I CONCEIVE THAT THE ESSENTIAL FEATURE OF AN ORDINARY CIF CONTRACT AS COMPARED WITH AN ORDINARY CONTRACT FOR THE SALE OF GOODS RESTS IN THE FACT THAT PERFORMANCE OF THE BARGAIN IS TO BE FULFILLED BY DELIVERY OF DOCUMENTS AND NOT BY THE ACTUAL PHYSICAL DELIVERY OF GOODS BY THE VENDOR…' PER MCCARDIE J IN MAMBRE SACCHARINE CO. LTD V CORN PRODUCTS LTD (1919) I KB 198.: A REAPPAISSIAL

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1.0 Introduction

A contract of sale CIF is a contract where the buyer has to pay for the price, insurance and freight of the goods. It is a contract, which contemplates the carriage of goods by sea, and has constituted the most important instrument of the overseas trade. The seller is therefore more intimately bound up with the carriage arrangements for the goods than in the case with a seller under FOB contract. The buyer must pay the price as provided in the contract of sale but does not generally assume any obligations in relation to the contract of carriage or the contract for the insurance of the goods during sea transit. The seller in CIF contract performs his obligation by tender the proper documents i.e. a bill of lading, a policy of insurance and an invoice to the buyer. The buyer is bound to pay the price even if the goods fail to reach him. Therefore, it can be stated that a CIF contract is a sale of documents (related to goods) rather than sale of goods itself. The general rule in CIF contracts is that the risk generally passes on or as from shipment. However, it will only pass if the seller has performed his physical duty to ship goods or to procure goods shipped which conform to the specifications set out in the contract of sale and which comply with the seller's duties implied by the SOGA -79 regarding satisfactory quality and conformity with description and sample.

2.0 Definition of CIF

A Cost, Insurance and Freight (CIF) contract is an agreement to sell goods at a price inclusive of the cost of the goods, insurance coverage and freight.

Article 141 of the UAE Commercial Transactions Law (Federal Law 18 of 1993) states: 'A CIF sale is one concluded against a lump sum price covering the price of the item sold, the maritime insurance charges and freight by vessel to the port of destination.'[1]

A CIF Contract is a type of a contract which is more widely and more frequently in use than any other contract used for the purpose of seaborne commerce. According to Lord Porter in the case of Comptoir d Achat v Luis de Ridder (1949) A.C. 293, 309, It is the type of contract where the seller is under obligations to ship at the port of shipment, goods of the description enclosed in the contract, to secure contract of carriage by sea, to make out invoice which will charge the buyer with the agreed price of the actual cost, commission, charges, freight and

[1] Tariq Idais, 'CIF Contracts In International Sales Of Goods' (2013) <https://www.tamini.com/law-update-articles/cif-contracts-in-international-sales-of-goods/ > (2013) assessed on 21 January 2020.

insurance premium and to tender bill of lading to the buyer covering the goods contracted to be sold.[2]

2.1 The Nature of CIF Contract

A CIF contract, which stands for cost, insurance and freight, represents one major commerce terms (INCOTERMS) adopted by the International Chamber of Commerce. Each INCOTERMS envisages different rights and obligations for buyers and sellers. In a CIF agreement, the seller sell the goods for a price including the cost, insurance and freight. CIF contracts are different from other INCOTERMS especially from FOB (Free on Board) in certain respects. One of the distinct feature of CIF contracts is that the buyer is required to pay against the tender of documents listed in the sale contract. In other words, the buyer cannot in principle reject the payment of the contract price conditional on the actual delivery of the goods. The seller, on the other hand, is obliged to ship the goods as described in the sale contract and to tender to the buyers the bill of lading, insurance policy, invoice, and any other documents that may be required necessary by the sale contract.[3]

Under the CIF contract, the seller performs his obligations by shipping, at the time specified in the contract or, in the absence of an express provision in the contract, within a reasonable time, goods of the contractual description in a ship bound for the destination named in the contract.

However, the seller is not himself obliged to ship the goods unless the contract so requires. He may instead purchase goods afloat and appropriate them to the contract or appropriate to the contract goods already purchased by him afloat before he entered into the contract. In short, under a CIF contract (in contrast to an FOB contract) there is no obligation on the seller to deliver the goods themselves to any delivery point.

