

Are cif contract of  
sale of goods a sale  
of documents?



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## RESEARCH PROPOSAL

A Cost, Insurance, and Freight (CIF) contract of sale is a sale of documents instead of sale of goods.

### HYPOTHESIS:

“ A Cost, Insurance, Freight (CIF) contract of sale is completed when documents are sold instead of the goods”.

### INTRODUCTION AND ACADEMIC RATIONALE:

This research proposal will explore the field of Cost Insurance Freight (CIF) contract of sale and it will provide enough references and evidences towards answering the question of:

That whether CIF contract of sale of goods is a sale of documents or not?

Documents here refers to the contract documents which are the proof of the sale. These documents include the Bills of Lading, Commercial Invoice, and the Insurance Policy. The proposal will also put light upon the context that a CIF sale contract is completed once the documents are tendered correctly even before the goods are delivered.

The research objectives for this proposal are presented here, by a series of sub questions:

- The nature of a CIF contract-Is it a sale of documents or sale of goods?
- What are the main documents which completes the CIF contract of sale?

- Why is more emphasis given on symbolic delivery of goods using the documents?
- What is the concept of passing of property and risk in a CIF contract of sale?
- What are the duties of the buyer and the seller in a CIF contract of sale?
- What is High Seas Sale (HSS) and its concept in a CIF contract of sale?

The CIF term started with the expansion of the trade and commerce. The first reported case of CIF was in 1862 and 1871 and at that time it was mentioned C. F.&I. instead of C. I. F. in a CIF contract the buyer or his agent need not be present physically and the payment was deferred to a mutually agreed date by the buyer and seller.[1]Hamilton J defined the obligations of a CIF vendor; which re as follows:

First, to ship at the port of shipment the goods contained in the contract;

Second, to procure a freight contract, under which the goods will be delivered at the agreed destination;

Third, to arrange for an insurance which will be available for the benefit of the buyer;

Fourth, to make out a commercial invoice;

Fifth, finally tender these documents to the buyer.[2]

It follows that against tender of these documents the buyer must be ready and willing to pay the agreed contract price.

Furthermore, in a CIF contract of sale the emphasis is on the symbolic delivery of goods, using the documents which has and carry the title to those goods which are mentioned in the contract of sale and are being shipped. It is a cash against documents contract.[3]

#### LITERATURE REVIEW:

To conduct research on the topic ' CIF contract of sale is a sale of documents instead of sale of goods', it is very much important to firstly obtain some background knowledge on the CIF contract of sale as well as the reasons and evidences which will support and strengthen our topic and will show and proof that CIF contract of sale is a sale of documents. This literature review is contains parts which explains the CIF contract of sale and the relevance of documents in the CIF contract. These include: The nature of a CIF contract, the main documents which completes the CIF contract of sale, the concept of passing of property and risk in a CIF contract of sale, the duties of the buyer and the seller in a CIF contract of sale, High Seas Sale (HSS) and its concept in a CIF contract of sale. This literature review is in accordance with the objectives of this research, which it will explain the need of documents in a CIF contract and as to why a CIF contract of sale is a sale of documents.

#### The Nature of a CIF Contract

To start with, a COST, INSURANCE, FREIGHT (CIF) contract of sale is that contract in which the buyer buys the goods from the seller by paying the entire amount till the final port where the goods are to be discharged and delivered to the buyer. The sale price term includes the cost of the goods, insurance, and freight. For Example: 9, 000 100lbs. bags of Wheat CIF Le <https://assignbuster.com/are-cif-contract-of-sale-of-goods-a-sale-of-documents/>

Harve shipment June 2016 cash against documents. Today a CIF contract is one of the most important instruments which is used in international trade and international sale of goods. In a CIF contract the obligations of the seller is to ship the goods to the port which is being agreed upon by the buyer and the seller, and this port is also known as the final port of delivery or the port of discharge. Next is to get a contract of freight from the carrier on which the goods will be shipped to the agreed port and destination and then to arrange for an insurance which will cover the goods against the loss during the transit and this will benefit the buyer and then to make a commercial invoice. After all this the final obligation of the seller is to tender the documents to the buyer in the correct way and the correct manner which have been agreed by both buyer and the seller. After the documents are tendered and they are accepted by the buyer, the buyer is then bound to pay the agreed contract price of the goods and the contract is fulfilled and performed.

