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The Autonomy of Documentary Credit: An Analysis in the Context of UCP 600

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Abstract

Expansive cargos of merchandise and substantial amounts of cash are frequently associated with universal commercial contracts, including worldwide sales of products. Risk of non-performance on the side of one selling or non-payment by the one purchasing is intrinsic and alwaystherein any business contract, particularly globaltrade. The complex nature of the issue is expanded because of ambiguousnational law, where parties have vague approaches in their agreement. At the point when parties settled on a national law, no less than one of the contracting parties is obliged to adjust to a new legitimate framework. This circumstance is very rare in universal tradesince the hazard likely to occur in such an exchange would be excessively gigantic. Whenever merchants or providers are buying and selling merchandise to and from worldwide clients with no settled business relationship, extra methods for anchoring installment and execution over the agreement are typically sought. A letter of credit is one of the ways to accomplish security. Occurrence of risk might be limited because of banks contribution in global deals, then again, the transactional costsrise. When the letter of credit is consented to be utilized in payment, the compulsion to pay the purchase pricegoes down to the purchaser's bank, as soon as the merchant shows the

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records required in letter of credit. The genuine products exchanged or the primary contract is not a concern of the bank. This paper aims to clarify the composition of documentary credit under the framework of UCP600 and the rule of strict compliance.

Keywords: Letter of credit, commercial contracts, UCP 600

1.1 INTRODUCTION HISTORY AND BACKGROUND OF LETTER OF CREDIT

The word ‘letter of credit’ has been taken from ‘accréditif’ which originates from French. Moreover, the word 'accréditif'' is obtained from ‘accreditivus’ that is taken from Latin which means trust.[1] Furthermore, the term of letter of credit is identical with documentary credit.[2]Letter of credit has been characterised diversely varying upon the application of the rules to the letter of credit, thus no single definition is accessible. For the most part, letter of credit is characterized as a written instrument that is utilised when someone (' applicant ') is in agreement to conduct payment to another person ('beneficiary') under a written contract, on the supposition that all terms expressed in the letter of credit have been met.[3]It is believed according to some scholars that letter of credit has been used since Babylon and Egypt time, when their banking structure had been adequate. For instance, Rufus Trimble refers to a Babylon's clay promissory note in 3000 B.C. which stated the sum and as well as the interest to be paid on a specific date. The letter of credit had been used by Ancient Greek bank “on correspondents with the view to obviating the actual transport of Specie on payment of accounts”.[4]

Letter of credit has been regarded progressively important for the subsequent centuries from international trade perspective. British banks had become the sole issuer of the letter of credit due to the strength and recognition of pound sterling that was obtained throughout past centuries. Subsequently, it led London bankers to acquire higher status in comparison to others in international

[1]Frank Roland Hans Mueller, “MINI THESIS” (UNIVERSITY OF THE WESTERN CAPE, 2013).
[2]Ibid.
[3]Ibid.
[4]Rufus James Trimble, “The Law Merchant and the Letter of Credit,” *Harvard Law Review*, 1948, 981–1008.

finance.[5]The letters of credit usage in the world remained constant since World War II. Throughout the time other means of trade finance had been introduced which were believed to be better options.However, contrary to common belief, letter of credit has proven to be better due to its adjustability which can be modified according to current condition of international trade.[6]The usage of letter of credit has been enourmous since then. Aside from being an instrument of goods payment, the letter of credit can be utilised in several kinds of transactions for every sort of payment and performance obligation, and also as a substitute to issuing bank's credit for applicant.[7]

Due to its high usage, the letter of credit has been referred to by the prominent English judge as "the life blood of international commerce".[8] Judge Donaldson stated in **Bhoja Trader** case that:

> "Irrevocable letters of credit and bank guarantees given in circumstances such that they are the equivalent of an irrevocable letter of credit have been said to be the life blood of commerce. Thrombosis will occur if, unless fraud is involved, the Courts intervene and thereby disturb the

[5]Zsuzsanna Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE," n.d.

[6]Ibid.

[7]"Elegant & Effective…Letters of Credit in Commercial Loans and Bankruptcy (Part 1 of 3) - ABFJournal," accessed December 12, 2015, http://www.abfjournal.com/articles/elegant-effectiveletters-of-credit-in-commercial-loans-and-bankruptcy-part-1-of-3/.

