NEAR EAST UNIVERSITY

MARITIME FACULTY

DEPARTMENT OF MARITIME MANAGEMENT

SALE OF GOODS ACT AND INCOTERMS

ADVISOR: HÜSEYİN MERAY

Submitted By

BURAK GÖRGEÇ

20072176

NICOSIA-2012

PREFACE

This is the graduation project of prepared for the Near East University Faculty of Maritime Studies.

The contents of my project; The Sale of Goods Act and Incoterms. In this project, I talked about the the buyer and seller rights, property transfer, seller's and buyer's duties on the goods transported, the responsibilities of buyer and seller, for whom the risk is carried on the goods, some contracts, (fob contract, cif contract), lien, stoppage in transit and incoterms and the seller's-buyer's rights/liabilities in deliver goods etc.

Thanks to our Mr.Dean Prof. Dr. Mustafa ALTUNÇ for imposed the spirit of maritime and about the superior value it adds to us. And thanks to head of our department Mr. Hüseyin MERAY MICS for the vast information that you taught us(including in English) and for help to prepare the my project. Also thanks all instructed CPT.Uğur TEMEN, CPT. Hilmi ŞAHLI, CPT. Mehmet Emin DEBEŞ, Mrs.Pınar TURAN SHARGHI for effort exerted.

BURAK GÖRGEÇ
NEAR EAST UNIVERSITY
JUNE/2012
NICOSIA

ABBREVIATIONS

B/L : Bill of Lading

FoB : Free on Board

CIF : Cost Insurace Freight

L/C : Letter of Credit

FCA : Free Carrier

FAS : Free Alongside Ship

CFR: Cost and Freight

EXW : Ex Works.

CPT : Carriage Paid to

CIP : Carriage and Insurance Paid to

DAF : Delivered at Frontier

DES : Delivered Ex Ship

DEQ : Delivered Ex Quay

DDU : Delivered Duty Unpaid

DDP : Delivered Duty Paid

SALE OF GOODS ACT

An Act to consolidate the law relating to the sale of goods. A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. The transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell. Price with reflect to Section 8 of the Act is as follows:

- The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.

- Where the price is not determined as mentioned in subsection above the buyer must pay a reasonable price.

- What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

The section assumes that a contract has been made by the parties and then proceeds to explain the methods by which the price can be ascertained. But which must be considered in an action on the sale is whether a contract has in fact been finally agreed upon by the parties, and the absence of an agreement as to the price may show that the parties have not yet reached a concluded contract. Another problem concerns the question whether the parties can make a binding contract in which they agree to fix the price at some future date. Section 9 of the Act is as follows:

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided; but if the goods or any part of them have been delivered to and appropriated by the buyer he must pay a reasonable price for them.

- Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault.

An agreement for the sale of goods at a valuation to be made by a third party must be distinguished from an agreement for sale at a valuation without naming any third party who is to make the valuation. Meaning of goods in the section 5 of the act is as follows;

- The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by him after the making of the contract of sale, in this Act called future goods.

- There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency which may or may not happen.

- Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

The subject matter of the contract of sale may be either existing goods owned or possessed by the seller or chance.

Future Goods: Include goods not yet in existence and goods in existence but not yet acquired by the seller. That future goods can never be specific goods within the meaning of the act. This certainly seems to be true of those parts of the Act dealing with the passing of property.

Specific Goods: The sale of a specific goods be distinguished from the contingent sale of future goods, though the distinction is not so much as to the subject matter of contract but as to its construction. Goods identified and agreed upon at the time a contract of sale is made. In most cases this is clear enough, and serves to distinguish such cases from contracts of sale of future or generic goods.

Goods Perishing: Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void. Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

Section 12 of the Act is as follows; In a contract of sale, other than one to which subsection below applies, there is an implied on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass. The main purpose and effect of the section is to require the seller to transfer the property or title to the goods to the buyer. Plainly, if the seller is himself of the owner and nobody else has any claims to the goods, the seller's property in the goods will pass to the buyer under the contract and section 12 will be satisfied. In the case of a breach of the condition implied by section 12, however, it appears that the buyer can do just this. In general, this simplifies and clarifies the law, though one slightly odd result of these provisions seems to be that the seller cannot now contract out section 12 even to the extent that this goes beyond the implication of title.

THE DUTY to PASS a GOOD TITLE

Among the most important terms implied by the Act in a contract of sale of goods are those relating to the seller's duty to pass a good title to the goods. Section 12 of the Act is as follows:

- In a contract of sale, there is an implied on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.

Its clear that the main purpose and effect of the section is to require the selle to transfer the property or title to the goods to buyer. Plainly, if the seller is himself the owner, and nobody else has any claims to the goods, the seller's property in the goods will pass to the buyer under the contract. But the section doesn't require that the sellers should himself be owner, or even that the should acquire a title to the goods

before transfering them. A contract of sale can perfectly well be performed by a seller who never has title at any time, by causing a third party to transfer it directly to the buyer.

THE DUTY to DELIVER the GOODS

Under section 27 of the Act:

- It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

The duty of the seller to deliver the goods is a somewhat ambiguous concept, for it covers three entirely different possibilities.

In the first place, there may be a duty to deliver to the buyer goods in which the property has already passed. Here the duty is specific and, subject to the question of payment, it is a duty which will be broken should the seller fail to deliver those particular goods. If the property has already passed, there can be no question of the seller substituting some other goods without the consent of the buyer. He must deliver those particular goods and no others will do.

In the second place, the sellers duty to deliver may be a duty to procure and supply to the buyer goods in accordance with the contract, but without any particular goods being designated to which the duty of delivery attaches. Thus a contract for the sale of purely generic goods does in one sense put upon the seller the duty of delivering the goods, but there is no duty to deliver any particular lot of goods. Until such a duty arises, therefore, the sellers is perfectly free to deliver any particular quantity of goods answeing the contract description. For example; the seller should procure goods answering the contract description, intending to use those in performance of the contract, but later changes his mind and sells them to someone else, the buyer cannot complain that the seller has broken his duty to deliver. Nor can the buyer obtain a decree of specific performance in such a case.

But there is a third possibility mid-way between the first two. It may be that the seller is under a personel duty to deliver a particular lot of goods although the property has not yet passed to the buyer. This is always so in the case of an agreement to sell specific goods, and clearly the seller cannot resell those goods without being guilty of a breach of contract. Even in the sale of unascertained goods it is possible for the seller's duty to deliver to attach to a particular lot of goods before the property passes. This, for example, is the effect of a notice of appropriation in a c.i.f contract which doesn't pass the property, but fixes the goods to the deliverd. Similarly in f.o.b contract where the seller ships goods but retains the bill of lading as security, the seller will come under an obligation to deliver to buyer the actual goods shipped, though the property remains in the seller for the moment. So these three posibilities are not mutually exclusive, but are rather three stages in the performance of the contract. Thus the duty to deliver may start by being unattached to any particular goods, may then become so attached and, finally, the property may pass. On the other hand, the 3 stages may be merged in one, as in the specific goods, or 2 of them may be so merged, as where goods are appropriated to a contract fixing the duty to deliver and passing the property at the same time.

The DUTY to SUPPLY the GOODS at the RIGHT TIME

Section 10, after laying down in subject. Under section 10;

- Whether any other stipulation as to time is or is not of the essence of the contract depends on the terms of the contract.

Although the act thus declines to lay down any general rules, the cpurts have done so and it is well settled that, in ordinary commercial contracts for the sale of goods the rule clearly is that the time is prima facie of the essence with respect to delivery. If the time for delivery is fixed by the contract, than failure to deliver at that time will thus be a breach of condition which justifies the buyer in refusing to take the goods. This rule applies to the time of delivery in the strict legal sense, and thus operates not only when the seller is under an obligation to dispatch the goods to the buyer but als when the buyer is bound to collect the goods from the sellers.

The DUTY to SUPPLY GOODS in the RIGHT QUANTITY

The seller must deliver the correct quantity of goods. In the first place section 30 states;

- Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

Moreover, the seller cannot excuse a short delivery on the ground that he will deliver the remainder in due course section 31 states that;

- Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.

There are no doubt circumstances in which it can be inferred from the contract quantity and the time allowed for shipment that the sellers are entitled to ship in more than one load, and therefore entitled to deliver in seperate loads. But the general rule is that the seller must deliver in one load.

The TRANSFER OF PROPERTY

The term property, defined by section 61 as the general property in goods, is commonly used by lawyers to signify title or ownership, and in everday useage this terminology is also applied to the sale of goods. Yet the act talks of a transfer of property as between seller and buyer, and contrasts this with the transfer of title. It is trite learning, however, that he distinguishing feature of property rights is that they bind not merely the immediate parties to the transaction, but also all third parties. Either their is a mere transfer of rights and duties from seller to buyer, or there is a transfer of property which affects the whole world. Nor is it possible to adopt the solution of saying that property is here used in its medieval sense of right to possession when at least it would make sense to talk of a transfer as between seller and buyer. The Act itself precludes the adoption of this view because it lays down the clear rulet hat the buyer's right to possession depends either on payment of the price or the

granting of credit, not on the passing of the property. In other words, the mere fact that the property in the goods has passed to the buyer doesnt confer on him a title good aganist third parties, nor does it confer on him the right to possession as aganist the seller. What than is this peculiar legal conception which act calls the property in the goods? The answer can only be given by considering what precisely are the consequences which flow from the passing of property. What rights does the passing of the property give to the buyer?

In the first place, then, what is the position of buyer if he wishes to obtain possession from the seller? The answer which has alrady been intimated, is that he can only do so if he pays the price or if seller sees fit to Grant him credit. Nor can the buyer avoid this consequnce by framşng is action in tort and suing for conversion, basing his claim on the fact that the goods are now his goods. The reason for this is that the action for conversion will only lie at the hands of someone with an immediate right to possession and thşs the buyer does not have until he tenders the price. Again, if the buyer resells the goods before obtaining possession, the sub-buyer can only obtain possession on the same terms as original buyer, that is to say by payment of the price, unless the original seller has assented to the second sale. The same applies if buyer pledges the goods instead of selling them. In all these case the buyer property avails him nothing, because the position would be precisely the same even if no property had passed. The same is true if buyer goes bankrupt before delivery of goods and payment of price. The seller cannot be compelled to deliver up the goods to the trustee in bankruptcy, and relegated to his right to prove in the bankruptcy for the price, even though the property in goods has passed to buyer. Indeed, quite the contrary, the law goes out of its way to protect the seller from the bankruptcy of the buyer by conferring on him the right of stoppage in transit should the buyer go bankrupt after the seller has dispatched the goods to him, but beforethe buyer has received them.

Suppose, next, that the buyer has actually obtained the possession of the goods. Once again the practical effect of the passing of the property is somewhat limited, because section 25 of the act enables buyer in possession to pass a good title to a third party, binding on the first seller, whether or not the property has already passed to original buyer. Moreover, it is arguable that section 25 has the strange result that the buyer, even f in possession, an deven if he has the property, cannot pass a good title to

a mala fide transfere. However, it is true that if the goods are delivered to the buyer with a stipulation that the seller reserves titles and property is only to pass on payment, the seller may be able to recover the goods in the event of the buyers bankruptcy. Moreover, the practice of incorporating these reservation of title clauses is growing. This then is a case where the passing of the property may have important practical effects, and indeed, many modern cases dealing with the passing of property hinge on these reservation of title clauses. What then is the position if the seller, being stil in possession of the goods, resells them to a third party, whether rightfully or wrongfully? Again the answer is that the transfer of property has little effect, for section 24 enables the seller who is in possession to pass a good title to a bona fide transferee, even though the transfer may be wrongful as aganist the first buyer. If the seller becomes insolvent, can the buyer claim the goods by virtue of his property? As aganist the seller himself, or a liquidator or receiver, the answer at common law is prima facie, yes, but sometimes the Bills of Sale Acts or the companies Act operate to invalidate the sale or the sellers rights in these circumstances. So this is again a case where the passing of property may have important practical consequences. And here too there are a number of modern cases demonstrating the important practical effects which attach to the passing of property in this situation, and the difficulties which arise when the property has not passed, or cannot pass because the good remain in bulk, and no physical seperation of buyer's goods from the remainder has yet been effected. So also, the buyers chances of obtaining equitable or specific relief seem to be greater if property has passed to him, especially if the seller claims no proprietary or possessory rights of any kind over the goods. A buyers right to goods of which he is undisputed owner will be specifically enforced aganist a seller who proposes to convert them and pay damages in lieu.

Next, reference must be made to three other important results which generally follow from the passing of property. The first of these is that the risk in the goods prima facie passes with the property. The second consequence is that generally speaking the seller is not entitled to sue for the price of the goods unless the property has passed. If the buyer repudiates the contract before this happens the sellers remedy is prima facie an action for damages for non-acceptance. Yet even here one cannot say that these consequences follow naturally or logically from the passing of the property.