The general rule is that, unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. This rule is applicable to CIF contracts but, at the same time, it requires some modification in its application in that the prima facie obligation of the buyer is one to pay upon delivery of the documents, not delivery of the goods. In a contract of sale CIF there are two subordinate contracts made by the seller. There is first the contract of carriage by sea, which is known as the contract of affreightment, under which the ship owner signs a bill of lading on receipt of the goods. Secondly, there is the contract of insurance in

[2] Katabaro Jackson, 'The Role of The Shipping Documents In CIF And FOB Contracts' <http://www.academia.edu/14268698/Shipping_Documents_in_CIF_And_FOB_Contracts> assessed on 3 February 2020.

[3] LBF Partners Law & Consultancy, 'The Right To Reject The Documents And Goods in CIF Contracts' <www.ibfpartners.com/dosyalar/053554.pdf >assessed on 30 January 2020.

accordance with the underwriters deliver a policy of insurance. Aside from the essential ancillary relationship, the CIF contract creates additional relationships, which are supplementary thereto. The documentary nature of the transaction lends itself readily to the introduction of bankers and other financing agents who may act for either seller or buyer as intermediates.[4] It is often said of CIF contracts that they are documentary sales. A series of cases prompted by shipping losses in the Great War questioned whether CIF contracts were sales of goods at all or rather sales of documents. The firm answer given was that they were sales of goods performed through the medium of documents. Earlier, the House of Lords, in the famous case of Couturier v Hastie (1856) HLC 673, had made the same point in concluding that a tender of CIF documents did not, on the construction of the contract, activate the buyer's duty to pay when those documents concerned goods that had ceased to exist at the contract date. The contract presupposed the existence of those goods.

Although a sale of goods contract, the character of a CIF contract as a documentary sale is such that the seller's physical duties are suspended until the documentary transfer has been completed.[5] A CIF contract requires the vendor to ship at the port of shipment the agreed goods in the underlying contract of sale, to procure a contract of carriage (bill of lading) under which the goods will be delivered to the agreed destination, to arrange for insurance which will be available for the benefit of the purchaser, to make out a commercial invoice and finally to tender these documents to the buyer who must be ready and willing to pay the price of the shipped goods. In such a case, the title of the goods may pass either on shipment or on tender of the documents. The risk generally passes on shipments or as from shipments, but possession does not pass until the documents which represent the goods are handed over in exchange for the price. As a result, the buyer, after receipt of the documents, can claim against the carrier for breach of the contract of carriage and against the underwriter for any loss covered by the policy.[6]

2.2 The various theories of CIF contract includes:

1. CIF contract as a sale of documents:

[4] Andreas Alsterberg, 'Transfer Of Risk In Sale Of Goods On Shipment Terms' <lup.lub.lu.se/luur/download?func=downloadFile&recordOld=1555616&fileOld=1563716> (2006) assessed on 30 January 2020.

[5] M.G. Bridge, 'Documents and CIF Contracts' <https://sas-space.sas.ac.uk/3805/1/1622-2033-1-SM.pdf >assessed on 30 January 2020.

[6] '(n1)'

According to this theory, CIF sale is not a sale of goods, but a sale of documents relating to goods, It is not a contract that goods shall arrive, but a contract to ship goods complying with the contract of sale, to obtain, unless the contract otherwise provides, the ordinary contract of carriage to the Place of destination end the ordinary contract of insurance of the goods on that voyage, and to tender these documents against Payment of the contract price. The buyer then has the right to claim the fulfilment of the contract of carriage or if the goods are lost or damaged, such indemnity for the lose as he can claim under the contract of insurance. He buys the documents, not the goods, and it may be that under the term of the contracts of insurance and affreightment he buys no indemnity for the damage that has happened to the goods. This depends on what documents he is entitled to under the contract of sale, It is obvious that this theory depends on the important role of the documents (Bill of lading, insurance policy, etc.) in CIF contracts. There is no doubt that those documents are vital in this kind of contract but the buyer's main concern is to got the documents as well as the goods and not the documents only.