[8]*R.D. Harbottle (Merchantile) Ltd v. National Westminster Bank Ltd*. [1978] 1 Q.B.

mercantile practice of treating rights there under as being the equivalent of cash in hand."[9]

1.2 MAIN OPERATIONS OF A LETTER OF CREDIT TRANSACTION

Letter of credit is characterized as a letter given by a bank at the merchandise purchaser's demand and given to the vender, with the motivation behind affirmation to the seller that he will be paid. The UCP 600or Uniform Custom and Practice for Documentary Credit alludesto the letter of credit as "any irrevocable agreement regardless of its title or description that establishes well-defined responsibilities of the issuing bank to adhere to the terms as stated"[10] Letter of credit, aside from being used extensively in international trade, is also used widely in domestic transactions. Irrespective of uninterested reactions either from seller of buyer, the bank assures the payment when the terms of agreement are performed.[11]

Moreover, the merchandise bought must be according to purchaser's request in order to be able to receive the advance payment. Letter of credit plays a part to solve the issue of trust between purchaser and seller.[12]Additionally, it acts the role of guaranteeing effective payment by using the bank as the payer to do the transaction and the transaction will be made automatically when the seller has

[9]*Intraco Ltd v. Notis Shipping Corporation of Liberia (The Bhoja Trader)* [1981] 2 Lloyd's Rep. 256, 257 E.P.

[10]"UCPDC 600 Article 1, 2, 3, 4, 5," accessed December 12, 2015, http://finotax.com/fx/ucp1.

[11]"How Letters of Credit Work - Agreements to Pay," accessed December 12, 2015, http://banking.about.com/od/businessbanking/a/letterofcredit.htm.

[12]Ahmad Azam Othman, "Principle of Autonomy in Letter of Credit: Malaysian Practice," *IIUM Law Journal* 19, no. 2 (2011): 201–42.

complied with terms of agreement. The transaction among the buyer and seller is ruled by the principle of autonomy.[13]

1.3 PRINCIPLE OF AUTONOMY

The principle of freedom, otherwise called principle of autonomy, is the establishing law associated with letters of credit. It suggests that the credit is free and separate from the contract between the purchaser and the seller, also, from the arrangements between the issuer party and the applicant. As indicated by J. E. Byrne, is the obligation of issuer to honour the beneficiary under the letter of credit, despite any differences among the parties or claims in regards to the agreement application, unless there is element of fraud in the transaction.[14]

Accordingly, in theletter of credit, the bank plays a role as facilitator or third party and issues the payment to the seller. Freedom is profoundly required for the bank because of its vital role to disregard any influence among the seller and purchaser in regards of performance or the goods when it comes to payment. Subsequently, bank is ensured by the rule of autonomy in a letter of credit transaction and will not be subjected to any dispute or litigation in regards of stipulated contract.[15] In short, the reason why letter of credit is used widely to date, is because of the banks' freedom or autonomy from the underlying contracts between the parties.[16]

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[13]Ibid.

[14]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."

[15]"The Impact of Transaction Fraud: Strategies for Theinternational Letter of Credit.," accessed December 12, 2015, http://www.freepatentsonline.com/article/Review-Business/14153982.html.

[16]Mueller, "MINI THESIS."

1.3.1 THE AUTONOMY PRINCIPLE IN THE CASE LAW

Preceding the acknowledgment of the autonomy principle in LC and the introduction of the UCP, history demonstrates that amid ancient times, common law courts were hesitant to acknowledge mercantile law (the forerunner of LC), which dismisses the common law concept of consideration.[17]

Commercial standards (Mercantile principles) were just acknowledged in the seventeenth century by the custom-based law courts in spite of their obliviousness of common law rules of contract and consideration.[18] Common law courts recognized the commercial standards on a concept where traders' custom was incorporated into the agreement of parties, in which custom had a big influence to the common law.[19] Thus, LC and its unique nature of freedom or autonomy, which is influenced from mercantile law,has since acknowledged and accepted by common law. Because of this acknowledgment, the importance of principle of autonomy in LC dealings has been elevated through case law.[20]Courts' uncompromising approach, which is displayed in majority of related cases mediated by several jurisdictions, upholds the exercise of this particular principle in LC transaction.One of the earliest dictum explains the application of principles of autonomy in letter of credit:

> "The large and important part which LC plays in modern commerce restrains me from expressing my opinion on many of the points argued. The system should be kept as free as possible from technicalities

[17]Othman, "Principle of Autonomy in Letter of Credit: Malaysian Practice."
[18]Ibid.
[19]Ibid.
[20]Ibid.

