



# TRANSFER OF TITLE AND RISK OF LOSS

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At some point in the life of a transaction for the purchase of goods, the ownership of the goods passes from the seller to the buyer. Additionally, the risk of loss or damage to the goods must transfer from the seller to the buyer.

## TITLE - OWNERSHIP OF GOODS

In contracts for the sale of goods, the parties involved must stipulate their intention as to when, how or under what conditions title to the goods is to be transferred. As a sale cannot occur without a shift in title to the goods, it is important that this is clear and agreed to by both parties and not just assumed or taken for granted. Title transfer should be agreed to in addition to matters such as price, quantity, quality, warranties, delivery schedule credit terms, discounts, and other important details.

Transfer of Title to goods, which have been identified (the seller has picked the goods from inventory to be delivered or sold to the buyer) to the contract of sale, passes from the seller to the buyer in any manner and on any conditions agreed upon by the parties to the contract of sale. In general, title to the goods passes when the parties agree that it passes.

Where parties have no explicit agreement as to the transfer of title, then title passes to the buyer:

- At the time and place at which the seller completed his performance with reference to delivery of the goods.
- At the time and place of shipment, if the contract authorizes shipment but does not require the seller to deliver the goods to the buyer at destination.
- Upon delivery of the goods to the buyer at destination, if the contract requires delivery at destination.
- Upon delivery of a document of title where the contract calls for delivery of such document without moving the goods.
- At the time and place of contracting where the goods at the time are identified to the contract, no documents are to be delivered, and delivery is to be made without moving the goods.



Title can only be transferred on existing, specific, identified goods. Title cannot pass under a contract of sale prior to identification of these goods. After formation of the contract of sale, it is normal for the seller to take steps to obtain, manufacture, prepare or select goods with which to fulfill his obligation under the contract. At some stage in the process the seller will have identified the goods which he intends to ship or deliver or hold for the buyer. Once the goods have been identified, relative to the contract, Title to the goods may pass to the Buyer. Title need not pass to the buyer at this point in the transaction. However, once the goods have been identified to the contract of sale, the buyer assumes a Special Property in the goods. This Special Property gives the buyer an insurable interest in them even though, in fact, they may not conform to the contract of sale. Identification of the goods to the contract does not shift the risk of loss. After identification, the seller may under the contract have duties to perform with respect to the goods.

## RISK OF LOSS

Risk of Loss refers to who is liable to pay, or who bears the risk, if the goods are lost, damaged, or destroyed without the fault of either party. Risk of loss, as the term is used in the law of sales, means placement of the ultimate loss upon the buyer or the seller. Where the parties failed to specify how the risk of loss is to be allocated or apportioned, the generally applicable rule is that risk of loss passes when the seller has completed all obligations under the contract.

There are specific rules that impose risk of loss upon the buyer or the seller irrespective of title or ownership of the goods:

1. Agreement of the parties. An agreement may not only shift the allocation of risk but may also divide the risk or burden in any manner.
2. Delivery to a carrier. If the contract does not require the seller to deliver the goods at a particular destination, the risk of loss passes to the buyer upon delivery of the goods to the carrier. If the seller is required to deliver them at a particular destination, risk of loss passes to the buyer at destination upon tender even though the goods are in the possession of the carrier.
3. Goods and possession of bailee to be delivered without being moved. Where the goods at the time of the contract are held by a bailee, and are to be



delivered without being moved, the risk of loss passes to the buyer on his receipt of a negotiable document of title covering the goods. Or, receipt of a nonnegotiable document of title, or other written direction to deliver the goods, unless the buyer reasonably objects.

4. Goods not to be shipped by carrier. If they are in the possession of the seller, buyer or other bailee, or if they are in the possession of the third party bailee, the contract may provide for delivery to the buyer with or without moving the goods

Transfer of Title is essential to a sale of goods. Transfer of Title is not; however, essential to the imposition of risk of loss to the goods. Risk of loss may follow ownership of the goods or exist independently. Title passes when the seller has completed delivery obligations under the contract, and risk of loss passes when the seller has completed all obligations.