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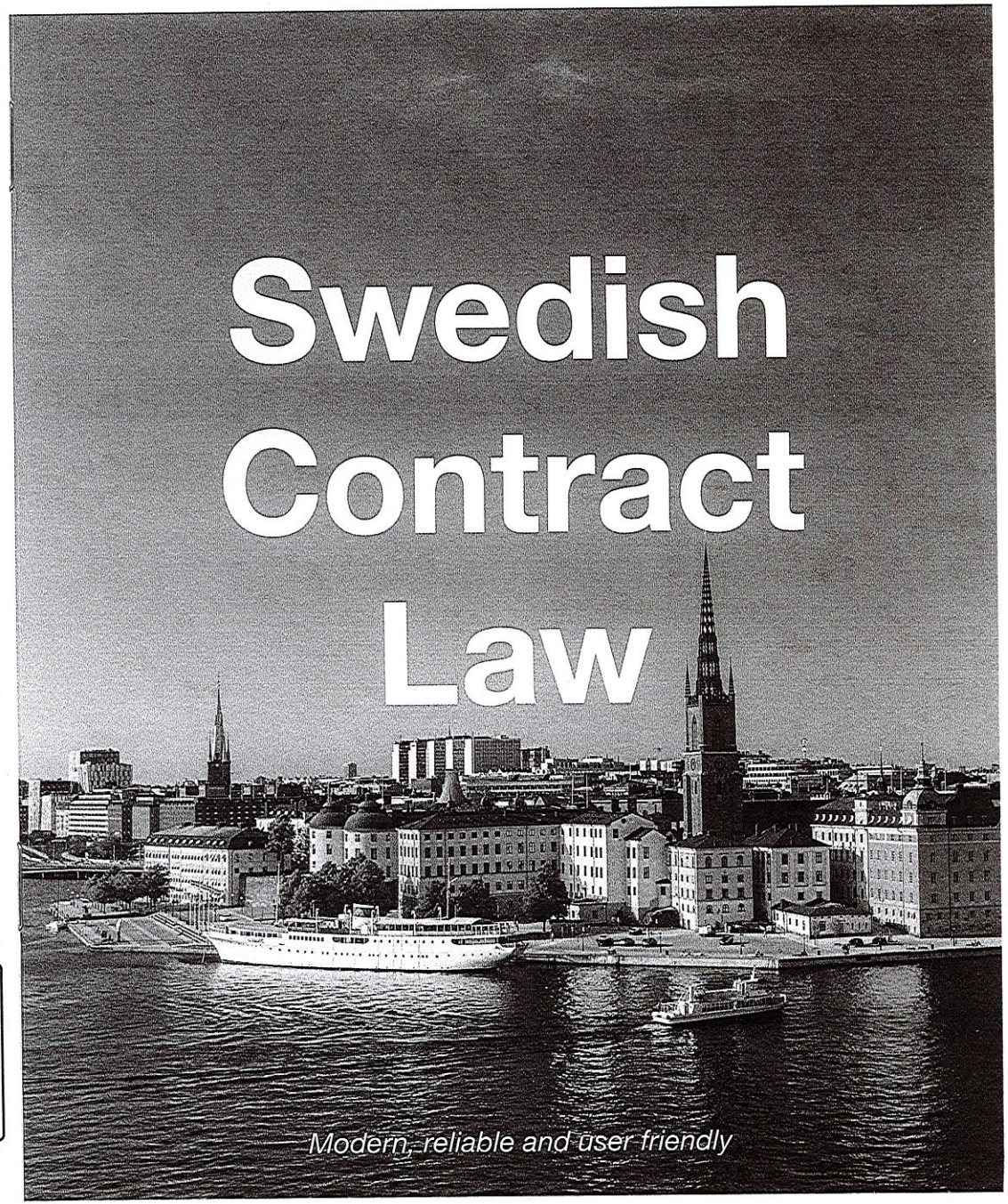


1. Introduction

Swedish law possesses features from both civil and common law traditions and provides a predictable and transparent legal system, which is very well-suited for international commerce. Sweden, being a country that heavily depends on export, has also traditionally been a front runner in international cooperation. Thus, Sweden has ratified and implemented a number of international conventions and treaties, which influence Swedish contract law. In addition, being a member of the EU, a substantial part of Swedish legislation also derives either directly or indirectly from European directives and regulations.