Moreover, this theory does not appear to be acceptable if justified, it would mean that the buyer would not be able to make any claim (if the goods do not comply with the contract of sale) when the documents in his possession are in conformity with the stipulations of the contract. In fact, these days, it is a well established principle that the acceptance of documents does not deprive the buyer of the right to reject the goods, at their arrival, if they are not in conformity with the contract descriptions.[7]

2. CIF as a sale of goods to be performed by delivery of documents:

This theory was presented by Bankes and Warrington L. JJ in the Court of Appeal as a reaction against the previous theory and in the same case.

Banks L.J stated "I an not able to agree with that view of the contract, that it is a sale of documents, relating to goods. I prefer to look upon it an a contract for the sale of goods to be performed by the delivery of documents and what those documents are must depend upon the terms of the contract itself" .

This theory was adopted by the Belgian Cassation Court in their decision dated 15 October 1925. In fact this theory in more persuasive than the first one, but it can be criticized in that it may lead to a result that the property in CIF contract passes to a buyer by the delivery of

[7] Al-Anbaki, Majid H.K. 'Passing of Property in CIF and FOB Contracts (Comparative Study) (1978) <theses.gla.ac.uk/3990/1/1978-Al-Anbakiphd.pdf> assessed on 20 January 2020.

documents. Thus McCardie J. after describing the difference between the two theories as one of phrase only, said the obligation of the vendor is to deliver documents rather than goods to transfer symbol rather than the physical property represented thereby. This result is not always the case in CIF contract.

3. CIF contract as a sale of goods and documents:

This is another theory which has been suggested to explain the nature of ClF contract. It says that C1F is a sale of goods and documents at the same time on the ground that the seller is bound to deliver goods and documents.

The result of this theory is that CIF contract has two subject-matters, the goods and the documents. Therefore the passing of property in the goods and the delivery of the goods are distinct from transfer of rights in property or by delivery of the documents. This result is a moot point, because the document themselves do not have any property to be passed to a buyer. The bill of lading represents the possession of the goods and not their property, besides it does not have any property in itself to be acquired by a buyer.

4. CIF as a sale of goods:

In Delaurier v Wyllie, (1889) 17R at pg 167-200 the Lord Ordinary (Trayner) stated:

"In short, a contract c.i.f is not to be read as imparting any obligation or right which it does not express. Such a contract binds the seller to pay something which otherwise would fall on the buyer; but except in so far as it shifts the obligation to pay, it remains a contract of sale subject to the ordinary rules of law which regulate the rights and obligations to which that contract gives rise. "

It can be inferred from the statement above mentioned that the nature of CIF contract is merely a ‘sale of goods’. This was said an well by ‘Tribunal de commerce de Marseille’ in their decision dated 2-12-1946. This theory in very general, as all the contracts, in field of sale of goods, are in the nature of sale of goods. Moreover, this theory does not specify the important role of the documents in ClF contracts and their relationship with the goods.

5 CIF contract as a sale of goods which are protected by documents:

The theories above discussed did not mention the main principle which governs sale of goods contracts. These contracts are governed by a principle called 'Protection of property". This principle simply means conserving the property of both seller and buyer. In other words, as

far as sale of goods contracts are concerned, ‘protection of property' principle keeps the balance between what we give and what we take. Consequently, most of the rules of sale of goods contracts have been set up according to that principle. We have seen that the previous theories did not comply completely with the true nature of CIF contract. The reason for that is the difficulty of defining the relationship between the goods and the documents, i.e. whether they are distinct or non-distinct. In this respect CIF contract cannot be conceived without documents, or a CIF contract without goods. Therefore the goods and the documents are inseparable. The link between the two is the idea of protection. In other words, the documents are simply instruments to protect the property in the goods. The buyer wants the goods to be in accordance with the contract description and the seller wants to receive the price. Therefore, it is thought, that the CIF contract is originally a sale of goods, and the documents are its instrument to protect the property both of the seller and of the buyer.

This protection requires:

1. The seller must put on board at the port of shipment goods in conformity with the contract description, and he must also send forward documents, and those documents must comply with the contract.

