Chapter 16: The Sales Contract: Transfer of Title and Risk of Loss
Relevance of Title and Risk of Loss in Sales Law

• Title prevents the seller’s unpaid creditors from claiming goods when the title to those goods has passed to the buyer.

• Title also determines whether goods are the subject of a present sale or simply a contract to sell.
Title and Risk Triggering Lawsuits

• Most lawsuits involve situations in which:
  1. Goods are damaged, destroyed, or lost after the contract is made.
  2. Both the seller and the buyer claim they are not a fault.
Risk, Loss, and Title in the UCC

• UCC rules for shifting loss are more important than the rules for passing title.

• If either party has committed a breach of contract, the risk of loss under the UCC usually falls totally or in part on the party who committed the breach.
Present Sale vs. Contract to Sell

• Present sale: sale in which title to goods passes from seller to buyer at the time parties make the contract.

• Contract to sell: sale in which title to goods passes from seller to buyer at a future time.
Types of Goods

- Identified goods: exact goods being sold that have been decided on by seller and buyer.
- Future goods: goods not yet in existence and not yet identified.
- Fungible goods: a unit is the equivalent of any other unit.
## Risk of Loss in the Absence of Breach

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<th>CONTRACT TERMS</th>
<th>RISK OF LOSS PASSES TO BUYER</th>
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<td>On receipt (physical possession) of goods by the buyer</td>
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<td>• Delivery Without movement of goods</td>
<td>When goods are properly delivered to an independent (for-hire) carrier at the shipping point</td>
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<td>• Delivery with movement of goods</td>
<td>When goods are properly tendered (offered) to the buyer after reaching the destination point</td>
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<td>• Delivery to carrier only</td>
<td>When the buyer accepts goods in his or her possession by approval, whether by words or by conduct</td>
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<td>• Delivery to destination points</td>
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Delivery Without Movement of the Goods

• In this case, risk of loss passes upon the buyer’s receipt of the goods.
• Receipt requires taking the physical possession of the goods.
Delivery with Movement of the Goods—Carrier Cases

• FOB and other terms must be defined and agreed upon by all parties.

• The contract may require or authorize the seller to ship the goods by carrier in one of two ways:

  1. Shipment contracts.
  2. Destination contracts.
Shipment Contract

- Shipment contract: terms indicate that seller has risk until goods are given to the carrier for shipment to buyer.
Destination contract: indicates that seller has risk until goods are actually delivered to buyer’s location.
Sales on Approval or Return

• Sale on approval: transaction in which goods are delivered to buyer for trial purposes.

• Sale or return: present sale under which buyer may return goods after a set or reasonable time.
Sale on Approval

• The buyer is considered to have accepted the goods if one of the following occurs:
  1. Buyer signifies acceptance by saying ‘yes’ or performing some act such as making payment.
  2. Buyer keeps the goods beyond the specified time or beyond a reasonable time.
  3. Buyer subjects the goods to unreasonable usage inconsistent with the purpose of trial.
Sale or Return

• A sale or return is considered a present sale of goods; consequently, the buyer accepts title ownership and risk of loss immediately at the time of the sale.

• This type of sale under the UCC is made if the buyer purchases goods primarily for resale.
Bulk Sales

• Bulk sale: sale of all or a major part of a merchant’s stock of goods, fixtures, and equipment at one time.

• Article 6 of the UCC.
Sales or Leases by Nonowners

• Lack of title and authority to sell.

• Possession.

• Buyer’s ownership.
Sales or Leases by Nonowners

• Seller had void title.
• Seller had voidable title.
• Merchant was given temporary possession.
• Bill of sale: written proof of ownership of goods.
Merchant Was Given Temporary Possession

• Buyer in the ordinary course of business: one who purchases goods in good faith from a seller who normally deals in the goods.
Risk of Loss Where There is a Breach of Contract

- Breaching party is responsible.
- Nonconformity must be serious enough to allow the buyer to legally reject the tender (offer) of delivery.