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The Obligations of Parties to Sales of Goods Under the Uniform Commercial Code

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THE OBLIGATIONS OF PARTIES TO SALES OF GOODS UNDER THE UNIFORM COMMERCIAL CODE†

BY REED T. PHALAN*

THE Uniform Commercial Code states: "The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract." [1] Questions often arise as to when, where, or in what manner the buyer is obligated to pay, and when, where, or in what manner the seller is obligated to deliver. Unless the parties expressly agree otherwise, their obligations are as summarized in this article.

OBLIGATION AS TO PAYMENT

Amount of Payment

The price the buyer is to pay is usually specified in the agreement. Sometimes, however, the agreement provides that price is to be determined later. If it appears that the parties to a sale of goods contract intend to form a present contract, and expressly provide that price is to be agreed upon later, there is an enforceable contract under which, should the parties fail to reach the postponed agreement, the price owed is presumed to be the reasonable price. Sometimes the parties agree that the price is to be as fixed in the future, either by the seller or by the buyer. For example, the price may be stated as, "seller's list price on date of shipment." If the parties intend to be presently bound, this is an enforceable contract for a price reasonably and in good faith fixed at the stated future time by the indicated party.[2]

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† *Editor's Note:* This is the third in a series of survey articles prepared by Mr. Phalan on the Uniform Commercial Code. The purpose of the series is to bring together the various sections of the Code dealing with a particular area of the law of sales and to provide a basic analysis of the provisions applicable thereto. It is the hope of the author and of the Editors that this will serve to better acquaint and inform those members of the legal profession who have had little or no opportunity to become familiar with the details of the Code and the many changes that it has made from prior law. The first two writings in this series were *Interests of Remote Parties in Goods under the Uniform Commercial Code,* 59 DICK. L. REV. 332 (1955), and *Inadvertant Acceptance of Buyer's Terms,* 62 DICK. L. REV. 170 (1958).

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[1] PA. STAT. ANN. tit. 12A, § 2-301 (1953); UNIFORM COMMERCIAL CODE § 2-301. Further reference to the Code will be to appropriate sections only and, unless otherwise specified, will refer to the 1952 Draft of the Code, which is the version adopted in Pennsylvania. Some reference will be made to the current, 1957 Edition of the Code, which is the version adopted in Massachusetts (MASS. GEN. LAWS c. 765 (1957), approved September 21, 1957) to become effective October 1, 1958. Such references will expressly state that they pertain to the 1957 Edition.

[2] UNIFORM COMMERCIAL CODE § 2-305.

Manner of Payment

The Code states: "Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it." [3] This is the rule which applies when a buyer offers to pay by his own personal, uncertified check.

Time of Payment

In connection with time of payment, the principal fact situations can be classified as to whether or not the seller agrees to extend credit to the buyer.

Seller Agrees on Credit

Payment is due at the expiration of the credit period, which runs from the time of shipment (or delivery if no shipment is involved), or from the effective date of the invoice, whichever is later. The invoice is effective from its date, or from the date it is dispatched to the buyer, whichever is later.[4]

No Credit Is Agreed Upon

If the buyer has not agreed to pay before having a chance to inspect the goods, then the time that the buyer is to pay is the time when the buyer is expected under the contract to receive and have a chance to inspect the goods.[5] This does not, in every case, make opportunity to inspect a condition precedent to the buyer's obligation to pay. If under the rules discussed later, risk of loss is on the buyer while the goods are in transit, and the goods are lost, damaged, or destroyed in transit, the buyer's payment is due when the goods would in due course have arrived and been made available for the buyer to inspect.[6]

Not infrequently a buyer agrees (and therefore is obligated) to pay before having a chance to inspect the goods. Often such an agreement is expressed by any of the following terms:[7]

1. C.O.D.

2. Sight draft, bill of lading attached, cash against documents, but if it is not also expressly agreed and stated that inspection is allowed, the expression "sight draft, bill of lading attached," without more, does not expressly require

[3] *Id.* § 2-511(2).
[4] *Id.* § 2-310(d).
[5] *Id.* § 2-310 and § 2-513.
[6] *Id.* § 2-709(1), providing that the seller may recover ". . . the price . . . of conforming goods lost or damaged after risk of their loss has passed to the buyer; . . ."
[7] *Id.* § 2-310 and § 2-513.

the buyer to pay in advance of the time when the goods can be expected to arrive. The statement is incomplete; for completeness, there should be added either (1) "cash against documents" (or its equivalent), requiring the buyer to pay upon presentment of the documents which is usually before the goods arrive, or (2) "inspection allowed" (or its equivalent), permitting the buyer to wait until the time when the goods arrive (or should have arrived, if the goods are lost in transit while risk of loss is on the buyer).[8]

3. C.I.F. or C. & F. Under such terms, unless otherwise expressly agreed and stated, the buyer must pay upon tender of the proper document of title.[9] C.I.F. and C. & F. terms are more fully discussed later in this article.