The next consequence is that the passing of property may in some circumstances determine who is the proper plaintiff to sue a third party who has damaged or destroyed the goods, for example; when they are en route to the buyer. But property alone will rarely be decisive. Usually, it is combined, either with a right to possession, or with a contractual right aganist the third party, such as a carrier. Prima facie, the person who is entitled to sue in respect of goods damaged at sea is the person who holds the B/L, and that person has both a contractual right aganist the shipowner and also the property. So it is reraly necessary to ask whether it is the one or the other which gives him the right to sue.

To sump up, it may be said that the most important practical consequences which flow from the mere passing of the property are as follows:

- If the property in the goods has passed to the buyer he will generally have a good title to them if the seller becomes insolvent while the goods remain in his possession.

- If the goods are delivered subject to a reservation of title/property by the seller, the seller may have a good title to the goods should the buyer become insolvent.

- The right to sue a third party for damages to, or loss of the goods, may depend on who has the property.

- The risk passes prima facie when the property passes.

- Generally, speaking the seller can only sue for the price if the property has passed.

It will be observed that only the first three of consequences affect third parties and that, although the passing of the property may have important results as between buyer and seller, its effect on third parties in ordinary circumstances is minimal. Still, a buyer or seller, relying on his property, aganist on insolvent seller or buyer, may well have a title good aganist a liquidator or trustee in bankruptcy claiming through the

seller or buyer. Of course, parties claiming through a contracting party are not treated by the law as third parties in this sense, although in other, more realistic sense, trustees in bankruptcy and liquidators should perhaps be treated as third parties.

The Passing Of Property: Specific Goods

The exact moment at which the property passes depends upon whether the goods are specific or unascertained, and this cleavage is so fundamental that the subject will be dealt with under two separate headings. Section 17 of the Act is as follows;

- Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties yo the contract intend it to be transferred.

- For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Although this section only applies to specific or ascertained goods, it is well settled that, as a matter of general contract law, the principle expressed in subsection2 also holds true for unascertained goods. Section 18 goes on to states;

- Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

The Passing Of Property: Unascertained Goods

The meaning of the terms unascertained goods has already been discussed and it has been seen to cover three possibilities. Firstly, goods to be manufactured or grown by the seller; secondly, purely generic goods and, thirdly, an unidentified portion of a specified bul kor whole. Although the Act doesn't distinguish between these three types of unascertained goods, the rules as to the passing of property and risk may well differ in the three cases. In particular, it will be seen that the passing of risk in an

unidentified portion of a specified whole may sometimes take place at a different time from the usual. And, secondly, it will be seen that what amounts to an unconditional appropriation which is what is usually required to transfer the property in one type of sal emay not be so in another. The fundamental rules are laid down by Section 16, 17. Section 16 provides that;

- Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Then Section 17 provides that on a sale of specific or ascertained goods, the property passes when the parties intend it to pass, and that intention is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Section 18 says that, subject to a contrary intention;

- Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer, and the assent may be express or implied, and may be given either before or after the appropriation is made.

Relationship of Section 16,17 and 18;

It is clear that Section 16 must be the starting point in considering the passing of property in sale of unascertained goods. The section lays down the fundamental rulet hat the property cannot pass until the goods are ascertained, and this appears to be a mandatory provision which takes precedence over the intention of the parties. Indeed, Section 17, which deals with the intention of the parties, only operates in a sale of specific or ascertained goods. There is thus no provision covering the passing of property in goods which are still unascertained for the good reason that the Act clearly does not contemplate this as a legal possibility at all. No matter what the parties may have intended, property cannot pass until the goods are ascertained.

RISK AND FRUSTRATION

When a person is bound to bear the accidental loss of or damage to, the goods, they are said to be at his risk. Sometimes, also, a contract for the sale of goods, like any other contract, may be totally frustrated by some extraordinary and unforeseeable event. Because frustration is sometimes also relevant where goods are destroyed or even severely damaged, the two sets of legal principles are interconnected in various ways. Indeed, the doctrine of frustration is sometimes said to be merely an aspect of the general rules as to risk, but this is not entirely accurate. If an executory contract is frustrated, neither party is under any liability to the other.

On the other hand, if the goods are at the seller's risk and they perish or deteriorate, although the buyer is not liable to the seller for the price, it by no means follows that the seller is not liable to the buyer for non-delivery, if the buyer can prove that he has suffered loss therefrom. The rules as to risk have nothing to say in such a case, and if the selleris to be exempted from liability, it must be by the doctrine of frustration.

Conversely, if the goods are at the buyer's risk, he is clearly liable for the price even though the goods have perished or deteriorated. But it does not follow that he may not also be liable for damages for non-acceptance if the seller can prove that he has suffered any. Only frustration can discharge the buyer from the liability for non-acceptance.

Transfer Of Risk

The general rule laid down by section 20 is that prima facie the risk passes with the property.

- Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer, the goods are the buyer's risk whether delivery has been made or not.

If there is an Express aggreement that one party is to bear the risk even though he has no property effect must no doubt be given to the agreement, but in the absence of

such an Express contract, it has been said that the rule res perit domino is generally an unbending rule of law arising from the very nature of property. While this is no doubt largely true in a static situation where property remains with one person throughout, it is not necessarily true of the dynamic situation where property is being transferred from one party to another. In this situation, there is nothing peculiar about separating the transfer of risk from the transfer of property and this commonly happens where goods are shipped under c.i.f or f.o.b contract. Apart from these cases, two other exceptional cases seem to be established by the outhorities, in one of which the risk passes before the property and, in the other, the risk passes after the property.

Frustration

It has alreay been suggested that the doctrine of frustration covers a wider field than the rules as to risk. The drafting to Section 7 support this view:

- Where the is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The doctrine of risk simply lays down that prima facie if the goods perish before the property passes, the seller must be bear the loss and cannot claim the price. Were the doctrine of frustration merely an aspect of the rules as to risk, this section would be an absurdity for it would, in effect, be saying that where the risk is on the seller he must bear the risk of the goods perishing. But section 7 does more than this, for it provides that in the circumstances the mentioned the contract is avoided. This means that both parties are discharged from their obligations; in other words, not only is the buyer not liable fort he price, but the seller is not liable for non-delivery.

EXPORT SALES

The sale of goods are to be shipped to their destination gives rise to a host of difficult question, adequate discussion of which would require a whole volume. This is not a task which it is proposed to undertake here, but something must be said of the principal types of export contract, of the problem raised by export and import licences,

and of the method of payment by bankers commercial credit. In the first place, 4 types of contract will be considered, the central two kinds being contracts whose essential terms have become standardized by commercial practice, although there is considerable variation in matters of detail. These 4 are ex-works contracts, fob contracts, cif contracts, ex-ship contracts.

Ex-Works or Ex-Store Contracts

Ex-Works contracts presents few difficulties in this connection. In fact, these can hardly be considered as exports sales at all, since it is the buyer's duty to take delivery at the works or store in question, and what he does with them after that is entirely his own affair. The property and risk will, in the absence of any contrary indication, pass when the goods are delivered in most contracts of this kind, since they are almost invariably sales of unascertained goods and it is unlikely that there will be any appropriation prior to delivery.

FOB Contracts

In a fob contract, the seller's duty is to place the goods free on board a ship to be named by the buyer, during the contractual shipment period. Prima facie at least, it seems that the expression fob determines how to goods shall be delivered, how much of the expense shall be borne by the sellers and when the risk of loss or damage shall pass to the buyers. It does not necessarily decide when the property is to pass. The sellers obligations extend to all charges incurred before shipment, including loading charges, but not freight or insurance. In the absence of a contrary intention, the buyer has the right and the responsibility of selecting both the port and the date of and generally making the arrangements for the shipment of the goods. He must nominate a ship on which the goods may be loaded by the seller and give adequate notice to the seller of that nomination. The ship must be an effective ship, that is, capable, both physically and otherwise, of receiving the cargo. If the buyer nominates a ship which cannot receive the cargo or which cannot load in time, he may, if he still has sufficient time, substitute another vessel in place of the one first nominated. Where the contract provides for a range of ports from which the goods are to be shipped, it is the buyers right and duty to select one out of the permitted number of ports and to give the seller

sufficient notice of his selection. On receiving the necessary notices from the buyer, the seller must be ready to ship the goods within a reasonable time; but he does not necessarily have to have the goods available for immediate shipment.

Notes: The contract for the carriage of the goods is made between the buyer (or his agent) and the shipowner. When the seller delivers the goods for loading on board, he normally obtains a mate's receipt, which he transmits to the buyer, who exchanges this for the proper bills of lading.

***Passing of risk and property**

In this sort of fob contract the almost universal rule is that risk passes on shipment as soon as the goods are over the ship rail, and if it should be material, the risk in each part of the cargo will pass as it crosses the ship rail. This is not because ofany peculiarity of fob contracts but because in this type of contract the seller duty is to delivered the goods fob. Once they are on board, the seller has delivered them to the buyer and it is natural that they should thereafter be at the buyers risk.As regards the passing of property, the position is that prima facie property may also pass, like risk, on shipment. The loading of the goods may be an unconditional appropriation which passes the property under section 18. If the goods are loaded together with other goods of the same description so that no unconditional appropriation of the specific goods sold then takes place, property cannot pass on shipment, but the risk will stil do so. In modern times, any general presumption that property passes with risk on shipment in an fob contract has probably largely disappeared. Although this may stil sometimes be the case if the contract contains no contrary provision, the practice of treating the shipping documents as security fort he payment of the price is now so well established in international sales, that contractual terms requiring payment aganist the shipping document is probably the norm in fob contracts these days, just as much as cif contracts where this practice may have first originated. Where payment is only to be made aganist document, the seller will normally have himself named as the consignee in the B/L, so that section 19 relevant. Sectipn 19 provides;

- Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie to be taken to reserve the right of disposal.

Seller's duties as to insurance

It has already been seen that the under section 32, delivery to the carrier is prima facie deemed to be delivery to the buyer himself, but despite this it has been held section 32 applies to fob contracts. This section states that;

- Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

Seller's duties as to contract of carriage

The above account is a sketch of the classic fob contract. But in modern times there are many variants. In particular, it is nowadays very common fort he seller to be required to make some or all of the arrangements for shipping and insuring the goods, particularly where the seller is an exporter or where small parcels rather than whole cargoes are being shipped. In this event, it is the seller who makes the contract for carriage of the goods with the shipowner, and he must then comply with section 32 of the Act. This provides;

- Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

CIF Contracts

The contract in question here is of a type familiar in commerce, and is described as a cif contract. The initials indicate that the price is to include cost, insurance and freight. It is type of contract which is more widely and more frequently in use than any other contract used for purposes of sea-borne commerce. An enormous number of transaction, in value amounting to untold sums, are carried out every year under cif contracts. The essential characteristics of this contract have often been described. The seller has to ship or acquire after that shipment the contracts goods, as to which, if unascertained, he is generally required give a notice of appropriation. On or after shipment, he has to obtain proper B/L and proper policies of insurance. He fulfils his contract by transfering the B/L and the policies to the buyer. As a general rule, he does so only aganist payment of the price, less the freight which the buyer has to pay. In the invoice which accompanies the tender of the documents on the prompt that is, the date fixed for payment the freight is deducted, for this reason.

Seller's duties in CİF contracts

The seller's duties in a cif contract, as summarized in the above passage, relate to the following matters. First, he must ship the goods or buy goods already already shipped. It would not be very common nowadays for a cif seller to buy goods afloat and in the great majority of cases the seller either already has the goods or himself buys them for shipment. Stipulations as to the time and place of shipment as specified in the contract must be strictly complied with anda re almost always treated as conditions. Delay of even one day in shipping the goods will justify rejection by the buyer. Indeed, the buyer is equally justified in rejecting the goods if they are shipped too soon. The seller must also insure the goods at his own expense.

Secondly, the seller must make a contract or the carriage of the goods to, and for their delivery at, the cif destination. Thirdly, the seller must, with all reasonable despatch, tender to buyer proper shipping documents. These comprise the seller's invoice for the price, B/L, an insurance policy covering the goods aganist marine risks. The most essential feature of the B/L is the requirement that it should evidence a contract for the carriage of the goods to the agreed port of discharge. The B/L and the

insurance policy are, in a commercial sense, the buyer's guarantee that he will receive the goods in due course or, if they are lost or damaged, that he will have recourse either aganist the shipowners or aganist the insurers. Recourse aganist the shipowner is usually secured by the transfer to the buyer of the contract of carriage under the B/L.

Non-confirming documnets

The shipping documents are therefore very important commercial and legal documents, because buyers pay the price in exchange for the documents, long before they receive the goods. Similarly, where the price is payable by letter of credit, banks will pay in exchange for the documents, thereby treating the documents as security for the money they advance. It is thus of critical importance that the documents be accurate, and that they comply with the terms of the contract.

In practice, documents very often do not so comply, and this is an extremely common source of commercial and legal difficulty. If buyers and banks always rejected non-complying documents, international trade would probably grind to a halt, but many of the instances of non-compliance are trivial or technical and do not lead to rejection. If at a later date the buyer decides that he wants to reject after all there will often be arguments about waiver and estoppel, which we discussed earlier. Where it is banks who in the first instance discover discrepancies in the documents, they often inform their buyers, and act on their instructions. Sometimes where the discrepancies appear particularly doubtful or technical, the bank may accept the documents, in return for an indemnity, that is, an undertaking to repay any moneys advanced and make goods any loss, if the buyer should then reject the documents.

