

Buyer takes over the goods, paragraph (1)

2. Where the buyer takes over the goods at a place of business of the seller, the risk passes when he takes over the goods.

Buyer fails to take over the goods, paragraph (1)

3. If the buyer was obligated to take over the goods at a place of business of the seller and the seller placed the goods at the buyer's disposal but the buyer failed to take them over in due time, the risk passes when the buyer commits a breach of contract by failing to take them over.

Example 81A: Buyer was to take delivery of 100 cartons of transistors at Seller's warehouse during the month of July. On 1 July Seller marked 100 cartons with Buyer's name and placed them in the portion of the warehouse reserved for goods ready for pick-up or shipment. On 20 July Buyer took delivery of the 100 cartons. Therefore, the risk of loss passed to Buyer on 20 July at the moment that the goods were taken over by him.

Example 81B: In the contract described in example 81A Buyer did not take over the 100 cartons until 10 August. The risk of loss passed to him at the close of business on 31 July, the moment at which the Buyer was in breach of contract for failing to take delivery.

Example 81C: Although Seller in the contract described in example 81A should have had the 100 cartons ready for Buyer to take delivery at any time during the month of July, no cartons were marked with Buyer's name or otherwise identified to the contract until 15 September. Buyer took delivery on 20 September, which was within a reasonable time after he was notified of the availability of the goods. The risk of loss passed to Buyer on 20 September, the time when Buyer took delivery of the goods. This result occurs, rather than the result given in example 81B, because Buyer was not in breach of the contract for not taking delivery before 20 September.

Goods not at a place of business of seller, paragraph (2)

4. The considerations which go into determining the appropriate time for the passage of the risk are different when the goods are at a place other than any place of business of the seller. So long as the goods are in the physical possession of the seller and the last day of the period during which the buyer was obligated to take over the goods has not as yet passed, it is appropriate that the seller should bear the risk of loss. It is the seller who is in the best position to protect the goods from loss or damage and, if loss or damage occurs, to present claims against those who might have caused the loss or against the insurance carrier.

5. These considerations are no longer present when the goods are in the hands of a third party, such as a public warehouse. The seller is in no better position than the buyer to guard the goods against loss. Nor is the seller in any better position than the buyer to present claims against the third party, a person responsible for causing the loss or an insurance carrier, as the case may be.

6. The Convention chooses the rule that the risk passes to the buyer at the time the buyer is in a position to withdraw the goods from the control of the third party. That time is when delivery of the goods is due, the goods have been placed at the disposal of the buyer and he is aware that they have been placed at his disposal.

Placed at the disposal of the buyer

7. Goods are placed at the disposal of the buyer when the seller has done that which is necessary for the buyer to be able to take possession. Normally, this would include the identification of the goods to be delivered, the completion of any pre-delivery preparation, such as packing, to be done by the seller, and the giving of such notification to the buyer as would be necessary to enable him to take possession.

8. If the goods are in the possession of a bailee, such as a warehouseman or a carrier, they might be placed at the disposal of the buyer by such means as the seller's instructions to the bailee to hold the goods for the buyer or by the seller handing over to the buyer in appropriate form the documents which control the goods.

Article 81**[Passage of risk in other cases]**

(1) In cases not covered by articles 79 and 80 the risk passes to the buyer when the goods are taken over by him or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) If, however, the buyer is required to take over the goods at a place other than any place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to a sale of goods not then identified, the goods are deemed not to be placed at the disposal of the buyer until they have been clearly identified to the contract.

PRIOR UNIFORM LAW

ULIS, articles 97 and 98.

Commentary

1. Article 81 gives the general rule for passage of the risk of loss in those cases which do not fall within articles 79 and 80. In the cases governed by article 81 it is anticipated that the buyer will take possession of the goods and arrange for any necessary transport himself, either in his own vehicles or in public carriers.