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## CHAPTER 9

### INTRODUCTION TO F.O.B. AND C.I.F. SALES

Certain special clauses have been used over the years in sales where delivery has involved carriage by sea. These clauses have given rise to certain main types of contract, the major terms of which have become largely standardised. The more important quotations in exporting are C.I.F. (Cost, Insurance, Freight) and F.O.B. (Free On Board), although variations of these terms of export contract exist, such as C.F.R. (Cost and Freight), EX.W. (Ex-Works), etc.

Under a **C.I.F.** (*port of destination*) contract of sale, the seller provides the goods, engages cargo space on the vessel, pays freight to the buyer's port which is normal, for example, C.I.F. Singapore, insures the goods on behalf of the buyer against normal marine and fire risk to that port and pays all charges incidental in getting the goods onto the vessel. The seller is liable for any loss or damage before the goods reach the ship.

**F.O.B.** (*port of shipment*) implies that the duty of the seller is to present the goods to the port/airport and see they are actually placed on board the vessel/aircraft which the buyer provides. The seller meets all charges incidental to placing the goods on the ship/aircraft such as collection, handling, insurance, but once the goods are on board and he has obtained receipt for the goods, the exporter's (seller's) responsibilities cease. Thereafter, the buyer pays all the charges. Thus, the buyer or his agent would insure the goods from the sea port or airport of departure to destination and pays the freight.

Under an **Ex-Works** (*named place*) contract it is the duty of the buyer to take delivery of the goods at the works or store of the seller or other named place as the case may be. The property and risk usually pass when the buyer takes delivery. These sales are almost always of unascertained goods, the appropriation taking place when the goods are selected or handed over at the works or store.

**C.F.R.** (*port of destination*), is another cargo delivery term under which the seller pays the cost and freight necessary to convey the goods from the port of shipment to the port of destination. The buyer will be responsible for any damage or loss to the goods when the goods pass the ship's rail at the port of

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shipment and for the unloading costs. The seller bears the costs of freight from the port of shipment to the port of destination including cost of packing, and loading in port of departure.

An **F.A.S.** (*port of shipment*) 'free alongside ship' contract is one in which the goods are delivered alongside the ship free of expense to the buyer. Thereafter, charges incurred are to be met by him (buyer).

## INCOTERMS

In a sale of goods contract is important that there must be no ambiguity in the interpretation by either party of the delivery terms quoted particularly in the area of cost and expenses. If such problems arise, much good will is lost, the exporter (seller) could lose the prospect of a repeat order in a competitive market and in addition costly litigation could arise. It is essential, therefore, that buyer/seller agree on the terms of delivery and their interpretation. Such a situation could be overcome by quoting the provisions of INCOTERMS.

In order to overcome any difficulties in interpreting the chief delivery terms used in foreign trade contracts, a set of international rules have been agreed by the member countries of the International Chamber of Commerce (I.C.C.). These rules eliminate the possibility of varied interpretation of the same terms in the same countries.

If the buyer/seller wish to use these rules, it must be specified in the contract that it is governed by the provisions of 'INCOTERMS 2000'.

## F.O.B. CONTRACTS

The main characteristics of this type of contract have been mentioned above. The goods must be delivered on board by the seller, free of expense to the purchaser, and they are not at the buyer's risk until actually delivered on board, when the property in them passes to him. So it may be said that in this type of contract (F.O.B.) risk and transfer of property pass simultaneously.<sup>671</sup>

The buyer on the other hand, must name a ship or authorise the seller to select one. The seller cannot sue for the price until the goods are actually loaded, and if his inability to load was caused by the buyer's failure to name

<sup>671</sup> Although the effect of s.19 in the case of specific or ascertained goods should not be ignored. Where bills of lading are issued under an F.O.B. or F.A.S. contract, and are marked 'to the order' of the seller, the intention of the parties, in the absence of any other provisions, would be that no property would pass to the buyer/holder of the bill of lading until other conditions, such as payment, have been satisfied; *Transpacific Eternity SA v. Kanematsu Corp. (The Antares III)* [2002] 1 Lloyd's Rep.233.



an effective ship, his only remedy lies in damages, not an action for the price.<sup>672</sup> Section 32(3) of the Sale of Goods Act 1979 provides that, unless otherwise agreed, where the 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 (the buyer) to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his (seller's) risk during such sea transit. Thus delivery to the carrier will not necessarily pass the risk in F.O.B. contracts as a rule. Nowadays under what is called an F.O.B. contract with additional services, the seller often makes the contract of carriage.<sup>673</sup> It must be reasonable in terms of the nature of the goods and other circumstances. If not and the goods are lost or damaged in the 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.<sup>674</sup>