Dating of the B/L

A point of critical importance in commercial practice, and also in law, is that the B/L must be correctly dated. The date on the B/L recording when the goods have been shipped is the buyer's guarantee that shipment has occured during the contractual shipment preiod. It is a separate breach of contract for the seller to tender to the buyer

incorrectly dates B/L, so that the seller commits two breaches by shipping the goods late and then procuring misdated B/L. Regrettably, B/L are often misdated in order to conceal the fact that the goods were shipped outside the contract period, and this practice often gives rise to legal difficulties, especially where the buyer does not discover the incorrect dating until much later.

Contract of carriage

Section 32 which has been set out above, also applies to cif contracts. This section requires the seller to make a reasonable contract with the shipowner. It has already been seen that what is reasonable must be judged at the time the contract of carriage is made and not when the contract of sale is made. So far as cif contracts are concerned, one of the most important requirements of a reasonable shipping contract is that it should give the buyer a right of action aganist the shipping company for loss or damage to the goods throughout the whole period of the voyage. This means that if the goods have to be transshipped, the first shipowner must accept liabilty for the defaults of sebsequent shipowners who will not be in privity with the sellers nor, therefore, with the buyers. But this may no longer be true in practice because most B/L today exonerate the shipowner from liabilty after transhipment, and if these are the only available B/L the seller is entitled to ship on those terms. In follows from the nature of a cif contract that section 32 does not apply because there is always an express agreement as to the insurance of the goods. This is still the case even if special circumstances occur as a result of which the ordinary insurance cover is not effective and it would be advisable to take out a special cover.

Passing of property and risk

Although section 32 states, as we have seen, that delivery to a carrier is prima facie deemed to be delivery to the buyer, this has no application to cif contracts in which delivery of the goods to the buyer occurs when, but not before, the documents are handed over. The peculiar feature of cif contracts has always been the importance attached to the shipping document, delivery of which transfer the property and the possession in the goods to the transferee. The seller's duty to deliver the goods in these cases means only that he must deliver the documents, for even if the goods are

lost at sea the seller can still insist on payment of the price in return for the documents. Indeed, the position is the same if the goods are damaged after loading and are discharged before the ship sails, and even before the B/L is issued. But that does not mean that a cif contract is a sale of documents and not of goods. It contemplates the transfer of actual goods in the normal course, but if the goods are lost, the insurance policy and B/L contract that is, the rights under them are taken to be, in a business sense, the equivalent of the goods. Moreover, a seller does not fulfil his duty by delivering a B/L which is regular on its face if, in fact, no goods have ever been shipped. Thus where a seller in good faith bought goods afloat and was given a B/L, apparently in order, and proceeded to sell the goods cif to another buyer, he was held in breach of contract when it was discovered that there were no goods.

Not only does a transfer of a B/L transfer the property and the possession in the goods, but a pledge of the documents also operates as a pledge of the goods although this is not generally true of documents of title. This transferability is of crucial importance both in law and in practice. Indeed, negotiability is of the very essence of a B/L. A non-negotiable document is not strictly speaking a B/L at all. But a B/L is not a negotiable instrument in the sense that a bill of exchange is, so a transferee of a B/L does not get a better title than the transferor.

In cif contract the risk once again passes on shipment, and if the goods are lost at sea the buyer is still bound to pay the price, although he will as a rule have the benefit of the insurance policy. The law is the same even if the seller knows that the goods have been lost when he tenders the shipping documents. So also, the inability of the buyer to have the goods discharged at the port of destination is of no concern to the seller, and cannot be a frustrating event. The delivery of the goods on board the vessel, followed by the delivery of correct document is a complete performance by the seller of his duties under a cif contract; what happens after that is of no concern to him, subject to some special cases.

At one time cif contracts differed fundamentally from fob contracts with regard to *the time at which property passes, although today the tendency may well be for fob* contracts to be treated in the same way as cif contracts. At any rate, in cif contract, it is quite clear that the general rulei which is not easily displaced, is that the property only

passes when the documents are transferred and paid for. Where the B/L is taken in the seller's name, this accords with section 18 and 19 which ahve already been discussed. Where contrary to the usual practice, the bill is taken in the buyer's name, the prima facie rule is that delivery to the carrier is deemed to be an unconditional appropriation, but this presumption is rebutted by the very nature of cif contract.

Under section 19 which has been set out above, it is expressly provided that if the seller sends a bill of exchange to the buyer with the shipping documents, the property does not pass unless the buyer accepts the bill of exchange. Even if the seller draws a bills of exchange on the buyer and discount it with a bank before it has been accepted by the buyer, the property will still not pass. Although the seller may obtain payment in this way he remains under a secondary liability as drawer of the bill of exchange and so property remains in him as security for this contingency.

Variants on CIF contracts

One very common variant of the cif contract is the c&f contract, in which the buyer arranges his own insurance, but in other respects the shipping arrangements are made by the seller and once again property usually passes when the documents are transferred in exchange for payment of the price.

Buyer's duties

The duties of the buyer under cif contract are to accept the shipping documents when tendered and to pay the contract price in exchange for documents. Documents are sent to a bank in the first instance and the bank than passes the documents to the buyer in exchange for payment or for some other method of satisfaction. Sometimes several banks are involved, and documents are transferred from one to another, ultimately ending up with the buyer. Sometimes the buyer is under a contractual duty to nominate a discharge port because the cif contract may not have originally specified a single port as the cif port, but may have envisaged a range of ports, leaving the buyer to select the particular port at a later date. In this situaiton the buyer must obviously make his nomination in sufficient time for vessel to sail to the port specified without interruption or delay.

EX-SHIP Contracts

In Ex-Ship contacts the seller has to cause delivery to be made to the buyer from a ship which has arrived at the port of delivery and has reached a place therein, which is usual for the delivery of goods of the kind in question. In other words, the seller really is under an obligation to deliver the goods to the buyer at the port of discharge in ex-ship contracts, and the buyer has no concern with the shipment itself. Section 32 therefore has no application at all to this type of case. It also follows that if the seller fails to deliver the goods, the buyer is not liable for the price or if he has paid it he can recover it as on a total failure of consideration.

SELLER'S RIGHTS AND POWERS AGANIST THE GOODS

Where the buyer defaults in his principal obligation, that is, in payment of the price, the seller has of course his personal action on the contract ifself but if the seller were always compelled to fall back on this remedy his position would be in many respects unsatisfactory. The law has therefore developed certain real rights or remedies whereby the seller can still look to the goods as a kind of security for payment of the price. In considering these real remedies four different fact situations must be distinguished.

Firstly, there may be a sale specific goods in which the property has passed to the buyer and the goods have been delivered to him. Here the seller has relinquished all right to look the goods for his price and he is relegated to his personal right of action aganist the buyer. If the seller attempts to enforce his right to the price by seizing the goods from the buyers possession, the sellers conduct will be a breach of section 12 of the Act and will doubtless constitute the tort of conversion as well. It is possible for the parties to provide by express agreement that the property in the goods is to remain in the seller even after they have been delivered, in which case the seller may have the right to seize or reclaim the goods in certain events for instance, if the buyer becomes insolvent before the price is paid. But such a right to reclaim the goods after delivery cannot be implied since it would be very rate for the property to be retained by the seller after delivery unless there is an express provision the this effect. But the use of

such express provision reservation of title clauses is growing and giving rise to difficult question. It will therefore be necessary to consider their effect, even though they cannot arise by implication of law in the same way that the other real rights arise.

Secondly, there may be a sale of specific goods in which the property has passed to the buyer, but the goods have not yet been delivered. In this case, whether the goods are still in the possession of the seller or have been dispatched to buyer the law confers on the seller, subject to certain condtions, the power to resell the goods and pass a good title to a third party as well as some incidental powers, and the right to the first buyer. It must be emphasized that these are two very different things because the seller often has the power to pass a good title to a bona fide transferee without having the right to do so; in other words the resale may constitute a breach of contract as aganist the first buyer although it validly transfers the property.

Thirdly, there may be an agreement to sell specific or unascertained goods in which bo property has yet passed but in which the seller is under a personal obligation to deliver certain particular goods and no others. This is always to case where there is an agreement to sell specific goods, and it may also occur in a sale of unascertained goods when there has been sufficient appropriation to place the seller under an obligation to deliver those particular goods, although there has not been sufficient appropriation to pass the property. This may happen for example, in a cif contract when the sellers give notice of appropriation, or in a contract for the manufacture of an article where the personal obligation to deliver the goods may come into being before the property passes. In these cases, the law does not need to confer a power of resale on the seller because he still has the property in the goods can simply by virtue of this property, transfer a good title to another buyer. But it does not follow that the seller does not need statotory protection from the consequences of exercising this power. For example, if the buyer defaults in payment of the price on the date agreed, the seller, being still the owner of the goods, has power to resell them, but the exercise of these powers might be breach of contract. The law, therefore protects the seller from the consequences of availing himself of these powers subject to certain conditions.

Fourthly, there may be an agreement to sell unascertained goods in which no property has yet passed and in which there is no obligation to deliver any particular

goods. Here no special provisions are needed at all, because the seller clearly has full power to exercise any control over the goods, and such exercise cannot be a breach of contract. For example, if a seller agrees to sell 1000 tons of a certain type of wheat and procures wheat of that description intending to deliver it in performance of the contract, no property passes before appropriation, nor is the seller bound to deliver that particular 1000 tons. If therefore the seller resells this 1000 tons to a third party he can pass a good title to this party and his action will not be a breach of contract with the first buyer.

UNPAID SELLER'S LIEN

The sellers lien is ordinary contracts of sale of goods now depends entirely on the Sale of Goods Act which is quite inconsitent with any suggestion that there may be any equitable lien differing from that provided for in the Act. The sellers lien is a right to retain the goods until the whole of the price has been paid or tendered. It does not strictly speaking give to the seller any property in the goods subject to it. At common law a lien does not confer a power of sale but the unpaid seller has a statutory power and right of sale subject to certain conditions which will be examined in due course. In practice the lien is often exercised merely as a preliminary to a resale of the goods. The sellers right of lien is a qualification upon the duty to deliver the goods laid down by section 27 and it only arises if three conditions are satisfied.

In the first place the seller must be an unpaid seller as defined by section 38. This section has already been set out and it is only necessary to emphasize here that the whole of the price must be paid or tendered before the buyer can claim to have discharged the lien. This raises important questions in connection with instalment contracts and it has been held that, generally speaking, the seller is entitled to exercise his lien over any part of the goods if any part of the price is outstanding. In other words he is not confined to claiming a lien over those goods to which the unpaid part of the price may be attributed. Reference should also be made here to section 42 which is a follows;

NEAR EAST UNIVERSITY

MARITIME FACULTY

DEPARTMENT OF MARITIME MANAGEMENT

SALE OF GOODS ACT AND INCOTERMS

ADVISOR: HÜSEYİN MERAY

Submitted By

BURAK GÖRGEÇ

20072176

NICOSIA-2012

PREFACE

This is the graduation project of prepared for the Near East University Faculty of Maritime Studies.

The contents of my project; The Sale of Goods Act and Incoterms. In this project, I talked about the the buyer and seller rights, property transfer, seller's and buyer's duties on the goods transported, the responsibilities of buyer and seller, for whom the risk is carried on the goods, some contracts, (fob contract, cif contract), lien, stoppage in transit and incoterms and the seller's-buyer's rights/liabilities in deliver goods etc.

Thanks to our Mr.Dean Prof. Dr. Mustafa ALTUNÇ for imposed the spirit of maritime and about the superior value it adds to us. And thanks to head of our department Mr. Hüseyin MERAY MICS for the vast information that you taught us(including in English) and for help to prepare the my project. Also thanks all instructed CPT.Uğur TEMEN, CPT. Hilmi ŞAHLI, CPT. Mehmet Emin DEBEŞ, Mrs.Pınar TURAN SHARGHI for effort exerted.

BURAK GÖRGEÇ
NEAR EAST UNIVERSITY
JUNE/2012
NICOSIA

ABBREVIATIONS

B/L : Bill of Lading

FoB : Free on Board

CIF : Cost Insurace Freight

L/C : Letter of Credit

FCA : Free Carrier

FAS : Free Alongside Ship

CFR: Cost and Freight

EXW : Ex Works.

CPT : Carriage Paid to

CIP : Carriage and Insurance Paid to

DAF : Delivered at Frontier

DES : Delivered Ex Ship

DEQ : Delivered Ex Quay

DDU : Delivered Duty Unpaid

DDP : Delivered Duty Paid

SALE OF GOODS ACT

An Act to consolidate the law relating to the sale of goods. A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. The transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell. Price with reflect to Section 8 of the Act is as follows:

- The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.

- Where the price is not determined as mentioned in subsection above the buyer must pay a reasonable price.

- What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

The section assumes that a contract has been made by the parties and then proceeds to explain the methods by which the price can be ascertained. But which must be considered in an action on the sale is whether a contract has in fact been finally agreed upon by the parties, and the absence of an agreement as to the price may show that the parties have not yet reached a concluded contract. Another problem concerns the question whether the parties can make a binding contract in which they agree to fix the price at some future date. Section 9 of the Act is as follows:

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided; but if the goods or any part of them have been delivered to and appropriated by the buyer he must pay a reasonable price for them.

- Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault.

An agreement for the sale of goods at a valuation to be made by a third party must be distinguished from an agreement for sale at a valuation without naming any third party who is to make the valuation. Meaning of goods in the section 5 of the act is as follows;

- The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by him after the making of the contract of sale, in this Act called future goods.

- There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency which may or may not happen.

- Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

The subject matter of the contract of sale may be either existing goods owned or possessed by the seller or chance.

Future Goods: Include goods not yet in existence and goods in existence but not yet acquired by the seller. That future goods can never be specific goods within the meaning of the act. This certainly seems to be true of those parts of the Act dealing with the passing of property.

Specific Goods: The sale of a specific goods be distinguished from the contingent sale of future goods, though the distinction is not so much as to the subject matter of contract but as to its construction. Goods identified and agreed upon at the time a contract of sale is made. In most cases this is clear enough, and serves to distinguish such cases from contracts of sale of future or generic goods.

Goods Perishing: Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void. Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

Section 12 of the Act is as follows; In a contract of sale, other than one to which subsection below applies, there is an implied on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass. The main purpose and effect of the section is to require the seller to transfer the property or title to the goods to the buyer. Plainly, if the seller is himself of the owner and nobody else has any claims to the goods, the seller's property in the goods will pass to the buyer under the contract and section 12 will be satisfied. In the case of a breach of the condition implied by section 12, however, it appears that the buyer can do just this. In general, this simplifies and clarifies the law, though one slightly odd result of these provisions seems to be that the seller cannot now contract out section 12 even to the extent that this goes beyond the implication of title.

THE DUTY to PASS a GOOD TITLE

Among the most important terms implied by the Act in a contract of sale of goods are those relating to the seller's duty to pass a good title to the goods. Section 12 of the Act is as follows:

- In a contract of sale, there is an implied on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.

Its clear that the main purpose and effect of the section is to require the selle to transfer the property or title to the goods to buyer. Plainly, if the seller is himself the owner, and nobody else has any claims to the goods, the seller's property in the goods will pass to the buyer under the contract. But the section doesn't require that the sellers should himself be owner, or even that the should acquire a title to the goods

before transfering them. A contract of sale can perfectly well be performed by a seller who never has title at any time, by causing a third party to transfer it directly to the buyer.

THE DUTY to DELIVER the GOODS

Under section 27 of the Act:

- It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

The duty of the seller to deliver the goods is a somewhat ambiguous concept, for it covers three entirely different possibilities.

In the first place, there may be a duty to deliver to the buyer goods in which the property has already passed. Here the duty is specific and, subject to the question of payment, it is a duty which will be broken should the seller fail to deliver those particular goods. If the property has already passed, there can be no question of the seller substituting some other goods without the consent of the buyer. He must deliver those particular goods and no others will do.

In the second place, the sellers duty to deliver may be a duty to procure and supply to the buyer goods in accordance with the contract, but without any particular goods being designated to which the duty of delivery attaches. Thus a contract for the sale of purely generic goods does in one sense put upon the seller the duty of delivering the goods, but there is no duty to deliver any particular lot of goods. Until such a duty arises, therefore, the sellers is perfectly free to deliver any particular quantity of goods answeing the contract description. For example; the seller should procure goods answering the contract description, intending to use those in performance of the contract, but later changes his mind and sells them to someone else, the buyer cannot complain that the seller has broken his duty to deliver. Nor can the buyer obtain a decree of specific performance in such a case.

But there is a third possibility mid-way between the first two. It may be that the seller is under a personel duty to deliver a particular lot of goods although the property has not yet passed to the buyer. This is always so in the case of an agreement to sell specific goods, and clearly the seller cannot resell those goods without being guilty of a breach of contract. Even in the sale of unascertained goods it is possible for the seller's duty to deliver to attach to a particular lot of goods before the property passes. This, for example, is the effect of a notice of appropriation in a c.i.f contract which doesn't pass the property, but fixes the goods to the deliverd. Similarly in f.o.b contract where the seller ships goods but retains the bill of lading as security, the seller will come under an obligation to deliver to buyer the actual goods shipped, though the property remains in the seller for the moment. So these three posibilities are not mutually exclusive, but are rather three stages in the performance of the contract. Thus the duty to deliver may start by being unattached to any particular goods, may then become so attached and, finally, the property may pass. On the other hand, the 3 stages may be merged in one, as in the specific goods, or 2 of them may be so merged, as where goods are appropriated to a contract fixing the duty to deliver and passing the property at the same time.

The DUTY to SUPPLY the GOODS at the RIGHT TIME

Section 10, after laying down in subject. Under section 10;

- Whether any other stipulation as to time is or is not of the essence of the contract depends on the terms of the contract.

Although the act thus declines to lay down any general rules, the cpurts have done so and it is well settled that, in ordinary commercial contracts for the sale of goods the rule clearly is that the time is prima facie of the essence with respect to delivery. If the time for delivery is fixed by the contract, than failure to deliver at that time will thus be a breach of condition which justifies the buyer in refusing to take the goods. This rule applies to the time of delivery in the strict legal sense, and thus operates not only when the seller is under an obligation to dispatch the goods to the buyer but als when the buyer is bound to collect the goods from the sellers.

The DUTY to SUPPLY GOODS in the RIGHT QUANTITY

The seller must deliver the correct quantity of goods. In the first place section 30 states;

- Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

Moreover, the seller cannot excuse a short delivery on the ground that he will deliver the remainder in due course section 31 states that;

- Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.

There are no doubt circumstances in which it can be inferred from the contract quantity and the time allowed for shipment that the sellers are entitled to ship in more than one load, and therefore entitled to deliver in seperate loads. But the general rule is that the seller must deliver in one load.

The TRANSFER OF PROPERTY

The term property, defined by section 61 as the general property in goods, is commonly used by lawyers to signify title or ownership, and in everday useage this terminology is also applied to the sale of goods. Yet the act talks of a transfer of property as between seller and buyer, and contrasts this with the transfer of title. It is trite learning, however, that he distinguishing feature of property rights is that they bind not merely the immediate parties to the transaction, but also all third parties. Either their is a mere transfer of rights and duties from seller to buyer, or there is a transfer of property which affects the whole world. Nor is it possible to adopt the solution of saying that property is here used in its medieval sense of right to possession when at least it would make sense to talk of a transfer as between seller and buyer. The Act itself precludes the adoption of this view because it lays down the clear rulet hat the buyer's right to possession depends either on payment of the price or the

granting of credit, not on the passing of the property. In other words, the mere fact that the property in the goods has passed to the buyer doesnt confer on him a title good aganist third parties, nor does it confer on him the right to possession as aganist the seller. What than is this peculiar legal conception which act calls the property in the goods? The answer can only be given by considering what precisely are the consequences which flow from the passing of property. What rights does the passing of the property give to the buyer?

In the first place, then, what is the position of buyer if he wishes to obtain possession from the seller? The answer which has alrady been intimated, is that he can only do so if he pays the price or if seller sees fit to Grant him credit. Nor can the buyer avoid this consequnce by framşng is action in tort and suing for conversion, basing his claim on the fact that the goods are now his goods. The reason for this is that the action for conversion will only lie at the hands of someone with an immediate right to possession and thşs the buyer does not have until he tenders the price. Again, if the buyer resells the goods before obtaining possession, the sub-buyer can only obtain possession on the same terms as original buyer, that is to say by payment of the price, unless the original seller has assented to the second sale. The same applies if buyer pledges the goods instead of selling them. In all these case the buyer property avails him nothing, because the position would be precisely the same even if no property had passed. The same is true if buyer goes bankrupt before delivery of goods and payment of price. The seller cannot be compelled to deliver up the goods to the trustee in bankruptcy, and relegated to his right to prove in the bankruptcy for the price, even though the property in goods has passed to buyer. Indeed, quite the contrary, the law goes out of its way to protect the seller from the bankruptcy of the buyer by conferring on him the right of stoppage in transit should the buyer go bankrupt after the seller has dispatched the goods to him, but beforethe buyer has received them.

Suppose, next, that the buyer has actually obtained the possession of the goods. Once again the practical effect of the passing of the property is somewhat limited, because section 25 of the act enables buyer in possession to pass a good title to a third party, binding on the first seller, whether or not the property has already passed to original buyer. Moreover, it is arguable that section 25 has the strange result that the buyer, even f in possession, an deven if he has the property, cannot pass a good title to

a mala fide transfere. However, it is true that if the goods are delivered to the buyer with a stipulation that the seller reserves titles and property is only to pass on payment, the seller may be able to recover the goods in the event of the buyers bankruptcy. Moreover, the practice of incorporating these reservation of title clauses is growing. This then is a case where the passing of the property may have important practical effects, and indeed, many modern cases dealing with the passing of property hinge on these reservation of title clauses. What then is the position if the seller, being stil in possession of the goods, resells them to a third party, whether rightfully or wrongfully? Again the answer is that the transfer of property has little effect, for section 24 enables the seller who is in possession to pass a good title to a bona fide transferee, even though the transfer may be wrongful as aganist the first buyer. If the seller becomes insolvent, can the buyer claim the goods by virtue of his property? As aganist the seller himself, or a liquidator or receiver, the answer at common law is prima facie, yes, but sometimes the Bills of Sale Acts or the companies Act operate to invalidate the sale or the sellers rights in these circumstances. So this is again a case where the passing of property may have important practical consequences. And here too there are a number of modern cases demonstrating the important practical effects which attach to the passing of property in this situation, and the difficulties which arise when the property has not passed, or cannot pass because the good remain in bulk, and no physical seperation of buyer's goods from the remainder has yet been effected. So also, the buyers chances of obtaining equitable or specific relief seem to be greater if property has passed to him, especially if the seller claims no proprietary or possessory rights of any kind over the goods. A buyers right to goods of which he is undisputed owner will be specifically enforced aganist a seller who proposes to convert them and pay damages in lieu.

Next, reference must be made to three other important results which generally follow from the passing of property. The first of these is that the risk in the goods prima facie passes with the property. The second consequence is that generally speaking the seller is not entitled to sue for the price of the goods unless the property has passed. If the buyer repudiates the contract before this happens the sellers remedy is prima facie an action for damages for non-acceptance. Yet even here one cannot say that these consequences follow naturally or logically from the passing of the property.

The next consequence is that the passing of property may in some circumstances determine who is the proper plaintiff to sue a third party who has damaged or destroyed the goods, for example; when they are en route to the buyer. But property alone will rarely be decisive. Usually, it is combined, either with a right to possession, or with a contractual right aganist the third party, such as a carrier. Prima facie, the person who is entitled to sue in respect of goods damaged at sea is the person who holds the B/L, and that person has both a contractual right aganist the shipowner and also the property. So it is reraly necessary to ask whether it is the one or the other which gives him the right to sue.

To sump up, it may be said that the most important practical consequences which flow from the mere passing of the property are as follows:

- If the property in the goods has passed to the buyer he will generally have a good title to them if the seller becomes insolvent while the goods remain in his possession.

- If the goods are delivered subject to a reservation of title/property by the seller, the seller may have a good title to the goods should the buyer become insolvent.

- The right to sue a third party for damages to, or loss of the goods, may depend on who has the property.

- The risk passes prima facie when the property passes.

- Generally, speaking the seller can only sue for the price if the property has passed.

It will be observed that only the first three of consequences affect third parties and that, although the passing of the property may have important results as between buyer and seller, its effect on third parties in ordinary circumstances is minimal. Still, a buyer or seller, relying on his property, aganist on insolvent seller or buyer, may well have a title good aganist a liquidator or trustee in bankruptcy claiming through the

seller or buyer. Of course, parties claiming through a contracting party are not treated by the law as third parties in this sense, although in other, more realistic sense, trustees in bankruptcy and liquidators should perhaps be treated as third parties.

The Passing Of Property: Specific Goods

The exact moment at which the property passes depends upon whether the goods are specific or unascertained, and this cleavage is so fundamental that the subject will be dealt with under two separate headings. Section 17 of the Act is as follows;

- Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties yo the contract intend it to be transferred.

- For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Although this section only applies to specific or ascertained goods, it is well settled that, as a matter of general contract law, the principle expressed in subsection2 also holds true for unascertained goods. Section 18 goes on to states;

- Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

The Passing Of Property: Unascertained Goods

The meaning of the terms unascertained goods has already been discussed and it has been seen to cover three possibilities. Firstly, goods to be manufactured or grown by the seller; secondly, purely generic goods and, thirdly, an unidentified portion of a specified bul kor whole. Although the Act doesn't distinguish between these three types of unascertained goods, the rules as to the passing of property and risk may well differ in the three cases. In particular, it will be seen that the passing of risk in an

unidentified portion of a specified whole may sometimes take place at a different time from the usual. And, secondly, it will be seen that what amounts to an unconditional appropriation which is what is usually required to transfer the property in one type of sal emay not be so in another. The fundamental rules are laid down by Section 16, 17. Section 16 provides that;

- Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Then Section 17 provides that on a sale of specific or ascertained goods, the property passes when the parties intend it to pass, and that intention is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Section 18 says that, subject to a contrary intention;

- Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer, and the assent may be express or implied, and may be given either before or after the appropriation is made.

