

A seller owned a single-family house. A buyer gave the seller a signed, handwritten offer to purchase the house. The offer was unconditional and sufficient to satisfy the statute of frauds, and when the seller signed an acceptance, an enforceable contract resulted.

The house had been the seller's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction. Two weeks after the parties had entered into their contract, one week after the buyer had obtained a written mortgage lending commitment from a lender, and one week before the agreed-upon closing date, the house was struck by lightning and burned to the ground. The loss was not insured, because three years earlier the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. The buyer declared the contract voided by the fire, but the seller asserted a right to enforce the contract despite the loss.

There is no applicable statute.

If a court finds for the seller, what will be the likely reason?

- A. The contract was construed against the buyer, who drafted it.
- B. The lender's written commitment to make a mortgage loan to the buyer made the contract of sale fully binding on the buyer.
- C. The risk of loss falls on the party in possession, and constructive possession passed to the buyer on the contract date.
- D. The risk of loss passed to the buyer on the contract date under the doctrine of equitable conversion.

Explanation:

When, as here, a real estate **contract is silent** as to the **risk of loss**, the doctrine of **equitable conversion** places that **risk on the party with equitable title** to the property. Equitable title is transferred to the **buyer** once the contract is formed and can be specifically enforced. A contract can be specifically enforced if no conditions exist (as seen here) or all contract conditions have been performed. Therefore, the court likely found in favor of the seller because the risk of loss had already passed to the buyer when the house was destroyed.

However, had this jurisdiction followed the Uniform Vendor and Purchaser Act (a minority rule), the risk of loss would have remained with the seller until the buyer took *actual* possession of or received title to the property **(Choice C)**.

(Choice A) A contract is generally interpreted according to its plain meaning; however, ambiguities within the contract may be construed against the drafter. But the rules of contract interpretation are irrelevant here because the contract is silent as to the risk of loss and the doctrine of equitable conversion controls.

(Choice B) There were no conditions in the contract of sale (e.g., that the buyer secure financing before closing), so the contract became binding once the seller signed the acceptance. Therefore, the buyer would have been obligated to purchase the property even if the buyer had not received a loan commitment.

Educational objective:

Unless otherwise provided, the doctrine of equitable conversion places the risk of loss on the party with equitable title to the property. The buyer acquires equitable title once a real estate contract is formed and can be specifically enforced.

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