The duties of the parties to an F.O.B. contract expressly subject to the INCOTERMS may be summed up as follows:

### The Seller must

- Provide the goods and the invoice.
- Obtain at his risk and expense any export licence<sup>675</sup> and carry out all customs formalities.
- Deliver the goods on board the named vessel<sup>676</sup> and port of shipment,<sup>677</sup> both of which will have been named by the buyer, and within the stipulated period.<sup>678</sup>

<sup>672</sup> *Petraco (Bermuda) v. Petromed International S.A.* [1988] 2 Lloyd's Rep.357, C.A.

<sup>673</sup> The three most common variants of F.O.B. contracts have been distinguished by the Court of Appeal in *the El Amria and El Minia* [1982] 2 Lloyd's Rep.28, in the following terms: 'In *Pyrene & Go v. Scindia Steam Navigation Co.* Mr. justice Devlin instanced three types of fob contract. In the first, or classic type, the buyer nominates the ship and he seller puts the goods on board for account of the buyer, procuring a bill of lading. The seller is then a party to the contract of carriage and if he has taken the bill of lading to his order, the only contract of carriage to which the buyer can become a party is that contained in the bill of lading which is endorsed to him by the seller. The second is a variant of the first, in that the seller arranges for the ship to come on the berth, but the legal incidents are the same. The third is where the seller puts the goods on board, takes a mate's receipt and gives this to the buyer or his agent who then takes a bill of lading. In this latter type the buyer is a party to the contract of carriage *ab initio*'. Notwithstanding these variants, the basic concepts such as delivery, property and risk remain common to each.

<sup>674</sup> Section 32(2), Sale of Goods Act 1979 (as amended).

<sup>675</sup> The standard of duty required by the seller is to use his best endeavours and failure to do so may operate to frustrate the contract; *Pagnan SpA v. Tradax Ocean Transportation SA* [1987] 2 Lloyd's Rep.342, where a 'force majeure' clause found in a standard trade contract, GAFTA, the Grain and Feed Trade Association, was held to protect the sellers in breaking a special condition in relation to the provision of an export licence.

<sup>676</sup> *Cargill U.K. Ltd. v. Continental U.K. Ltd.* [1989] 2 Lloyd's Rep.290, C.A.

- Bear all risks of loss of or damage to the goods until the goods have passed the ship's rail at the named port of shipment.<sup>679</sup>
- Pay all costs relating to the goods until the goods have passed the ship's rail; e.g. costs of customs formalities.
- Give the buyer sufficient notice that the goods have been delivered on board.
- Provide the buyer with the usual document in proof of delivery, as described above.
- Provide at his own expense packaging<sup>680</sup> and mark the goods appropriately.
- Render the buyer every assistance in obtaining any document or equivalent electronic messages, which the buyer may require for the importation of the goods.

### The buyer must

- Pay the price.<sup>681</sup>
- Contract at his own expense for the carriage of the goods from the named port of shipment.
- Take delivery of the goods.
- Bear all risks of loss or damage to the goods from the time they have passed the ship's rail at loading port.

<sup>677</sup> The port of delivery in an F.O.B. contract has been held to be a condition; *Petrograde Inc. v. Stinnes GmbH* [1995] 1 Lloyd's Rep.142.

<sup>678</sup> An F.O.B. seller would normally be entitled to treat the contract as repudiated if the buyer fails to nominate a ship within the stipulated time, or if no express stipulation as to time is provided, then within a reasonable time; *Olearia Tirrena SpA v. NV Algemeene Oliehandel (The Osterbek)* [1973] 2 Lloyd's Rep.86, C.A.

<sup>679</sup> *Pyrene & Co v. Scindia Navigation Co* [1954] 2 Q.B.402.

<sup>680</sup> The goods must comply with the contractual description, quality and quantity and must be sufficiently packed to withstand the rigours of the voyage; *Mash & Murrell v. Emmanuel* [1962] 1 All E.R.77, the sellers, in Cyprus, agreed to sell potatoes to buyers, in England. The potatoes were in good condition when loaded, but rotten when they arrived at destination. It was held that although the potatoes were fit when loaded, they were not fit to travel to England. Hence the sellers were in breach of an implied condition that the goods would be merchantable.

