

CHAPTER 21

TITLE, RISK, AND INSURABLE INTEREST

EMILY COOPER, CHRISTINA CORTEZ, ELENA
CORDONEAN, RAYA GAYTON

SECTION 1:

Sale of goods requires different rules than real property transactions:

Risk should not always pass with title.





Definition: title- the *right of ownership*

For an interest in goods to pass from seller to buyer the goods must

- the goods must be in existence
- they must be identified as the specific goods designated in the contract.

Identification

- 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).
- Always check ID Manual

<https://www.youtube.com/watch?v=1WFZK6Z365g>



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. In other words These goods are owned or possessed by the seller at the time of sale.

Existing goods can be classified into specific or unascertained.

Specific goods: Goods identified and agreed upon at the time of the making of the contract of sale .

Unascertained goods: The goods, which are not separately identified or ascertained at the time of the making of the contract. For example, if A agrees to sell to B one bag of sugar out of the lot of one hundred bags it is a sale of unascertained goods because it is not known which bag is to be delivered. As soon as a particular bag is separated from the lot for delivery, it becomes ascertained or specific goods.

Future Goods

Future goods are goods to be manufactured or produced or yet to be acquired by seller. 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 for delivery to the buyer.

Examples:

- A agrees to sell to B all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.**
- X agrees to sell to Y all the mangoes, which will be produced in his garden next year. It is contract of sale of future goods.**

Contingent Goods: Though a type of future goods, these are the goods the acquisition of which by the seller depends upon a contingency, which may or may not happen.

Example: A agrees to sell specific goods in a particular ship to B to be delivered on the arrival of the ship. If the ship arrives but with no such goods on board, the seller is not liable, for the contract is to deliver the goods should they arrive.

Fungible Goods

Goods that are alike by physical nature, by agreement, or by trade usage (grains of wheat, barrels of like-grade oil).

goods which are capable of being substituted in place of one another.

Example - since one ounce of pure gold is equivalent to any other ounce of pure gold, gold is fungible. Other fungible commodities include sweet crude oil, company shares, bonds, other precious metals, and currencies. Fungibility refers only to the equivalence of each unit of a commodity with other units of the same commodity. Fungibility does not relate to the exchange of one commodity for another different commodity.



Transfer Of Title To Fungible Goods

- Goods that are sold by weight or measure
 - Wheat, sugar, flour, gasoline, oil
- The following rules apply to determine when title to fungible goods passes
 - If goods are ordered without specifying the location from which they are to come
 - Title passes when the goods become clearly identifiable
 - If a buyer orders a specific quantity of fungible goods from a specific mass
 - Title passes at once, before the portion ordered is separated from the rest
 - The buyer acquires immediate title to an undivided share of the specific mass because the units of oil are all the same

SECTION 2: WHEN TITLE PASSES

- Any concrete understanding between the buyer and seller determines when title passes. UCC 2-401(2) states that with no direct contrary agreement the title passes to the buyer at the time and place the seller performs by delivering goods.
- Ex. If a buyer purchases live chickens at a farm, title will pass when the chickens are physically delivered to him/her, unless both parties agree otherwise.

SHIPMENT AND DESTINATION CONTRACTS

- To recap , arrangement for delivery can determine when title passes from seller to buyer, unless both parties agreed otherwise.
- In a shipment contract, the seller is required to ship goods by carrier, for example trucking company. Under this contract the seller is only obligated to deliver such goods in to the hands of the trucking company, then title passes over to the buyer at the place and time of shipment.-UCC2-401(2)(a) States, more often a contract is assumed to be shipment contract if nothing to the contrary is stated within contract.
- In a destination contract, seller is obligated to deliver goods to a certain destination, usually directly to the buyer, sometimes to a third party appointed by the buyer. UCC2-401(2)(B) States, the title passes over to buyer when goods are presented to that destination.

DELIVERY WITHOUT MOVEMENT OF GOODS

- At times, the sales contract does not require for the seller to deliver goods,
- for example when contract states that buyer wants to pick up the goods. In this situation passage of title depends on if the seller is supposed to deliver document of title to the buyer. Documents of title are, warehouse receipts or a bills of lading.
- A warehouse receipt is a receipt issued by a warehouse for goods that were stored there.
- A bill of lading is a receipt for goods that are signed by the carrier and serves as a contract for the transportation of goods.

DELIVERY WITHOUT MOVEMENT OF GOODS CONTINUED

- When document of title is needed, the Title passes to the buyer when and where the document of title is delivered.
- For example, when goods are stored in a warehouse title passes to buyer when the appropriate documents are delivered, therefore the goods never move.
- When document of title is not required, yet deliver is made without transporting the goods, once goods are identified the title passes over to the buyer at the time and place the sales contract was formed. But if goods are not identified the title does not pass over to the buyer until such time that the goods are identified.
- Example Juan sells bricks to Emily. They agree that Emily is to pick them up from Juan's warehouse, if the bricks are set aside marked or in any way distinguished from the rest of the bricks, then the title passes to Emily at the time the contract was signed. But suppose Emily arrives to find that her bricks are still in large boxes with the rest of Juan's inventory title does not pass over to Emily until the particular piece she purchased are identified being marked or separated.

SALES OR LEASES BY NONOWNERS

- Often times there are situations where people who receive goods with imperfect titles attempt to sell or lease them, causing problems.
- Often times there are two owners or parties who claim the same goods with imperfect titles.
- In this situation Sections 2-402 & 2-403 of UCC provision deal with the problem of two parties who claim the rights to the same goods. Most often buyer obtains whatever title the seller has to the goods that are sold. The same provision also protects leases.
- Under a lease hold interest the lessee obtains a right to possess and use the goods. A lessee obtains whatever leasehold interest the lessor has the power to transfer according the leasing contract.