2. Legal sources

Unlike the traditional civil law systems, Swedish contract law does not contain a unified code for contractual rights and obligations. Instead, provisions relating to contract law may be found in different legislative acts. First among these is the Contracts Act. However, the provisions of the Contracts Act do not cover all features of Swedish contract law. Some of the other statutes that include relevant provisions are the International Sale of Goods Act (which incorporates the CISG into Swedish law), the Sale of Goods Act (largely based on CISG, although with some significant differences), the Commission Agency Act and the Commercial Agency Act.

Swedish law derives its content from primarily four sources:

(i) statutes;

(ii) court decisions;

(iii) preparatory works (government bills and white papers); and

(iv) legal literature.

In particular, the significance of legislative preparatory works, and their importance hereof for the content of Swedish law, leads to increased predictability of how the courts will apply specific legislative provisions. Swedish courts seek the legislature's 'intention' behind a statute, and the underlying preparatory works are therefore considered to be an important legal source.

Case law from the Swedish Supreme Court (and some decisions from the appellate courts) constitute important sources for some aspects of contract and commercial law. Legal literature is also recognised as a source of law in Sweden. Consequently, a well-reasoned opinion of a distinguished scholar may serve as a basis for the solution of a legal problem. Some recent decisions of the Swedish Supreme Court also indicate that, in the absence of any other Swedish legal sources, the Draft Frame of Common Reference ('DFCR'), which sets out principles, definitions and model rules of European private law, as well as the UNIDROIT Principles on International Commercial Contracts 2010 ('UNIDROIT') may be referred to as reflecting the legal situation in Sweden.

3. The fundaments of Swedish contract law

Although Swedish contract law is formed by various sources, the fundamental principles on which it is ultimately based are:

- Party autonomy; and
- Pacta sunt servanda (i.e. agreements must be kept)

Thus, the 'freedom of contract' is greatly respected in Swedish contract law and the agreement between the parties is the starting point in any commercial dispute.

Another key element of Swedish contract law is the overall lack of formal requirements. In essence, written contracts are only mandatory for very specific purposes (the purchase of real estate being the primary example). In the overwhelming majority of cases, there are no requirements for written form or otherwise. From a practical point of view, written agreements are nevertheless the standard for commercial activity. Even if oral agreements enjoy the same legal protection as written ones, it is often of vital importance not least for evidentiary purposes to agree on terms and conditions in writing.

4. Formation of contracts

4.1 The Contracts Act – the model of 'offer and acceptance'

The Swedish Contracts Act is comprised of four chapters:

(i) Formation of contract;

(ii) Agency;

(iii) Invalidity; and

(iv) General Provisions.

The first part of the Contracts Act sets out under what circumstances an agreement is formed and is based on the model of 'offer and acceptance'. In essence, the 'offer and acceptance' model provides that an offer, which is not explicitly limited to a certain time or by other prerequisites, is binding for the party making the offer should it be accepted by the counterparty and this acceptance is communicated in a timely manner and without any changes or additions to the offer. The offer will have to be accepted within a certain, reasonable time in order to bind the offeror. In today's modern society, where communication is becoming increasingly fast, the reasonable time frame for accepting an offer can be quite short. If the acceptance is untimely, it may be treated as a new offer, which the original offeror can accept or dismiss.

4.2 Formation of contracts in other ways

The 'offer and acceptance' model described above is not mandatory law and contracts can be formed in other ways.

If it is possible to establish that the true intention of two or more parties at a particular time was to enter into an agreement on specific terms and conditions, then such an agreement has been formed. Party autonomy and the parties' true intentions are the cornerstones of Swedish contract law and will most often form the key elements when it comes to establishing whether a binding agreement has been made or not.

The challenge for a party claiming that a contract has been formed is to prove this assertion. As a general rule, the burden of proof will fall on the party making the assertion to show that the parties' joint intention, at a particular time, was to enter into an agreement. In the absence of a written contract or other documentary evidence, that burden of proof may be difficult to meet.

4.3 Contracts formed through conduct

It is well-established under Swedish contract law that the conduct of a party can also give rise to the formation of a binding agreement between the respective parties, as well as to alterations of an existing contract. If the parties have acted in such a way that it appears that their joint intention and understanding was to enter into a contractual relationship, then a valid and binding agreement will be deemed to be in place.

