

SECTION V. PRESERVATION OF THE GOODS

Article 74

[Seller's obligation to preserve]

If the buyer is in delay in taking delivery of the goods and the seller is either in possession of the goods or otherwise able to control their disposition, the seller 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 buyer.

PRIOR UNIFORM LAW

ULIS, article 91.

Commentary

If the buyer is in delay in taking delivery of the goods and the seller is in physical possession of the goods or is in a position to control the disposition of the goods which are in the possession of a third person, it is appropriate that the seller be required to take reasonable steps to preserve the goods for the benefit of the buyer. It is also appropriate that the seller "may retain [the goods] until he has been reimbursed his reasonable expenses by the buyer," as is provided in article 74.

Example 74A: The contract provided that Buyer was to take delivery of the goods¹ at the Seller's warehouse during the month of October. Seller made delivery on 1 October by placing the goods at Buyer's disposal.² On 1 November, the day when Buyer was in breach of his obligation to take delivery and the day on which the risk of loss passed to Buyer,³ Seller shifted the goods to a portion of the warehouse which was less appropriate for the storage of such goods. On 15 November Buyer took delivery of the goods at which time the goods were damaged because of the inadequacies of the portion of the warehouse to which they had been shifted. In spite of the fact that the risk of loss had passed to Buyer on 1 November, Seller is liable for the damage to the goods which occurred between 1 November and 15 November by reason of the breach of his obligation to preserve them.

Example 74B: The contract called for delivery on CIF terms. Buyer wrongfully dishonoured the bill of exchange when it was presented to him. As a result, the bill of lading and other documents relating to the goods were not handed over to the Buyer. Article 74 provides that in this case Seller, who is in a position to control the disposition of the goods through his possession of the bill of lading, is obligated to preserve the goods when they are discharged at the port of destination.⁴

¹ The buyer's obligation to take delivery is set forth in article 56.

² See article 29 (b) and 29 (c).

³ Article 81 (1).

⁴ Compare example 75 C.