Obligation as to Delivery

If the agreement specifies no time for delivery, it is presumed that the seller is to ship or deliver within a reasonable time.[10]

The seller's obligation as to place and manner of delivery depends upon the type of contract involved. Most contracts can be classified into the following types:

1. Shipment contract. The seller is obligated or authorized to initiate shipment of the goods to a particular place.

2. Destination contract. Not only must the seller initiate transportation of the goods to a particular place but the seller is responsible for the arrival of the goods at that place.

3. Contract for delivery without transportation. The seller is not required to do anything involving transportation of the goods.

4. Contract permitting return. The buyer has a contract right to return the goods to the seller, even though the goods conform to the contract.

If goods are to be transported in connection with a sale, whether the contract is a shipment or a destination contract is often indicated by the terms used in stating the price. For example (assume the seller is located in Philadelphia and the buyer in Erie), the price may be stated as, "$500, F.O.B. Philadelphia, Pa." The term "F.O.B." (free on board) means that the price to the buyer is the indicated price at the place stated; if the buyer wants the goods elsewhere, transporting or further transporting them will be at the buyer's expense. Such a statement of price (that is, F.O.B. point of shipment) identifies the contract

[8] *Id.* § 2-310 and § 2-513, Official Comments.
[9] *Id.* § 2-320(4).
[10] *Id.* § 2-309.

as a shipment contract; the seller is required to ship but has no obligation as to arrival. If goods are to be transported in connection with the sale, but the price statement contains no F.O.B. term and says nothing about who pays freight, it is presumed that the buyer is to pay the shipping charges and that the contract is a shipment contract.[11] On the other hand, the price statement, "$500, F.O.B. Erie, Pa.", identifies the contract as a destination contract. A price term of "$500, F.O.B. cars, Philadelphia, Pa.," means that the seller is to load the goods on cars and then turn the loaded cars over to the carrier.[12] Sometimes the price is stated in a hybrid form: "$500, F.O.B. Philadelphia, Pa., freight allowed to Erie, Pa." [13] This is a shipment contract; the Official Comments to the Code explain that (as a change from the prior law[14]) a contract is a shipment contract if that intent clearly appears even though the seller contracts to pay transportation to a particular place.[15]

The statement of price may include the terms "C.I.F." or "C. & F.," for example, "$500, C. & F. Erie, Pa." The expression means that the seller prepays freight (and insurance in the C.I.F. contract) at a stated figure which he then collects from the buyer, in addition to the cost or purchase price of the goods. The chief purpose of a C.I.F. or C. & F. contract is to relieve the buyer from the risk of fluctuation in freight and insurance rates. The seller calculates the rates and adds them to the cost; the seller assumes the risk (or benefit) of any change in rates between the time the contract is formed and the time the buyer is to receive the goods. From the standpoint of how much the buyer is to pay, the contract closely resembles an F.O.B. destination contract, but nevertheless is a shipment contract rather than a destination contract.[16] Since freight and insurance rates are less stable with foreign shipments than with domestic shipments, the terms are more commonly (but not exclusively[17]) used in foreign trade.

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[11] *Id.* § 2-504.

[12] *Id.* § 2-319.

[13] For example, such a price term was used in the contract involved in Frick & Lindsay Co. v. Johnston & Somerset Ry. Co., 279 Pa. 536, 115 Atl. 837 (1922) (the case, however, involving another point) and was the basis of litigation in Columbia Mills Inc. v. Machenbach Importing Co., 117 Misc. 283, 191 N.Y. Supp. 325 (1921) and in Dow Chem. Co. v. Detroit Chem. Works, 208 Mich. 157, 175 N.W. 269 (1919).

[14] The Uniform Sales Act provides in Section 19, Rule 5: "If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place or to pay the freight or cost of transportation to the buyer, or to a particular place, the property [and therefore the risk of loss] does not pass until the goods have been delivered to the buyer or reached the place agreed upon."

[15] UNIFORM COMMERCIAL CODE § 2-503, Official Comment.

[16] *Id.* § 2-320.

[17] For example, Pittsburgh Prov. & Pack. Co. v. Cudahy Pack. Co., 260 Pa. 135, 103 Atl. 548 (1918), involved a contract for meat shipped from Kansas City to Pittsburgh, C. & F. Pittsburgh.

Shipment Contract

Seller's Obligation

In a shipment contract, the obligation of the seller is: [18]

1. To deliver the goods to a carrier and make a reasonable contract for their transportation;

2. To deliver or tender to the buyer (or cause to be delivered or tendered, for example, through a collecting bank) any document of title necessary for the buyer to obtain possession;

3. To notify the buyer that the goods have been shipped. Often the seller gives such notice by sending the invoice to the buyer in an open credit sale, or by sending the documents to a bank in the buyer's town for collection of the draft, as in a sight draft bill of lading attached sale.[19]

Risk of Loss

In a shipment contract, the risk of damage, destruction, theft, or other loss of the goods passes to the buyer when the seller duly delivers the goods to the proper carrier, regardless of whether the shipment is by straight or order bill of lading, and regardless of whether the goods are consigned to the seller or to the buyer.[20] If the agreed terms are stated as, "sight draft, bill of lading attached, cash against documents," the seller usually will have the goods shipped by an order bill of lading in which the seller is named as consignee. This is for facility in collection and has no effect on risk of loss or on title.[21]