> and from unnecessary judicial dicta which may embarrass business dealings in future".[21]

The above statement clearly backs the autonomous principles; any actions that may risk this standard should not be allowed. Regardless of the above point, it has been pointed out many times that judges and lawyers failed in noticing and determining adequate weightage to the lawful nature of autonomy of letter of credit.[22] This observation recommends that there is no consistency in the application of principle of autonomy and its privilege varies between cases and also their jurisdictions.[23]

In a famous English case of HamzehMalas& Sons v British Imex Industries Ltd,[24]Lord Justice Jenkins states:

> "It seems to be plain enough that the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of goods, which imposed upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not."[25]

Additionally, there was a hesitation by courts to be involved in letter of credit transactions where the performance of tasks had been in the right manner.

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[21]"Does a Documentary Credit Constitute Absolute Payment? On JSTOR," accessed December 12, 2015, http://www.jstor.org/stable/1093285?seq=1#page_scan_tab_contents.

[22]"OUCLF: Articles: X Gao & R Buckley (2003)," accessed December 12, 2015, http://ouclf.iuscomp.org/articles/gao-buckley.shtml#fn121anc.

[23]Othman, "Principle of Autonomy in Letter of Credit: Malaysian Practice."

[24] [1958] 2 QB 127.

[25] [1958] 2 QB 129.

In Power Curber International Ltd v National Bank of Kuwait SAK[26], Lord Denning MR stated that:

> "It is vital that every bank which issues a letter of credit should honour its obligations. The bank is in no way concerned with any dispute that the buyer may have with the seller. The buyer may say that the goods are not up to contract. Nevertheless, the bank must honour its obligations. The buyer may say that he has a cross-claim in a large amount. Still the bank must honour its obligations. A letter of credit is like a bill of exchange given for the price of goods. It ranks as cash and must be honoured"

In a well-known case of Wood Hall Ltd V Pipeline Authority[27],Stephen J stated that there is a necessity for the letters of credit to have autonomous principles in order to assure that they have the same value as cash.

In the same way in Bolivinter Oil SA v Chase Manhattan Bank NA and Others[28], it was decided that any requests for an injunction to prevent a bank from it shall not be entertained by the court, specifically when the request for injunction is on the grounds of disagreements of the underlying contract. Sir Johnson MR indicated in his judgement that:

> "Judges who are asked, often at short notice and ex parte, to issue an injunction restraining payment by a bank under an irrevocable letter of credit of performance bond or guarantee should ask whether

[26] [1981] 1 WLR 1233
[27] (1979) 141 CLR 443, at 457.
[28] [1984] 1 WLR 392.

> there are any challenges to the validity of the letter, bond or guarantee itself. If there is not or if the challenge is not substantial, prima facie no injunction should be granted and the bank should be left free to honour its contractual obligation."[29]

1.4 THE UCP 600

The recognised method of banking related to documentary credit is regularised by the Uniform Customs and Practice for Documentary Credits (UCP), which are a set of regulations issued by the International Chamber of Commerce (ICC). The UCP first came into existence in 1933 and have had numerous modifications, the latestof which is the UCP 600 that came into effect on the July 1, 2007.[30]

The principles of autonomy are mentioned in two respective articles, 4 and 5, of the UCP 600 which state as follows:

> "A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary."[31]

Additionally, it mentions that, "A beneficiary can in no case avail itself of the contractual relationships existing between the banks or between the applicant and the issuing bank. An issuing bank should

[29] Ibid, at 393.

[30] Chumah Amaefule, "The Exceptions to the Principle of Autonomy of Documentary Credits" (University of Birmingham, 2012).

[31] Ibid.

discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, preform an invoice and the like. Finally, banks deal with documents and not with the goods, services or performance to which the document relate." The above mentioned articles of UCP 600 are in regards to autonomy principles.[32]

1.5 EXCEPTIONS TO THE PRINCIPLE OF AUTONOMY

The notion of autonomy of the credit, is an underlying process which the bank must pay and are bound to follow strictly. The counter banks have the right to refuse the payment when documents which are submitted during credit applications do not fulfill the criteria. However, when the documents fulfill the stipulated criteria, the banks must pay the advance payment.[33] As per banks, their sole part is to give funding of business sale as they are not in charge of the existence or the nature of the exchanged products. This has been acknowledged to be the main solid path for documentary credit system to materialise.[34]