In other words, when there is a 'meeting of minds' with respect to rights and obligations, there is an agreement. Needless to say, the party claiming that a contract was reached at a certain point bears the burden of proof.

The concept that a contract can be established by conduct is not regulated by statute. Instead, this serves as a good example of a principle developed by the courts and thereby included into Swedish contract law. Furthermore, it also serves as a good example of the importance granted to party autonomy. As no formal requirements will generally need to be met, the parties' true intentions at a specific time, as those intentions may be evidenced, will govern the interpretation and classification of their relationship.

4.4 Business customs and party practice

Business customs and party practice are concepts which are applied under Swedish contract law. Primarily, such concepts are referred to by parties in order to support the interpretation of an existing agreement. However, if it can be shown that, for example, within a certain business sector, agreements are reached in a specific way, such customs may also influence the analysis of whether or not a contract has been concluded under the circumstances at hand.

4.5 Summary on formation of contracts

Under Swedish contract law all circumstances related to a specific situation should be considered in order to establish whether or not a contract has been formed. The lack of formal requirements, the principle of freedom of contract and the weight given to party intention are cornerstones when assessing whether an agreement has been made or not. If the true party intention is proven, such party intention will thus be respected by the law, making it very difficult to circumvent an agreement on formalistic grounds.

5. Pre-contractual obligations

5.1 General liability at the pre-contractual stage

In principle, a party may enter into and end negotiations freely and at any time it may chose. Damages for so called 'pure economic loss' (i.e. a loss not occasioned by personal injury or damage to property) are also, as a general rule, only available in contractual relations (unless caused by a criminal act). Thus, damages covering 'pure economic loss' will rarely be awarded in tort or other non-contractual situations. Accordingly, costs incurred for negotiations

at a pre-contractual stage, which become useless because no contract is concluded, are, from a principal point of view, a risk which each party needs to bear.

However, under specific circumstances, when a party wilfully or negligently deceives a counterparty at the pre-contractual stage, liability for damages may occur under Swedish law (culpa in contrahendo and/or dolus in contrahendo, i.e. negligent or wilful misconduct during negotiations). A claimant, however, not only has to prove the actions taken in bad faith by the counterparty but also has to prove the damages resulting from such actions. Those damages will further be limited to the so called 'negative interest', i.e. the cost, loss and expense which could have been avoided but for the bad faith behaviour, and will not cover the potential profit that could have been derived from the contract had it been concluded in good faith. In practice, this will typically limit the scope for damages to the costs of continuing negotiations beyond the point where there was no genuine intention by the party thus acting in bad faith to actually enter into a contract.

The concepts of culpa in contrahendo and/or dolus in contrahendo are not dealt with in statute. Instead, the application of these principles has been established through Supreme Court jurisprudence.

5.2 Letters of intent and similar pre-contractual documents

Letters of intent and other pre-contractual documents are not specifically regulated in Swedish law. The legal consequences of such documents depend entirely on their actual wording and surrounding circumstances. Consequently, if a letter of intent includes specific rights and obligations which may be deemed breached, it may be considered to be a contract and the breaching party may be held liable for costs and losses of the other party caused by such breach.

If, on the other hand, the letter of intent does not include any specific, binding rights and obligations and, thus, cannot be considered a contract, it will hold no value other than perhaps as evidence to determine the parties' intentions at a certain point in time.

6. Interpretation of contracts

6.1 Common intention of the parties

The starting point for the interpretation of a contract under Swedish law is to seek the common intention of the parties at the time the contract was made. From a theoretical point of view, even the most unambiguous wording in a written agreement may thus be disregarded, if it can be proven that it does not accurately reflect the joint intention of the parties.

In practice, however, and particularly in commercial contracts, the burden of proof lies heavily on a party claiming that the wording of a contract does not reflect the true intention of the parties. A position which is clearly at odds with the wording of the contract will rarely be successful.

6.2 Other features of contract interpretation

Once a dispute has arisen, it will often be challenging from a practical point of view to determine the subjective intentions of the contracting parties. Consequently, Swedish contract law includes a number of methods and principles aimed at more objective contract interpretation. Notably, such methods and principles do not derive from legislation (other than what has been ratified through CISG, which may be referred to analogously even in situations where CISG is not formally applicable). Instead, precedents from courts and legal literature have played a crucial role in the development of the law in this area. The methods and principles, which have thus emerged over the past decades, largely reflect the views of the international legal community as set out in, for example, UNIDROIT and DCFR.