Relationship of Section 16,17 and 18;

It is clear that Section 16 must be the starting point in considering the passing of property in sale of unascertained goods. The section lays down the fundamental rulet hat the property cannot pass until the goods are ascertained, and this appears to be a mandatory provision which takes precedence over the intention of the parties. Indeed, Section 17, which deals with the intention of the parties, only operates in a sale of specific or ascertained goods. There is thus no provision covering the passing of property in goods which are still unascertained for the good reason that the Act clearly does not contemplate this as a legal possibility at all. No matter what the parties may have intended, property cannot pass until the goods are ascertained.

RISK AND FRUSTRATION

When a person is bound to bear the accidental loss of or damage to, the goods, they are said to be at his risk. Sometimes, also, a contract for the sale of goods, like any other contract, may be totally frustrated by some extraordinary and unforeseeable event. Because frustration is sometimes also relevant where goods are destroyed or even severely damaged, the two sets of legal principles are interconnected in various ways. Indeed, the doctrine of frustration is sometimes said to be merely an aspect of the general rules as to risk, but this is not entirely accurate. If an executory contract is frustrated, neither party is under any liability to the other.

On the other hand, if the goods are at the seller's risk and they perish or deteriorate, although the buyer is not liable to the seller for the price, it by no means follows that the seller is not liable to the buyer for non-delivery, if the buyer can prove that he has suffered loss therefrom. The rules as to risk have nothing to say in such a case, and if the selleris to be exempted from liability, it must be by the doctrine of frustration.

Conversely, if the goods are at the buyer's risk, he is clearly liable for the price even though the goods have perished or deteriorated. But it does not follow that he may not also be liable for damages for non-acceptance if the seller can prove that he has suffered any. Only frustration can discharge the buyer from the liability for non-acceptance.

Transfer Of Risk

The general rule laid down by section 20 is that prima facie the risk passes with the property.

- Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer, the goods are the buyer's risk whether delivery has been made or not.

If there is an Express aggreement that one party is to bear the risk even though he has no property effect must no doubt be given to the agreement, but in the absence of

such an Express contract, it has been said that the rule res perit domino is generally an unbending rule of law arising from the very nature of property. While this is no doubt largely true in a static situation where property remains with one person throughout, it is not necessarily true of the dynamic situation where property is being transferred from one party to another. In this situation, there is nothing peculiar about separating the transfer of risk from the transfer of property and this commonly happens where goods are shipped under c.i.f or f.o.b contract. Apart from these cases, two other exceptional cases seem to be established by the outhorities, in one of which the risk passes before the property and, in the other, the risk passes after the property.

Frustration

It has alreay been suggested that the doctrine of frustration covers a wider field than the rules as to risk. The drafting to Section 7 support this view:

- Where the is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The doctrine of risk simply lays down that prima facie if the goods perish before the property passes, the seller must be bear the loss and cannot claim the price. Were the doctrine of frustration merely an aspect of the rules as to risk, this section would be an absurdity for it would, in effect, be saying that where the risk is on the seller he must bear the risk of the goods perishing. But section 7 does more than this, for it provides that in the circumstances the mentioned the contract is avoided. This means that both parties are discharged from their obligations; in other words, not only is the buyer not liable fort he price, but the seller is not liable for non-delivery.

EXPORT SALES

The sale of goods are to be shipped to their destination gives rise to a host of difficult question, adequate discussion of which would require a whole volume. This is not a task which it is proposed to undertake here, but something must be said of the principal types of export contract, of the problem raised by export and import licences,

and of the method of payment by bankers commercial credit. In the first place, 4 types of contract will be considered, the central two kinds being contracts whose essential terms have become standardized by commercial practice, although there is considerable variation in matters of detail. These 4 are ex-works contracts, fob contracts, cif contracts, ex-ship contracts.

Ex-Works or Ex-Store Contracts

Ex-Works contracts presents few difficulties in this connection. In fact, these can hardly be considered as exports sales at all, since it is the buyer's duty to take delivery at the works or store in question, and what he does with them after that is entirely his own affair. The property and risk will, in the absence of any contrary indication, pass when the goods are delivered in most contracts of this kind, since they are almost invariably sales of unascertained goods and it is unlikely that there will be any appropriation prior to delivery.

FOB Contracts

In a fob contract, the seller's duty is to place the goods free on board a ship to be named by the buyer, during the contractual shipment period. Prima facie at least, it seems that the expression fob determines how to goods shall be delivered, how much of the expense shall be borne by the sellers and when the risk of loss or damage shall pass to the buyers. It does not necessarily decide when the property is to pass. The sellers obligations extend to all charges incurred before shipment, including loading charges, but not freight or insurance. In the absence of a contrary intention, the buyer has the right and the responsibility of selecting both the port and the date of and generally making the arrangements for the shipment of the goods. He must nominate a ship on which the goods may be loaded by the seller and give adequate notice to the seller of that nomination. The ship must be an effective ship, that is, capable, both physically and otherwise, of receiving the cargo. If the buyer nominates a ship which cannot receive the cargo or which cannot load in time, he may, if he still has sufficient time, substitute another vessel in place of the one first nominated. Where the contract provides for a range of ports from which the goods are to be shipped, it is the buyers right and duty to select one out of the permitted number of ports and to give the seller

sufficient notice of his selection. On receiving the necessary notices from the buyer, the seller must be ready to ship the goods within a reasonable time; but he does not necessarily have to have the goods available for immediate shipment.

Notes: The contract for the carriage of the goods is made between the buyer (or his agent) and the shipowner. When the seller delivers the goods for loading on board, he normally obtains a mate's receipt, which he transmits to the buyer, who exchanges this for the proper bills of lading.

***Passing of risk and property**

In this sort of fob contract the almost universal rule is that risk passes on shipment as soon as the goods are over the ship rail, and if it should be material, the risk in each part of the cargo will pass as it crosses the ship rail. This is not because ofany peculiarity of fob contracts but because in this type of contract the seller duty is to delivered the goods fob. Once they are on board, the seller has delivered them to the buyer and it is natural that they should thereafter be at the buyers risk.As regards the passing of property, the position is that prima facie property may also pass, like risk, on shipment. The loading of the goods may be an unconditional appropriation which passes the property under section 18. If the goods are loaded together with other goods of the same description so that no unconditional appropriation of the specific goods sold then takes place, property cannot pass on shipment, but the risk will stil do so. In modern times, any general presumption that property passes with risk on shipment in an fob contract has probably largely disappeared. Although this may stil sometimes be the case if the contract contains no contrary provision, the practice of treating the shipping documents as security fort he payment of the price is now so well established in international sales, that contractual terms requiring payment aganist the shipping document is probably the norm in fob contracts these days, just as much as cif contracts where this practice may have first originated. Where payment is only to be made aganist document, the seller will normally have himself named as the consignee in the B/L, so that section 19 relevant. Sectipn 19 provides;

- Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie to be taken to reserve the right of disposal.

Seller's duties as to insurance

It has already been seen that the under section 32, delivery to the carrier is prima facie deemed to be delivery to the buyer himself, but despite this it has been held section 32 applies to fob contracts. This section states that;

- Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

Seller's duties as to contract of carriage

The above account is a sketch of the classic fob contract. But in modern times there are many variants. In particular, it is nowadays very common fort he seller to be required to make some or all of the arrangements for shipping and insuring the goods, particularly where the seller is an exporter or where small parcels rather than whole cargoes are being shipped. In this event, it is the seller who makes the contract for carriage of the goods with the shipowner, and he must then comply with section 32 of the Act. This provides;

- Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

CIF Contracts

The contract in question here is of a type familiar in commerce, and is described as a cif contract. The initials indicate that the price is to include cost, insurance and freight. It is type of contract which is more widely and more frequently in use than any other contract used for purposes of sea-borne commerce. An enormous number of transaction, in value amounting to untold sums, are carried out every year under cif contracts. The essential characteristics of this contract have often been described. The seller has to ship or acquire after that shipment the contracts goods, as to which, if unascertained, he is generally required give a notice of appropriation. On or after shipment, he has to obtain proper B/L and proper policies of insurance. He fulfils his contract by transfering the B/L and the policies to the buyer. As a general rule, he does so only aganist payment of the price, less the freight which the buyer has to pay. In the invoice which accompanies the tender of the documents on the prompt that is, the date fixed for payment the freight is deducted, for this reason.

Seller's duties in CİF contracts

The seller's duties in a cif contract, as summarized in the above passage, relate to the following matters. First, he must ship the goods or buy goods already already shipped. It would not be very common nowadays for a cif seller to buy goods afloat and in the great majority of cases the seller either already has the goods or himself buys them for shipment. Stipulations as to the time and place of shipment as specified in the contract must be strictly complied with anda re almost always treated as conditions. Delay of even one day in shipping the goods will justify rejection by the buyer. Indeed, the buyer is equally justified in rejecting the goods if they are shipped too soon. The seller must also insure the goods at his own expense.

Secondly, the seller must make a contract or the carriage of the goods to, and for their delivery at, the cif destination. Thirdly, the seller must, with all reasonable despatch, tender to buyer proper shipping documents. These comprise the seller's invoice for the price, B/L, an insurance policy covering the goods aganist marine risks. The most essential feature of the B/L is the requirement that it should evidence a contract for the carriage of the goods to the agreed port of discharge. The B/L and the

insurance policy are, in a commercial sense, the buyer's guarantee that he will receive the goods in due course or, if they are lost or damaged, that he will have recourse either aganist the shipowners or aganist the insurers. Recourse aganist the shipowner is usually secured by the transfer to the buyer of the contract of carriage under the B/L.

Non-confirming documnets

The shipping documents are therefore very important commercial and legal documents, because buyers pay the price in exchange for the documents, long before they receive the goods. Similarly, where the price is payable by letter of credit, banks will pay in exchange for the documents, thereby treating the documents as security for the money they advance. It is thus of critical importance that the documents be accurate, and that they comply with the terms of the contract.

In practice, documents very often do not so comply, and this is an extremely common source of commercial and legal difficulty. If buyers and banks always rejected non-complying documents, international trade would probably grind to a halt, but many of the instances of non-compliance are trivial or technical and do not lead to rejection. If at a later date the buyer decides that he wants to reject after all there will often be arguments about waiver and estoppel, which we discussed earlier. Where it is banks who in the first instance discover discrepancies in the documents, they often inform their buyers, and act on their instructions. Sometimes where the discrepancies appear particularly doubtful or technical, the bank may accept the documents, in return for an indemnity, that is, an undertaking to repay any moneys advanced and make goods any loss, if the buyer should then reject the documents.

Dating of the B/L

A point of critical importance in commercial practice, and also in law, is that the B/L must be correctly dated. The date on the B/L recording when the goods have been shipped is the buyer's guarantee that shipment has occured during the contractual shipment preiod. It is a separate breach of contract for the seller to tender to the buyer

incorrectly dates B/L, so that the seller commits two breaches by shipping the goods late and then procuring misdated B/L. Regrettably, B/L are often misdated in order to conceal the fact that the goods were shipped outside the contract period, and this practice often gives rise to legal difficulties, especially where the buyer does not discover the incorrect dating until much later.

Contract of carriage

Section 32 which has been set out above, also applies to cif contracts. This section requires the seller to make a reasonable contract with the shipowner. It has already been seen that what is reasonable must be judged at the time the contract of carriage is made and not when the contract of sale is made. So far as cif contracts are concerned, one of the most important requirements of a reasonable shipping contract is that it should give the buyer a right of action aganist the shipping company for loss or damage to the goods throughout the whole period of the voyage. This means that if the goods have to be transshipped, the first shipowner must accept liabilty for the defaults of sebsequent shipowners who will not be in privity with the sellers nor, therefore, with the buyers. But this may no longer be true in practice because most B/L today exonerate the shipowner from liabilty after transhipment, and if these are the only available B/L the seller is entitled to ship on those terms. In follows from the nature of a cif contract that section 32 does not apply because there is always an express agreement as to the insurance of the goods. This is still the case even if special circumstances occur as a result of which the ordinary insurance cover is not effective and it would be advisable to take out a special cover.

Passing of property and risk

Although section 32 states, as we have seen, that delivery to a carrier is prima facie deemed to be delivery to the buyer, this has no application to cif contracts in which delivery of the goods to the buyer occurs when, but not before, the documents are handed over. The peculiar feature of cif contracts has always been the importance attached to the shipping document, delivery of which transfer the property and the possession in the goods to the transferee. The seller's duty to deliver the goods in these cases means only that he must deliver the documents, for even if the goods are

lost at sea the seller can still insist on payment of the price in return for the documents. Indeed, the position is the same if the goods are damaged after loading and are discharged before the ship sails, and even before the B/L is issued. But that does not mean that a cif contract is a sale of documents and not of goods. It contemplates the transfer of actual goods in the normal course, but if the goods are lost, the insurance policy and B/L contract that is, the rights under them are taken to be, in a business sense, the equivalent of the goods. Moreover, a seller does not fulfil his duty by delivering a B/L which is regular on its face if, in fact, no goods have ever been shipped. Thus where a seller in good faith bought goods afloat and was given a B/L, apparently in order, and proceeded to sell the goods cif to another buyer, he was held in breach of contract when it was discovered that there were no goods.

