

*Article 69*

## [Accounting for benefits in case of restitution]

(1) If the seller is bound to refund the price, he must also pay interest thereon from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

## PRIOR UNIFORM LAW

ULIS, article 81.

**Commentary**

1. Article 69 reflects the principle that a party who is required to refund the price or return the goods because the contract has been avoided or because of a request for the delivery of substitute goods must account for any benefit which he has received by virtue of having had possession of the money or goods. Where the obligation arises because of the avoidance of the contract, it is irrelevant which party's failure gave rise to the avoidance of the contract or who demanded restitution.<sup>1</sup>

2. Where the seller is under an obligation to refund the price, he must pay interest from the date of payment to the date of refund. The obligation to pay interest is automatic because it is assumed that the seller has benefited from being in possession of the purchase price during this period. Since the obligation to pay interest partakes of the seller's obligation to make restitution and not of the buyer's right to claim damages, the rate of interest payable would be based on that current at the seller's place of business.

3. Where the buyer must return the goods, it is less obvious that he has benefited from having had possession of the goods. Therefore, paragraph (2) specifies that the buyer is liable to the seller for all benefits which he has derived from the goods only if (1) he is under an obligation to return them or (2) it is impossible for him to make restitution of the goods or part of them but he has nevertheless exercised his right to declare the contract avoided or to require the seller to deliver substitute goods.

<sup>1</sup> See article 66 (2) and para. 9 of the commentary thereon.