

PASSING OF RISK UNDER THE DOMESTIC LAW AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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Abstract

This paper elaborates the meaning that the regulation of passing of risk has in case of loss or damage of goods in the contracts of sale of goods. The legal regulation of this matter allows for more fluid and unambiguous resolution of disputes between the contracting parties in case of loss or damage of the goods. The main area of research in this paper is the legal regulation of the passing of risk, i.e. the legal settings of the passing of risk when this matter is not regulated between the contracting parties. Therefore, the purpose of this research is to analyze the actual legal norms that regulate this matter under the domestic law and the United Nations Convention on Contracts for the International Sale of Goods, in the following text referred to as CISG. This research is important because it allows for a direct comparison of the legal provisions regulating this matter between a domestic source of law and an international source of law that has a mandatory application in our country when the criteria's are met. The main hypothesis during this research is that the regulation of the passing of risk in the domestic law and the CISG is based on the same principles and there is no need for radical changes of the legal regulation of this matter in the domestic legislation. Aiming to achieve structural research of the subject of interest in this paper, firstly we analyze the regulation of the matter in the domestic law and afterwards we elaborate the regulation of the matter under the CISG. The concluding chapter is dedicated to sublimation and generating conclusions of the analyzed matters in this research paper.

Key words: *contract, sale, risk, loss, damage, CISG*

I. INTRODUCTION

The allocation of risk in case of loss or damage of goods in contracts of sale of goods is an equally important matter for both contracting sides, i.e. the seller and the buyer. The rules that regulate the matter, give the answer to the question of whether the buyer or the seller has to endure the burden for the loss or damage of the goods.

Therefore, bearing in mind that often the losses or damages of the goods can be substantial, the contracting parties usually regulate this matter in the contracts. That allows them to avoid disputes regarding this matter because they have already expressed their will, or at least, in case

* Filip Risteski, PhD Candidate, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Law Faculty, e-mail: risteskifilip@hotmail.com

of a dispute, it usually allows the parties for a quicker and more efficient dispute resolution by interpretation of the contract provisions that regulate the matter.

However, there are many cases in which the parties haven't regulated this matter. Henceforth, all the disputes are set to be regulated by the norms that regulate the matter in the applicable substantive law.

The first part of this paper elaborates the settings of the norms that regulate the passing of risk in domestic law. Therefore, we dedicate this part to the research of the provisions stipulated in the national law. The second part of this paper is dedicated to the research of the provisions that regulate the matter under the UN Convention on contracts for the international sale of goods. In the concluding part of this research paper, we sublime and generate conclusions of the analyzed matters in this research paper and point out the similarities and differences of the regulation in the two analyzed sources of law.

II. PASSING OF RISK UNDER THE DOMESTIC LAW

The provisions that regulate the passing of risk in case of loss or damage of goods in contracts of sale of goods in the domestic law are governed by the Law of Obligations of North Macedonia. The Law of Obligations regulates a much wider scope of matters than the CISG which main focus is the sales contracts of goods. Therefore, the domestic law contains provisions that regulate the passing of risk in different types of contracts, not only the contracts of sale of goods. However, having in mind that the main focus of this paper is to analyze the mutual setup of the norms that regulate the passing of risk in the domestic law and the CISG, this research is focused on the contracts of sale of goods.

As previously emphasized, a very important question in sales contracts is who bears the risk for accidental loss or damage of the goods. Accidental loss or damage of the goods means that neither the buyer nor the seller is responsible for the loss or the damage of the goods. The concept of loss or damage of the goods in contracts of sale of goods should be interpreted more extensive. It should include perishing, robbery and all different types of loss or damage of the goods. A key moment for the regulation of the passing of the risk is the moment of passing of the goods from the seller to the buyer.¹

1. Legal regulation in the domestic law

The main provision that regulates the passing of risk in the domestic law in sales contracts is Article 444 of the Law of Obligations. Hence, it is stipulated that the risk for loss or damage of the goods passes from the seller to the buyer after the handing over of the goods to the buyer. However, the risk does not pass to the buyer if the buyer has terminated the contract or has requested substitution of the goods due to deficiency of the goods.²

These provisions are important because very often, a period of time passes between the conclusion of the contract and the handing over of the goods, Therefore, it has to be clear that the passing of risk is determined by the handing over of the goods, and not the conclusion of the

¹Borislav T. Blagojevic, Vrleta Krulj, *Commentary on the Law of Obligations* (II book, second edition), 1983, Savremena Administracija, p. 1265.

