

on the seller from the beginning to the extent that it is not covered by the buyer's insurance [2-510(2)].

Buyers who repudiate a contract for identified, conforming goods before risk of loss has passed to them are liable for a commercially reasonable time for any damage to the goods that is not covered by the seller's insurance [2-510(3)]. For example, Trendy Shoe Stores contracts to buy 1,000 pairs of shoes from Acme Shoe Manufacturing Company. Acme crates the shoes and stores them in its warehouse pending delivery to Trendy. Trendy then tells Acme it will not honor its contract for the shoes, and they are destroyed by a fire in Acme's warehouse shortly thereafter. If Acme's insurance covers only part of the loss, Trendy is liable for the balance.

**Insurable Interest** The Code rules that govern risk of loss are supplemented by rules that give the parties an **insurable interest** in the goods, which allows them to insure themselves against most of the risks they must bear. Buyers may protect their interest in goods before they obtain title to them, since they have an insurable interest

in goods at the moment the goods are *identified to the contract* [2-501(1)]. Sellers have an insurable interest in their goods as long as they have title to the goods or a security interest in them [2-501(2)].

## Sales on Trial

There are several common commercial situations in which a seller entrusts goods to another person. This may be done to give a potential buyer the chance to decide whether or not to buy the goods or to give the other party a chance to sell the goods to a third party. These cases present difficult questions about who has the risk of loss of the goods and whose creditors may attach the goods. The Code provides specific rules to answer these questions depending on the nature of the parties' agreement.

**LOG** Distinguish between sale or return and sales on approval and explain the ramifications those distinctions have for the rights of buyers and sellers.

### CONCEPT REVIEW

## Risk of Loss

The point at which the risk of loss or damage to goods identified to a contract passes to the buyer is as follows:

1. If there is an agreement between the parties, the risk of loss passes to the buyer at the time they have agreed to.
2. If the contract requires the seller to ship the goods by carrier but does not require that the seller guarantee their delivery to a specific destination (shipment contract), the risk of loss passes to the buyer when the seller has delivered the goods to the carrier and made an appropriate contract for their carriage.
3. If the contract requires the seller to guarantee delivery of the goods to a specific destination (destination contract), the risk of loss passes to the buyer when the seller delivers the goods to the designated destination.
4. If the goods are in the hands of a third person and the contract calls for delivery without moving the goods, the risk of loss passes to the buyer when the buyer has the power to take possession of the goods—for example, when he receives a document of title.
5. In any situation other than those noted above where the seller is a merchant, the risk of loss passes to the buyer on his receipt of the goods.
6. In any situation other than those noted above where the seller is not a merchant, the risk of loss passes to the buyer on the tender of delivery to the buyer by the seller.
7. When a seller tenders goods that the buyer lawfully could reject because they do not conform to the contract description, the risk of loss stays on the seller until the defect is cured or the buyer accepts them.
8. When a buyer rightfully revokes acceptance of goods, the risk of loss is on the seller from the beginning to the extent it is not covered by the buyer's insurance.
9. If a buyer repudiates a contract for identified, conforming goods before risk of loss has passed to the buyer, the buyer is liable for a commercially reasonable time for any loss or damage to the goods that is not covered by the seller's insurance.