IDENTIFYING GOODS

- Before any interest in specific goods can pass from seller to buyer or from lessor to lessee, two conditions must be met: (1) the goods must be **in existence**, and (2) they must be **identified** as the specific goods designated in the contract.

  - **Existing Goods:** If the contract calls for the sale or lease of goods that **already exist** in their final form, then identification occurs **at the time the contract is made**.

  - **Future Goods:** If the contract calls for the sale or lease of goods that have **yet to be completed or modified** in accordance with the contract, identification occurs **when the goods are shipped, marked, or otherwise designated** by the seller or lessor for delivery to the buyer or lessee.

  - **Fungible Goods:** Goods that are alike by physical nature, by agreement, or by trade usage (*e.g.*, grains of wheat, barrels of like-grade oil). Identification of these goods occurs **when the goods are shipped, marked, or otherwise designated** by the seller or lessor for delivery to the buyer or lessee.

  - Identification is significant because it permits the buyer or lessee to **insure** the goods and to **recover** from third parties who damage the goods (in transit or otherwise).

PASSING TITLE

- The UCC provides that, unless a contrary agreement is explicitly made, **title passes** to the buyer at the time the goods are **physically delivered to the buyer**.

    - **Shipment Contract:** A contract that (1) requires or authorizes the seller to ship the goods to the buyer via carrier and (2) transfers title to the buyer once the seller (a) delivers the goods to the carrier and (b) promptly notifies the buyer that the goods are en route.

    - **Destination Contract:** A contract that (1) requires the seller to deliver the good to the buyer, (2) at a particular destination, and (3) transfers title to the buyer once (a) the seller or its carrier delivers the goods to the designated destination and (b) the seller notifies the buyer that the goods are available for receipt.

    - **Non-Delivery Contract:** When a contract provides that the buyer will take possession of the designated goods without delivery by the seller, title passes to the buyer at the time and place the contract is made, unless the seller is required to provide a ***document of title*** – in which case, title passes when the seller delivers the title document.

IMPERFECT TITLE

- **Void Title:** A buyer (or lessee) who acquires goods from a seller (or lessor) that did not own or have the right to dispose of the goods has only **void title** (or a void leasehold interest) in the goods, subject to the true owner's right to reclaim.

- **Voidable Title:** A seller (or lessor) who obtained goods by means of

  (1) **fraud** or **deceit**,

  (2) payment with a **dishonored check**,

  (3) purchase from a **minor**, or

  (4) purchase on credit while **insolvent**

  may transfer valid title (or a valid leasehold interest) in the goods to a ***good faith purchaser*** (or lessee) who bought (or leased) the goods without knowing there is any impediment to the seller's (or lessor's) title.

- **Entrustment:** Entrusting goods to a merchant who deals in goods of that kind gives the merchant the power to transfer all of the entrustor's rights in the goods to a ***buyer*** (or lessee) ***in the ordinary course of*** (the merchant's) ***business***.

RISK OF LOSS: DELIVERY OR TENDER

- **Transported Goods:** The risk of loss for goods sold under a shipment or destination contract is as follows:

  - **Shipment Contract:** Risk of loss **passes to the buyer** when the **seller delivers the goods to the carrier**.

  - **Destination Contract:** Risk of loss **passes to the buyer** when the seller or its **carrier makes the goods available to the buyer at the designated destination**.

- **Goods Held by the Seller:** If the seller is a **merchant**, risk of loss passes to the buyer at the time she **takes physical possession of the goods**. If the seller is a **non-merchant**, risk of loss passes to the buyer when the seller **tenders the goods** to the buyer.

- **Goods Held by a Bailee:** Risk of loss passes to the buyer when (1) the **buyer receives the title document** from the seller, (2) the **bailee acknowledges the buyer's right** of possession, <u>or</u> (3) the buyer receives a nonnegotiable title document and has had a **reasonable period of time to demand the goods from the bailee**.

  - **Bailee:** A party who, by a bill of lading, warehouse receipt, or other document of title, acknowledges possession of goods or contracts to deliver them.

RISK OF LOSS: CONDITIONAL SALES

- **Sale on Approval:** A conditional sale where the buyer may take possession of the goods on a **trial basis**. The sale becomes final only when the buyer **approves** of the goods being offered.

  - Title and risk of loss remain with the seller until the buyer accepts or approves the offered goods. If the buyer does not accept, the goods will be returned at the seller's expense and risk of loss.

- **Sale or Return:** A conditional sale where title, possession, and risk of loss pass from the seller to the buyer; however, the buyer retains the option to return some or all of the goods, at the buyer's expense and risk of loss, during the specified period **even though the goods conform** to the contract.

RISK OF LOSS: BREACH

- **Non-Conforming Goods:** When the seller or lessor provides the buyer or lessee with goods that are sufficiently non-conforming as to entitle the buyer or lessee to **reject** them, risk of loss does not pass to the buyer until

  (1) the seller or lessor **cures** the breach, by providing conforming replacement goods, or

  (2) the buyer **accepts** the goods, despite their defects.

  - **Revocation:** If a buyer accepts and <u>then</u> discovers the defect, the buyer may **revoke** her acceptance, and pass the risk of loss back to the seller.

- **Breach by the Buyer or Lessee:** When a buyer or lessee breaches a contract for sale or lease of goods, the risk of loss **immediately** shifts to the buyer or lessee, <u>but</u> <u>only</u> <u>if</u> the seller or lessor has already **identified** the goods. In such a case, the buyer or lessee

  (1) only bears the risk of loss for a **commercially reasonable time** after the seller has learned of the breach, and

  (2) is liable only to the extent that the seller's or lessor's insurance does not cover the loss.

INSURABLE INTEREST

- **Insurable Interest:** A property interest in sold or leased goods that is ***sufficiently substantial*** to permit a party to insure against damage to the goods identified to the sale or lease contract.

  - A **buyer or lessee** has an insurable interest once the goods are **identified** to the contract.

  - A **seller or lessor** has an insurable interest as long as she retains title to the goods.

  - Even after title has passed, if the seller retains a ***security interest*** in the goods for payment still due, the seller can insure the goods to the extent of that interest.