²Law of Obligations, Public Journal of Republic of North Macedonia 18/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09, 161/09, 23/13 и 123/13, Article 444

contract and the risk passes to the buyer after the handing over of the goods.³ The obligation of the seller to hand over the goods is stipulated from Article 455 to Article 462.

Although the general rule is that the risk passes to the buyer after the handing over of the goods, we can see that there is an exception to that general rule. Therefore, the risk does not pass to the buyer if the buyer has terminated the contract or has requested substitution of the goods due to deficiency of the goods.

In order to achieve legal certainty, the legal theory provides an interpretation of this rule. Therefore, it is stated that this rule should be interpreted in a manner that the risk passes to the buyer with the handing over of the goods and the buyer has the burden of loss or damage of the goods until the moment that he has issued a declaration of termination of the contract or has requested substitution of the goods. If it is determined, that such a declaration has no merit, it should be considered that the risk hasn't passed back to the seller retroactively, but the risk has passed to the buyer with the handing over of the goods. If it is determined that the declaration is valid and justified, it should be considered that the risk hasn't passed to the buyer at all with the handing over of the goods.⁴

2. Passing of risk when the contract of sales involves carriage of the goods

The passing of the risk when the contract involves carriage of the goods is not strictly regulated in domestic law. There isn't a provision that regulates the matter specifically. Therefore, in order to determine the moment when the risk passes to the buyer, we have to determine the moment of fulfilment of the obligation of the seller of handing over the goods. Article 460 of the Law of Obligations determines that if the contract of sales involves carriage of the goods, and the seller is not bound to hand them over at a particular place, the handing over of the goods is done when the goods are handed over to the first carrier for transmission or to the person that organizes the transportation. Henceforth, Article 460 has to be interpreted in correlation to Article 444, which leads to the conclusion that risk passes from the seller to the buyer at the moment when the goods are handed over to the first carrier for transmission or to the person that organizes the transportation.

3. Passing of risk in case of late performance of the buyer

Previously, we have determined that the main rule considering the passing of risk stipulates that the risk passes to the buyer after the goods are handed over to him. However, there are situations in which the risk passes before the handing over of the goods to the buyer. Those are the situations when the buyer fails to fulfil his obligation of taking delivery of the goods at the agreed period of time.

Hence, the domestic law stipulates that if the handing over of the goods hasn't happened due to late performance of the buyer of his obligation to take delivery of the goods, the risk passes to the buyer at the moment when the buyer's obligation is due and he fails to perform. If the goods are generically specified, the risk passes to the buyer when the seller has identified the goods and has sent a notice of the identification to the buyer. When the goods that are generically specified cannot be identified because of their nature, the risk passes to the buyer when the seller has

³Kiril Chavdar, Kimo Chavdar, *Law of Obligations, commentary, explanations, practice and case registry* (second amended and updated edition, Skopje, 2008) p. 659

⁴Ibid, p.660

undertaken all the necessary activities to enable the buyer to take delivery of the goods and has sent a notice regarding those activities to the buyer.⁵

As we can see from the first sentence from the previous paragraph, one of the consequences of the buyer late performance is the passing of risk. In this case, the passing of risk is connected to the creditors-buyer late performance.⁶

The Law of Obligations regulates the creditor's late performance, or the creditor's lack of performance according to the contract in Articles 314 and 315. Therein, it is stated that the creditor obligation is due if he denies accepting the performance of the debtor or obstructs his performance. Also, the creditor's performance is due when he is ready to accept the performance of the debtor's obligation but is not ready to perform his concurrent obligation. While applying the provisions of the creditor's nonperformance, the provisions for time and place of handing over of the goods has to be considered.⁷ In these situations, the seller has the right to deposit the goods in court or to a third person and has an obligation to protect the goods as a good businessman.⁸

The second paragraph of Article 445 sets the rule for the passing of risk in the case of the sale of generically specified goods. From this paragraph, we can establish that two conditions have to be met simultaneously. Firstly, the seller has to have clearly identified the goods, and second, he has to have sent a notification of the identification of the goods to the buyer. Only when these two conditions are met simultaneously, the risk passes to the buyer.