6.2.1 The wording of the agreement

As described above, the wording of a contract will be regarded as the primary evidence of the intention of the parties and a court will only disregard the clear wording of a contract if a party can offer very substantial evidence of a different intention. The Swedish Supreme Court has repeatedly declared that the wording as it may be understood 'in the context of a normal use of language' is the starting point for every contract interpretation.

6.2.2 When the wording is not enough

When the wording as such proves insufficient to determine the content of an agreement, it must be supplemented by an overall, objective assessment. In

making that assessment, the Supreme Court has established a number of factors to be taken into account, including (without any order of priority):

a) The nature, structure and overall purpose of the contract in question and, in particular, the specific clause(s) to which the dispute relates;

b) the parties' negotiations for the conclusion of the contract. If the wording of the contract is unclear, what transpired during the negotiations may be relevant to consider as a means of interpretation. This is so even if the contract includes a so called 'entire-agreement clause';

c) the parties' actual conduct subsequent to the conclusion of the contract;

d) practices which the parties may have established between themselves in prior contractual dealings;

e) trade usages (to the extent any such sufficiently established usages exist and can be proven); and

f) reasonableness (common business sense)

7. Invalidity of contracts

Sections 28–33 of the Contracts Act deal with circumstances under which a contract may be deemed invalid.

7.1 Sections 28 to 31 – duress, fraud, deception and usury

Sections 28 and 29 of the Contracts Act describe the circumstances under which a person performing a legal act (such as entering into a contract) under duress, will not be bound by that act.

Section 30 of the Contracts Act deals with legal acts and their invalidity if the actions taken have been induced by fraud or through deception. In essence, section 30 provides that a party, acting in bad faith in relation to an agreement entered into as the result of fraud or deception, will not be able to rely on and enforce that agreement.

Section 31 of the Contracts Act constitutes a general provision against usury, and is an example of how Swedish legislation tries to protect a weak party from being exploited. The clause is often invoked in cases where a lender has demanded excessive interest rates for a loan.

7.2 Section 33 – 'honour and good faith'

Section 33 of the Contracts Act is a broadly worded provision, which has not been applied by the Swedish Supreme Court in modern times. If translated literally, it deals with the situation where the enforcement of an agreement, which would otherwise be binding, would go against 'honour and good faith' (Sw: 'tro och heder', based on the German law principle of Treu und Glauben).

Section 33 aims to cover situations where other, narrower rules cannot be applied, but where it would nevertheless 'be inequitable to enforce the legal act.' It is not uncommon that reference to this clause is made by respondents wishing to avoid an otherwise binding agreement - however, very rarely with any success.

7.3 The general clause - section 36 of the Contracts Act

Section 36 of the Contracts Act provides for the modification or setting aside of one or more individual terms in a contract if such term(s) are unconscionable considering the content of the contract, circumstances related to the formation of the contract, subsequent events or other circumstances. If the whole contract can be considered unconscionable, it may be set aside in full under section 36.

From a theoretical point of view, section 36 of the Contracts Act may be given a very broad application. It is therefore not uncommon for it to be argued by parties wishing to modify or set aside parts of an otherwise binding contract. However, as it primarily aims at consumer protection and other relations in which one party is inherently weaker than the other, it has rarely been applied to commercial contracts. In practice, the scope for applying section 36 of the Contracts Act is thus very limited and in the overwhelming majority of commercial cases it has been rejected in favour of the fundamental principle of pacta sunt servanda.

8. Termination of contracts

A contract may be terminated either for cause or without cause. Swedish contract law, being founded on party autonomy, will generally uphold clauses providing for the termination of a contract at a certain time or under certain circumstances. If the contract is silent in this respect, the following will, as a general rule, apply.

All contracts may be terminated for cause by a party if the other party commits a material breach of the contract. What may be considered 'material' in terms of a breach will have to be determined on a case-by-case basis. However, a breach of a party's primary obligations under a contract, such as the obligation of a buyer to pay for a good or a service, will typically be considered material. Unless otherwise agreed between the parties, there is no requirement that a party first be given an opportunity to remedy the material breach before a termination becomes effective.

