

*Article 77***[Sale of the preserved goods]**

(1) The party who is bound to preserve the goods in accordance with articles 74 or 75 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the cost of preservation, provided that notice of the intention to sell has been given to the other party.

(2) If the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party who is bound to preserve the goods in accordance with articles 74 or 75 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) The party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PRIOR UNIFORM LAW

ULIS, articles 94 and 95.

Commentary

1. Article 77 sets forth the right to sell the goods by the party who is bound to preserve them.

Right to sell, paragraph (1)

2. Under paragraph (1) the right to sell the goods arises where there has been an unreasonable delay by the other party in taking possession of them or in taking them back or in paying the cost of preservation.

3. The sale may be by "any appropriate means" after "notice of the intention to sell" has been given. The Convention does not specify what are appropriate means because conditions vary in different countries. To determine whether the means used are appropriate, reference should be made to the means required for sales under similar circumstances under the law of the country where the sale takes place.

4. The law of the State where the sale under this article takes place, including the rules of private international law, will determine whether the sale passes a good title to the purchaser if the party selling the goods has not complied with the requirements of this article.¹

Goods subject to loss, paragraph (2)

5. Under paragraph (2) the party who is bound to preserve the goods must make reasonable efforts to sell them if (1) the goods are subject to loss or rapid deterioration or (2) their preservation would involve unreasonable expense.

6. The most obvious example of goods which must be sold, if possible, because they are subject to loss or rapid deterioration is fresh fruits and vegetables. However, the concept of "loss" is not limited to a physical deterioration or loss of the goods but includes situations in which the goods threaten to decline rapidly in value because of changes in the market.

7. Paragraph (2) only requires that reasonable efforts be made to sell the goods. This is so because goods which are subject to loss or rapid deterioration may be difficult or impossible to sell. Similarly, the obligation to give notice of the intent to sell exists only to the extent to which such notice is possible. If the goods are rapidly deteriorating, there may not be sufficient time to give notice prior to sale.

8. If the party bound to sell the goods under this article does not do so, he is liable for any loss or deterioration arising out of his failure to act.

Right to reimbursement, paragraph (3)

9. The party selling the goods may reimburse himself from the proceeds of the sale for all reasonable costs of preserving the goods and of selling them. He must account to the other party for the balance. If the party selling the goods has other claims arising out of the contract or its breach, under the applicable national law he may have the right to defer the transmission of the balance until the settlement of those claims.

¹ Article 4.