The usefulness of letters of credit would be ruined when a purchaser is effectively allowed to refuse installment process by merely stating that the products are not in line according to contract. In the instances where false or forged reports are available, the seller isn't permitted to get installment.[35]Fraud rule is made to handle letter of credit issues and it has been defined variously in many ways. As indicated by Xiang Gao, it is an unrivaled law that speaks differently from the main standard of letters of credit law or the rule of autonomy. Fraud rule allows the court or issuer to check the evidence before the

[32]Ibid.
[33]Anthony Connerty, "Fraud and Documentary Credits: The Approach of the English Courts," 2011.
[34]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."
[35]Ibid.

presented documents and also to prevent the letter of credit installment when fraud is identified in the contract.[36]

Raymond Jack describes the fraud as, "exception to the rule that the contracts made in connection with credits are autonomous."[37] To put it differently, the rule permits the bank to refuse installment when fraud accusation is available and to give a chance for defence when the bank is sued by the party who applied and presented the documents.[38]Strict conditions must be met if courts are to apply fraud exception. The facts surrounding the case must be established, "proven manifest fraud or "outright fraud" for instance, forged papers submitted for a cargo that does not exist in the first place. The payment is only prevented to the beneficiary when fraud occurred contrary to the documents presented.[39]

"Manifest fraud", "alleged fraud" and also "commercial dispute" vary from each other. A measure should be taken by the court for such instances. A limitation for such occasion to happen is permitted in exceptional fraud cases to stop a recipient from the reception of the money.[40]

1.5.1 IMPORTANT EARLY CASES IN THE UNITED STATES

[36]Gao Xiang, "The Fraud Rule in the Law of Letters of Credit: A Comparative Study" (Kluwer Law International: The Hague, The Netherlands, 2002).

[37]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."

[38]Xiang, "The Fraud Rule in the Law of Letters of Credit: A Comparative Study."

[39]"The 'fraud Exception' and the L/C Independence Principle - Trade Finance Consulting," accessed December 12, 2015, http://www.tradefinanceconsulting.com/press---articles/the-fraud-exception-and-the-l-c-independence-principle.

[40]Ibid.

Fraud rule improvement in the US can be sketched out by the accompanying cases, and those cases have been referred to as they speak to transformative times in American case law.[41]

On account of **Old Colony Trust Co v. Legal advisor's Title and Trust**[42]the plaintiffs had propelled a vast aggregate to the seller. A letter of credit issued by the litigant stayed as collateral security. The letter of credit called for, among different reports, a warehouse receipt, which is issued if the merchandise are in control of the warehouseman. Facially adjusting records were offered to the bank, anyway the bank denied payment on the ground that the examination of the reports revealed that the products were in reality still on board. The merchant sued the defendant for breach of contract, yet the case was dismissed by the court.[43]**The Appellate Court confirmed the first judgment and held:**

> "Obviously, when the issuer of a letter of credit knows that a document, although correct in form, is, in point of fact, false or illegal, he cannot be called upon to recognize suchdocument as complying with the terms of the letter of credit."[44]

In the current case the court gave its ruling on contract law standards, to be specific, that a deceitful file cannot be considered as fulfilling. Equally, to the previouslystated Higgins v. Steinharderter, the fraudrule, as of now, was not considered. As indicated by court on

[41]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."
[42][1924] 297 F 152
[43]Ibid.
[44]Zsuzsanna Tóth, "Documentary Credits in the Interna'The "fraud Exception" and the L/C Independence Principle - Trade Finance Consulting.' Accessed September 11, 2018. Http://www.tradefinanceconsulting.com/press---Articles/the-Fraud-Exception-and-the-L-c-Independ" (Doctoral Dissertation, 2006).

contract law standards, fabricatedfiles are not considered as fullfilling[45]

Sztejn v. Henry Schroeder Banking Corporation et al is frequently referred to as the "landmark American case"since it is the regularly referred to and essential case in the history of fraud rule. Article 5 of the UCC is the significant root of the court's reasoning of its effect on the law of letter of credit within and outside the US[46]; the ruling with respect to fraudexception is also encapsulated in it.[47]

The facts: Sztejn v. Henry Schroder Banking Corp, In Sztejn, before payment made by the issuing bank to the recipient, the candidate presented a suit seeking a statement that letter of credit and the draft thereunder were nullified. The submitted suit was likewise for injunctive relief to deny the draft payment by the guarantor as the recipient is accused of shipping valueless products instead of the bargained merchandise settled before. Aside from that, it is additionally claimed that the confirming bank that gave the draft reports for payment to issuing bank has been informed of the dynamic fraud by the recipient even beforeaccepting the draft.[48]

To hear the movement, Justice Shientag accepted that all accusations in the complaintwere valid, specifically, that "Transea was engaged in a scheme to defraud the plaintiff," thatthe "merchandise shipped by Transea is worthless rubbish" and thatthe "Chartered Bank is not an innocent holder of the draft for valuebut is merely attempting to procure payment of the draft for Transea'saccount." Based on the

[45]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."