2. In the absence of special terms, the buyer must pay the price against presentation of shipping documents. Payment of the price does not deprive the buyer of his right to reject the goods on arrival, if they are not in conformity with the contract description.[8]

2.3 Duties of a Seller in a CIF Contract

The following are the duties of the seller under the contract of CIF;

a) to ship goods of the contract description, at the port of shipment, within the time named in the contract.

b) to arrange shipment or contract for the carriage of the goods.

c) to effect a proper policy or policies of insurance on the goods, upon the terms, upon the terms current in the trade.

d) to obtain proper bills of lading for the goods.

e) to make out an invoice of the goods.

[8] ‘(n7)’

f) to obtain export license, when necessary

Under the contract of CIF, the buyer has a right to reject the documents and also a right to reject the goods. It is important to note the time when the property in the goods will pass as shown in the case of Smith and Co. Ltd v Bailey, Son and Co. (1891)2Q.B 403, where the court held that the general property remains in the seller until he transfers the bill of lading. The resultant effect is that the buyer takes all the risks of transit, and on tender of shipping documents to him, he must pay the agreed price. It is irrelevant that the goods are already lost. Usually, the risk will already be covered by the insurance.[9]

A CIF seller never becomes bound to deliver the goods to the buyer or to an agent of the buyer. Instead, the conventional duty under the Section 27 *Sale of Goods Act* 1979 ('SOGA') states that a seller to deliver, is commuted under the CIF contract into duties to ship, or procure or adopt the shipment of, conforming goods and to transfer documents that give the buyer direct rights against the insurer and the carrier. Subject to the terms of the contract, the seller's physical duties lie in the description, quality and fitness of the goods shipped, as well as in their timely shipment. At the earliest, these obligations spring upon completion of the documentary transfer. Between the shipment of the goods and the documentary transfer, modern bulk commodities contracts impose on the seller a duty to issue a notice of appropriation. This assures the buyer of forthcoming performance and defines the documents that the seller will later transfer to the buyer. It stitches together the physical and documentary parts of the seller's performance. This is why the seller's physical duties can accurately be said to be suspended until the documentary transfer has occurred. They cannot plausibly be said to come into existence only on that event.[10]

2.4 Duties of a Buyer in a CIF Contract

The following are the duties of the buyers in a CIF contract;

1. Acceptance of Document of Title

The most important of the CIF contract is for the buyer to accept all shipping documents representing the goods sold. The Bill of lading is the most important that must be accepted.

2. Payment of Price

[9] Uche Anyamele, The United Nations Convention On Contracts For The International Sale Of Goods: A Proposal For Nigeria' http://www.cisg.law.pace.edu/cisg/biblio/anyamele.html. assessed on 25 January 2020.
[10] '(n 1)'

On tender of the documents, the buyer becomes obliged to pay the price within a reasonable time after the tender of the documents. He cannot insist on waiting for the goods to be delivered before paying or refuse to pay merely because the goods are defective. Berger & Co Inc v Duffus SA (1984) AC 382.

3. Payment of Import duty and Cost of Unloading

It is the duty of the buyer to pay all import duties and wharfage charges, if any. He is also expected to pay the cost of unloading, lighterage and landing at the port of destination, in accordance with the bill of lading.[11]

Under a CIF contract, the purchaser is obliged to pay against the tender of a clean bill of lading that covers the goods contracted to be sold, an insurance policy and a commercial invoice that shows the price. The purchaser is obliged to pay against the tender of the documents notwithstanding of fact that the goods have been lost or damaged at sea after the shipment. In the event of loss, the purchaser must pay the price on tender of the documents and his remedies, if any, will be against the carrier as per the bill of lading or against the underwriter as per the insurance policy, but not against the vendor under the contract of sale. If the purchaser refuses to pay against the documents without any legitimate reason, he shall be liable to compensate the vendor for damage that may result, as per Article 150 of the Commercial Transactions Law.[12]

2.5 Right of a Buyer in CIF Contracts

The buyer enjoys two separate and independent rights of rejecting documents and goods. That is to say, the fact that the buyer has accepted the documents does not affect its right to reject the goods on arrival. However, where the defects in the documents are so obvious (e.g., the date on the bill of lading is incorrect and the seller has nothing to do with this through fraud or likewise) and the buyer has paid against them, the right to reject the goods will be lost. Yet, despite such a loss of the right of rejection, the buyer is entitled to Law & Consultancy claim actual damages (the difference between the contract price and market price at the time of delivery) stemming from the tender of defective documents by the seller. Regards must also be had in relation to the foregoing to the question how the buyer's right to rejection of the goods is affected by the inclusion of a "quality final at loading" clause into the sale contract. The mere existence of such a clause should not necessarily lead to the

