The seller under classic fob contract law commercial essay

Law

The seller is under an obligation to ship goods that are conformity to the contract description. '…… The goods will correspond with the description'. [1]Also the seller is under a duty to deliver goods to the port of of lading. If the seller breaches it, the buyer has right to obtain the damages. Port name is a condition in FOB contract. In Manbre S Co Ltd v Corn P Co Ltd,[2]it was held that the seller breached a condition and the buyer was entitled to reject the delivery. To pay all handling and transportation costs is the seller's duty. He must receive all relevant documents for export on behalf of the buyer and he is responsible for any charge for getting the document. For instance, ' certificate of origin'.[3]The seller is an obligation to ship the goods, but this duty starts after obtaining shipment instrument by the buyer and he must ship the goods during the specific time.[4]Delivery date and shipment date are linked together. If the goods pass the ship's rail, the seller is considered to deliver the goods to the buyer.[5]Sale of Goods Act 1979 imposes the seller to notify buyer when the goods are sent. The risk should be given without any postpone. Because this may enable to the buyer to insure the goods when they are in sea transit.[6]The risk will not pass if he fails to notify the buyer.[7]

Duty to the Buyer Under Classic FOB Contract

Under FOB contracts the buyer is under a duty to arrange the shipment of the goods. The main duty of the buyer is ' secure shipping space', also the buyer must refer the port of loading.[8]In David T Boyd v Louis Louca,[9]if the buyer doesn't identify the port of loading, the seller can choose it. The shipment space should be insured by the buyer. The buyer must bear all extra costs for the warehouse if he fails to get shipping space during the specific date.[10]If the goods pass on the ship's rail the buyer is under a duty to pay all costs for the goods. Sometimes the parties agreed to pay against the document. If the seller takes out a bill of lading in his own name, the buyer must pay when it is tendered.[11]

Seller's duty under Incoterms 1990

Under FOB contract the seller is under an obligation to procure and prepare invoices. The commercial invoice should provide by seller.[12]The seller must ship goods that equal to the contract description or conformity with the contract.[13]The goods must deliver on the board ship by the seller to the name of port of shipment and during the specific date.[14]When the seller delivers the goods on board ship. Also he must bear all loading charges until the goods pass on ship's tail.[15]' The seller has to provide adequate notice to the buyer to enable him to insure the goods during their sea transit'.[16]Insurance is the seller's duty. He must provide the buyer including all relevant importation.[17]Proof of delivery must provide to the buyer by the seller. Such as, transport document or electronic equivalent if the parties agreed to electronic data interchange.[18]

Buyer's duty under Incoterms 1990

The buyer is under a duty to provide shipping instrument in specific time. In Forrest v Aramayo,[19]according to the contract, the buyer must provide shipping instrument. It was held that he failed to do it. Notice to the seller is the buyer's duty. He must give adequate notice to the seller of the name of the ship, ' the port of lading'.[20]When the seller provides proof of delivery, the buyer must accept it. Such as, transport document.[21]When the goods pass on the ship's rail, the risk passes to the buyer even if he fails to provide the name of ship or expire delivery date.[22]The buyer must bear all costs after shipment. Also he must pay all price for the goods.[23]