[46] Among others, the well-known English case, United City Merchants (Investments) Ltd v. Royal Bank of Canada,

[47]Ibid.

[48]Ibid.

"established" fact that fraud had been done in the trade, the Court candidly dismissed the Chartered Bank's motion to dismiss the offended party's complaint and ruled for the plaintiff. In making his decision, Justice Shientag first recognized the significance of the principle of independence in the law of letters of credit, expressing[49]:

> "It is well established that a letter of credit is independent of the primary contract of sale between the buyer and the seller. The issuing bank agrees to pay upon presentation of documents, not goods. This rule is necessary to preserve the efficiency of the letter of credit as an instrument for the financing of trade. One of the chief purposes of the letter of credit is to furnish the seller with a ready means of obtaining prompt payment for his merchandise. It would be a most unfortunate interference with business transactions if a bank before honoring drafts drawn upon it was obliged or even allowed to go behind the documents, at the request of the buyer and enter into controversies between the buyer and the seller regarding the quality of the merchandise shipped".[50]

The Sztejn case has given a reasonable direction to future fraud cases as it managed a classicfraud circumstance. It represented how a disappointed applicant, who has been cheated by an exploitative beneficiary, can depend on the fraud rule to secure its interest. As per Sztejn the accompanying conditions apply: "(1) A letter of credit may be dishonoured only in cases of fraud, not upon a mere (allegation of) breach of contract. (2) A letter of credit may be dishonoured when fraud is proven or established, not upon mere allegation of fraud. (3) However, the credit should be honoured in accordance with its terms, notwithstanding the existence of the proven fraud, if a holder in due

[49]Ross P Buckley and Xiang Gao, "Development of the Fraud Rule in Letter of Credit Law: The Journey so Far and the Road Ahead," *U. Pa. J. Int'l Econ. L.* 23 (2002): 663.
[50]Ibid.

course or a presenter with similar status makes demand for payment."[51]

1.5.2 THE FRAUD EXCEPTION IN THE EARLY ENGLISH CASE LAW

Pillans v. Van Mierop

One of the letter of credit fraud'sfirst cases cited by legal academics is the Pillans v. Van

Mierop[52]. In 1765, an Irish traderby the name of White requested an aggregate of 800 pounds from plaintiffs, Rose and Pillans. White offered to give credit issued by the defendaants from London, Hopkins and Van Mierop, keeping in mind the end goal to ensure the reimbursement.[53]

The plaintiffs at that point kept in touch with Van Mierop and Hopkins, wanting to know "whether they would accept such bills as they, the plaintiffs, should in about a month's time draw upon the said Van Mierop and Hopkins's house here in London, for 800 pounds upon the credit of White."[54]The defendant concurred. White discovered that he was bankrupt, in this manner the defendant advised the plaintiffs not to draw on them. In any case, they did and litigants denied to make payment.[55]

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[51]Mueller, "MINI THESIS."

[52][1756] 97 Eng Rep 1035

[53]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."

[54] Ibid

[55]Tóth, "Documentary Credits in the Interna'The "fraud Exception" and the L/C Independence Principle - Trade Finance Consulting.' Accessed September 11, 2018. Http://www.tradefinanceconsulting.com/press---Articles/the-Fraud-Exception-and-the-L-c-Independ."

Plaintiffs turned to court. According to the Court:

> "Van Mierop and Hopkins were bound by their letter; unless there was some fraud upon them: for that they had engaged under their hands, in a mercantile transaction, "to givecredit for Pillans and Rose"s reimbursement".[56]

Although this case was decided almost 250 years ago, no fraud rule analysis was utilized but it shows that fraudulent practices have not been tolerated by courts since early times.[57]

Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd

The firmtactic in Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd is clarifiedfurther by Judge Kerr:

> "It is only in exceptional cases that the courts will interfere with the machinery of irrevocableobligations assumed by banks. They are the life-blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchantsat either end of the banking chain. Except possibly in clear cases of fraud of which thebanks have notice, the courts will leave the merchants to settle their disputes under the contractsby litigation or arbitration as available to them or stipulated in

[56] Ibid

[57]Tóth, "DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL TRANSACTIONS WITH SPECIAL FOCUS ON THE FRAUD RULE."