[11] '(n9)'
[12] Uche Anyamele, ibid.

conclusion that the buyer is bound at all circumstances and therefore cannot reject the goods upon arrival. The way in which the "quality final at loading port" clause is devised in the sale contract is crucial to the assessment of whether and to what extent the buyer's right to reject the goods remains intact. If the sale contract stipulates the certificate at the loading final for both the description and quality of the goods, then the buyer will be estopped from rejecting the goods. If the wording refers only to the quality, then it should be found out whether the difference between the certificate at loading and the analysis at the discharge relates to "quality" or" description" of the goods under the contract. The appraisal will be made according to the laws (such as GAFTA or FOSFA contracts) incorporated in the sale contract. Consequently, if the non-conformity relates only to the "quality", the right to rejection of the goods will be lost at buyer's end. Otherwise, so long as the difference goes to "description" of the goods, and since the seller is under an obligation to ship the goods as described in the sale contract, the buyer will be able to reject the goods or claim damages or (if possible) request allowance accordingly. Having said that, one of the best way to avoid disputes relating to the rejection of the goods due to a problem in the contractual quality is to draft the sale contract with a view to such trade world realities.[13]

3.0 The Essential Features of CIF Contract

However, the main features of CIF contracts had been construed in a very restricted way 'contrat de droit strict', but the modern tendency or the judiciary is to construe CIF terms in a more flexible manner to suit modern requirements. This flexibility means:-

1. If the contracting parties evince no clear intention to vitiate the precise and definite meaning of CIF; their obligations should be carried out according to the principles governed by CIF contracts.

2. If the contracting parties have incorporated in their contract, a repugnant stipulation to CIF that stipulation should be applied, and consequently, contracts containing such terms are prima facie not CIF contracts.

3. The circumstances of the case, sometimes, indicate that despite the fact that the contract contains terms repugnant to CIF, but the real intention of the contract in parties is to apply CIF rules regardless of those apparently repugnant

[13] '(n3)'

stipulations, or their real intention is to apply CIF rules as long as the circumstances envisaged by the repugnant stipulation are not realized.[14]

The essential features of a CIF contract has already been described. The seller does not undertake that the goods shall arrive, but agrees at his own expense:

(a) to procure and tender to the buyer the requisite shipping documents, which, unless otherwise agreed, comprise:

a) a bill of lading showing shipment at the contractual port of shipment (if any) of goods conforming to the contract;

b) a policy of insurance covering the goods for their sea transit;

c) a commercial invoice relating to the goods;

(b) to transfer the property in the goods to the buyer at the due time for such transfer, provided that the goods are then in existence.[15]

If the goods, having been shipped sound are lost or damaged in transit, the buyer's remedy (if any) is not against the seller but against the carrier or insurer, pursuant to the contracts of carriage and insurance taken out by the seller and transferred or to be transferred to the buyer. For this reason, the CIF contract has sometimes been described as being a sale of documents relating to goods rather than sale of goods. The advantage of the CIF contract, which has made it an essential instrument of sea-borne commerce, is to enable to deal with cargoes afloat, by transferring the documents representing the goods. The seller, while taking the risk of the rise or fall in the price of the goods, the cost of carriage and the rate of insurance before shipment, has the advantage of being able to obtain payment of the price of the goods before their arrival, and even in the event of loss or damage in transit. By stipulating for payment by an irrevocable letter of credit, the seller may obtain cash for the goods sold immediately after shipment; or, if the terms of payment are "cash against documents" or "net cash" (which is the same thing), he may still obtain payment from the buyer a considerable time before the goods arrive at their destination. Whether a particular contract is or is not a CIF contract is a question of substance. It cannot be resolved solely by reference to the label, which the parties have chosen to attach to their contract. Lord Porter in Comptoir D`Achat et

[14] '(n7)'
[15] '(n4)'

de Vented u Boerenbond Belge SA v Luis de Ridder Limitada (The Julia) stated that: "Not every contract which is expressed to be a CIF contract is such."

