

Transfer of Title and Risk of Loss

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- Common Law: Title controlled by all other issues
- UCC: Each issue treated separately

Seller's Obligation I

- Delivery
 - Tender of delivery: goods that conform to contract must be put at buyer's disposal
- Time of Delivery
 - Set by contract or reasonable time
 - Goods must be kept available to buyer; all goods at one time

Insurable Interest

- Party with title has insurable interest
- Party with security interest also has insurable interest
- Buyer has interest once goods have been identified
 - Selected/designated
 - Fungible Goods-share considered identified at time of contract

Title

- The parties may agree
- Otherwise, passage of title occurs upon completion of delivery
 - If there is no physical delivery, title passes with documents of title
 - If there is no delivery, and no document of title, title passes when the contract is made
 - If destination contract, delivery at buyer's location
 - If shipment contract, delivery occurs when carrier receives goods

Title and Third Parties

- A buyer takes only what the seller had
- A good faith purchaser for value can take good title even if transferor did not have good title
- Buyers in the ordinary course of business take free of security interests
- Entrusting of the goods to a merchant, who then sells goods to buyer in the ordinary course of business, will pass valid title

Risk of Loss

- Common Law: whoever had title took the risk of loss
- The terms of the agreement control, parties may provide that one or the other takes the risk, or that it is divided between them

Risk of Loss-Shipment Contracts

- FOB point of origin
 - Seller has risk until the goods are delivered to the point of origin
- FAS
 - Seller has risk until goods are delivered to ship
- CIF, C&F
 - Seller bears risk until goods are loaded
- Contracts generally presumed to be shipment

Risk of Loss-Destination Contracts

- FOB destination
 - Seller bears risk until goods reach destination and also bears cost of transportation
- Ex ship
 - Seller has risk until goods are unloaded
- No arrival, no sale

Risk: General Provisions

- On the seller until delivery if the seller is merchant
- On the seller until tender of delivery if the seller is not merchant
- Effect of breach of risk of loss:
 - If buyer has right to reject, the risk stays with seller until cure of defect
 - When buyer repudiates, risk is with buyer for commercially reasonable time

Sales on Trial

- Sale on Approval
 - Generally, risk stays with seller until buyer accepts goods
- Sale or Return
 - Same as sale
- Sale on Consignment
 - Treated same as sale or return, so risk is on buyer
