

Contract law free on board fob cif

[Law](#), [Contract Law](#)



In this case study, Patina is the seller and Luca is the buyer under an FOB (Free on Board) agreement. General picture of a FOB contract can be congregated from the case of *Wimble & Sons v Rosenberg & Sons* which describes it as a contract for the sale of goods where the seller which in this case is Patina who agrees to deliver the goods over the ship's rail and the buyer or Luca in this stance agrees to convey it overseas.

According to English law, the case of *Pyrene v Scindia* defines a classic FOB contract which has occurred in this case study between Patina and Luca as the seller (Patina) draws up the contract with Luca who then nominates a vessel. If the buyer in a FOB agreement fails to nominate a ship within the actual contracted time then the contract may stand effectively repudiated. The seller or Patina in this case would have been legally allowed to sell goods to a third party thus recovering any losses from the buyer.

The Incoterms definition of a FOB is basically deprived of the seller being the shipper or transporter of the goods and the buyer's duty is to nominate a vessel as it is described in *Pyrene's* case. The main issue in this case is the transfer of risk from the seller (Patina) towards the seller (Luca). And furthermore it will be argued in regard to case law and statutes. According to an FOB agreement, risk is transferred at the point where the goods cross the 'ships rail'. Plaintiff in the case of *Pyrene & Co v Scindia Steam Navigation Co* sued the defendant carrier and was victorious in recovering damages of ? 00 as the defendant was found to be liable as he showed negligence while loading the goods and therefore the goods were damaged when they reached the plaintiff. Develin J in *Pyrene's* case judged that the liability of negligence would extend to cover up damages if the goods are damaged

during the process of loading either side of the ship's rail. This was the point in English law where the problem of risk bearing arose as it was difficult to decide if the goods lean back over the ships rail and fall on the dock.

In an FOB contract, goods which have passed the ships rail and are then damaged then the buyer is responsible for all the loss or damage even if the goods fall on the deck but if the goods fall on the wharf or water then the seller has to bears the losses. Conflicts basically arise when both the parties fail to understand the workings of the ' ship's rail' concept. Case of Thermo Engineers Ltd v Ferry Masters Limited explains this concept perfectly. The facts of this case were that an English seller of a heat exchanger decides to enter in a FOB agreement with a buyer located in Denmark's city of Copenhagen.

The heat exchanger was carried by trailer onto the vessel which had a damaged lower deck. The damage was covered by the high calibre of the Hague-Visby rules as they provide that the carrier is only liable from the point where the goods are loaded on the ships and as the trailer had crossed the rails of the ship when the damage was done which relieved the burden of risk from road provisions authority which would have been liable if the damage would have occurred prior to the crossing of the ship's rail. Due to uncertainty a new term of FCA (Free carrier) Incoterm was developed in order to provide an alternative to FOB.

This was one of the major developments in International Trade Law after 1936 when Incoterms were first introduced to define costs, risks and obligations of buyers and sellers in International transactions. Legal duties of

Patina under a classic FOB contract are to ship goods of contractual description at port of shipment. Section 13 of the Sale of goods act 1979 provides that the goods should correspond to the description which is present in the contract. Accordingly to Section 15A of Sale of goods act 1979, a breach if there is minor and a breach of warranty rather than a breach of condition.

Thus does not allow the buyer to reject the goods. Seller's delivery to the shipment place is a condition and if Patina would have delivered to a different place then Luca would have been legally allowed to claim damages. Another duty of a seller or Patina in this case is to pay handling and transportation costs. This includes the cost of loading and stevedoring. It's the duty of Luca to make arrangements for shipping and therefore communication in this instance is important as a seller is instructed by the buyer to ship the goods within the time frame stated by the buyer.

On the other hand when the goods are loaded the buyer should be informed by the seller of the shipment under S32 (3) of the Sale of goods act 1979, however this section does not impose any liability if Patina failed to notify Luca's of the shipment. After the judgment by Buckley LJ in the case of Wimble, Sons and Co Ltd v Rosenberg and Sons it was decided that section S32(3) of the Sale of goods act 1979 would never apply to a FOB contracts. Remedies available for Patina provided by the Sale of goods act 1979 is that Luca's can be sued on the grounds of non payment or for damages for non-acceptance.

It is duty of a buyer which in this case is Luca's to make payments to Patina for the goods upon passing of the ship's rail under a FOB. Luca can obtain damages for defective goods or for the whole delivery if the goods are not of satisfactory quality stated in the contract description. If Patina has retained the bill of lading then the risk will nevertheless pass when the goods cross the ship's rail. One important difference in English law and Incoterms 2000 is that Incoterms have much clearer rules as who is responsible for obtaining an export license.

It is legal duty of Patina to ship goods of contract description, prepare invoices and to have check, pack, mark and delivers the goods but the packing was ripped of some goods which reached Luca so Patina can be legally bound to pay damages. Section 35A (b) of the sale of goods acts provides that ' if the buyer accepts some of the goods, including, where there are any goods unaffected by breach, all such goods, he does not by accepting them lose his right to reject the rest. Luca's can only reject defective goods not whole consignment or when the difference in quantity is least as stated in section 30 of the sale of goods act 1979.

United Nations convention on contracts for the International sale of goods article 66 provides that any loss or damage after the risk has passed to the buyer does not discharge Luca's from his obligation to pay the price, unless the damage or loss is due to an act or omission of the seller. According to article 68 of the same convention, if Patina was aware of the damage or loss to the goods at that time but does not disclose to the buyer then Patina can

be liable for the damage to the goods. Article 74 inform of the damages available to the injured party.

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Article 77 allows reduction in damages if the party relying on a breach of contract is not able to take reasonable measures in order to mitigate a loss. Article 79 further strengthens Patina's legal position and as it allows exemptions to those seller who can prove that the damage to goods were beyond their control or have been able to avoid it. In this case an objective consideration would have been taken into account.

Luca's should inform Patina of any lack of conformity within a reasonable time and no later than two years after he receives goods. If a breach is found to be a fundamental one than Patina can be deprived from what it expected to receive under the contract. The convention therefore would not have been forceful in forcing a claim which was not known to the seller or Patina and the contract then would have been frustrated rather than breached. If Luca's decides to return the goods than benefits deprived must be accountable.

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Bibliography * Murray, Dixon, Timson-Hunt, Holloway, (2007), Schmitthoff's Export Trade, 11th Edition Sweet & Maxwell ISBN: 9780421893207 * Carr, I, (2009), Principles of International Trade Law, 4th Edition, Cavendish Publishing Ltd * Chuah, J, (2009), Law of International Trade, 4th Edition, Sweet & Maxwell Ltd * Dockray, M, Cases and Materials on the Carriage of Goods by Sea, 3rd ed. , Cavendish Publishing Ltd 2004 * Wilson, J, Carriage

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of Goods by Sea, 6th ed. , Pitman 2007 * Sale of Goods Act 1979 (amended)

* Incoterms 1990 & 2000