<sup>681</sup> The buyer must also fulfil any arrangements made for the method of payment and failure to do so is a repudiatory breach, for example failure by the buyer to set up a letter of credit facility in favour of the seller when required under the contract, would amount to such a breach; *Transpetrol Ltd v. Transol Olieprodukten Nederland BV* [1989] 1 Lloyd's Rep.309. Note that in the absence of agreement to the contrary, the seller can demand payment in exchange for the documents since the delivery obligation in s.28 of the Sale of Goods Act 1979 (as amended) states that payment and delivery are concurrent conditions. In other words the seller's obligation under s.28 is deemed to be satisfied by the furnishing of the documents.



- Pay all costs relating to the goods from the time they have passed the ship's rail at the port of shipment.
- Give the seller sufficient notice of the vessel name,<sup>682</sup> loading point<sup>683</sup> and required delivery time.<sup>684</sup>
- Pay the costs of pre-shipment inspection except when mandated by the authorities of the country of export.
- Pay all costs and charges incurred in obtaining the documents or equivalent electronic messages and reimburse those incurred by the seller in rendering his assistance.

## C.I.F. CONTRACTS

### DUTIES OF THE SELLER

- To ship or procure goods of the description contained in the contract under a contract of affreightment which will ensure the delivery of the goods at the destination contemplated in the contract. As mentioned previously undertakings in the contract as to time and place of shipment are nearly always treated as conditions.<sup>685</sup>

<sup>682</sup> The nomination must be made and communicated to the seller within a reasonable period to allow the seller sufficient time to complete the loading by the end of the shipping period; *Bunge & Co. v. Tradax England* [1975] 2 Lloyd's Rep.235. Furthermore, the nominated vessel must comply with port restrictions of each one of the load ports listed in the contract, otherwise the seller is entitled to reject the buyer's nomination; *Richco International Ltd. v. Bunge & Co. Ltd. (The New Prosper)* [1991] 2 Lloyd's Rep.93.

<sup>683</sup> The delivery point is the port of shipment, usually designated by the buyer in the contract of sale. Failure on the part of the buyer to nominate the port of shipment when specified in the contract' or alternatively failure to notify the seller of the nomination by an agreed date, may amount to a breach of condition precedent; *Gill & Duffus v. Societe Pour l'Exportation des Sucres SA* [1985] 1 Lloyd's Rep.621.

<sup>684</sup> A date or period of shipment for the goods will normally be specified. Until the buyer has made an effective nomination of the date of shipment, the seller's obligation to have the goods ready to load at the port does not arise; *J. & J. Cunningham Ltd. v. Robert A Munro & Co Ltd.* (1922) 13 Ll. L. Rep.216. Unless the contract provides that the buyer's nomination is final, he is not confined to the single nomination and may substitute an earlier nomination with a subsequent one provided that the substitute nomination is made in time: see *Cargill U.K. Ltd. v. Continental U.K. Ltd.* [1989] 2 Lloyd's Rep.290, C.A. If the buyer substitutes one nomination for another one, the seller's expenses incurred by reason of the substitution are his own loss in the absence of an express or implied contractual stipulation to the contrary.

<sup>685</sup> Thus, in *Aruna Mills v. Dhanrajmal Gobindram* [1968] 1 Lloyd's Rep.304, a contract for sale of cotton provided for a variation in price if the prevailing rate of exchange should vary between the contract date and the date when the price was payable. The sellers, in breach of contract, failed to ship the cotton until 27th June, 1966, although the last permitted date for shipment was 31st May, 1966. The rupee was devalued on 6th June, 1966, and the buyers paid the additional price on receipt of the shipping document which were received after

- To arrange for insurance which will be available to the buyer.
- To make out an invoice for the goods.
- To tender the documents to the buyer in exchange for the price, so that the buyer will know the amount of the freight he must pay, and so that he can obtain delivery of the goods if they arrive, or recover for their loss if they are lost on the voyage.

INCOTERMS 2000, provide a slightly different set of duties and obligations for the seller and buyer under a C.I.F. contract. These could be summarised as follows:

#### **The Seller must**

- Provide the goods<sup>686</sup> and the invoice, in accordance with the contract of sale.
- Obtain at his own risk and expense any export licence and carry out all customs formalities necessary for the exportation of the goods.
- Contract on usual terms at his own expense for the carriage of the goods to the named port of destination.
- Obtain at his own expense cargo insurance as required by the contract,<sup>687</sup> and provide the buyer with insurance policy or other evidence of insurance cover.
- Deliver the goods on board the vessel at the port of shipment on the date or within the period stipulated.
- Bear all risks of loss of or damage to the goods until they have passed the ship's rail at the port of shipment.

