
Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd [1915] AC 79
Eastwood v Kenyon [1840] 113 E.R. 482
Foley v Classique Coaches Ltd [1934] 2 KB 1
GPP Big Field LLP v Solar EPC Solutions SL [2018] EWHC 2866
Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd [2003] QB 679
Hill v CA Parsons Ltd [1971] 3 All ER 1345
Hilton v Tucker (1888) 39 Ch.D. 669
Howard E Perry v British Rly Board [1980] 1 WLR 1375
Johnson v Agnew [1980] AC 367
London Borough of Southwark v IBM UK Ltd [2011] EWHC 549
Marks & Spencer plc BNP Paribas [2015] UKSC 72
Mountford v Scott [1975] 1 All ER 198
Photo Production Ltd v Securicor Transport Ltd [1980] AC 848 (HL)
Quadrant Visual Communications Ltd v Hutchison Telephone (UK) Ltd [1993] BCLC 422
Rainbow Estates Ltd v Tokenhold Ltd [1999] Ch 64, (1998) 2 All ER 860
Routledge v Grant [1828] 4 Bing 653
Ryan v Mutual Tontine Westminster Chambers Association [1893] 1 Ch 116
Scott v Corp of Liverpool [1885] 1 Giff 216, 65 E.R. 851
Scott v Corp of Liverpool [1885] 3 De G & J 334, 44 E.R. 1297
Sky Petroleum Ltd v V.I.P. Petroleum Ltd [1974] 1 WLR 576
Smiths v Hughes [1871] LR 6 QB 597

*ENFORCED PERFORMANCE OF COMMERCIAL SALES CONTRACTS IN THE NETHERLANDS,
SINGAPORE AND CHINA*

St Albans City and District Council v International Computers Ltd [1996] 4 All ER 481
Strangborough and Warner's Case [1589] 4 Leo. 3; 74 E.R. 686

Taylor v Caldwell [1863] 3 B & S 826

Tito v Waddell (No 2) [1977] Ch 106 [1977] 3 All ER 129

Tsakiroglou & Co Ltd v Noblee Thorl Gmbh (1960) 2 QB 318

Wellmix Organics (International) Pte Ltd v Lau Yu Man, [2006] 2 SLR(R) 117

White and Carter (Councils) Ltd v McGregor [1962] AC 413 (HL)

Wilson v Northampton and Banbury Junction Rly Co [1874] 9 Ch App 279

Germany: Landgericht München nr 8, 8 February 1995 HKO 24667/93

Oberlandesgericht Koblenz nr 2 ,17 September 1993 U 1230/91

Oberlandesgericht München nr 23, 22 September 1995 U 3750

Schiedsgericht der Handelskammer, Hamburg, 21 March 1996, <<http://www.unilex.info/case.cfm?id=195>>

Malaysia: Chop Ngoh Seng v Esmail And Ahmad Bros [1948] 2 MLJ 93

Hock Hin & Co v Allwie & Co Ltd [1961] MLJ 232

Koek Tiang Kung v Antara Bumi Sdn Bhd [2005] 4 MLJ 525

MN Guha Majumder v RE Donoughare [1974] 2 MLJ 114

Spain: Tribunal Supremo 1 Juli 2013 <<http://www.unilex.info/case.cfm?id=1823>>

United States: Stephan's Machine & Tool Inc v D&H Machinery Consultants Inc [1979]

Ohio Ct App 417 NE2d 579

Switzerland: Handelsgericht St. Gallen 5 December 1995, HG 45/1994 <www.unilex.info/case.cfm?id=190>

Arbitration: ICC Arbitration Case n 8128 (1995) <<http://www.unilex.info/case.cfm?id=207>>

ICC Arbitration Case n 8611 (1997) (Industrial equipment case) <<http://cisgw3.law.pace.edu/cases/978611i1.html>>

TABLE OF FIGURES

Figure 1 Relationship between the unification instruments and the three subject legal systems	7
Figure 2 The concept of a sales contract and sale	46
Figure 3 Goods perishing before making the contract / Goods perishing before sale but after conclusion of the contract	47
Figure 4 The rules governing the exchange of performances by commercial parties	51
Figure 5 Goods subject to sales law	57
Figure 6 Offers (subject to the CISG) which do not stipulate the purchase price nor encompasses a mechanism to determine the purchase price	72
Figure 7 Binding effect of offer and acceptance in light of the revocability of an offer	85
Figure 8 Principles for determining the intention and understanding of parties	96
Figure 9 Historical underpinnings of enforced performance in the Netherlands	108
Figure 10 Historical underpinnings of specific remedies in Singapore	119
Figure 11 Historical underpinnings of the right to demand continuance of performance in China	131
Figure 12 Example of the complex nature of determining the enforceability of the obligation to pay the price in a commercial context	149
Figure 13 Operative effect of the rules on enforced performance of non-monetary obligation	182
Figure 14 Different forms of legal delivery	202
Figure 15 Exemptions from enforced performance	289
Figure 16 Action for the actual delivery of the goods as stipulated in the contract	338
Figure 17 Enforceability of penalty clauses	354