

STUDY UNIT 4 : SELLERS DUTIES : DUTY OF CUSTODY

Sellers obligation to take care of thing until it is handed over.

Period: After contract is concluded but before delivery takes place, seller is obliged to look after thing. Seller is liable if damage of thing is her fault. purchaser carries risk of accidental damage

Degree of care:

Degree of care required of seller is which a reasonable person would exercise on thing. Parties may also agree to seller must bestow more or less care on thing. Onus of proving care was exercised rests on seller.

Mora creditoris / Debitoris:

If there is mora by purchaser regarding acceptance of delivery or mora by seller to accept performance, seller will be liable only if thing is damaged intentionally by her gross negligence. If seller is in mora regards delivery of thing. She is liable in all cases, except situations beyond her control.

* Imputed (to ascribe to charge a person)

THE PURCHASER'S REMEDIES:

(1) If thing ^{which is tendered} differs materially from thing sold, purchaser can cancel contract & claim damages for her full loss.

(2) Where damage of thing was caused by 3rd person, seller incurs no liability. If risk is buyer, seller must cede to purchaser any claim she has against 3rd person.