About to the nature of the performance of the CIF contract, especially where the importance is given on the tendering of the documents in the correct manner rather than physical delivery of goods, some jurists and academic writers are of the view that CIF contract of sale is a sale of documents rather than goods.[4]

The main documents which completes the CIF contract of sale and the concept of passing of property and risk

In the CIF contract of sale, the importance is on the symbolic delivery of goods which is done using the documents which has the title of the shipped

goods. it is a cash against documents contract. The main documents in a CIF contract of sale are Bills of Lading, Insurance policy, Commercial Invoice. The commercial invoice shows the contract price and the buyer must pay once these documents are tendered. The advantages of a CIF contract are that the buyer does not have to worry about the freight prices and insurance premiums and the changes if any happen to the prices, as the buyer pays the entire price till the final delivery port. The buyer also knows the exact price which he has to pay.

The property in a CIF contract of sale may pass either on shipment or on tender of the documents and the risk generally passes on shipment, but the possession does not pass until the documents which represents the goods are handed over in exchange for the price. The presumption is property passes in CIF contract of sale when documents are delivered to the buyer.[5]

The judgement of Scrutton J also said that a CIF contract is a contract of sale of documents in the cases of *Karberg (Arnhold) & Co v Blythe Green, Jourdain & Co*. The judgement became very famous. The judgement lies as:

“ I am strongly of opinion that the key to many of the difficulties arising in CIF contracts is to keep in mind the cardinal distinction that a CIF sale is not a sale of goods, but a sale of documents relating to goods. It is not a contract that goods shall arrive, but a contract to ship goods complying with the contract of sale and to tender those documents against payments of the contract price. He buys the documents, not the goods, and it may be that under the terms of the contracts of insurance and affreightment he buys no indemnity for the damage that has happened to the goods. In my view,

therefore, the relevant question will generally be not “ what at the time of the declaration of tender of the documents is the condition of the goods?”... but “ what, at the time of the tender of documents, was the condition of the documents as to compliance with the contract of sale?” This ruling has been observed in later cases.[6]

Whatever happens to the goods in transit, the Bills of Lading and the Insurance Policy provide an almost complete continuous cover from the port of shipment to the port of destination. If the goods are lost at sea the documents remain valid and can be tendered as normal for the full purchase price to be paid.[7]

Justice McCardie held in *Manbre Saccharine Co Ltd v Corn Products Co Ltd*, whereby he said that the obligation of the vendor is to deliver documents rather than goods to transfer symbols rather than the physical property represented thereby. This supports that documents seem to be the essence of the CIF contract.[8] If the seller hands over the documents to the buyer before payment, then it is presumed that the seller reserves the title until payment.[9]

The duties of buyer and the seller in a CIF Contract of Sale

The duty of the seller is to ship the goods afloat which are mentioned in the contract and make a contract of carriage of goods by sea to port of arrival at his own expense. Obtaining a bill of lading and the insurance policy, tender these documents i. e. commercial invoice, Bills of lading and insurance policy to the buyer.

The buyer should accept the tender of conforming documents and pay the contract price which is against the delivery of documents. The documents must be strictly conformed to the contract, and the documents can be re-tendered if they are not conforming to the contract of sale.[10]

### High Seas Sale(HSS) and its concept in a CIF Contract of Sale

In a CIF contract when a buyer (actual consignee) has the documents like the Bills of Lading, Insurance Policy, and the Commercial Invoice, he can then further sell those goods to someone else, and he can do so when the goods are still sailing and in the sea. The second buyer can also do this to someone else and the documents are sold for the price. This type of sale is known as HIGH SEAS SALE (HSS) in which the goods are sold while they are still sailing and they have not reached the final port. A high seas sale is done when the goods have left the loading port and are in the sea but have not arrived at the port of discharge. If something happens to the goods, then the buyer has the insurance policy and he can claim the damages from the insurance company.

