

Article 75

[Buyer's obligation to preserve]

(1) If the goods have been received by the buyer and he intends to reject them, he must take such steps as are reasonable in the circumstances to preserve them. He may retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that he can do so without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination.

PRIOR UNIFORM LAW

ULIS, article 92.

Commentary

1. Article 75 sets forth the buyer's obligation to preserve goods which he intends to reject.

2. Paragraph (1) provides that if the goods have been received by the buyer and he intends to reject them, he must take reasonable steps to preserve them. The buyer may retain those goods until he has been reimbursed his reasonable expenses by the seller.

3. Paragraph (2) provides for the same result where goods which have been dispatched to the buyer have been placed at his disposal at their destination and he exercises his right to reject them.¹ However, since the goods are not in the buyer's physical possession at the time he exercises his right to reject them, it is not as clear that he should be required to take possession of them on behalf of the seller. Therefore, paragraph (2) specifies that the buyer need take possession only if "he can do so without payment of the price and without unreasonable inconvenience or unreasonable expense" and only if the seller or a person authorized to take charge of the goods for him is not present at the place of destination.

4. Paragraph (2) is applicable only if goods which have been dispatched to the buyer "have been placed at his disposal at their destination." Therefore, the buyer is obligated to take possession of the goods only if the goods have physically arrived at their destination prior to his rejection of them. He is not obligated to take possession of the goods under paragraph (2) if before the arrival of the goods he rejects the shipping documents because they indicate that the goods do not conform to the contract.

Example 75A: After the goods were received by Buyer he rejected them because of their failure to conform to the contract. Buyer is required by article 75 (1) to preserve the goods for the Seller.

Example 75B: The goods were shipped to Buyer by railroad. Prior to taking possession, Buyer found on examination of the goods that there was a fundamental breach of the contract in respect of their quality. Even though Buyer has the right to avoid the contract under article 45 (1) (a), by virtue of article 75 (2) he is obligated to take possession of the goods and to preserve them, provided that this may be done without payment of the price and without unreasonable inconvenience or unreasonable expense and provided that Seller or a person authorized to take possession on his behalf is not present at the place of destination.

Example 75C: The contract provided for delivery on CIF terms. When the bill of exchange was presented to Buyer, he dishonoured it because the accompanying documents were not in conformity with the contract of sale. In this example Buyer is not obligated to take possession of the goods for two reasons. If the goods have not arrived and been put at his disposal at the place of destination at the time Buyer dishonours the bill of exchange, the provisions of article 75 (2) do not apply at all. Even if article 75 (2) were to apply, because Buyer could take possession of the goods only by paying the bill of exchange, he would not be required by article 75 (2) to take possession and preserve the goods.²

¹ Para. (2) states that the buyer "must take possession of [the goods] on behalf of the seller". Once possession is taken, the obligation to preserve the goods arises out of para. (1).

² Compare example 74B.