> the contracts, otherwise,trust in international commerce could be irreparably damaged".[58]

Among all cases, England's leading case of fraud rule is **United City Merchants (Investments) Ltd v Royal Bank of Canada**.[59]The case is additionally outstanding as The American Accord Case as it is profoundly relatable to the Sztejn case. As indicated by Lord Diplock, the Sztejn case was the building blocks as it set up the reason for the work of fruad govern in letters of credit under English law. [60]A sovereign agent is utilized for this situation by the seller to display the documents under the letter of credit. The bank declined to provide payment in the primary presentation as a result of a few inconsistencies, including a blank space for the date of shipment in the Bill of Lading.[61]

The bank held that in the second tender, the Bill of Lading was anteceded and subsequently decrease to pay because of misrepresentation. Due to that, the seller sued the bank on the charge of evading its duties. As indicated by Mocotta J, the bank has the privilege to deny payment as any incorrectness justified its rejection to the seller.[62]LordDiplock reasoned that fraudundoseeverything amid appeal. The court would not endure corrupt individuals to use the procedure forfraud.[63]Despitethe fact that the case was expelled in the Court of Appeal, Lord Diplock's choice is endorsed by House of Lords

[58]*Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd* [1978] 1 QB 146.

[59] [1982] 2 All ER 720

[60]Nevin Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The," *Ankara B. Rev.* 5 (2012): 39.

[61]Nevin Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The," *Ankara B. Rev.* 5 (2012): 39.

[62]Nevin Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The," *Ankara B. Rev.* 5 (2012): 39.

[63] ibid

since a seller can't have responsibility in the third partyfraud. In the event that the fraud is committed by an outsider and the seller has no association at all to it, the seller at that point is certainly qualified for payments he is not guilty.[64]The choice was scrutinized by Guest as the records with a genuine date would be dismissed by the bankon the grounds of incompliance, then again,predating it is as yet acceptable.[65] The judge thinking in regards to the third partyfraud was esteemed to be legitimate; it is likewise in accordance with the conventional perspective.[66]

LordDiplock likewise cracked another issue for this case in regards to the security interest of a bank as a security holder over the products that the documents speak to. The interests of security holders ought to be ensured against any fraud or fraud claims. LordDiplock's judgment then begun to be cited in courts. Despite the fact that there are as yet a bunch of situations where injunction was allowed, for the most part the courts talked about the fraudlaw and its range.[67]Following this case, it was affirmed that the balance of convenience ought to be supportive of giving an injunction in Tukan Timber Ltd v Barclays Bank Plc.[68]

The purchaser tried to totally forbid the bank from makingpayment to the corrupt seller, despite the fact that the payment had been dismissed twice based on the grounds of fraud. In this manner, the case was dismissed by Hirst J. as no threat of fraud from the seller was found, and if that happens, the bank would pay up at the presentation to come.[69]Hereafter, the balance of convenience favored

[64]Nevin Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The," *Ankara B. Rev.* 5 (2012): 39.
[6565]Ibid.
[66]Ibid.
[67]Ibid.
[68] [1987] 1 Lloyd's Rep 171
[69] ibid

injunction dismissal which was esteemed to be essential for the work of the rule.[70]

1.6 UCP 600, FRAUD, CAUSES OF THE INCONSISTENCY AND SOLUTIONS

Fraud issue is not to be managed by UCP 600 but to be dealt with as indicated by the relevant law.[71] UCP 600 does not say fraudspecifically but rather it is believed that its tendency is to secure banks that take after UCP in the instances of fraud. As indicated by Article 34: "A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon." Sub-article 12 (b) gives a designated bank that acknowledged a draft or brought about a deferredpayment undertaking power to prepay or buy a draft acknowledged or a deferred installment undertaking acquired by that designated bank.[72]

Same with the above, the delivering bank's responsibility to repay towards the designated bank is explained below:

> "An issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment

[70]Nevin Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The," *Ankara B. Rev.* 5 (2012): 39.
[71]"The 'fraud Exception' and the L/C Independence Principle - Trade Finance Consulting."
[72]Ibid.