6th June, 1966. They (buyers) sued to recover that additional price by way of damages for late shipment, alleging that if the goods had been shipped on or before 31st May, 1966, they would have received the shipping documents and made payment on or before 5th June, 1966, i.e. before devaluation. It was held that the loss due to the devaluation was not too remote, for the parties had contemplated it as likely to result from late shipment.

<sup>686</sup> It must be noted that the C.I.F. seller, in the absence of a specific term in the contract of sale, need not actually ship goods. He may, for instance, purchase goods afloat; *Wildhandel v. Tucker & Cross* [1975] 2 Lloyd's Rep.240.

<sup>687</sup> Unless the cargo insurance cover is specified in the sale contract, the seller is only required to conclude and produce an ordinary policy of insurance current in the particular trade; *E. Clement Horst Company v. Biddell Brothers* [1912] A.C.18, H.L.; *Groom v. Barber* [1915] 1 K.B.316, D sold to C 100 bales of cloth on C.I.F. terms. The goods were shipped and insured under a policy which did not cover war risks. There was no custom of the trade that the seller should insure against war risks. The ship carrying the goods was sunk by a German cruiser. It was held that C was bound to pay the price on tender of the shipping documents. If the goods are lost from a peril not covered by the ordinary policy of insurance current in trade, the buyer must nevertheless pay the full price on delivery of the documents.



- Pay the freight and costs of loading the goods on board and any charges for unloading at the port of discharge, and the costs of customs formalities necessary for exportation.
- Give the buyer sufficient notice that the goods have been delivered on board the vessel.<sup>688</sup>
- Provide the buyer without delay with the usual transport document for the agreed port of destination.
- Provide at his own expense packaging and mark the goods appropriately.
- Render the buyer every assistance in obtaining any documents or equivalent electronic messages required for the importation of the goods.

### **The Buyer must**

- Pay the price as provided in the contract of sale.
- Obtain any import licence and carry out all customs formalities for the importation of the goods.
- Accept delivery of the goods when they have been delivered and receive them from the carrier at the named port of destination.
- Bear all risks of loss of or damage to the goods from the time the goods have passed the ship's rail at the port of shipment.
- Whenever he is entitled to determine the time for shipping the goods and/or the port of destination, give the seller sufficient notice thereof.
- Accept the transport document.
- Pay the costs of any pre-shipment inspection, except when mandated by the authorities of the country of exportation.
- Pay all costs and charges incurred in obtaining the documents or equivalent electronic messages and reimburse the seller in rendering his assistance.

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<sup>688</sup> This is normally done, in the case of unascertained goods, by the seller tendering to the buyer a 'notice of appropriation', as agreed in their sale contract. The giving of a valid notice of appropriation narrows the contract description to a particular parcel or parcels of goods being carried in a named vessel under a bill of lading of a given date. It may, but will not necessarily, convert the contract into one for specific goods, depending on whether the bill of lading relates to an unseparated part of a larger bulk cargo; *Waren Import Gesellschaft Krohn & Co. v. Alfred C. Toepfer (The Vladimir Ilich)* 1 Lloyd's Rep.322.

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- Provide the seller, upon request, with the necessary information for procuring insurance.

### REFUSAL OF BUYER TO ACCEPT GOODS

In a C.I.F. contract the buyer or his agent may repudiate the contract by:

- a) refusing to accept the documents if they do not conform with the contract; and
- b) rejecting the goods on delivery if following inspection they do not comply with the contract.

The buyer loses the right to reject documents once they have been accepted and paid.<sup>689</sup> Once the buyer has accepted the documents he may only reject the goods<sup>690</sup> for any non-conformity which was not apparent on the face of the documents. If the defect is apparent the buyer is taken to have waived his right to reject the goods or he may be estopped.