For example, were the parties describes their contract as a CIF contract but the terms gives the seller the option to supply the buyer with the goods but not the documents, then the contract would not, in law, amount to a CIF contract. This is because its own terms would conflict with the documentary obligations, which lies in the heart of a CIF contract. However, it does not follow from this that the label chosen by the parties is irrelevant. It can be adduced as evidence of the true nature of the contract, but it is not conclusive. It must be noted that it is of importance to distinguish the parties obligations under the English law and under Incoterms 2000. This is since the seller´s and the buyer´s obligations under CIF and FOB terms has not been subject of legislative definition in the United Kingdom. It is instead a product and result of commercial custom and usage, whereas Incoterms is developed by ICC. However, the responsibilities of the parties according to the definition of Incoterms 2000, which is not binding for the English courts, may nevertheless furnish prima facie evidence of usage even where, under national law, where the scope of any particular duty is in doubt because of lack of authority or absence of agreement, express or implied.[16]

3.1 A Sale Of Documents or A Sale of Goods

There is one important issue, which has given rise to disagreement in relation to the nature of a CIF contract. That disagreement relates to whether or not a CIF contract is truly a sale of goods or whether it is, in fact, a sale of documents. The documents are in many ways the heart of the CIF contract and the importance of documentation is reflected in some judicial dicta, which lend support to the proposition that a CIF contract should be classified as a sale of documents rather than a sale of goods. The suggestion that a contract for the sale of goods CIF shall be regarded as a sale of documents is derived from the judgment of Scrutton J. in Arnhold Karberg & Co. v Blythe, Green, Jourdain & Co. when he declared:

"I am strongly of the opinion that the key to many of the difficulties arising in CIF contracts is to keep firmly in mind the cardinal distinction that a CIF sale is not a sale of goods, but a sale of documents relating to goods he buys the documents, not the goods, and it may be that under the terms of the contracts of insurance and affreightment he buys no indemnity for the damage that has happened to the goods."[17]

[16] '(n 4)'
[17] Andreas Alsterberg, ibid.

For this reason, the seller must tender documents and cannot claim performance of a CIF contract by tendering, in lieu thereof, the goods themselves at the port of destination unless of course the buyer waives compliance with the terms of the agreement. Another well-known statements is made by Judge McCardie J. in Manbre Saccharin Co Ltd v Corn Products Co. Ltd:

"I conceive that the essential feature of an ordinary CIF contract as compared with an ordinary contract for the sale of goods rests in the fact that the performance of the bargain is to be fulfilled by delivery of documents and not by the actual physical delivery of goods by the vendor. All that the buyer can call for is delivery of the customary documents. This represents the measure of the buyer's right and extent of the vendor's duty. The buyer cannot refuse the documents and ask for the actual goods, nor can the vendor withhold the documents and tender the goods they represent."

This description focuses upon the delivery obligation of the seller. It has validity because the seller's delivery obligation is defined as one which pertains to the documents rather than the goods themselves. Indeed, a contract, which gives the seller an option either to deliver the goods or the documents, is not a true CIF contract. The seller must tender the relevant documents and it is not possible for him to perform his contractual obligation by instead tendering the goods alone.

On presentation of the shipping documents, if they are complete and regular, the buyer is bound to pay the price, irrespective of the arrival of the goods. The seller is not under any duty to ensure the actual physical delivery of the goods at the destination i.e. that the goods actually reach the buyer. A seller performs his delivery obligation by tendering the appropriate documents to the buyer and the fact that the goods subsequently fail to reach the buyer does not of itself involve the seller in a breach of contract. So, if the goods are lost in transit or arrive in a damaged condition the buyer will ordinarily have his remedy under the policy of insurance or against the carrier under the contract contained in the bill of lading. Whether in any particular case either of these remedies is available to him depends upon the terms of the policy of insurance and the bill of lading. Although all the CIF advantages, there are certain problems or disadvantages that must be noted. Since the buyer must pay upon presentation of proper documents, he will generally be unable to reject the documents on the grounds that non-conforming goods were shipped. On the other hand, he will be in a position to reject non-conforming documents even when the seller has shipped conforming goods.