Contracts concluded for an indefinite period of time may, unless otherwise agreed between the parties, be terminated without cause by one party giving the other party reasonable, advance notice. By contrast, contracts concluded for a specific term, or for a specific transaction (such as a sharepurchase agreement or other one-time sale of a good), may only be terminated for cause, unless otherwise agreed between the parties.

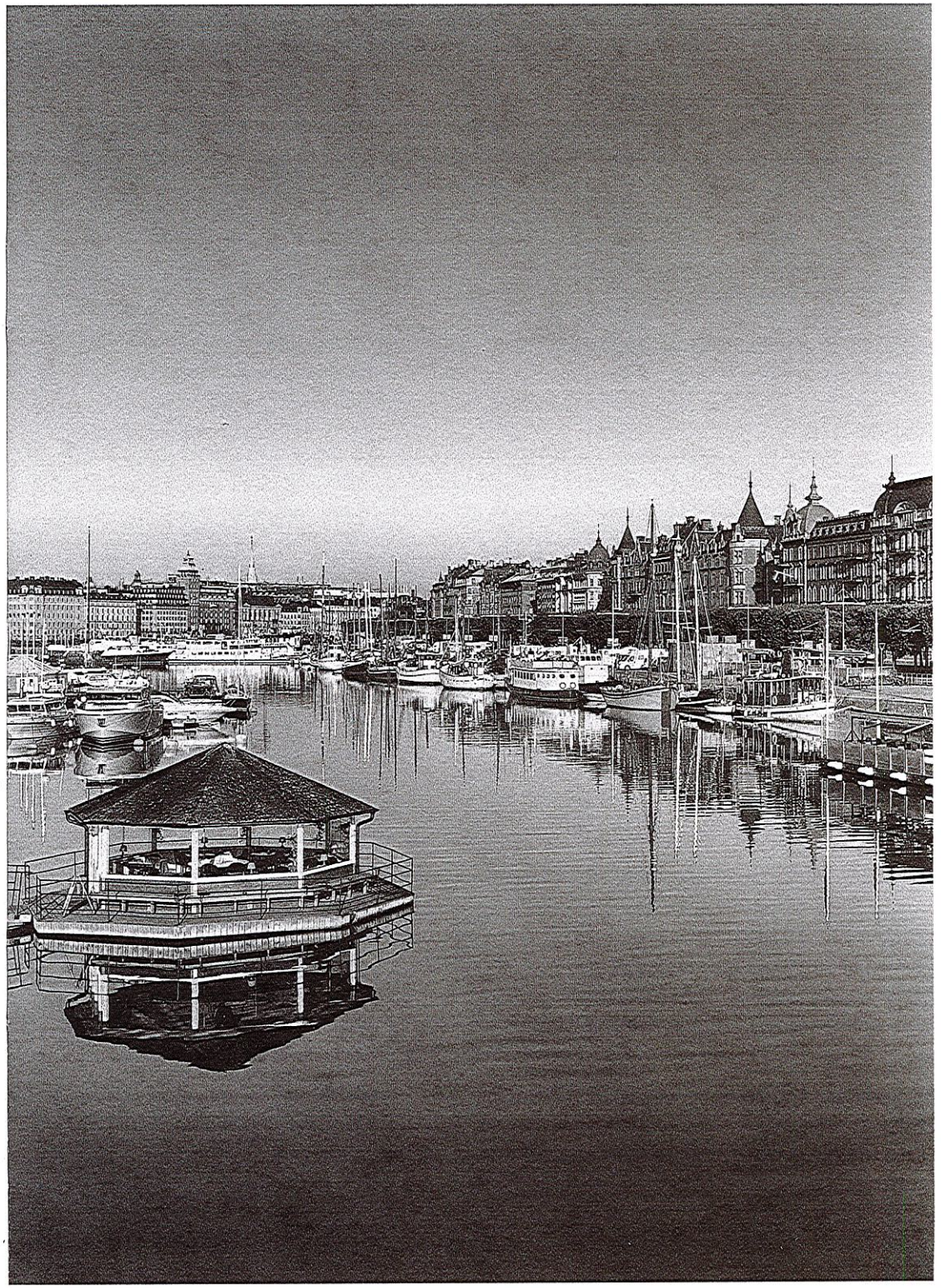
The termination of certain types of contracts is, however, covered by mandatory law. Such statutes have typically been adopted to protect an otherwise weaker party. Two examples of such statutes are the Commercial Agency Act and the Commission Agency Act. The termination of agency agreements takes into consideration, amongst other, the length of the relationship.