The third paragraph of Article 445 regulates the situations where the goods that are generically specified cannot be identified by the seller because of their nature. Therefore, usually, the identification takes place at the moment when the buyer takes delivery of the goods. For example, in cases where the good is some sort of liquid good, and the seller doesn't have enough free storage tanks to store, or separately identify the liquid goods that are sold, the law stipulates that the seller has completed his obligation when he has undertaken all the necessary activities so that the buyer can take delivery of the goods and the seller has notified the buyer about those activities.⁹

III. PASSING OF RISK UNDER THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

As we have already established, the determination of the moment when the risk passes to the buyer has significant importance in the sales contract. In international sales, very often, the parties use the very well known rules which regulate this matter, the INCOTERMS.¹⁰ By using such rules, the parties give subsidiary application to the applicable substantive law, such as the CISG. Anyhow, in case of lack of sufficient regulation of the matter, or lack of regulation at all

⁵Law of Obligations, op. cit. Article 445

⁶Borislav T. Blagojevic, VrletaKrulj, op.cit., p.1266

⁷Law of Obligations, op. cit., Articles 445,455,457-460

⁸KirilChavdar, KimoChavdar, op. cit.,p. 661, 662

⁹Borislav T. Blagojevic, VrletaKrulj, op.cit., p 1267

¹⁰ The INCOTERMS rules are first created in 1936 by the International Chamber of Commerce. Since the creation of the rules, they have been revised and updated in 1953, 1967, 1974, 1980, 1990, 2000, 2010 and 2020. The most current version INCOTERMS 2020 went into effect on January 1, 2020. These rules are applicable when they are chosen by the parties, but anyhow, their importance in global trade law is immense due to the popularity and worldwide application of the rules. < <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-history/> > accessed 22 June 2021.

in the contract by the parties, the CISG shall be applied to determine who has to bear the burden of accidental loss or damage of the goods. The CISG shall be applied only when the criteria's of chapter one of the CISG are met.

The CISG is more detailed regarding this matter than the domestic law. The CISG, besides the general regulation of the passing of risk, regulates two specific situations. It regulates the passing of risk when the contract of sale involves the carriage of goods and the passing of risk when the goods are sold in transit. In all other situations, the risk passes to the buyer in the moment of the handing over of the goods to the buyer, or in the moment when the goods are placed at the buyer's disposal, and he commits a breach by failing to take delivery. In the cases where the contract relates to goods not then identified, the goods have to be identified to the contract before they are placed at the buyer's disposal and only after those criteria's are met, the risk passes to the buyer.¹¹

1. General rule

The general rule regarding the passing of risk is stipulated in Article 69 of the CISG. This Article applies only if Articles 67 and 68 do not apply, which refer to situations where the contract involves carriage of goods and where the goods are sold in transit. Article 69 is applicable even if the buyer arranges for subsequent transportation of the goods by a third party carrier. Which article is applicable in a particular case is often determined by the interpretation of the parties agreement.¹²

In one case between a Yugoslav company - seller and a Hungarian company – buyer the arbitral tribunal has applied Article 67. Between the parties has been agreed that “the buyer has to take over the goods – eggs at the seller's place of business and has to take the goods to his warehouse in Hungary”. The tribunal has interpreted this contract clause in a way that carriage of goods has been agreed upon by the parties.¹³

Article 69, paragraph 1, regulates that 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.

This paragraph regulates the situation in which the buyer has to take over the goods from the seller place of business. Anyhow, as it is logical, even if the buyer doesn't take over the goods if his obligation for taking over is due, the risk passes to the buyer. However, in order for the risk to pass to the buyer, the seller has to have placed the goods at the buyer's disposal. The placing of the goods at the buyer's disposal is considered done when the seller has undertaken all necessary activities to allow the buyer to take over the goods. The essence of this paragraph is strongly connected to the physical possession of the goods. The party that has possession of the goods has much better conditions to take care of the goods, and that is why the main rule is that the party who possess the goods has to bear the burden for loss or damage of the goods.

