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Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

1. Article 69 provides residual rules on the passing of risk in cases not covered by the preceding two articles. Paragraph (1) covers cases where delivery is to take place at the seller's place of business, while paragraph (2) addresses all other cases. The consequence of the passing of the risk on the buyer's obligation to pay is dealt with in article 66. The effect on the passing of risk in cases where the seller commits a fundamental breach is addressed in article 70.

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

2. Article 69 applies only if the preceding two articles do not apply.¹ Article 67 governs cases where the contract of sale involves the carriage of goods. If the contract of sale is silent as to the carriage of goods, article 69 rather than article 67 will govern the passing of risk. This is true whether or not the buyer arranges for subsequent transportation of the goods by its own vehicles or by a third-party carrier. Which article applies in a particular case often turns on interpretation of the parties' agreement. A court concluded that a contract term 'list price ex works' was not inconsistent with article 67 (1) where the goods were to be taken by a third-party carrier from Japan.² An arbitral tribunal applied article 67 (1) to a contract that provided that "the buyer has to pick up the fish eggs at the seller's address and take the goods to his facilities in Hungary" and that the price was "FOB Kladovo".³ On the other hand, with respect to a contract where the seller agreed to deliver the goods under the "DAF" ("Delivery at Frontier") Incoterm, an arbitral tribunal found that article 69 (2) rather than article 67 governed the issue of when risk passed.⁴

Taking over goods at seller's place of business

3. When goods are to be delivered at the seller's place of business, paragraph (1) of article 69 provides that the risk passes to the buyer when it takes over the goods. A court has applied the paragraph to the passing of risk in the sale of a painting at an auction.⁵

4. If the buyer fails to take over the goods, paragraph (1) provides that the risk passes when the goods have been placed at the buyer's disposal and the buyer's failure to take them over breaches the contract. Under paragraph (3), goods are at the buyer's disposal when they are clearly identified to the contract. There are no reported cases applying this provision.

Taking over goods at other locations

5. Paragraph (2) of article 69 addresses the passing of the risk in cases where the buyer is bound to take over the goods at a place other than the seller's place of business. In these cases, the risk passes when the buyer is aware that the goods are placed at its disposition and delivery is due. Under paragraph (3), goods are at the buyer's disposal when they are clearly identified to the contract.

6. Paragraph (2) covers a variety of cases, including cases where delivery is made of goods stored in a warehouse, delivery at some place other than the seller's or buyer's place of business, and delivery at the buyer's place of business.⁶ In one

¹ CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000] (art. 69 (1) applies only if preceding two articles do not apply) (see full text of the decision).

² CLOUT case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997].

³ CLOUT case No. 163 [Arbitration—Arbitration Court attached to the Hungarian Chamber of and Industry, Hungary, 10 December 1996].

⁴ CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993].

⁵ *Kunsthuis Math. Lempertz OHG v. Wilhelmina van der Geld*, Arrondissementsrechtbank Arnhem, the Netherlands, 17 July 1997, Unilex, affirmed on other grounds, Hof Arnhem, 9 February 1999 (Convention not applicable).

⁶ CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000] (paragraph (2) covers cases where buyer takes over goods at place other than seller's place of business).

case, a court found that the risk that furniture stored in a warehouse would be lost had not passed to the buyer to whom storage invoices had been issued but to whom delivery was not yet due because by their agreement delivery was due only on the buyer's demand and it had not yet made a demand.⁷ Another case found, however, that the risk of loss had passed when the seller delivered raw salmon to a processor because the buyer acquiesced in the delivery and delivery was due.⁸ In another case, an arbitral tribunal found that the seller, who had stored the goods following the buyer's failure to open an agreed letter of credit, bore the risk of loss because the seller had not delivered the goods "DAF" ("Delivery at Frontier") as agreed or placed the goods at the buyer's disposal.⁹

⁷ CLOUT case No. 338 [Oberlandesgericht Hamm, Germany, 23 June 1998].

⁸ CLOUT case No. 340 [Oberlandesgericht Oldenburg, Germany, 22 September 1998].

⁹ CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993] (see full text of the decision).