Terminations which are unlawful will typically be considered as a material breach of contract and may, in turn, entitle the other party to terminate the contract for cause and claim damages.

9. Consequences of breach of contract

In line with the fundamental principle of pacta sunt servanda, Swedish contract law provides that parties are required to act in accordance with their agreements. If a party does not, it will find itself in breach of contract. Remedies for breach of contract are provided for inter alia in the Sale of Goods Act. Although that act is only directly applicable to the sale of tangible goods, it is recognised as being reflective of general principles of Swedish contract law and may thus, at least in part, be applied by analogy also to other types of contracts.

A party wishing to hold the other party liable for breach of contract must generally notify the breaching party. Such a notice should be provided within a reasonable time from when the non-breaching party became aware, or



ought to have become aware, of the breach. Absent a timely notice, the non-breaching party may be precluded from relying on the breach. Passivity more generally can also have consequences under Swedish Contract Law.

9.1 Specific performance and price reduction

The primary remedy for a contractual breach under the Sale of Goods Act is specific performance. This remedy is of course only useful if it is practically possible for the breaching party to perform. If, for example, defective goods are delivered to a buyer, the seller may be required to remedy the breach by replacing or repairing the goods in question.

Besides being the primary remedy for the non-breaching party, specific performance also applies for the benefit of the breaching party. Thus, if practically possible, the party in breach should be given an opportunity to remedy its breach. If such a remedy is provided without delay, the non-breaching party will not be entitled to certain other remedies such as termination of the contract.

However, if the breaching party does not or cannot remedy its breach without undue delay, termination of the agreement becomes a possible action provided that the breach can be classified as material.

As an alternative to termination, the non-breaching party may be entitled to a price reduction corresponding to the difference in value of the good with and without the defect. That difference is then to be subtracted from the price agreed for the good. This remedy is often used when termination is not a viable option.

In addition to any other remedy available, the non-breaching party may also claim damages for costs, losses and expenses incurred as a result of the breach. Damages are available irrespective of whether the contract has been terminated.

9.2 Damages for breach of contract

As a general rule, Swedish contract law provides that a breaching party is obliged to compensate the non-breaching party so as to put the non-breaching party in the same economic position as it would have found itself in had it not been for the breach, i.e. as if the contract had instead been duly performed. This may include both direct and indirect losses, such as loss of profit, although liability for indirect losses is excluded in certain circumstances.

It does not matter if the breach was conducted wilfully or negligently. If a breach can be established, the breaching party will be liable. The amount of damages is typically established by comparing two economic scenarios - on the one hand, a hypothetical scenario where no breach is committed and the likely economic result of that scenario and, on the other hand, the actual scenario including the breach and its actual economic result.

In addition, there must be an established causal link between the breach of contract and the loss, cost or expense for which damages are sought. The damage incurred also needs to be a reasonably foreseeable consequence of the breach, i.e. it cannot be too remote.

The burden of proving the breach, the damage and the causal relationship between the two falls on the party claiming damages.

Swedish law generally provides for damages to be compensatory only, not punitive or exemplary. The non-breaching party should also not be compensated so as to end up in a better situation than if the breach had not occurred (under the principle compensatio lucri cum damno).

Finally, the non-breaching party is under a duty to mitigate its costs and losses due to the breach. To fulfil this duty the non-breaching party should generally take such measures as would be expected from a reasonable party not expecting to be compensated for its costs and losses.

Consistent with the principle of party autonomy, Swedish law will generally accept and uphold agreements providing for exclusion or limitation of liability. However, it is generally held that a party may not contractually exclude or limit its liability for damage caused by its own wilful misconduct or gross negligence.

9.3 Liquidated damages and contractual penalties

Swedish law does not distinguish between liquidated damages and penalties. Instead, parties are free to agree on the monetary consequences of a breach of contract and contractual provisions on liquidated damages and/or penalties are generally valid and enforceable under Swedish law (subject to the overall safeguard of unconscionability).