¹¹ United Nations Convention on Contracts for the International Sale of Goods (CISG), (Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods, Part Three, Sale of Goods, passing of risk), 2010, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf> accessed 1 November 2020.

¹² UNCITRAL Digest of Case Law on the United Nations Convention on International Sale of Goods, 2012, United Nations, p.325

¹³ Yugoslav company v Hungarian company (CLOUT case No. 163, 10 December 1996), <<https://cisgw3.law.pace.edu/cases/961210h1.html>> accessed 1 November 2020.

However, the buyer cannot bear the risk for unlimited time, and a logical rule is set that the risk passes to the buyer when the buyer has breached the contract by not taking delivery.

The second paragraph of Article 69 regulates the situations where the buyer is bound to take over the goods at a place other than the place of business of the seller. Hence, that place can be the buyer's place of business, or any other place determined by the parties. However, in practice, the most common are the situations where the buyer has to take over the goods from a warehouse. For this paragraph to be applicable, three conditions have to be met, i.e. the delivery has to be due and made, the goods have to be placed at the buyer's disposal and the buyer has to be aware of the fact that the goods are placed at his disposal at that place. Regarding the third condition, that the buyer has to be aware of the fact that the goods are placed at his disposal at the agreed place if the parties haven't agreed on the time when the goods have to be placed at the buyer's disposal, the seller has to notify the buyer about the placement of the goods for this criteria to be fulfilled.

The third paragraph of Article 69 relates to situations where the contract relates to goods not then identified and this paragraph sets a condition for the passing of risk. In the aforementioned situations, it is regulated that until the goods are identified to the contract, the goods shall be considered not to be placed at the disposal of the buyer.¹⁴

2. Passing of risk in cases where the contract involves carriage of goods

The passing of risk in cases where the contract involves the carriage of goods is regulated in Article 67 of the CISG. Article 67, stipulates that if the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk. Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.¹⁵

The main application of this Article is noticeable in cases where the transport has to be undertaken by more carriers of transmission and with different means of transportation. For example, the transport can be undertaken by train, truck and ship in order to be fulfilled and the goods to reach their destination. In these situations, the risk passes when the goods are handed over to the first carrier of transmission.

This main rule that the risk passes when the goods are handed over to the first carrier of transmission is a rule that is generally accepted in international business law. Under paragraph one of this Article, when the seller is not bound to hand over the goods to the buyer at a particular place, there is case law that confirms the abovementioned and the court has decided that the risk has passed to the buyer when the seller has handed over the goods to the first carrier of transmission.¹⁶ The second part of this paragraph refers to the passing of risk when the seller

¹⁴ZoiValioti, *Passing of risk in international sale contracts: A comparative examination of the rules on risk under the United Nations Convention on Contracts for International Sale of Goods (Vienna 1980) and INCOTERMS 2000* (September 2003), <<https://www.cisg.law.pace.edu/cisg/biblio/valioti1.html>> accessed 1 November 2020

¹⁵United Nations Convention on Contracts for the International Sale of Goods - CISG, (Vienna, 1980), Article 67

¹⁶Italian company v German company, (CLOUT case No. 360, 13 April 2000),

is bound to hand over the goods at a particular place to the carrier of transmission. In practice, this paragraph is not often applied in the case of law because there haven't been problems with the application of this rule.¹⁷

The handing over of the goods is considered complete when the goods are in the carrier's possession. One court has decided that the real handing over of the goods is complete when the carrier has loaded the goods in the vehicle of transportation and the loading is finished. Before the loading is completed, the risk does not pass to the buyer.¹⁸

The second paragraph of Article 67 regulates the passing of risk concerning the goods that are not clearly identified in the contract. Hence, it is stipulated that for the risk to pass to the buyer, the goods have to be clearly identified. A situation can occur where the goods are handed over to the carrier but are not clearly identified. Hence, in case of damage of the goods after the handing over to the carrier, a dispute can arise in regard to the determination of the moment at which the goods were damaged and of who bears the risk for the damage of the goods. The regulation stipulated in this paragraph shrinks the space of interpretation and defines that the risk hasn't passed to the buyer if the goods haven't been identified by the seller.

