Maritime Law

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INTRODUCTION

Transportation of products and travelers by water is a standout amongst the most antiquated channels of business on record. This method of transportation was and still is fundamental for global exchange since ships are fit for conveying massive goods which generally would not be conveyed. Tenets representing connections among members of ocean transport have additionally been known since c.1st thousand years BC.

Old oceanic principles got from the traditions of the early Egyptians, Phoenicians and the Greeks who conveyed a broad business in the Mediterranean Sea. The most punctual oceanic code is credited to the island of Rhodes which is said to have affected Roman law. It is for the most part acknowledged that the soonest oceanic laws were the Rhodian Sea Laws, which have been guaranteed to date from 900 B.C., yet which more probable showed up in the shape perceived today amid the period from 500 to 300 B.C. These laws were perceived in the Mediterranean world as a strategy for giving unsurprising treatment of vendors and their vessels. The many-sided quality and tender loving care found in the Rhodian Sea Laws exhibited the modernity of business and exchange of Ancient Greece – a universe of business, the focal point of which, Rhodes, was in a position to manage terms for exchange.

In spite of the fact that the decay of Greece and the ascent of the Roman Empire altered the impact of the Rhodian Sea Law, a uniform code in light of the Rhodian Law remained and was perceived as basic to quiet and beneficial Mediterranean exchange: the Mediterranean Sea was for more than one thousand years [300 B.C. to 1200 A.D.] just managed by the Rhodian Law, albeit enlarged with a few augmentations by the Romans. Along these lines, the Digest of Justinian, dated 533 A.D., states the accompanying with respect to any debate emerging in the

Mediterranean Sea: "This issue must be chosen by the sea law of the Rhodians, gave that no law of our own is against it."

These laws which got their fundamental components from Rhodian traditions were a short time later stepped up by Romans. There was an awesome development of the utilization of the standards of the Roman law in the restoration of trade ensuing upon the development of the Italian republics and the considerable free urban areas of the Rhine and the Baltic Sea. Extraordinary courts were set up in the Mediterranean port towns to judge question emerging among seafarers. This action in the end prompted the chronicle of individual judgments and the codification of standard guidelines by which courts end up plainly bound. Three noted codes of sea law – whose standards were found in the Roman law, were figured in Europe amid the three centuries between A.D. 1000 and A.D. 1300. One, Libre del Consolat de blemish of Barcellona was received by the urban areas on the Mediterranean; the second, the Laws of Oleron won in France and England; and the third, Laws of Wisby represented the considerable free urban communities of the Hanseatic League on the Baltic.

The most established of these codes was Consolato del Mare, or Regulation of the Sea, arranged at Barcelona. It was an assemblage of extensive standards for every single oceanic subject. It, for instance, managed responsibility for, the obligations and obligations of the bosses or commanders thereof, obligations of sailors and their wages, cargo, rescue, cast off, normal commitment, and so forth. Libre del Consolat de blemish of Barcellona and the Tablets of Amalfi, one arranged at the celebrated of Italian seaports, delighted in specialist a long ways past the ports where they were proclaimed. Fundamentally, until the ascent of current countries, sea law did not get its power from regional sovereigns but rather spoke to what was at that point imagined to be the standard law of the ocean.

In the long run, as business from the Mediterranean moved northward and westbound, ocean codes created in northern European ports. Among the critical medieval ocean codes were the Laws of Wisby (a Baltic port), the Laws of Hansa Towns (a Germanic association), and the Laws of Oleron (a French island). The Consolato del Mare was helpful in the arrangement of these later codes. Specifically, the Laws of Oleron, the second incredible code of oceanic

direction, was enlivened by the Consolato del Mare. These three codes are known as the three curves whereupon rests present day admiral's office structure.

As could be comprehended from the discourse over, the soonest advancements identifying with sea law happened in regions having a place with what is presently known as the Continental lawful custom. These improvements added to the early office of the chief naval officer law of England – the starting point of the custom-based law lawful convention and one of the major sea states with rich convention in transportation. The European office of the chief naval officer precepts were conveyed to the USA – another imperative delivery country – through the English arrangement of admiral's office law, which at first was enlivened by what have been named the three curves of present day admiral's office law – the Laws of Wisby, the Laws of Hansa Towns, and the Laws of Oleron.