> is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary [emphasis added].”[73]

The last sentence from the passage above explained that in spite of the fact that the issuing bank has no commitment of making payment to the recipient because of the fraud, the designated bank must be repaid since the installment is now made to the said beneficiary.[74]

1.6.1 Different Applications

The exception law of fraud is initially founded by the common law courts to defeat extreme and unfair consequences of the standard of autonomy experienced by all involved. In any case, the existing standard has been deciphered varyingly and in this manner the newlyfoundedrule is hard to be used in a particular way. The greatest hurdle in this circumstance is that the rulehas no particular range as it differs and national courts would have varying translation and use of the fraud exception rule. Subsequently, irregularity between judges is recognized and consequently the results would contrast even inside a similar nation. Ackner recognized the irregularity issue and expressed in the United Trading case that:[75]

“It is interesting to observe that in America where concern to avoid irreparable damage to international commerce is hardly likely to be lacking, [an injunction] appears to be more easily obtainable [in fraud cases]”[76]For instance, concerning the Rule all in all, it is not certain whether the Rule can apply to the third party’sfraud, or if

[73]Ibid.
[74]Ibid.
[75]Nevin MERAL, “THE FRAUD EXCEPTION IN DOCUMENTARY CREDITS,” *TÜBİTAK–ULAKBİM*, n.d., 39.
[76]United Trading Corp SA v Allied Arab Bank [1985] 2 Lloyd’s Rep 554, 561

paying banks are qualified for repayment in the event that they pay upon the presentation to venders regardless of their awarenessof fraud or what is considered fraud due to lack of proof. Customary law has just addressed a portion of these inquiries yet there still remain issues of deciphering the Rule. For instance, in English law, to apply the Rule there requires purposeful fraud while the American courts require material fraud. Consequently, the standard of evidence for purposeful fraud is higher than that of material fraud and so Demir-Araz claims that English law appears to treat buyers harder.[77]Be that as it may, the primary inquiries are first, what standard of fraud is asked for to conjure the Fraud Rule so as to influence a court to apply the Rule for a situation of a vender's fraud and second, to what degree the Rule applies to fraud in the basic contract.[78]

These queries are addressed diversely basedon the common law nations. Besides, civil law nations encounter more regrettable circumstances as fraudexception is not accessible in the framework, as the outcome fraud issue might be dealt with as criminal case.[79]The cheats cause more serious outcomes and may get criminal discipline, and it is much more extreme than a common law tort. This marvel would construct more irregularities amongst civil and common law nations about fraud issue. Therefore, a contention emerges in universal trade amongst merchant and purchaser, and neighborhood courts would need to get involved to solve the metter. On the off chance that conflict is caused by a special case, a line might be drawn from a typical or standard application and in this manner the conflict

[77]Ibid.

[78]Ibid.

[79]Tao Zhang and Heng-fu Zou, "Fiscal Decentralization, Public Spending, and Economic Growth in China," *Journal of Public Economics* 67, no. 2 (1998): 221–40.

might be disposed of between autonomy standard and fraud exception rule.[80]

1.6.2 REVIEWING THE UCP

Common law courts have officially settled generally acknowledged rulecurrently used. It ought to be conceded by the UCP that continuous audit should be performed upon fraud exception rule. Consequently, it could be ensured that when crucial exception is associatedin a case, every person that utilizes the UCP is to be judged similarly and predictably. To put it differently, an arrangement on fraud must be incorporated into UCP.ICC is seen to be the most fitting body to set up this arrangement.[81]Up until this point, ICC is by all accounts more experienced in contrast with national courts.[82]They are some the best in their arena and likewise, there is firmguideline to enter ICC including to be a broker or possessing business background. As a result, it is exceedingly anticipated of them to set up a rule or an arrangement on fraud in the UCP.[83]It is not acceptable to see ICC quiet with respect to this vital issue.[84]

The ICC may decide to incorporate the UCC and The United Nations Convention on Independent Guarantees and Standby Letters of Credit (the UNICITRAL Convention) for such arrangement since there are various issues the UCP leaves to the national courts although UCC controls them, including guarantees.[85]A usefulinstance that can be utilized is the Convention as it displays rule for fraud rule's impendingdevelopments.[86]Consequently, the rule in the UCP ought to turn into a platform between Convention Article 19 and 20 and also

[80]MERAL, "THE FRAUD EXCEPTION IN DOCUMENTARY CREDITS."
[81]Ibid.
[82]Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The."
[83]Ibid.
[84]Ibid.
[85]MERAL, "THE FRAUD EXCEPTION IN DOCUMENTARY CREDITS."
[86]Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The."