Concerning this Article, always has to be considered that it is connected to Article 69 and usually, the situations that are not covered by this Article are covered by Article 69.¹⁹

3. Passing of risk when goods are sold in transit

In International Business Law, often, there are situations where the goods are sold in transit. Subsequently, a regulation regarding the passing of risk for those situations is needed in order for disputes to be avoided between the parties regarding this matter.

Article 68 of the CISG regulates this matter and stipulates the main rule that the risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at any time of the conclusion of the contract of sale, the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at risk of the seller.

The first sentence of this Article sets the general rule which stipulates that it is to be considered that in respect of goods sold in transit, the risk passes to the buyer from the time of the conclusion of the contract. Although, this sentence sets a rule regarding the passing of risk, in practice it can be really difficult to determine the moment when the goods were damaged or lost while in transit. It can happen before or after the conclusion of the contract. For example, if the goods are carried by ship, the contract is concluded while the goods were in transit and after the ship reaches its destination, during the offload of the goods it is noticed that the goods are damaged. A dispute can arise regarding the moment in which the goods were damaged if it is before or after the conclusion of the contract. Therefore, although there is a rule regarding the passing of risk in these situations, sometimes its application can be difficult because of the lack

<<https://cisgw3.law.pace.edu/cases/000413g1.html>> accessed 4 November 2020

¹⁷UNCITRAL Digest of Case Law on the United Nations Convention on International Sale of Goods, 2012, United Nations, p. 322.

¹⁸Italian company v German company, (23 October 2006), <<http://cisgw3.law.pace.edu/cases/061023g1.html>> accessed 4 November 2020

¹⁹John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (fourth edition) p. 517

of possibility to determine the facts, i.e. to determine the moment in which the goods were damaged.

The second sentence of the Article sets an exception rule in relation to the general rule prescribed in the first sentence of Article 68. It sets a criteria “circumstances so indicate” which determines a different moment for the passing of risk and regulates that the risk passes to the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. In regard to the criteria “circumstances so indicate”, only objective circumstances should be considered, independent of any contracts.²⁰

Finally, the third sentence of Article 68 also sets an exception to the general rule and regulates a situation where the seller acted mala fide. This paragraph regulates the situation where the seller at any time of the conclusion of the contract knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer. In these situations, the seller has tried to deceive the buyer by not disclosing some facts and a logical rule is set in the CISG that the loss or damage of the goods is at the risk of the seller. This Article does not regulate whether the goods should be identified as it is stated in Articles 67 and 69. Anyhow, analogy in relation to these Articles is generally accepted.²¹

4. Obligation to pay the price in relation to passing of risk and passing of risk in cases where the seller has committed a fundamental breach

Chapter IV of the CISG which regulates the passing of risk contains an article that regulates the obligation of the buyer to pay the price after the risk has passed to the buyer and an article that regulate the right of the buyer to resort to a remedy when the seller has committed a fundamental breach. Although these articles do not regulate explicitly the passing of risk but are more focused on the rights of the parties in certain situations, these articles are closely connected to the passing of risk so we'll make a short analysis of the articles.

a. Obligation to pay the price in relation to passing of risk

The obligation to pay the price after the risk has passed to the buyer is stipulated in Article 66 of the CISG. Therein, it is stipulated that loss of or damage of the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price unless the loss or damage is due to an act or omission of the seller.²²

This Article contains a general rule and an exception. The general rule is that the loss of or damage of the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price. That means that when the buyer has received the goods in conformity to the contract, the risk is on the buyer and he has to fulfil his obligation.²³

²⁰Annemieke Romein, *The passing of risk, A comparison between the passing of risk under the CISG and German Law* (Heidelberg, June 1999), <<https://www.cisg.law.pace.edu/cisg/biblio/romein.html>> accessed 10 November 2020

²¹Zoi Valioti, op.cit. <<https://www.cisg.law.pace.edu/cisg/biblio/valioti1.html>> accessed 10 November 2020.

²² CISG, Article 66

²³Zoi Valioti, op. cit.