In general, however, by accepting the documents the buyer is not taken to have accepted the goods.<sup>691</sup> Once a buyer rejects the documents or the goods he can recover from the seller damages for non-delivery.<sup>692</sup>

### PASSING OF THE RISK

As a general rule, the risk passes when the goods are shipped. The buyer will still have to pay for the goods if they are lost on the voyage.<sup>693</sup> Note however, that although the risk passes when the goods are shipped, the property in the goods is not transferred to the buyer until the seller transfers the documents to the buyer and the latter has paid for them. Therefore, it appears that a C.I.F. contract is a 'sale of documents', since it is the delivery of these documents that

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<sup>689</sup> *Panchaud Frères S.A. v. Etablissements General Grain Co.* [1970] 1 Lloyd's Rep.53, under a C.I.F. contract of sale the bill of lading stated that the goods had been shipped on 31<sup>st</sup> July 1965, whereas the certificate of quality suggested that the goods had been shipped between 10<sup>th</sup> and 12<sup>th</sup> of August 1965. The question was whether the buyers by taking up the documents and paying for them were precluded from complaining of the defect in the documents. The Court stated that if a buyer's conduct is such as to lead the other party to believe that he is not relying on that ground, he cannot afterwards set it up as a ground of rejection.

<sup>690</sup> Of course, a buyer can reject the goods for breach of any of the terms implied by ss.12-15 of the Sale of Goods Act 1979 (as amended).

<sup>691</sup> *Kwei Tek Chao v. British Traders and Shippers Ltd.* [1954] 2 Q.B.459.

<sup>692</sup> See *supra*, p.177, s.51, Sale of Goods Act 1979 (as amended).

<sup>693</sup> *E. Clement Horst Company v. Biddell Brothers* [1912] A.C.18, H.L.

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transfers the property to the buyer.<sup>694</sup> In order to simplify the above mentioned process involved in a C.I.F. contract, consider the following examples:

S, agrees to sell to B some goods, under a C.I.F. contract. S has to fulfil the above mentioned four duties, i.e. (1) to ship/procure goods of the contract description, at the port of shipment, within the time named in the contract and to contract for their carriage; (2) to arrange for insurance which will be available to the buyer; (3) to tender the documents to the buyer in exchange for the price.

1. If the contract does not provide for a particular time of delivery then a reasonable time will be assumed.
2. As mentioned earlier, risk of loss or damage to the goods passes when the goods are shipped. Assume that S ships the goods. Therefore, the risk has passed to B and he will have to bear any loss or damage that might happen to the goods.
3. However, as mentioned above, the property in the goods (i.e. ownership) does not pass to B until S has transferred the documents (e.g. bill of lading, invoice, etc.) to him!<sup>695</sup> Therefore, one may anticipate the situation where the goods have been shipped, as in the example, but the documents have not been transferred. In other words, the buyer (B) has not got ownership of the goods, but nevertheless, the risk of the goods being lost or damaged in transit is for him (B) to bear! However, bear in mind that the buyer (B) has the benefit of the insurance. Under such circumstances it could be said that there is a conditional appropriation of the goods to the contract which will not become unconditional until the buyer (B) takes up the documents and pays for them. This is the reason why it was mentioned earlier in this chapter that a C.I.F. contract is effectively a 'sale of documents'; because it is the delivery of those documents which transfers the property to the buyer.<sup>696</sup>

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<sup>694</sup> *Manbre Saccharine Co. Ltd. v. Corn Products Co Ltd.* [1919] 1 K.B.198, D sold quantities of starch and syrup to C. Subsequently, the ship carrying the goods was lost. Two days later D tendered the documents for payment and the C refused to take up the documents or pay. It was held that C were bound to take up the documents and pay the price. Risk normally passed to the buyer upon shipment. In a C.I.F. contract the transfer of the documents transfers to the buyer the right to the goods or, in the case where goods are lost or damaged, rights to compensation from the shipper or insurer.

<sup>695</sup> *The Kronprinsessan Margereta* [1921] A.C.486, the sellers sold and shipped coffee on F.O.B. terms to a number of buyers. Subsequently, they obtained bills of lading to the buyers' order but retained them until payment was arranged. It was held that property did not pass as the sellers, by taking out the bills in the buyers' names, could not demand possession without the buyers' endorsement. Equally, the buyers could not obtain possession until they received the bills. Thus, although the bills were taken out to the order of the buyers, this did not necessarily show an intention to pass property.

<sup>696</sup> Such title however, is defeasible; *Kwei Tek Chao v. British Traders and Shippers Ltd.* [1954] 2 Q.B.459, under a contract of sale of goods, delivery to be made in Hong Kong,

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4. In the above example of a C.I.F. contract, let us assume that the documents arrive and are delivered to the buyer (B). However, he (B) suspects that the goods he ordered have been damaged/or are not up to his expectations, and therefore, he decides to wait until the goods have arrived (so that he can inspect them) and pay for them after inspecting them. It must be remembered that he is not entitled to take this action; he must pay the agreed price within a reasonable time after tender of the documents; he is not entitled to withhold payment until he has examined the goods.<sup>697</sup>

### OTHER DELIVERY TERMS

'Payment on arrival', and such clauses are considered ambiguous and their meaning has to be ascertained from the intention of the parties. The parties may have intended that the arrival of the goods shall be a condition for the payment of the price. In this case it would seem that the contract is not a C.I.F. contract.<sup>698</sup>

As a concluding comment of this chapter on INCOTERMS, it must be borne in mind that pure inclusion of delivery terms, for example, of C.I.F. subject to INCOTERMS 2000, would not suffice for such sale contract to be treated as such.

