

# Sellers duty under cif contracts law commercial essay

Law



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According to case *Smyth and Co Ltd v Baily Son and Co Ltd*,<sup>[1]</sup> CIF contracts summarised by Lord Wright is a type of contracts which is more frequent and the most popular in use than other contract. In cif contracts the price of goods inclusive of cost, insurance and freight.<sup>[2]</sup> CIF contracts indicate the place of delivery. For instance, if a contract provides a delivery to London, it means ' the seller will have to bear the cost, insurance and freight to enable delivery of the goods at London'.<sup>[3]</sup> CIF Liverpool, means the goods will arrive to Liverpool or the goods will be delivered in Liverpool and buyer must provide the name of the port.

## **Seller's Duty Under CIF Contracts**

### **1- The seller is under obligation to procure and prepare documents**

The seller must procure and prepare shipment documents. Such as, he should prepare an invoice and receive a bill of lading and also policy insurance.<sup>[4]</sup>

### **2- Invoice**

In CIF contracts the seller is under a duty to tender an invoice to the buyer. ' The seller's invoice to the price'.<sup>[5]</sup> Moreover, ' the seller must give credit to the buyer for the amount of the freight'.<sup>[6]</sup>

### **3- Insurance**

The seller must obtain insurance policy cover the goods to protect marine cause and then tender the insurance to the buyer. Otherwise, he commits a breach of contract.<sup>[7]</sup> If the seller could not cover the insurance policy or fails to obtain it, he will responsible for the risk.<sup>[8]</sup>

## **4- Bill of Lading**

The seller is under obligation to insure bill of lading and also he must obtain shipped it.[9]The face of bill should be clear because it shows that the goods have been obtained for shipped. Otherwise, the goods are not in good order. [10]In CIF contracts the buyer pays for the goods against the documents and it is a 'reason or the insistence on a clear bill of lading'.[11]Also bill of lading should be transferable,[12]and during the transit the buyer can sell the goods.[13]The seller in cif contract must procure and tender bill of lading. [14]Furthermore, it should be issued a time of shipment.[15]In case *Hanson v Hamel and Horley Ltd.*

## **Buyer's Duty Under CIF Contracts**

### **1- Payment against Document**

Tender of documents plays a significant role in a CIF contract. The buyer should confirm a good tender of documents, because it represents the goods. Against the document, the buyer has to pay for the goods. The buyer is under a duty to pay to the seller in the currency which correspond with the contract of sale. If any currency has fluctuations, the seller has right to protect himself against it.[16]Today in the most CIF contracts will establish a letter of credit as a method of payment.[17]

### **2- name of port of destination**

There are a numerous number of destinations. The buyer is under a duty to name port of destination. Before the shipment, the buyer has to choose the name of the port and he must tell the seller.[18]3- delivery is the buyer's obligation. He must take delivery when the goods arrive. Also he must bear

all unloading costs.[19]4-the buyer is under an obligation to obtain any import licence ' if required'. But the parties can agreed otherwise in the contract.[20]

## **Passing of Property**

Under a CIF contract passing of property is a central event in a contract. [21]CIF contracts depend on two things to passing of property. Firstly, the general law. Secondly, the intention or agreement between parties. For instance, implied in their contract.[22]In the first place, according to Sale of Goods act, the title cannot pass to the buyer until the goods are ascertained. [23]If a seller sold 3000 tons of a cargo of barley which totals 15000 tons, the property cannot pass if the just bill of lading transfer for 3000. Because the goods must be ascertained before property can pass.[24]It is clear that under CIF contract property passes when the seller transfer the documents and payment is made.[25]Before passing the property, the buyer has to pay. Otherwise, the property will not pass.[26]In Rowlan v Divall,[27]the defendant sold a car to the plaintiff. After two months it was learned that the car was stolen property and also before it came to the defendant it was stolen. The defendant did not have property to pass on. The judge held that the buyer was entitled to recover his money already paid to buy a car and ' there was a total failure of consideration'.[28]

## **Passing of Risk**

According to Sale of Goods act, risk and property linked together, but this situation is different in a CIF contract.[29]Passing of property and risk under a CIF contract are not simultaneous.[30]In a CIF contract risk pass when the

goods are 'on shipment or as from shipment'.<sup>[31]</sup> This means if seller is sold the goods, the risk passes on shipment when the goods are shipped and the risk passes as from shipment if the goods are bought afloat. 'Since risk passes upon shipment, this places buyer under obligation to pay for the goods against a valid tender of documents'.<sup>[32]</sup> Furthermore, the buyer is under an obligation even if the goods before tender of the document have been damaged or lost. Under the Sale of Goods Act the contract is void if the goods have been lost or damaged during the contract without the knowledge of the seller.<sup>[33]</sup> The buyer often has a right to claim for damage from the carrier and also insure. Inversely, if the goods get damaged or lost by the event such as war the buyer is to bear the damage.<sup>[34]</sup>

## **FOB Contracts**

FOB stands for free on board.<sup>[35]</sup> FOB contract in *Wimble, Sons and Co v Rosenberg and Sons*,<sup>[36]</sup> described as a flexible instrument. The buyer must nominate the ship and the goods must be put on the board of a vessel by the seller for the buyer's account, also he must procure a bill of lading.<sup>[37]</sup> FOB contract recognizes the port of lading and this is the significant difference with CIF contract, because in CIF contracts recognize the port of arrival.<sup>[38]</sup> According to the Sale of Goods Act if the seller takes a bill of lading in his own name, it deems that he reserves the right of disposal.<sup>[39]</sup>

## **Passing of Property in FOB Contract**

Passing of title in goods is determined by many factors. For instance, by general law, by the term of contract between parties. If the goods are placed on board the vessel in FOB contract, the buyer has a property of the goods.

In FOB contract title in the goods passes at the same time because the buyer has a contractual relationship with the shipper of the goods after shipment. Title passes when the parties intend it to pass.[40] In FOB sales, property generally passes when the goods cross the ship's rail'.[41] Title in goods will pass when the bill of lading is delivered and also when the full price is made. [42] If the seller taking a bill of lading in his own name, according to Sale of Goods Act 1979 s19 (2) title does not pass on shipment. Particularly, in *Wait v Baker*, it was held that the property never passed because the seller took a bill of lading in his own name.[43]

### **Passing of Risk in FOB Contract**

Unlike CIF contracts, in FOB contract the risk often passes to the buyer upon shipment.[44] In FOB contract the seller is under an obligation to deliver goods to the buyer. In *Cunningham v Munro*,[45] also *Pyrene Co Ltd v Scindia Navigation Co Ltd*,[46] it was held that the risk passes when the goods cross the ship's rail. And the risk will not pass if the seller doesn't load the goods. Also the risk will pass to the buyer if the seller loaded the goods on board the vessel safely.[47] If the goods are not ascertained, the risk in goods still passes. In *Inglis v Stock*,[48] it was held that the risk passed at the time of shipment to the buyer.