While it is true to say that the seller does not assume an obligation physically to deliver the goods to the buyer, it is not true to say that the seller does not owe the buyer any duties in relation to the conformity of the goods with the terms of the contract. It is accepted that the buyer has two rights of rejection, namely the right to reject the documents and the right to reject the goods.[18]

3.2 Advantages of CIF Contract

1. CIF serves the interest of the seller as a shipper. The seller has the benefit of charging a higher price, taking into account extra services. The seller also has the advantage of receiving the transacting money before the goods actually reach the buyer.

2. The seller has the benefit to recover the value of goods in the event of damages or loss before payment.

3. The buyer has the benefit of not having to undertake the task of insurance or shipping space and also has the advantage of knowing the exact price he must pay.

4. The buyer has two substantial rights of rejection, the right to reject the documents and the right to reject the goods. Once he gets the documents of sale, he may still reject the goods on their actual delivery if they turn out to be not in conformity with the standards he had prescribed. The risk which he takes is that the loss or damage of goods may not be covered by the bill of lading or insurance policy.[19]

3.3 Disadvantages of CIF Contract

1. The buyer cannot reject the goods or the documents if they are correct and he is obliged to accept and pay them.

2. The separation of risk and the passing of property highlight a problematic nature, as the buyer may not be able to claim a right of possession of goods or bring an action in tort for damages done to the goods prior to his obtaining property.[20]

3. Under the CIF Contract, the buyer must take the risk for the period of carriage, as the buyer has no means of controlling or limiting those risks.

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[18] '(n4)'

[19] 'The Definition of CIF Contract and its Advantages and Disadvantages'<sinepoenanullalex.blogspot.com/2010/11/definition-of-cif-contract-and-its.html> assessed on 25 February, 2020.

[20] 'The journey of a Post-graduate Scholar'<manishaluch.blogspot.com/2010/11/summary-of-workshop-6-advantages-and.html> assessed on 25 February 2020.

4. The seller's obligation to arrange the shipping of goods gives the seller the upper hand to control the cost incurred for the whole course of shipping.

5. Generally, the buyer have no opportunity to inspect the goods before shipment unless so provided in the contract hence this puts the buyer in a disadvantage position.

6. The seller bear the risk of fluctuation of freight and insurance rates depending on the prevailing economic conditions which cannot be negotiated upon conclusion of the sale of contract.[21]

4.0 CIF Contracts Under The English law

The English Case Law which forms the basis for many international shipping contracts, has established that it is irrelevant whether both buyer and seller knew of the loss of the ship before the latter tendered the documents; the buyer must pay the price. Hence, the vendor can tender the documents even though he possesses, at the time of tender, actual knowledge of the loss of the ship or the goods. Consequently, in the event of loss, the purchaser will receive the documents rather than the goods for which he contracted. Even if the purchaser had already paid the price, he cannot demand its return. In addition, a vendor under a CIF contract for the sale of goods who has shipped the agreed goods under a clean bill of lading and obtained the proper documents, can tender those documents to the purchaser notwithstanding he knows at the time of such tender of the loss of the goods.[22]

Under a CIF contract, the vendor performs his obligations by tendering the documents to the purchaser. He is not obliged to deliver the goods to the agreed destination but he is under a negative duty not to prevent the goods from being delivered to the purchaser at their destination. This might be done by preventing the carrier from delivering them to the purchaser or by sending them to a different destination. However, if the contract contains a clause that imposes on the vendor an obligation to deliver the goods to the agreed destination, it is not considered as a CIF contract,even if the letters of 'CIF' appear in the contract. Not every contract which is expressed to be a CIF contract is such. Article 155 of the Commercial Transactions Law states that 'a contract which contains such conditions as will render the seller liable for the perishing of the goods after shipment, or makes the performance of the contract conditional on the safe arrival of the vessel, or which vests the buyer with an option to accept the goods according to the contract or according to the pro-forma delivered to him