Any term in the sale contract whereby the particular INCOTERMS' meaning is varied, would be capable of turning such delivery term to

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property in the goods passed to the buyers when they paid in exchange for the bills of lading. Subsequently, however, it was discovered that the goods had been shipped outside shipment period, and the bills of lading had been forged without the seller's knowledge. It was held that the buyers were entitled to reject the goods, the title of which was defeasible.

<sup>697</sup> *E. Clement Horst Company v. Biddell Brothers* [1912] A.C.18, H.L.

<sup>698</sup> *Ginzberg v. Barrow Haematite Steel Co and McKellar* [1966] 1 Lloyd's Rep.343; C.I.F. contract for sale of goods, whereby payment was to be made upon tender of the shipping documents ('cash against documents'). The goods arrived before the documents and to assist the buyers to obtain possession, the sellers sent a delivery note, which enabled the buyers to take possession. Subsequently, the buyers went into receivership without having paid. Receiver claimed that the 'cash against documents' variation changed the contract to 'ex-ship', sellers claimed conversion. It was held that property had not passed. Sellers did not intend to depart from CIF but merely to expedite delivery. Furthermore, where the contract is 'cash against documents', the inference is that no property passes until the price has been paid. Similarly, in *Comptoir d'Achat et de Vente du Boerenbond Belge SA v. Luis de Ridder Limitada (The Julia)* [1949] A.C.293, H.L., under a C.I.F. Antwerp contract, the sellers were liable for the condition of the goods upon arrival and provided for payment against presentation of a delivery order. The documents were presented to the buyer who paid for the goods. The cargo was never delivered however, because of the German occupation of Belgium, and the ship was diverted to Lisbon and the goods were sold there. The buyer claimed a refund of the price. The sellers claimed that under a C.I.F. contract property passed upon payment against the documents. It was held that the buyer was entitled to a refund. This was not a C.I.F. contract in substance. The documents gave the buyer no property right in the goods entitling him to deal with them while afloat. In addition the fact that the seller undertook liability for the goods until delivery indicated that this was an 'ex-ship' contract. Hence, the sellers had not performed and a refund was ordered.

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something completely different to that understood by the parties when they concluded the sale contract.<sup>699</sup>

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<sup>699</sup> The Court of Appeal has held that words such as 'insurance to be effected by buyers' contained in C.F.R./C. & F. contracts were not merely declaratory but amounted to a contractual obligation on the buyer, *Reinhart Co. v. Joshua Hoyle & Sons Ltd.* [1961] 1 Lloyd's Rep. 346. In *Leigh and Sullivan Ltd. v. Aliakmon Shipping Co. Ltd. (The Aliakmon)* [1986] 2 All E.R. 145, H.L., there was a sale contract on C. & F. terms. After shipment of the goods, a variation of the contract was negotiated whereby the sellers indorsed the bill of lading to the buyer, whereby the buyers were able to take possession of the goods and store them as agents for the sellers. The sellers reserved property in the goods until they were paid. Although the rest of the facts and the issue of negligence are not relevant for the topic under consideration, it should be noted that in effect the C. & F. contract the parties had entered, as a result of these variations, was considered by the House of Lords not to give the rights that normally buyers in C. & F. contracts would enjoy. The two variations, namely, the reservation of property in the goods by the sellers until payment, and the way the bill of lading made them sellers' agents, had turned the C. & F. contract to a different one altogether. *The Parchim* [1918] A.C. 157, where the price quoted by the seller was C. & F. and included provisions whereby (i) the buyer would bear the costs of insurance and any variations in the freight charges, and (ii) if the ship was lost after part of the goods had been loaded, the contract was to be cancelled (as to the balance of the goods). It was held the contract not a C.I.F., but had more characteristics of an extended F.O.B. See also *Law & Bonar Ltd. v. British American Tobacco Company* [1916] 2 K.B. 605, where the term used was 'C.I.F. Smyrna - seller's risk until actual delivery'.

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