Not only does a transfer of a B/L transfer the property and the possession in the goods, but a pledge of the documents also operates as a pledge of the goods although this is not generally true of documents of title. This transferability is of crucial importance both in law and in practice. Indeed, negotiability is of the very essence of a B/L. A non-negotiable document is not strictly speaking a B/L at all. But a B/L is not a negotiable instrument in the sense that a bill of exchange is, so a transferee of a B/L does not get a better title than the transferor.

In cif contract the risk once again passes on shipment, and if the goods are lost at sea the buyer is still bound to pay the price, although he will as a rule have the benefit of the insurance policy. The law is the same even if the seller knows that the goods have been lost when he tenders the shipping documents. So also, the inability of the buyer to have the goods discharged at the port of destination is of no concern to the seller, and cannot be a frustrating event. The delivery of the goods on board the vessel, followed by the delivery of correct document is a complete performance by the seller of his duties under a cif contract; what happens after that is of no concern to him, subject to some special cases.

At one time cif contracts differed fundamentally from fob contracts with regard to *the time at which property passes, although today the tendency may well be for fob* contracts to be treated in the same way as cif contracts. At any rate, in cif contract, it is quite clear that the general rulei which is not easily displaced, is that the property only

passes when the documents are transferred and paid for. Where the B/L is taken in the seller's name, this accords with section 18 and 19 which ahve already been discussed. Where contrary to the usual practice, the bill is taken in the buyer's name, the prima facie rule is that delivery to the carrier is deemed to be an unconditional appropriation, but this presumption is rebutted by the very nature of cif contract.

Under section 19 which has been set out above, it is expressly provided that if the seller sends a bill of exchange to the buyer with the shipping documents, the property does not pass unless the buyer accepts the bill of exchange. Even if the seller draws a bills of exchange on the buyer and discount it with a bank before it has been accepted by the buyer, the property will still not pass. Although the seller may obtain payment in this way he remains under a secondary liability as drawer of the bill of exchange and so property remains in him as security for this contingency.

Variants on CIF contracts

One very common variant of the cif contract is the c&f contract, in which the buyer arranges his own insurance, but in other respects the shipping arrangements are made by the seller and once again property usually passes when the documents are transferred in exchange for payment of the price.

Buyer's duties

The duties of the buyer under cif contract are to accept the shipping documents when tendered and to pay the contract price in exchange for documents. Documents are sent to a bank in the first instance and the bank than passes the documents to the buyer in exchange for payment or for some other method of satisfaction. Sometimes several banks are involved, and documents are transferred from one to another, ultimately ending up with the buyer. Sometimes the buyer is under a contractual duty to nominate a discharge port because the cif contract may not have originally specified a single port as the cif port, but may have envisaged a range of ports, leaving the buyer to select the particular port at a later date. In this situaiton the buyer must obviously make his nomination in sufficient time for vessel to sail to the port specified without interruption or delay.

EX-SHIP Contracts

In Ex-Ship contacts the seller has to cause delivery to be made to the buyer from a ship which has arrived at the port of delivery and has reached a place therein, which is usual for the delivery of goods of the kind in question. In other words, the seller really is under an obligation to deliver the goods to the buyer at the port of discharge in ex-ship contracts, and the buyer has no concern with the shipment itself. Section 32 therefore has no application at all to this type of case. It also follows that if the seller fails to deliver the goods, the buyer is not liable for the price or if he has paid it he can recover it as on a total failure of consideration.

SELLER'S RIGHTS AND POWERS AGANIST THE GOODS

Where the buyer defaults in his principal obligation, that is, in payment of the price, the seller has of course his personal action on the contract ifself but if the seller were always compelled to fall back on this remedy his position would be in many respects unsatisfactory. The law has therefore developed certain real rights or remedies whereby the seller can still look to the goods as a kind of security for payment of the price. In considering these real remedies four different fact situations must be distinguished.

Firstly, there may be a sale specific goods in which the property has passed to the buyer and the goods have been delivered to him. Here the seller has relinquished all right to look the goods for his price and he is relegated to his personal right of action aganist the buyer. If the seller attempts to enforce his right to the price by seizing the goods from the buyers possession, the sellers conduct will be a breach of section 12 of the Act and will doubtless constitute the tort of conversion as well. It is possible for the parties to provide by express agreement that the property in the goods is to remain in the seller even after they have been delivered, in which case the seller may have the right to seize or reclaim the goods in certain events for instance, if the buyer becomes insolvent before the price is paid. But such a right to reclaim the goods after delivery cannot be implied since it would be very rate for the property to be retained by the seller after delivery unless there is an express provision the this effect. But the use of

such express provision reservation of title clauses is growing and giving rise to difficult question. It will therefore be necessary to consider their effect, even though they cannot arise by implication of law in the same way that the other real rights arise.

Secondly, there may be a sale of specific goods in which the property has passed to the buyer, but the goods have not yet been delivered. In this case, whether the goods are still in the possession of the seller or have been dispatched to buyer the law confers on the seller, subject to certain condtions, the power to resell the goods and pass a good title to a third party as well as some incidental powers, and the right to the first buyer. It must be emphasized that these are two very different things because the seller often has the power to pass a good title to a bona fide transferee without having the right to do so; in other words the resale may constitute a breach of contract as aganist the first buyer although it validly transfers the property.

Thirdly, there may be an agreement to sell specific or unascertained goods in which bo property has yet passed but in which the seller is under a personal obligation to deliver certain particular goods and no others. This is always to case where there is an agreement to sell specific goods, and it may also occur in a sale of unascertained goods when there has been sufficient appropriation to place the seller under an obligation to deliver those particular goods, although there has not been sufficient appropriation to pass the property. This may happen for example, in a cif contract when the sellers give notice of appropriation, or in a contract for the manufacture of an article where the personal obligation to deliver the goods may come into being before the property passes. In these cases, the law does not need to confer a power of resale on the seller because he still has the property in the goods can simply by virtue of this property, transfer a good title to another buyer. But it does not follow that the seller does not need statotory protection from the consequences of exercising this power. For example, if the buyer defaults in payment of the price on the date agreed, the seller, being still the owner of the goods, has power to resell them, but the exercise of these powers might be breach of contract. The law, therefore protects the seller from the consequences of availing himself of these powers subject to certain conditions.

Fourthly, there may be an agreement to sell unascertained goods in which no property has yet passed and in which there is no obligation to deliver any particular

goods. Here no special provisions are needed at all, because the seller clearly has full power to exercise any control over the goods, and such exercise cannot be a breach of contract. For example, if a seller agrees to sell 1000 tons of a certain type of wheat and procures wheat of that description intending to deliver it in performance of the contract, no property passes before appropriation, nor is the seller bound to deliver that particular 1000 tons. If therefore the seller resells this 1000 tons to a third party he can pass a good title to this party and his action will not be a breach of contract with the first buyer.

UNPAID SELLER'S LIEN

The sellers lien is ordinary contracts of sale of goods now depends entirely on the Sale of Goods Act which is quite inconsitent with any suggestion that there may be any equitable lien differing from that provided for in the Act. The sellers lien is a right to retain the goods until the whole of the price has been paid or tendered. It does not strictly speaking give to the seller any property in the goods subject to it. At common law a lien does not confer a power of sale but the unpaid seller has a statutory power and right of sale subject to certain conditions which will be examined in due course. In practice the lien is often exercised merely as a preliminary to a resale of the goods. The sellers right of lien is a qualification upon the duty to deliver the goods laid down by section 27 and it only arises if three conditions are satisfied.

In the first place the seller must be an unpaid seller as defined by section 38. This section has already been set out and it is only necessary to emphasize here that the whole of the price must be paid or tendered before the buyer can claim to have discharged the lien. This raises important questions in connection with instalment contracts and it has been held that, generally speaking, the seller is entitled to exercise his lien over any part of the goods if any part of the price is outstanding. In other words he is not confined to claiming a lien over those goods to which the unpaid part of the price may be attributed. Reference should also be made here to section 42 which is a follows;

- Where an unpaid seller has made part delivery of the goods he many exercise his lien… on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien…

Where however there is not one contract but a number of seperate contracts for goods to be separately paid for and delivered, it naturally follows that the seller cannot claim a lien over any part of the goods which have been paid for merely because some others have not been for. This would be a general lien, which may be conferred by express contractual terms, but the lien which the Act confers is only a special or particular lien. It does not follow of course from the mere fact that the goods are to be delivered and paid for in instalments that there is not still one contract only. On the contrary the general rule is that a contarct for sale of goods by instalments is still one contract and the lien may therefore be exercised over any part of the goods.

In the second place the seller is not entitled to a lien if the goods have been sold on credit. If a seller agress to allow the buyer credit, this does not necessarily mean that the he is prepared to deliver the goods before the price has been paid. It may only mean that the seller is not insisting on immediate payment to which he is prima facie entitled if he is ready and willing to deliver. Oddly enough the Act appears to assume that an agreement as to credit necessarily means an agreement that the buyer shall be entitled to the goods before payment because section 21 says;

- Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely-
  - Where the goods have been sold without any stipulation as to credit
  - Where the goods have been sold on credit but the term of credit has expired
  - Where the buyer becomes insolvent

LOSS OF LIEN

The seller loses his lien in one of four ways. Firstly, if the price is paid or tendered the seller ceases to be an unpaid seller and therefore loses his lien. But he is entitled to retain possession until payment or tender. If this is so it might seem that payment or

tender is strictly speaking a condition precendent to the buyers right to claim delivery but as we have seen section 28 expressly says that payment and delivery are concurrent conditions. It is usually inferred from this that actual tender of the price is not necessary provided the buyer is ready and willing to pay the price and there is judicial authority to the effect that this at any rate is the limit of sellers duty to deliver. But if the buyers sues for non-delivery without making tender it would usually be arguable that the seller has waived the need for such a tender by making it quite plain that he is not going to deliver the goods in any event. The remaining three ways in which the seller loses his lien are sect out in section 43 which runs;

- The unpaid seller of goods loses his lien… in respect of them-
- When he delivers the goods to a carrier or other bailee… for the purpose of transmission to the buyer without reserving the right of disposal of the goods
- When the buyer or his agent lawfully obtains possession of the goods
- By waiver of the lien…

We have already seen that for some purposes delivery to a carrier is deemed to be delivery to the buyer but this section clearly differentiates between these two different possibilities and as will be seen shortly the sellers right of stoppage in transit depends on this very distinction. Although the seller loses his lien on delivery to the carrier he may still have the right of stoppage in transit but it is all the same important to decide when the goods pass into the possession of the carrier, because the extent of the right of lien differs from that of stoppage in transit. In particular, the seller can only stop the goods if the buyer is insolvent whereas his right of lien only depends on the absence of a stipulation as to credit. It follows that the seller may well have a right of stoppage once the goods have been delivered to the carrier.

Fourth way, in which the seller may lose his lien is by waiver. In a certain sense, delivery of the goods to the buyer on credit is but an instance of waiver of the lien but the seller may waive his lien without giving up possession at all. If for example, the seller should ask the buyers permission to retain possession by way of temporary loan, he may be held to have waived his lien. Although section 41 says that the seller may exercise his lien notwithstanding that he is in possession as the buyer bailee or agent the subsection does not say that the seller may exercise his lien notwithstanding that

he has impliedly waived his lien. And if the seller having originally refused to sell on credit were later to agree to the buyer taking possession before payment, this would presumably amount to a waiver of the lien and the seller would not be able to change his mind again and insist on the lien after all.

UNPAID SELLER'S RIGHT OF STOPPAGE IN TRANSIT

The seller's right of stoppage in transit is set out section 44;

- Subject to this Act when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and may retain them until payment or tender of the price.

It makes no difference whether or not the property has passes to the buyer. Where the property has not passed the seller has, in virtue of his ownership the power to stop the goods and the Act makes the exercise of this power rightful as aganist the buyer; where the property has passed the Act confers both the power and the right to stop. It has been said that the courts look with great favour on the right of stoppage in transit on account of its intrinsic justice and this is certainly borne out by judical pronouncements. It seems to accord with commercial morality that the seller should be treated as in a sense, a secured creditor looking to the goods as his security, until they have finally passed into the possession of the buyer. In modern times, the development of system of payment aganist documents and in particular of payment by bankers commercial credits has greatly reduced the importance of the right of stoppage. Where the price is to be paid in this way the seller has little to fear from the threat of the buyers insolvency because the seller will retain the control of the goods through the document of title until he is paid. The law relating to stoppage in transit is therefore only important where the sale is on credit and there are virtually no modern cases on the subject.