[21] 'The journey of a Post-graduate Scholar' ibid.
[22] '(n 1)'

at the time of contracting, shall neither be a CIF nor a FOB sale, but shall be deemed to be a sale conditional upon delivery at the place of arrival.' In a CIF contract, the documents which must be tendered by the vendor to the purchaser will include a bill of lading. However, the contract may stipulate for tender of a delivery order or give the vendor the option of tendering a delivery order. It has been recognised, since the English case of Re Denbigh Cowan & Co v R Atcherley & Co [1921] 90 LJKB 836, that the mere substitution of a delivery order for a bill of lading under the terms of the contracts does not impart any obligation to deliver the actual goods, so as to prevent the contract from being a true CIF contract. Nevertheless, in another English case, The Julia [1949] AC 293, a contract for the sale of rye 'CIF Antwerp' gave the seller the option of tendering bills of lading or delivery orders. The seller shipped the rye in bulk and tendered a delivery order in respect of a quantity smaller than the entire shipment. This order was directed to the seller's agent in Antwerp. Accordingly, it was held that the contract was not a CIF contract but one for the delivery of the goods in Antwerp. As the goods were not so delivered, there was a total failure of consideration. Here it can be said that if the seller in the Julia case had chosen to tender a bill of lading, he would have performed his obligations and it would have been a CIF contract.

Further, if a contract gives the purchaser the option of tendering documents or goods, it is not a CIF contract, so the seller is not bound to tender the documents. A true CIF contract does not give the seller this option; the seller must tender the documents and cannot perform by instead tendering goods alone.[23]

4.1 Duties and Right Of A Seller In A CIF Contract Under The English Law

Under the CIF contact, the seller is required to deliver the goods on board of the vessel at the agreed port of delivery. According to the CIF contract, the seller has to bear all costs relating to the goods until delivery of the goods on board the vessel. However, under the CIF contract, the seller's duty to provide a contract of carriage and has to insure the goods under the insurance contract. Moreover, the insurance policy has to protect to the buyer. Otherwise, the seller commits to breach of the contract. Under the English Law, there is no general rule to obtain an export licence. It depends on the contract, which the party, who has the best position to obtain it. According to Brandt &co. case is that, 'both seller and buyer were British traders albeit that the buyer was securing goods from an overseas merchant so he has to apply for the export licence, because he alone knows full facts regarding the destination of

[23] '(n 1)'

the goods." On the other hand, if the seller is in a better position than the buyer, he is responsible to provide a licence. Under the CIF contract, it is also seller's responsibility to provide an export licence.

The seller must give notice to the buyer that this notice may enable him insure the goods during the sea transit. The notice must be given without delay. Any fail to give notice, makes the seller still liable on the goods during the sea transit. According to the CIF contract, the seller has also to give the buyer sufficient notice that the goods have been delivered on board the vessel.[24]

4.2 Duties and Right Of A Buyer In A CIF Contract Under The English Law

Under the CIF contract the buyer has no under obligation to procure a ship, place, and shipping time. On the other hand, the buyer main duty is to accept the documents, if these documents are in conformity with the contract of sale. When a CIF buyer has accepted the documents; he must pay the full price of the goods. Furthermore, the buyer must take delivery of the goods at the agreed destination and has to bear all unloading costs.

According to the CIF contract, the buyer has only to pay any customs or other duties, which may impose in a CIF contract. For instance, payment of the freight is the buyer's duty and also it is a condition of the contract.[25]

5.0 Conclusion

In light of the above, it can be concluded that under a CIF contract the purchaser cannot refuse the documents and demand from the vendor the actual goods. Nor can the vendor withhold the documents and tender the goods. Furthermore, the performance of a CIF contract is fulfilled by delivery of the documents and not by the actual delivery of the goods by the vendor. Accordingly, it has been argued that a CIF contract is not a sale of goods but a sale of documents. As a result, the feature of an ordinary CIF contract is to be fulfilled by delivery of the documents and not by the actual physical delivery of the goods by the vendor. On the other hand, it could be argued that although under CIF contracts shipping documents are very important for the performance of these contracts, CIF contracts cannot be deemed as a sale of document.

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[24] 'The Main Difference Between CIF And FOB Contracts Under The English Law' <www.akellawfirm.com/yayinlaw/The_Main_Difference_Between_CIF_And_FOB_Contracts_Under_English_Law.pdf> assessed on 30 January 2020.

[25] '(n 24)'

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