



# Topic 24: Commercial Impracticability

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**Commercial  
Impracticability**

## Commercial Impracticability



## Commercial Impracticability

- Commercial impracticability is a form of excuse, excusing someone from performing a contract.
- Commercial impracticability is a possible excuse for sellers.
- Commercial impracticability is supposed to be very rare. If you made a bad deal, you're generally stuck with it. That's the whole point of a binding contract!

### Commercial Impracticability

- Commercial impracticability is for highly unusual situations far from what the parties could have reasonably expected would happen.
- Some examples could be earthquake, fire, flood, strikes, the sudden failure of a supplier.

### Commercial Impracticability

- Two recurrent categories:
  - Unexpected failure of a supplier
  - Huge price increase for supplies

## Commercial Impracticability

- UCC 2-613: Special form of commercial impracticability available in particular circumstances.
- UCC 2-615: General commercial impracticability

## Commercial Impracticability

### **UCC § 2-613. Casualty to Identified Goods.**

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then

- (a) if the loss is total the contract is avoided; and
- (b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

## Commercial Impracticability

### UCC §2-613 (special commercial impracticability)

- Only applies for particular goods identified to the contract at the time it was made
- Loss must happen through no negligence or other fault of the seller
- If the loss is total, the seller can avoid the contract
- If the loss is partial, the buyer has the choice of inspecting the goods and taking them at lower price that reflects an allowance for the damage, otherwise the contract is avoided

## Commercial Impracticability

### UCC § 2-615. Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

## Commercial Impracticability


### UCC §2-615 (general commercial impracticability)

- Performance must be impracticable
  - E.g., cost increases of 50% likely still practicable
- Must be caused by something that the non-occurrence of which was a basic assumption of the contract at time of contracting

In which situation will complete destruction of the good or goods before delivery (and before risk of loss has passed to the buyer), and where no one is to blame, completely excuse performance?

- (A) The contract is for "10 metric tons of industrial grade aluminum."
- (B) The contract is for "2,000 units of Team USA Luge t-shirts in sizes and design as specified on the attached list."
- (C) The contract is for "a 2008 white Ford F-150 XL pickup truck."
- (D) The contract is for "the Pontiac Trans Am used to portray KITT in the final scene of Season 1, Episode 5 of the original *Knight Rider* TV series."
- (E) The contract is for "luxury office furnishings suitable for three offices and one conference room, such rooms being as shown on the attached blueprint."

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## Problems

### Hurricane Roscoe, Part 1

The weather says Hurricane Roscoe will make landfall in two days. Bob contracts to purchase 30 sheets of plywood from Sally to board up the windows on Bob's building, delivery set for the next day.

When Sally goes to procure the plywood from the wholesaler, the price has gone up, because of the hurricane, by 2000%. Sally wants to avoid the contract. Can she?

**ANSWER:** No, assuming it's the hurricane that caused the price increase. She can't under §2-613 because §2-613 is only for goods identified to the contract, and the plywood wasn't. Under §2-615 she can't because it was known the hurricane was coming, therefore the non-occurrence of a hurricane wasn't a basic assumption at the time of contracting.

## Problems

### Hurricane Roscoe, Part 2

Hurricane Roscoe causes massive damage to a custom-restored 1946 Studebaker automobile that car collector Brenda had contracted to purchase from classic-car broker Selena for \$860,000. Brenda was willing to pay so much for the car because it had been prominently featured in the blockbuster movie *Fatal Death* (tagline: "Murder's never been so deadly.") The car was completely flooded and a collapsing roof caused by the winds smashed the back half of the car. Selena wants to avoid the contract. Can she?

**ANSWER: No. Under §2-613, since the loss is not total, Brenda has the option of inspecting the car and taking it at a lower price to reflect the damage. But if Brenda wants to avoid the contract, she can. UCC §2-615 doesn't allow Selena to avoid the contract because it's practicable to give over the damaged car and absorb the discount.**