

*Article 80***[Passage of risk when goods sold in transit]**

The risk in respect of goods sold in transit is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents controlling their disposition. However, if at the time of the conclusion of the contract the seller knew or ought to have known that the goods had been lost or damaged and he has not disclosed such fact to the buyer, such loss or damage is at the risk of the seller.

PRIOR UNIFORM LAW

ULIS, article 99.

Commentary

1. If the goods were in transit at the time the contract of sale was concluded, the risk of loss is deemed to have passed retroactively at the time the goods were handed over to the carrier who issued the documents controlling their disposition. This rule that the risk of loss passes prior to the making of the contract arises out of purely practical concerns. It would normally be difficult or even impossible to determine at what precise moment in time damage known to have occurred during the carriage of the goods in fact occurred. It is simpler if the risk of loss is deemed to have passed at a time when the condition of the goods was known. In addition, it will usually be more convenient for the buyer, who is in physical possession of the goods at the time the loss or damage is discovered, to make claim against the carrier and the insurance company.
2. However, any loss or damage which had already occurred at the time of the conclusion of the contract and of which the seller knew or ought to have known but which he did not disclose to the buyer is at the risk of the seller.