

Article 36

[Examination of the goods]

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redispach, examination may be deferred until after the goods have arrived at the new destination.

PRIOR UNIFORM LAW

ULIS, article 38.

Commentary

1. Article 36 describes the point of time when the buyer is obligated to examine the goods. The buyer's right to examine the goods prior to paying the price is considered in article 54 (3).

2. This article is prefatory to article 37, which provides that if the buyer fails to notify the seller of lack of conformity of the goods within a reasonable time after he has discovered it or ought to have discovered it, he loses the right to rely on the lack of conformity. The time when the buyer is obligated to examine the goods under article 36 constitutes the time when the buyer "ought to have discovered" the lack of conformity under article 37, unless the non-conformity is one which could not have been discovered by such examination.

3. The examination which this article requires the buyer to make is one which is reasonable in the circumstances. The buyer is normally not required to make an examination which would reveal every possible defect. That which is reasonable in the circumstances will be determined by the individual contract and by usage in the trade and will depend on such factors as the type of goods and the nature of the parties. For example, a party would not be expected to discover a lack of conformity of the goods if he neither had nor had available the necessary technical facilities and expertise, even though other buyers in a different situation might be expected to discover such a lack of conformity. Because of the international nature of the transaction, the determination of the type and scope of examination required should be made in the light of international usages.

4. Paragraph (1) states the basic rule that the buyer must examine the goods or cause them to be examined "within as short a period as is practicable in the circumstances". Paragraphs (2) and (3) state special applications of this rule for two particular situations.

5. Paragraph (2) provides that if the contract of sale involves the carriage of goods "examination may be deferred until after the goods have arrived at their destination". This rule is necessary because, even though delivery is effected when the goods are handed over to the first carrier for transmission to the buyer and even though risk of loss may also pass at that time,¹ the buyer is normally not in a physical position to examine the goods until they arrive at the destination.²

6. Paragraph (3) carries this thought one step further. Where the buyer redispaches the goods without a reasonable opportunity for examination by him, examination of the goods may be deferred until after the goods have arrived at the new destination. The typical situation in which the buyer will not have a reasonable opportunity to examine the goods prior to their redispach is where they are packed in such a manner that unpacking them for inspection prior to their arrival at the final destination is impractical. The redispach of the goods may be necessary because the buyer intends to use the goods himself at some place other than the place of destination of the contract of carriage, but more often it will arise because the buyer is a middleman who has resold the goods in quantities at least equal to the quantities in which they are packed.

7. The examination may be deferred until after the goods have arrived at the new destination only if the seller knew or ought to have known at the time the contract was concluded of the possibility of redispach. It is not necessary that the seller knew or ought to have known that the goods would be redispached, only that there was such a possibility.

¹ Articles 29 (a) and 79 (1). See paras. 3 to 8 of the commentary to article 79 for a discussion of the rules which determine when risk passes if the contract of sale involves carriage of the goods.

² See paragraph 6 of the commentary to article 54 for a discussion of the buyer's obligation to pay the price prior to examination of the goods.