

1.3 Terminology and Definitions

Defining International Commercial Law (ICL)

- ICL is the body of laws, rules and recognised standards that regulate various international commercial transactions including international sale of goods
- ICL concerns the regulatory framework of trade across nations
- ICL applies to interstate affairs
- ICL also includes rules and principles regulating regional trade
- Essentially ICL is the international law of contract and dispute resolution for private parties and how government agreements can affect those private party transactions.

Distinguishing ICL from domestic commercial law

- No central legislature
- No executive enforcing the laws made by the legislature
- Absence of a single judicial institution with inherent jurisdiction

Purpose of ICL

- Provide orderly governance
- Accomplish the needs of the commercial community
- Facilitate commercial activity
- Ensure legal predictability

Introduction of ICL terminology

Some terms you will see in this Unit include:

- Incoterms (today – buyers/ sellers/ risk)
- CISG.
- Law merchant (Lex Mercatoria – law merchant)
- Bill of lading
- Letter of credit
- Choice of forum
- Choice of law/ conflict of law
- UNCITRAL

Defining: 'Bill of Lading'

- 'A legal document between the shipper of a particular good and the carrier detailing the type, quantity and destination of the good being carried.' The bill of lading also serves as a receipt of shipment when the good is delivered to the destination.

Defining: Letter of Credit

- 'A letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount.'
- Becomes very useful to address difficulties in regards to:
 - Distance
 - Differing laws
 - Unfamiliar parties

UNCITRAL: United Nations Commission on International Trade Law

- “It plays an important role in improving the legal framework for international trade by preparing international legislative texts for use by States in modernising the law of international trade and non-legislative texts for use by commercial parties in negotiating transactions.”
- Probably the closest thing we have to a central ICL legislator.

1.4 Incoterms

International Rules for the Interpretation of Trade Terms (Incoterms):

- Globally recognised standards used in commercial contracts for the sale of goods nationally and internationally
- Provide internationally accepted definitions and rules of interpretation
- Developed by ICC (International Chamber of Commerce)
- 2010 version – set out in Mo Text pp 12-41 (Bigger change between 2000 – 2010 was no more risk passing “Over the Rail” in FOB).

Incoterms 2020

- EXW (Ex works) (any mode of transport)
- FCA (Free Carrier) (any mode of transport)
- FAS (Free Alongside Ship) (Shipping or inland waterway)
- FOB (Free On Board Vessel) (Shipping or inland waterway)
- CFR (Cost & Freight) (Shipping or inland waterway)
- CIF (Cost, Insurance & Freight) (Shipping or inland waterway)
- CPT (Carriage Paid to) (any mode of transport)
- CIP (Carriage and insurance paid to) (any mode of transport)
- DAP (Delivered at place) (any mode of transport)
- DPU (Delivered at place unloaded) (any mode of transport)
- DDP (Delivered Duty Paid) (any mode of transport)

Shipping Only INCOTERMS

FAS Free Alongside Ship

- Seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment
- The risk of loss/ damage to the goods passes:
 - When the goods are alongside the ship and
 - The buyer bears all costs from that moment onwards

FOB Free On Board

- Seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered
- The risk passes:
 - When the goods are on board the vessel, and
 - The buyer bears all costs from that moment onwards

CFR Cost and Freight

- Seller delivers the goods on board the vessel or procures the goods already so delivered

The risk passes

- When the goods are on board the vessel

CIF Cost, Insurance and Freight

- Seller delivers the goods on board the vessel or procures the goods already so delivered

The risk passes

- When the goods are on board the vessel
- The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination

CIF – Cost Insurance Freight

- Most popular and widely used trade term in international sale contracts by sea
- The price of goods is inclusive of freight (reward payable in respect of carriage of cargo from loading point to the point of discharge) + insurance cost (i.e., these obligations fall to the seller).

Obligations of seller

- Duty to procure and prepare docs: invoice, bill of lading, insurance
- Organisation of licences
- Tender of documents

CIF – Seller's obligation

Duality of obligations

- Obligations in respect of goods that are subject matter of the contract
- Obligations regarding tender of docs covering the goods
- 'CIF contract pays for the goods against the strength of the documents'
- 'Anything short of an insurance policy is inadequate to discharge the seller's obligation to tender a policy under CIF'
- Where the seller fails to obtain adequate insurance cover, the goods are at risk of the seller – *Lindon Tricotagefabrik v White* 1975

CIF: A Sale of Goods Performed by Delivery of Documents

Arnhold Karberb v Blythe (1916) 2 KB 379

- Sale of goods performed by delivery of documents because legal rights and liabilities attach to the documents
- Buyer has obligation to pay against tender of documents and can refuse to pay if documentation not in order

CIF – Sellers Remedies

- Can sue the buyer for the price where property in the goods has passed to the buyer and buyer wrongfully neglects or refuses to pay for the goods
- Has a lien on the goods – i.e., even if property has passed seller can retain the goods until seller is paid.
- Damage for non-acceptance.