

On June 1, a seller agreed to sell an antique car to a buyer for \$20,000, in a writing signed by both the seller and the buyer. At the time, the car was on display in a museum in a different city and was to be delivered to the buyer on August 1. On July 15, before the risk of loss had passed to the buyer, the car was destroyed by fire without fault of either party. Subsequent to the contract but before the fire, the car had increased in value to \$30,000. The seller sued the buyer for the contract price of \$20,000, and the buyer counterclaimed for \$30,000.

What is the likely outcome of this suit?

- A. Both claims will fail.
- B. Both claims will succeed, and the buyer will recover \$10,000.
- C. Only the buyer's claim will prevail.
- D. Only the seller's claim will succeed.

Explanation:

Effect of destruction or damage to identified goods

(UCC § 2-613)

Complete destruction	Contract avoided (ie, neither party is required to perform)
Partial destruction	Buyer may demand inspection & (1) treat contract as avoided or (2) accept goods at reduced price but with no further right against seller

UCC = Uniform Commercial Code.

Contracts for the sale of goods are governed by Article 2 of the Uniform Commercial Code (UCC). Under the **UCC**, the **risk of loss** generally remains with the seller until the buyer receives the goods. However, if the contract deals with **specifically identified goods** (eg, the antique car on display), then **complete destruction** of the goods **excuses each party's duty** to perform **so long as** the destruction occurred:

without fault of either party *and*
before the risk of loss passed to the buyer.

Here, the buyer and seller formed a contract for the sale of an antique car. That car was destroyed by fire without fault of either party and before the risk of loss passed to the buyer. Therefore, the contract was avoided and neither the buyer nor the seller was required to perform. This means that both their claims will fail (**Choices B, C & D**).

Educational objective:

When a contract deals with specifically identified goods, complete destruction of the goods excuses each party's duty to perform if the destruction occurred (1) without fault of either party and (2) before the risk of loss passed to the buyer.

References

U.C.C. § 2-509 (Am. Law Inst. & Unif. Law Comm'n 2020) (risk of loss in the absence of breach).

UCC § 2-613 (Am. Law Inst. & Unif. Law Comm'n 2020) (casualty to identified goods).

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