The exception to this rule is applicable when the loss or damage is due to an act or omission of the seller and the Article regulates that in those situations the buyer is not obligated to pay the price.²⁴

This Article finds its application in practice. One arbitral tribunal has decided that the seller is liable for the damage of the goods due to inadequate packaging of the goods.²⁵ In another case, it is decided that the seller is liable for the damage of the goods in a situation where the goods are live sheep and the seller has given wrongful instructions to the carrier regarding the transmission of the sheep, so due to that act of the seller, the damage occurred.²⁶

b. Passing of risk in cases where the seller has committed a fundamental breach

Article 70 of the CISG regulates the availability of the remedies to the buyer in cases where the seller has committed a fundamental breach. Article 70 stipulates that if the seller has committed a fundamental breach of the contract, Articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

According to this Article, although the risk has passed to the buyer, the buyer retains the right to access to the available remedies when the seller has committed a fundamental breach.²⁷ The key element of this Article is that the breach has to be fundamental, a simple breach is not sufficient for this Article to be applicable. Herein, it has to be considered that the loss or damage of the goods should not be due to the fundamental breach of the seller. Henceforth, the fact that the seller has committed a fundamental breach of the contract according to Article 25²⁸ of the CISG does not prevent the passing of risk to the buyer in relation to Articles 67, 68 and 69.²⁹

IV. CONCLUSION

This research has shown the importance of the regulation of the passing of risk in sales contracts. Bearing in mind all the provisions that we have analyzed in this research, it's obvious that there can be many different situations in practice in which the problem regarding the passing of risk can arise between the parties. Therefore, the purpose of the existence of the provisions that regulate this matter is that they provide a mechanism for faster and more unambiguous resolution of potential disputes between the parties when they haven't regulated the matter in the contract of sales. Also, the existence of these provisions improves the legal certainty for the parties involved in the contractual obligations.

We can conclude that both sources of law, the Law of Obligations and the CISG stipulate a same general rule regarding the passing of risk, which regulates that the risk passes from the seller to

²⁴Peter Huber, Alastair Mullis, *The CISG, A new textbook for students and practitioners*, 2007, Sellier, European law publishers, p. 317

²⁵Italian company v German company, (CLOUT case No. 724, 14 December 2006), <<https://cisgw3.law.pace.edu/cases/061214g1.html>> accessed 10 November 2020

²⁶German company v Danish Company, (22 August 2002), <<http://cisgw3.law.pace.edu/cases/020822g2.html>> accessed 10 November 2020

²⁷ UNCITRAL Digest of Case Law on the United Nations Convention on International Sale of Goods, p. 327

²⁸ CISG, Article 25 – A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

²⁹Zoi Valioti, op. cit.

the buyer at the moment when the buyer takes over the goods. This rule is logical and righteous because the party who has possession of the goods can control them so it is normal that the risk for accidental loss or damage is to that party. However, there are exceptions to this rule in the cases where the buyer is in breach of the contract by not taking delivery.

The main difference between these sources of law is that the CISG regulates this matter in much more detail. However, considering that the CISG regulates only the sales contracts and the Law of Obligations has a much wider scope, it is logical that the CISG is more detailed and regulates more different situations.

The two specific situations which the CISG regulates are the situations of the passing of risk when the contract of sale involves carriage of goods and the passing of risk when the goods are sold in transit. Regarding the regulation about the passing of risk when the contract of sale involves carriage of goods, although, the national law does not have an explicit provision that regulates the matter, through the analysis, we realized that the moment of the passing of risk can be determined implicitly with an interpretation of Article 460 in relation to Article 444 of the Law of Obligations. However, Article 67 of the CISG that regulates this matter is more detailed and covers more situations.

Anyhow, the most specific situation that only the CISG regulates is the situation when the goods are sold in transit. Considering that this is a situation that in modern days is more and more frequent, we believe that a regulation of this matter in the national law would improve the legal certainty and would provide a mechanism for much easier dispute resolution between the parties in these situations.

As we have mentioned in the introduction part of this paper, the nature of the provisions regarding the passing of risk is not mandatory, and the parties can freely regulate this matter according to their will. The necessity of the existence of these provisions is seen in situations where the parties haven't regulated this matter, or haven't sufficiently regulated this matter so an applicable substantive law can be applied in cases where disputes arise regarding the passing of risk.

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