Destination Contract

Seller's Obligation

In a destination contract, the seller is obliged to make (or cause to be made) a delivery or tender of delivery of the goods to the buyer at the stated place; to accomplish this adequately, the seller must deliver or tender to the buyer any document of title necessary for the buyer to obtain possession.[22]

Risk of Loss

If the goods are in the possession of a carrier, risk of loss passes to the buyer when they are duly tendered to the buyer at the agreed place. If trans-

[18] UNIFORM COMMERCIAL CODE § 2-504.
[19] *Id.* § 2-504, Official Comment.
[20] *Id.* § 2-509.
[21] *Id.* §2-401 and § 2-509.
[22] *Id.* § 2-503.

portation is in the seller's trucks and the goods arrive at the agreed destination but are still in the seller's possession, the rules as to when risk of loss passes are the same as for a contract not involving transportation, discussed next.[23]

Contract for Delivery Without Transportation

The goods may be in the possession either of the seller or of a bailee.

Goods in Seller's Possession

The seller must (1) have the goods available for the buyer according to the agreement, and (2) so notify the buyer.[24] After the seller does this, then:

1. If the seller is not a merchant, the risk of loss passes to the buyer after he has a reasonable time to take the goods; [25]

2. If the seller is a merchant, the risk of loss remains with the seller,

   a. Until the buyer receives the goods; [26] or

   b. Until the buyer fails to take the goods according to contract or gives notice that he will not take them. If the buyer so repudiates or breaches his part of the contract, then, as to any loss not covered by the seller's insurance, risk of such loss rests on the buyer.[27]

Goods in Bailee's Possession

Since in the type of contract here discussed, the seller's performance does not involve transportation of the goods, the term "bailee" does not include a carrier in the process of transporting the goods. The seller may properly perform his obligation by doing any one of the following: [28]

1. The seller may give (or tender) to the buyer a negotiable document of title covering the goods. If the seller performs in this way, risk of loss passes to the buyer upon his receipt of the document.

2. The seller may procure from the bailee an acknowledgment of the buyer's right to possession of the goods. If the seller performs in this way, risk of loss passes to the buyer upon such acknowledgment.

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[23] *Id.* § 2-509.
[24] *Id.* § 2-503.
[25] *Id.* § 2-509.
[26] *Id.* § 2-509.
[27] *Id.* § 2-510.
[28] *Id.* § 2-503 and § 2-509. And see the clarification of the risk of loss rules written into § 2-509 of the 1957 Edition.

3. The seller may, if the buyer does not object, give the buyer a non-negotiable document of title or a written direction that the bailee turn the goods over to the buyer. If the seller performs in this way (with concurrence of the buyer), risk of loss passes to the buyer after he has had a reasonable time to present the document or direction.

Contracts Permitting Return

There are two types of sales contract which permit a buyer to return goods even though they conform to the contract, namely (1) sale on approval, and (2) sale or return. The Pennsylvania Code fails to include definitions clearly distinguishing between these two. However the Official Comments give the basis for a distinction.[29] The same basis is used in the 1957 Edition of the Code in defining sale on approval and sale or return. Since under the Pennsylvania Code, the Official Comments may be consulted in the construction and application of the Code,[30] the definitions contained in the 1957 Edition are probably the proper ones to be applied under the Pennsylvania Code. The 1957 Edition states: ". . . the transaction is (a) a 'sale on approval' if the goods are delivered primarily for use, and (b) a 'sale or return' if the goods are delivered primarily for resale." [31]

Risk of Loss

Sale on Approval. Unless otherwise agreed, risk of loss (and title) remain in the seller until:

1. The buyer approves or otherwise indicates he considers himself the owner of the goods; or

2. The time within which the buyer can give notice of disapproval passes without the buyer giving such notice.

If the buyer gives proper notice of his desire to return the goods, the risk remains on the seller and the return is at the seller's risk and expense.[32]

Sale or Return. Risk of loss is on the buyer from the time he would have had the risk in an ordinary contract without the return feature, and any return under the contract is at the buyer's risk and expense.[33]

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[29] *Id.* § 2-326, Official Comment.
[30] *Id.* § 1-102.
[31] *Id.*, 1957 Edition, § 2-326.
[32] *Id.* § 2-327.
[33] *Id.* § 2-327.

PASSING OF TITLE

Under the Code, the location of title is for most purposes unimportant in determining the relative rights of the seller and buyer. Risk of loss, and remedies of the seller against the buyer or of the buyer against the seller, do not depend upon where title is at any given moment.[34] Location of title does become of some importance if the rights of third parties are involved.[35]

In general, as the Code states, "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods . . ."[36]

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[34] *Id.* § 2-401.

[35] In determining the rights of third parties, other factors are also important. See Phalan, *Interests of Remote Parties in Goods under the Uniform Commercial Code*, 59 DICK. L. REV. 332 (1955).

[36] UNIFORM COMMERCIAL CODE § 2-401.