The importance of documents can be supported from the statement made by Lord Porter in *Comptoir d'Achat et de Vente du Boerenbond Belge S/A v Luis de Ridder Limitada (The Julia)*[1949] A. C. 293 at pp. 309, 312:

' The obligations imposed upon a seller under a c. i. f. contract are well known, and in the ordinary case include the tender of a bill of lading covering the goods contracted to be sold and no others, coupled with an insurance policy in the normal form and accompanied by an invoice which shows the price and, as in this case, usually contains a deduction of the freight which

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the buyer pays before delivery at the port of discharge. Against tender of these documents the purchaser must pay the price'.[11]

#### METHODOLOGY:

To understand how this research study will aim to be conducted, it is firstly very important to establish the focus and direction it will follow. This will enable us and take us to a certain level where there will be more understanding and more support on CIF contract of sale as a contract for sale of documents rather than sale of goods. From the literature reviewed in preparation for this proposal, it became clear that what most Judges and from their judgements that the obligations of a CIF contract of sale are fulfilled when the correct and conforming documents as per the sale contract is tendered by the seller to the buyer. Because of this, the question that arose in the beginning that ' why a CIF contract of sale is considered a sale of documents and not sale of goods?' is somewhere answered, and after reviewing the literature review in this study, additionally to establishes an answer for the question.

To continue, for this study and to meet the objectives, the methodology that will be adopted is that of the doctrinal research method. ' Doctrinal research is concerned with the formation of what are labelled as legal ' doctrines', whereby an analysis of legal rules takes place'.[12]These legal rules can be located within sources of law such as Statutes and Cases, although it is very important to understand that they cannot fully provide a thorough statement of the law. In regards to this study, it is important to appreciate that this can only be obtained by applying the pertinent set of legal rules to the specific

facts and the judgements of the judges who are in favour of the view that a CIF contract of sale is a sale of documents.

This research method is colloquially referred to as ‘black-letter law’ and historically can be seen to be the most suitable method to adopt for research of this nature. Moreover, doctrinal research is concerned with the formation and evolvement of legal doctrines for publication. As this study is essentially asking ‘what is the law?’ it does significantly differ from the qualitative analysis process used in traditional social science research.

So, to conduct this research and to make it clear that a CIF contract of sale is a sale of documents, the judgements in regards to the CIF contract will be analysed. This will enable us to understand why the traders and most importantly the judges are of the view that a CIF contract of sale is a sale of documents.

Moreover, the CIF contract of sale is governed by many laws and acts like the Sale of Goods Act 1979, Carriage of Goods by Sea Act 1971, Carriage of Goods by Sea Act 1992, and the main aim is to make it very much clear that the CIF contract of sale is a sale of documents. It is usually inclusive of the sections and provisions from the above stated acts. An extensive list of cases in which the judgements are in the view of the research question which is that a CIF contract is a sale of documents is also included in this research to make the concept and the research clearer. Some of the cases related to our research proposal are as follows:

JUDGE	CASE	YEAR	RECORD
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Scrutton J	<i>Arnold Karberg &amp; Co v Blythe, Green Jourdain &amp; Co</i>	[1915]	K. B. 379 a
McCardie J	<i>Manbre Saccharine Co, Ltd v Corn Products Co, Ltd</i>	[1918-19]	All ER Rep p. 984
Lord Atkinson	<i>Johnson v Taylor Bros &amp; Co Ltd</i>	[1920]	AC 144at p 156
Lord Wright	<i>Ross T Smyth &amp; Co Ltd v TD Bailey Son &amp; Co</i>	[1940]	AllER 60at and p. 70
Lord Porter	<i>Comptoir d’Achat et de Vente du Boerenbond Belge S/A v Luis de Ridder Limitada (The Julia)</i>	[1949]	A. C. 293 a 309, 312[1

OUTLINE OF CHAPTERS:

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Content

One

This is the introductory chapter which will have the main issues related to the research question along with the research objectives and hypothesis.

Two

This chapter deals with the literature review. It is broken down into various topics related to CIF contract of sale along with some cases and judgements relevant to the topic making it more clear and concise.

Three

This chapter contains the explanation of the methodology adopted along with the reasons for its adoption. It also contains the findings and a table of cases related to the topic.

the research topic.

Four This is the final chapter which has the bibliography.

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[3] *Karberg (Arnhold) & Co v Blythe Green, Jourdain [1915]*

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[5] *The Miramichi [1915] P 71*

[6] Ademuni-Odeke, 'The nature of CIF Contract- Is it a Sale of Documents or Sale of goods?' 160

[7] Ademuni-Odeke, 'The nature of CIF Contract- Is it a Sale of Documents or Sale of goods?' 161

[8] *Manbre Saccharine Co Ltd v Corn Products Co Ltd [1918-19]*

[9] *Ginzberg v Barrow Haematite Steel Co Ltd [1996]*

[10] *Borrowman, Phillips & Co v Free & Hollis [1878]*

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