VOID TITLES

- Sometimes the buyer unknowingly purchases a title from someone who misrepresents them self as the owner of the goods. In this case if the seller stole the goods the title is void and under the law no title exists. If no title exists then the buyer does not receive a title and there is no real owner, same thing would happen if the goods were leased, because the lessor would have no leasehold interest to transfer.
- Voidable Title: Seller has a voidable title if the goods that they are selling are received through fraudulent means.
- For ex: Checks that are bounced purchased from minor or purchased on credit when seller is insolvent. Insolvent means that the person ceases to pay his/her debts it and cannot pay the it becomes due.

GOOD FAITH PURCHASERS AND ENTRUSTMENT RULE

- A good faith purchaser is someone who gives value for an asset in good faith and without knowledge of adverse claims.
- **Voidable title and leases**—a lessor with voidable title has the power to transfer a valid leasehold interest for value.
- **Entrustment Rule** –Entrusting goods to a seller who deals with goods of that sort gives the seller the power to transfer all rights the ordinary buyer.

SECTION 3: RISK OF LOSS

- At stages of a sale or lease transaction, there may be a question of risk of loss meaning...who suffers the financial loss if the goods are damaged or lost?
- Under the UCC, the risk of loss is not necessarily pass with title
- It is usually determined by the parties within the contract

DELIVERY WITH MOVEMENT

- Courts look for specific delivery terms within the contract
- The courts look for the terms included and decide whether the contract is a shipment or a destination contract
- **SHIPMENT CONTRACT:** the seller or lessor is required or authorized to ship goods by carrier, but is not required to deliver them to a particular destination.
- **DESTINATION CONTRACT:** the risk of loss passes to the buyer or lessee when the goods are tendered to the buyer or lessee at the specified destination.

DELIVERY WITHOUT MOVEMENT OF THE GOODS

- Sometimes the buyer or lessee is to pick up the goods from the seller or lessor, or the goods are to be held by a bailee.
- BAILMENT: a temporary delivery of personal property, without passage of title and into the care of another.
- If the seller is a MERCHANT, risk of loss to goods is held by the seller passes to the buyer when the buyer actually takes physical possession of the goods.
- In a finance LEASE, the lessor normally retains the risk of loss.
- When goods are held by the bailee, the goods are usually represented by a document of title.
- Depending on how it is transferred, the document of title is either negotiable or nonnegotiable.

CONDITIONAL SALES

- Buyers and sellers sometimes form sales contracts that are conditioned either on the buyer's approval of the goods or on the buyer's resale of the goods.
- **SALE ON APPROVAL:** when the seller offers to sell goods to a buyer and permits the buyer to take the goods on a trial basis.
- **SALE OR RETURN:** the sale is completed, but the buyer has an option to return the goods and undo the sale.

Section 4: Insurable Interest

INSURABLE INTEREST

- ❖ Parties who enact “SALES” and “LEASE” contracts most times acquire **INSURANCE COVERAGE** to **PROTECT** themselves from – **DAMAGES –LOSSES & -DESTRUCTION OF GOODS!**
- ❖ Parties obtaining insurance **MUST** have a vested interest (something to lose or gain) from the insured component(s) for those involved to get a valid policy.
- ❖ Insurance laws **NOT** the “Uniform Commercial Code” (UCC) make the decision determining whether the party has a sufficient interest.
- ❖ However the UCC does prove to be helpful, because it contains certain rules regarding insurable interest in GOODS.

INSURABLE INTEREST OF THE BUYER AND LESSEE

- ❖ A buyer or lessee has an INSURABLE INTEREST in IDENTIFIED GOODS.
- ❖ In the instant the CONTRACT SPECIFIES the GOODS BY THE SELLER/ LESSOR, the party that is the BUYER/LESSEE gets "SPECIAL PROPERTY INTEREST" that gives them the necessary qualifications to get coverage for those goods even before the risk of damage or loss has been acquired by the buyer/lessee.
- ❖ [UCC 2-501 (1), 2A-218(1)]

UCC DEFINITIONS

[UCC 2-501 (1)]: The buyer obtains a **special property** and an **insurable interest** in goods by **identification** of existing goods as goods to which the contract refers even though the goods so identified are **non-conforming** and he has an **option to return or reject** them. Such identification can be made at any time and in any manner **EXPLICITLY** agreed to by the parties.

[UCC 2A-218 (1)]: A lessee obtains an insurable interest **when existing goods are identified** to the lease contract **even though** the goods identified are **nonconforming** and the lessee has an **option to reject** them.

Continued: INSURABLE INTEREST of the BUYER and LESSEE

- Identification of the goods can occur at any time or point agreed to by the parties.

- In the case the parties involved cannot EXPLICITLY agree on identification in their contract, the UCC provisions on identification apply.

INSURABLE INTEREST of the SELLER or LESSOR

- “A seller has an insurable interest in goods as long as he or she retains title to the goods.”

- “Even after title passes to a buyer, a seller who has a **security interest** in the goods still has an insurable interest and can insure the goods. [UCC 2-501 (2)]”

UCC DEFINITION

UCC 2-501 (2)

The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

“Upcoming next slide”:

UCC 2A-218 (3)

Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

Continued: Insurable Interest of the Seller or Lessor

- Therefore they both the “buyer and the seller” can insure the same goods at the same time.
- Though there must be some type of loss or accident for each to collect from the insurance companies.
- In the case of **leases**, the **lessor** keeps the right to retains an insurable interest in leased goods, that is unless the lessee takes the action of an option to buy, then in that case the risk if loss moves to the lessee. [UCC 2A- 218 (3)]