When Right Of Stoppage Arises

Before the seller can exercise his right of stoppage in transit three conditions must be satisfied. Firstly, the seller must be an unpaid seller within the meaning of the Act. Secondly, the buyer must be insolvent and thirdly, the goods must be in course of transit. The first two of these have already been considered and it remains now to examine the meaning of the expression course of transit. The decisions at common law on this subject were very numerous and in 1887 Jessel, MR, said that as to several of them there is great difficulty in reconciling them with principle as to others there is great difficulty in reconciling them with one another and as to the whole the law on this subject is in a very unsatisfactory state. Secrion 45 of the Act makes a determined and on the whole successful attempt to reduce this chaos to a number of definite rules. The goods are in transit when they hace passed out of the possession of the seller into the possession of a carrier, but have not yet reached the possession of the buyer. Little difficulty is generally encountered with the question, when does the transit commence? But one ambiguity must be cleared up. If the carrier is the seller's own agent no question of the right of stoppage arises at all, for the goods while in the possession of such agent are still sufficiently in the possession of the seller to enable him to exercise his lien and he need not invoke the less extensive right of stoppage. The right of stoppage only arises when the carrier is an independent contractor who holds possession of the goods on his own behalf as carrier. It is now necessary to examine the question when does the transit end? In the first place it must be clearly understood that although section 32 says that delivery to a carrier is prima facie deemed to be delivery to the buyer this is only a constructive and not an actual delivery, and it is only an actual delivery which ends the right of stoppage. If this were not so of course section 32 would be inconsistent with the whole concept of stoppage in transit because this right postulates delivery to a carrier, but not delivery to the buyer. This much is clear from section 45;

- Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee… for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee…

Although therefore delivery to a carrier is not in itself delivery to the buyer for this purpose, there is no reason why the buyer should not be able to show that in the particular circumstances of the case the carrier was his agent and that therefore the transit was at an end just as the seller can show that the carrier washis agent and that the transit had never started. This possibility is expressly recognized by section 45 which refers to the buyer or his agent and by section 45 which says;

- When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent to the buyer.

If the ship is owned by the buyer clearly delivery of the goods to the master is a delivery to the buyers agent which terminates the transit. Likewise, if the ship is demised to the buyer so as to vest complete control over the vessel in the buyer, the master is treated as being employed by the buyer; and then delivery to the ship is delivery to the buyer. But if the ship is merely chartered for a voyage or a fixed period as is the usual case the master remains the employee of the shipowner and does not become the agent of the buyer so that delivery to the ship does not end the right of stoppage. If the seller is owner of the ship no question of the right of stoppage arises at all of course because the goods are still in the possessionof the seller while on the ship. The mere fact that the contract is for the sale of goods fob does not exclude the right of stoppage. Although the seller's duty in a contract fob may be complete when he has placed the goods on board, this does not mean that he is not still interested in them and that he cannot subsequently stop them if the buyer becomes insolvent.

Transfer of the Bills of Lading

Somewhat surprisingly, the Act does not make it clear whether the transfer of the B/L to the buyer is by itself sufficient to terminate the sellers right of stoppage. The UCC expressly provides that negotiation of any negotiable document of title to the buyer terminates the right of stoppage. But it seems implicit in the English Act that mere transfer of the B/L to the buyer does not prevent the seller from stopping the goods in transit. Both sections 39 and 47 seems to assume that the right may continue even after the bill is transferred to the buyer. Yet it is surprising that there are no

modern cases on the subject, and it may be that in practice businessmen simply do not believe that they have the right to reclaim the goods from the carrier once they have transferred the B/L to a buyer even though he has bought on credit and become insolvent before paying the price. Despite modern commercial practice, it must still sometimes happen that buyers buy on credit but become insolvent while the goods are at sea and in this situation the right the stop could still be of practical importance. But although the mere transfer of B/L to the buyer may not defeat the right to stop the goods the right may be lost by sub-dealings with the goods by the buyer. Considerable difficulties have arisen here and it is essential to keep two points clearly distinct.

The first question which arises is whether the sub-buyer or pledgee is entitled to possession of the goods free from the sellers right of stoppage and the second question is whether assuming the sub-buyer or pledgee to be so entitled the seller can exercise his right of stoppage over the money paid by the sub-buyer in the event of a sale or over the goods subject to the pledgee's rights in the event of a pledge. To take the latte possibility first, there can be no doubt that the seller can still exercise his right of stoppage notwithstanding that the goods have been pledged but of course he can only do so subject to the right of the pledgee. In other words, the seller can claim the return of the goods from the carrier if he is prepared to pay of the pledgee. What is more, even if the pledge obtains the goods in virtue of his pledge and sells them the seller is entitled to claim that the balance of price shall be paid directly to him and not to the insolvent buyer.

UNPAID SELLER'S RIGHT OF RESALE

It has already been pointed out that the sellers power of resale must be carefully distinguished from his right of resale. The seller has the power to resell the goods if he still has the property in the goods or if even though the property has passed, he is in possession of the goods within section 24 of the Sale of Goods Act or section 8 of the Factors Act or if even though the property has passed the seller has exercised his right of lien or stoppage in transit. The first case does not call for caomment and the second has already been fully discussed but the third needs to be briefly considered. Section 48 says;

- Where an unpaid seller who has exercised his right of lien… or stoppage in transit resells the goods the buyer acquires a good title to them as aganist the original buyer.

This presumably means that even though the property has passed to the first buyer if the seller exercises his right of lien or stoppage, he has the power to resell the goods passing a goods title to a third party although he could not have done so under section 24 of the Sale of Goods Act and section 8 of the Factors Act. In other words, this section envisages the possibility of a resale by a seller not in possession of the goods and is to that extent wider than these two sections. It is now necessary to examine the seller's right of resale. The seller is entitled as aganist the buyer to resell the goods in any of the following circumstances;

1. If the seller obligation to deliver has not yet crystallized into an obligation to deliver any specific goods. Here it is clear that the seller incurs no liability if he resells the goods for the simple reason that it cannot be said which are the goods which he must deliver.

2. If the buyer repudiates the contract it is again clear on principle that the seller can accept the repudiation and may resell the goods if he chooses. It is of course, immaterial whether or not the property has passed to the first buyer. Refusal to accept the goods by the buyer is prima facie a repudiation of the contract and if the seller accepts the repudiation the contract is thereby rescinded, any title which has passed to the buyer will revest in the seller and the seller may resell the goods and sue for damages for non-acceptance. If however, the seller refuses to accept the repudiation then prima facie he is not entitled to resell the goods. This is because either the property will have passed to the buyer or seller will still be bound to transfer it to buyer. In this situation the seller can only resell if authorized to do so by section 48, which are discussed below. As we have senn the mere fact that buyer is late in paying the price is not necessarily a repudiation of contract, but may only amount to a breach of warranty for which the seller may recover damages, so late payment of itself does not justify a resale by the seller unless section 48 is satisfied expect in cases where time of payment is of the essence.

3. The seller has a right of resale if he has expressly reserved this right in original contract on default by buyer.

4. Lastly, the unpaid seller is given a right of resale if buyer fails to pay the price and the goods are perishable or in other case if he gives notice to buyer that he intends to resell and buyer still does not pay the price due to.

RESERVATION OF TITLE CLAUSES

It has been noted in a number of places that there has in recent years been a growing practice of incorporating in contracts of sale reservation of title clauses. Some of these clauses are of considerable complexity and there are many different versions in use, but the essence of a reservation of title clause is to reserve the property in the goods to the seller until the price is paid in full, notwithstanding that the goods are delivered to buyer. The purpose of such a clause is of course, the confer upon the seller some degree of security aganist the insolvency of buyer. Prima facie at least, if the buyer becomes insolvent before the price is fully paid the seller will be able to reclaim possession of the goods. From a functional or commercial viewpoint therefore reservation of title clauses operate like a more extend version of the real rights of lien and stoppage in transit. The lien operates while the seller is still in possession, the right of stoppage after he has despatced the goods but before they have arrived, and a reservation of title clause operates after the goods have actually been delivered to buyer. But a reservation of title clause must be expressly inserted, there is no implied real right to reclaim goods from buyer once they have been delivered merely because the price has not been paid. In theory such a right might exist even without express reservation if there are any grounds for arguing in some particular case that property has not passed on or before delivery but it would be rare indeed that property does not pass at the latest on delivery in the absence of some express provision to this effect. So it can be assumed for all partical purposes that a reservation of title clause must be expressly inserted if seller is to retain any title after delivery.

INCOTERMS

Incoterms is not exclusively used in shipping as, for example, are charterparties. It is also not primarily meant for use in contracts of carriage of goods. However, it do have a bearing on shipping and shipping documents. It also influence the rights and responsibilities of the persons who enter into contracts to carry goods by sea.

For example, the connection between incoterms and shipping can be identified when considering the seller's obligations related to the carriage of goods. Some incoterms require the seller to arrange for the contract of carriage and specify the type of contract of carriage, for example, a Bill of Lading. Incoterms may also state the seller's obligations concerning the delivery of goods, provision of documents and packaging. If the seller delays in delivering the goods to the ship, he may become liable to demurrage. There may be special packaging requirements for certain cargoes which if not complied with by the seller could make him liable to the shipowner if damage or risk of damage occurs to the ship. When goods are bought or sold internationally, arrangements must be made for their transport. In the contract of sale, the buyer and seller must decide who will arrange and pay for the transport and assume the risks for loss or damage. Many combinations are possible but if the contract of sale incorporates incoterms, the responsibilities and rights of the buyer and seller become quite celar. It help to avoid misunderstandings between buyers and sellers in international commerce.

The first incoterms, Uniform Rules for the Interpretation of Trade Terms-were published by the International Chamber of Commerce (ICC) in 1936. Modem trade practices and the development of transportation techniques require an adaptation of trade terms to serve the needs of modem commerce. This is particularly true for unitisation in containers or otherwise and also for multimodalism and electronic data interchange (EDI). The ICC has kept in step with the changes and has produced trade terms which have become tried and tested in the market and in the courts.

Owing to the doctrine of "freedom of contract", the parties to a contract of sale are free to decide how functions, costs and risks should be distributed between themselves. Therefore they can incorporate the internationally accepted incoterms or

they can insert trade terms into their contracts of sale which may not clarify the actual duties and functions and the point in time when these obligations are fulfilled. This can lead to considerable, expensive litigation.

EXW which represents the minimum cost for the seller to DDP which causes maximum cost for the seller. Initially these are identified by abbreviations in three letters. These abbreviations make it simple for quick reference to the appropriate trade term in documentary credits, contracts of sale and communications, especially when ED1 is used. The references are internationally standard and have been agreed upon by the ICC and the Economic Commission for Europe of the United Nations.

Obligations of Buyer and Seller

EXW-Ex Works:

"Ex Works" means that the seller's only responsibility is to make the goods available at his premises (i.e. , works or factory). The buyer bears the full cost and risk involved in bringing the goods from there to the desired destination. This term thus represents the minimum obligation for the seller. EXW is related to the departure of the goods from the premises of the seller. This incoterm is suitable for any mode of transport.

FCA-Free Carrier:

This term has been designed to meet the requirements of modern transport, particularly such "intermodal" transport as container or ro-ro traffic by trailers and ferries. It is based on the same main principles as FOB except that the seller fulfills his obligations when he delivers the goods into the custody of the carriers at the named point. If no precise point can be mentioned at the time of the contract of sale, the parties should refer to the place or range where the carrier should take the goods into his charge. The risk of cargo loss or damage is transferred from seller to buyer at that time and not at the ship's rail. "Carrier" means any person by whom or in whose name a contract of carriage by road, rail, air, sea or a combination of modes has been made. When the seller has to furnish a document, he duly fulfils this obligation by presenting such a document issued by the person defined as a "carrier". This incoterms can be

classified in a group where the main carriage is unpaid. The term is suitable for any mode of transport, including multimodal transport, and is also relevant to unimodal transport where the transport is either by air or by rail.

FAS-Free Alongside Ship:

Under this term the seller's obligations are fulfilledwhen the goods have been placed alongside the ship. This means that the buyer has to bear all costs and risk of loss or damage to the goods from that moment. The buyer contracts with the sea carrier for the carriage of the goods to the destination and pays the freight. This incoterms can be classified in a group where the main carriage is unpaid. The term is very suitable for transport by sea and inland waterway, e.g., by barges.

FOB-Free on Board:

The seller delivers the goods on board the vessel free of cost to the buyer at a port of shipment named in the sales contract. The contract of sale will specify the place of delivery as, for example, "FOB Tokyo". FOB contracts are closely connected with Bills of Lading. There may be a variety of FOB terms. In the classic type of FOB contract the seller is the shipper. The seller is a party to the contract of carriage until the bills of lading are made out in the buyer's name. This type will be used where the vessel will be specialised, e.g. , a tanker for oil, or where political pressures cause the buyer to use vessels flagged in the buyer's country.

