



Topic 20: Risk of Loss with Sales of Goods

Eric E. Johnson

ericejohnson.com



Konomark
Most rights sharable

General Principles

- If the loss is caused by negligence, then the negligent party bears the risk of loss.
- After the title and possession pass to buyer, then (in general) the buyer then bears the risk of loss.
- Risk-of-loss terms are controlled by the agreement, unless it is silent.

When do the UCC risk-of-loss rules come up?

- Accident in shipping
- Lost by shipper
- Theft
- Spoilage during delay
- Etc ...

UCC Risk-of-Loss Default Rules

Characterizing the rules in general:

- They can depend on many things, including:
 - Whether the seller is a merchant.
 - Whether a party is in breach.
 - Paperwork and documents of title.
 - Whether the goods are being held by a bailee, being shipped, or being picked up or delivered directly.
- A motivating concern in drafting the UCC was to put the risk-of-loss on the party most likely to have insurance.

UCC Risk-of-Loss Default Rules

An example of UCC default rules:

- If the goods are not being shipped, then:
 - For merchant sellers, risk-of-loss passes when buyer picks up the goods and takes possession.
 - For non-merchant sellers, risk-of-loss passes to buyer on tender of delivery, essentially meaning, “Your goods are ready to be picked up.”