

## PART III. SALES OF GOODS

## CHAPTER I. GENERAL PROVISIONS

*Article 23*

## [Fundamental breach]

A breach committed by one of the parties is fundamental if it results in substantial detriment to the other party unless the party in breach did not foresee and had no reason to foresee such a result.

## PRIOR UNIFORM LAW

ULIS, article 10.

**Commentary**

1. Article 23 defines "fundamental breach".
2. The definition of fundamental breach is important because various remedies of buyer and seller,<sup>1</sup> as well as some aspects of the passing of the risk,<sup>2</sup> rest upon it.
3. The basic criterion for a breach to be fundamental is that "it results in substantial detriment to the [injured] party." The determination whether the injury is substantial must be made in the light of the circumstances of each case, e.g., the monetary value of the contract, the monetary harm caused by the breach, or the extent to which the breach interferes with other activities of the injured party.
4. Once this basic criterion is met, a criterion which looks to the harm suffered by the injured party, a breach is fundamental unless the party in breach can prove that he "did not foresee and had no reason to foresee such a result," i.e. the result which did occur. It should be noted that the party in breach does not escape liability merely by proving that he did not in fact foresee the result. He must also prove that he had no reason to foresee it.
5. Article 23 does not specify at what moment the party in breach should have foreseen the consequences of the breach, whether at the time the contract was concluded or at the time of the breach. In case of dispute, that decision must be made by the tribunal.

<sup>1</sup> See articles 42 (2), 44 (1), 45 (1) (a), 47 (2), 60 (1) (a), 63, 64 (1) and 64 (2).

<sup>2</sup> See article 82.