Another type is where the seller makes the necessary arrangements for carriage, takes the bills of lading in his own name and transfers these to the buyer against payment. This is a common variety. A third type of FOB contract comes into existence when the buyer engages his own freight forwarding agent at the port of loading to book the space and obtain the bills of lading. This method may be used where freight has to be paid in advance. In this situation, the seller merely places the goods on board, obtains a mate's receipt and delivers this to the forwarding agent to enable the latter to obtain a Bill of Lading. In Pyrene v. Scindia, the shipper was the buyer, who made the contract of carriage. The buyer was not the charterer of the vessel. The cargo was dropped and damaged during loading because of defective cargo lifting

equipment. The goods had not passed the ship's rail. Therefore they were not "placed on board the vessel". The seller was still the owner of the cargo. However, because the buyer had made the contract of carriage with the shipowner, the seller could not bring an action against the shipowner for a breach of contract. Therefore, the seller brought an action for the tort of negligence. The shipowner wished to use a clause in the contract of carriage limiting his liability according to the Hague Rules. The judge in the case decided that the Hague Rules applied to "loading" and this operation covered the activity from the time the cargo was placed on the vessel's "tackle", or cargo hook, for lifting. Therefore, because the cargo was attached to the vessel's cargo tackle, it was on board. He held also that the seller was party to an implied contract with the carrier. Therefore the seller was bound by the limitation of liability provision in the contract of carriage. The definition of "on board" led to FOB and "delivery on board" being considered to relate to the moment the cargo is placed on the ship's cargo lifting devices. If the cargo is being lifted by shore cargo-handling equipment, FOB may relate to the moment it actually crosses the ship's rail. For oil or other liquid cargoes coming on board by pipeline, the delivery occurs when the cargo passes the ship's loading valve manifold.

This incoterm can be classified in a group where the main carriage is unpaid by the seller. It is particularly suitable for transport by sea and inland waterway.

CFR-Cost and Freight;

The word "cost" only signifies the price for the goods themselves and is quite unnecessary. The important keyword is "freight". The term is sometimes abbreviated to "C & F" or, "CNF", where the "N" takes the place of "and". The term is used with the name of the port of destination, e.g., "CNF Hamburg". This INCOTERM can be classified in a group where the main carriage is paid, usually by the seller. It is appropriate for transport by sea and inland waterway.

CIF-Cost Insurance and Freight;

This is perhaps the most usual and important term used in sales contracts involving carriage by sea. This term is basically the same as C & F, but with the addition that the

seller has to procure insurance against the risk of loss or damage to the goods during the carriage. The seller contracts with the insurer and pays the insurance premiums. These, then, are included in the price for the goods. The original contract of sale in international trade was probably FAS or FOB where the buyer would have chartered a vessel and called at the ports of shipment taking the goods into his care. The buyer would have been the shipper. In the late 19th century the CIF transaction developed mainly because of the development of good communication links and banking services. In modem international trade, this is by far the most common form of term of trade in a contract of sale. Because the essence of the system is that the system of documentary credits is used through banks, the CIF term also leads to the potential of maritime and documentary fraud because the banks are paying for documents, not for the physical goods. This incoterm can be classified in a group where the main camage is paid by the seller and it is suitable for transport by sea and inland waterway.

CPT-Carriage Paid to ...(the named place of destination);

This means that the seller pays the freight for the camage of goods to the named destination. It is suitable for any mode of transport, in particular for multimodal transport.

CIP--carriage and insurance paid to . . . (named destination);

The use of this term means that the seller has to ship the goods and procure the insurance against the buyer's risk of loss or damage during camage. It is appropriate for transport by any mode including multimodal transport. This incoterm can be classified in a group where the main camage is paid, usually by the seller.

DAF Delivered at frontier;

This incoterm means that the seller's obligations are fulfilled when the goods have amved at the frontier-but before "the customs border" of the country named in the sales contract. The term is primarily intended to be used when goods are to be camed by rail or road. It is appropriate for transport by any mode including multimodal

transport. This incoterm can be classified in a group where the main camage is paid, usually by the seller.

DES-delivered ex ship . . . (named port of destination);

This means that the seller makes the goods available to the buyer in the ship at the destination named in the sales contract. The seller has to bear the full cost and risk involved in bringing the goods there. This incoterm can be classified in a group where the seller is responsible for all costs and risks until amval. It is appropriate for transport by sea or inland waterway.

DEQ--delivered ex quay... (named port of destination);

This incoterm means that the seller makes the goods available to the buyer on the quay (wharf) at the destination named in the sales contract. As the seller has to bear the full cost and risk involved in bringing the goods there, the sale "ex quay" implies an amval contract. It is appropriate for transport by sea and inland waterway.

DDU Delivered duty unpaid ... (named place of destination);

"Delivered duty unpaid" means that the seller fulfills his obligation to deliver when the goods have been made available at the named place in the country of importation. This incoterm can be classified in a group where the seller is responsible for all costs and risks until amval. It is appropriate for transport by multimodal transport and also unimodal transport.

DDP--delivered duty paid;

While the term "ex works" indicates the seller's minimum obligation, the term "delivered duty paid" when followed by words naming the buyer's premises denotes the other extreme-the seller's maximum obligation. The term "Delivered Duty Paid" may be used irrespective of the type of transport involved. This incoterm can be classified in a group where the seller is responsible for all costs and risks until arrival.

It may be worth noting that in modem, multimodal transport, ccdoor-to-door services" may be provided by carriers, be they traditional ocean carriers or "NVOCs(non-vessel owner carrirs)". The abbreviation, DDP, may be confused with "door-to-door" service. This should be avoided.

Now, we look summary information about seller's and buyer's obligations…

EX-WORKS (… NAMED PLACE)	
Seller's Obligations	***Buyer's Obligstions***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence -Deliver goods at his premises. -Bear risk of loss or damage until delivery. -Pay all costs until delivery. -Advise buyer of availability of goods -Pay for necessary checking, packing, marking before delivery. -Assist buyer to obtain documentation and advise buyer on insurance.	-Pay the price. -Obtain licences and export/import permits. -Arrange transport from premises. -Take delivery at seller's premises. -Bear risk of loss or damage after delivery. -Pay all costs after delivery including duties and taxes -Advise seller of the place and time of taking delivery -Give seller proof of having taken delivery. -Pay pre-shipment inspection costs. -Reimburse seller for documentation costs.

FCA--FREE CARRIER (. . . NAMED PLACE)	
Seller's Obligations	***Buyer's Obligstions***
-Provide goods according to contract. -Comply with export licences and customs formalities -Arrange, if buyer requests, for carriage of goods at buyer's risk and expense. -Deliver the goods to the carrier agreed. -Bear risk of loss or damage until delivery. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered to carrier. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Comply with import licences and customs formalities -Arrange for carriage of goods. -Accept delivery of the goods. -Bear risk of loss or damage after delivery. -Pay all costs after delivery. -Give seller adequate notice of preferred camer and date and point of delivery. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc. and give seller appropriate camage instructions.

FAS-FREE ALONGSIDE SHIP (. . . NAMED PORT OF SHIPMENT)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence -Deliver goods alongside named vessel at named port -Bear risk of loss or damage until time of deliver alongside on ship -Pay all costs until delivery alongside ship. -Give buyer adequate notice that goods have been delivered to ship. -Advise buyer of delivery of goods in agreed manner -Pay costs of packaging, checking and marking -Assist with obtaining import licences and insurance if necessary.	-Pay the price agreed. -Obtain licences and official permission for export/ import -Arrange for shipment at own expense. -Take delivery alongside ship. -Bear risk of loss or damage after delivery alongsşde ship -Pay all costs after delivery including duties and taxes -Give seller adequate notice of ship and port of loading -Accept proof of delivery. -Pay cost of pre-shipment expenses where neccessary -Pay all costs relating to import licences, etc.

FOB-FREE ON BOARD (. . . NAMED PORT OF SHIPMENT)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Deliver goods on board named vessel at named port. -Bear risk of loss or damage until time of delivery on ship. -Pay all costs until delivery on ship. -Give buyer adequate notice that goods have been delivered to ship. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licences and official permission for expot/import. -Arrange for shipment at own expense. -Take delivery at named port. -Bear risk of loss or damage after delivery at ship side. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of ship and port of loading. -Accept proof of delivery. -Pay cost of pre-shipment expenses where neccessary -Pay all costs relating to import licences, etc.

CFR--COST AND FREIGHT (. . . NAMED PORT OF DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Deliver goods on board vessel at named port. -Bear risk of loss or damage until delivery on board ship. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered to ship. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licences and official permission for export/import. -Arrange delivery at his own expense at agreed destination. -Take delivery at named port. -Bear risk of loss or damage after delivery. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of ship and port of loading. -Accept proof of delivery. -Pay cost of pre-shipment inspection where necessary. -Pay all costs relating to import licences, etc.

CIF-COST, INSURANCE AND FREIGHT (. . . NAMED PORT OF DESINTATION)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods in accordance with contract. -Obtain necessary export licence. -Arrange at own expense for shipment of goods to named port. Arrange insurance of goods. -Deliver goods on board vessel at named port. -Bear risk of loss or damage until delivery on board ship. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered to port of shipment. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking.-Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain any import licence. -Take delivery at named port. -Bear risk of loss or damage after delivery at port of shipment. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of time and port of loading. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc. -Render assistance re insurance if necessary.

CPT-CARRIAGE PAID TO (. . . NAMED PLACE OF DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods in accordance with contract. -Assist buyer to obtain necessary export licence. -Pay cost of delivery to agreed point and make the contract of camage. -Deliver goods to first carrier. -Bear risk of loss or damage until delivery. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licences and official permission for export/import. -Take delivery at named point. -Bear risk of loss or damage after delivery. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of time and place of delivery. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc.

CIP-CARRIAGE AND INSURANCE PAID TO (. . . NAMED PLACE OF DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods in accordance with contract. -Assist buyer to obtain necessary export licence. -Pay cost of delivery to agreed point and make the contract of camage. -Deliver goods to first camer. -Bear risk of loss or damage until delivery. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered to ship. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licence and official permission for export/import - Take delivery at named port. -Bear risk of loss or damage after delivery. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of ship and port of loading. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc

DAF-DELIVERED AT FRONTIER (. . . NAMED PLACE)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Pay cost of camage to frontier. -Deliver goods to named frontier. -Bear risk of loss or damage until delivery. -Pay all costs until delivery. -Give buyer adequate notice that goods have been delivered to frontier. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licences and official permission for export/import. -Take delivery at frontier. -Bear risk of loss or damage after delivery. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of place of delivery. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc.

DES - DELIVERED EX SHIP (. . . NAMED PORT OF DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
- Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Arrange at own expense delivery to a named place at named port. -Deliver goods on board named vessel at named port of destination. -Bear risk of loss or damage until time of delivery on ship. -Pay all costs until delivery on ship at destination. -Give buyer adequate notice that goods have been delivered to port of destination. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	- Pay the price. -Obtain licences and official permission for export/import. -Take delivery at named port. -Bear risk of loss or damage after delivery at ship side. -Pay all costs after delivery including duties and taxes. -Give buyer adequate notice of ship and port of destination. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc.

DEQ-DELIVERED EX QUAY (DUTY PAID) (. . . NAMED PORT OF DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
- Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Arrange camage to port of *destination.* -Deliver goods on quay at named vessel at named port. -Bear risk of loss or damage until time of delivery at quay. -Pay all costs including customs duties until delivery on quay. -Give buyer adequate notice that goods have been delivered to quay. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary.	-Pay the price. -Obtain licences and official permission for export/import. -Take delivery at named port. *-Bear risk of loss or damage after* delivery at quay. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of delivery destination. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc.

DDU-DELIVERED DUTY UNPAID (. . . AT NAMED DESTINATION)	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Assist buyer to obtain necessary export licence. -Pay all costs of caniage to agreed point at destination port. -Deliver goods at named port. -Bear risk of loss or damage until time of delivery on ship. -Pay all costs until delivery on ship. -Give buyer adequate notice that goods have been delivered. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Assist with obtaining import licences and insurance if necessary	-Pay the price. -Obtain licences and official permission for export/import. -Take delivery at named port. -Bear risk of loss or damage after delivery at ship side. -Pay all costs after delivery including duties and taxes. -Give seller adequate notice of ship and port of delivery. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Pay all costs relating to import licences, etc.

DDP-DELIVERED DUTY PAID (. . . NAMED PLACE OF DESTINATION	
Seller's Obligations	***Buyer's Obligations***
-Provide goods according to contract. -Obtain necessary export licence. -Arrange caniage to port of destination at own expense. -Deliver goods at named port. -Bear risk of loss or damage until time of delivery. -Pay all costs until delivery on ship including duties and taxes. -Give buyer adequate notice that goods have been delivered to port. -Advise buyer of delivery of goods in agreed manner. -Pay costs of packaging, checking and marking. -Pay all costs connected with import licences and assist buyer with insurance procedures.	-Pay the price. -Assist seller with obtaining permission for export/import. -Take delivery at named port. -Bear risk of loss or damage after delivery. -Pay all costs after delivery. -Give seller adequate notice of destination port. -Accept proof of delivery. -Pay cost of pre-shipment expenses where necessary. -Assist seller with information necessary to deliver goods.

BİBLİOGRAPHY

www.bclaws.ca

www.wikipedia.org

www.legislation.gov.uk

www.oft.gov.uk

www.lemon-co.co.uk

www.iccwbo.org

www.southwestshipping.com

www.jus.uio.no

The Sale of Goods- P.S. Atiyah

Chartering and Shipping- J.Lopez