UCC Article Section 109.[87]Fraud rule is to be activated by rule standard for the directive. At the point when the standard is settled either too low or too high, a purchaser or merchant may misuse the lawin turn. Thus, the answer for this circumstance is to decide the standard at material fraud, between constructive and egregious fraud, with the help of clear and evident wrongdoing to summon the rule.[88]These wrongdoings might be recorded similarly to UCC for this event; the list might be utilized to compare them. Consequently, irrespective of the directions built up by ICC, the use of the rule ought to be articulate.[89]

1.7 THE UNCITRAL CONVENTION

The United Nations Commission on International Trade (the UNICITRAL) built the UNICTRAL Convention in 1995. Before determining how appropriate the Convention is to represent fraud issue guideline, the requirements of fraud rule in the Convention must be examinedmeticulously.[90]

Article 19/1/a, b, c of the Convention states that:"(1) if it is manifest and clear that: (a) Any document is not genuine or has been falsified; (b) No payment is due on the basis asserted in the demand and the supporting documents; or (c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis, the guarantor/issuer, acting in good faith, has a right, as against the beneficiary, to withhold payment."[91]According to Article 19, delivering banks are permittedto deny payment to sellers under three situations; "(i) if the payment date is not yet due, (ii) if documents are found to be fraudulent and (iii) when there is no conceivable basis for

[87]Ibid.
[88]Ibid.
[89]Connerty, "Fraud and Documentary Credits: The Approach of the English Courts."
[90]MERAL, "THE FRAUD EXCEPTION IN DOCUMENTARY CREDITS."
[91]Ibid.

such purpose and type of undertaking. 'Conceivable basis' is defined in Article 19/2 in four subparagraphs later."[92]The Conventions examines the provisional court actions and additionally its conditions in Article 20. The plaintiff may receive a temporary request when he figures out how to show high likelihood of one of serious misconducts with accessible solid proof immediately, as well as clear and evident misconduct as found in Article 19/1/a, b, and c. Solid proof is necessary by Convention to be misconduct evidence while that differs for the objective of seller,[93]which is the contrary to traditional English strategy.[94]

In any case, there are a few issues identified with the Convention. The primary issue identified is a list of kinds of misconduct is controlled by the Convention so as to summon such law. Some see the list to be thorough, empowering or offers more examples for future examination.[95]Furthermore, for documentary exchange to incorporate the principles, the countries ought to have already concurred with the terms for quick impact. Consequently, legalizing the rule does not appear to be helpful. [96]

The last matter is that fraudcases are not mentioned in the content of documentary credits as the sole things controlled are just autonomous guarantees and backup letters of credit.[97]Backup letters are originally treated the same wayascommercial letters of credit by UCP, yet there are still clear contrasts and therefore cannot be used instantly. Regardless of that, it still turns out to be great sample for UCP to incorporate fraud rule. As indicated by Buckley and Gao, the impact could be more effective when the range is more extensive, yet

[92]Ibid.
[93]ibid 333
[94]Ibid.
[95]Meral, "Fraud Exception in Documentary Credits: A Global Analysis, The."
[96]Ibid.
[97]Mueller, "MINI THESIS."

it is still seen to be an early stage towards better arrangements at global level in contrast with abandoning it to national courts.[98]With the convention, the improvement of fraud appears to take positive advancement in spite of the range concern. Consequently, with a specific end goal to enhance fraudrule in UCP, the arrangements in the Convention can be utilized as aframework.[99]

1.8 CONCLUSION

In documentary letter of credit, the autonomy principles separate the contract, the releasing the payment and dealing with the accuracy of documents are delegated to banks. Nothing can disturb the process of payments, and interrupt the autonomous nature of letter of credit unless fraud is being established.

A letter of credit is one of the ways to accomplish security with the motivation behind confirmation to the seller that he will receive his money. Occurrence of risk might be limited because of banks contribution in global deals. When the letter of credit is consented to be utilized in payment, the compulsion to pay the purchase price goes down to the purchaser's bank, as soon as the merchant shows the records required in letter of credit.

[98]Ibid.
[99]Ibid.

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