Contemporary sea law is a blend of antiquated tenets and new at laws both national and universal. Among the customary standards of office of the chief naval officer still being used are marine protection, general normal and rescue. The welfare of the sailor, the old idea of "upkeep and cure" are likewise still being used today. The fundamental explanation behind the ceaseless utilization of antiquated standards of law is the constant idea of essential risks of nautical. Since in any event the finish of the nineteenth century, be that as it may, maritime design and freight dealing with have changed in noteworthy ways. The broad utilization of raw petroleum bearers and also transporters of melted gaseous petrol has, for instance, suggested new risks and conversation starters of obligation for oil contamination and harm to the marine environment and the shorelines. Thus, current sea law comprises of laws that are of notable source and of late advancement. Note likewise that not the majority of the first standards of oceanic law still apply.
The most punctual known sea laws were uniform. As per one student of history, the considerable estimation of the tenets which had been produced for sea exchange lay in the way that they had been "observed by training to be reasonable to the requirements of a group which knows no national limits – the global group of seafarers." This verifiable consistency of early sea laws declined with the development of patriotism. Nonetheless, oceanic exchanges have dependably been global in nature which more often than not includes people from various purviews. Global delivery is "an unpredictable business, and its exercises are directed in a way

that regularly embroils the enthusiasm of a few nations." The intricate worldwide part of the exchange, from one viewpoint, and the way that oceanic law is national (than universal), on the other, display diverse issues. The distinction in local oceanic enactments may, for instance, make the result of the "worldwide" exchange erratic to members. Additionally, jurisdictional, decision of-law, and discussion non convenience issues would be there.

Making the standards of oceanic law all around uniform, by and by comprehended, would mitigate a large portion of the issues identified with unconventionality and struggle of laws. This comprehension has prompted the restoration in the nineteenth century of the old inclination to make rules identifying with sea exchange uniform all around. This exertion was first begun at the impelling of attorneys and business men, for example, the individuals who established the Comité Maritime International (CMI) and the national sea law affiliations; and keeps on becoming under the aegis of the Intergovernmental Maritime Organization (IMO) and other United Nations partnered associations with the collaboration of specialists in the private division.

Established in 1897, the International Maritime Committee or CMI started consistency among national oceanic enactments of part nations. Among the traditions drafted by CMI were the Hague Rules (International Convention on Bill of Lading), and the Visby Amendments (revising the Hague Rules), the Salvage Convention and numerous others. Since 1958, a significant number of CMI's capacities have been taken by the International Maritime Organization of the UNO. This association has likewise proceeded with the move towards uniform oceanic laws. Many states clung to this standard either by fuse of the arrangements in local laws or by ramifications of bargain commitments. In this way, now, we can discuss the relative consistency of national oceanic laws of various transportation states which may not be coordinated by the level of consistency achieved in some different territories of law. The level of harmonization so far accomplished isn't, in any case, attractive in so far as a few zones are concerned. For instance, there still exist contrasts in appraisal of oceanic cases.

[1]The historical backdrop of sea law in Ethiopia had not been clear until the establishment of the 1960 Maritime Code. Despite the fact that Ethiopia's oceanic history dates as far back as the seasons of Axum, a parallel improvement of the laws identifying with sea exchange was truant. It is just since 1960's that Ethiopia saw an improvement of a far reaching oceanic enactment combined with the resurgence of transportation exchange after the foundation of the Ethiopian Shipping Lines SC (ESLSC). The 1960 Maritime Code is as yet the most essential bit of enactment in the territory.

- Important Definitions
- Several terms essential for understanding this topic are mentioned below

Maritime law:

Maritime transport is the shipment of goods (cargo) and people by sea and other waterways. Port operations are a necessary tool to enable maritime trade between trading partners. To ensure smooth port operations and to avoid congestion in the harbor it is inevitable to permanently upgrade the port's physical infrastructure, invest in human capital, fostering connectivity of the port and upgrade the port operations to prevailing standards. Hence, port operations can be defined as all policies, reforms and regulations that influence the infrastructure and operations of port facilities including shipping services.

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International Trade:

According to Wasserman and Haltman, "International trade consists of transaction between residents of different countries".
According to Anatol Marad, "International trade is a trade between nations".
According to Eugeworth, "International trade means trade between nations"

Contract - It is a written or spoken agreement, concerning with employment, sales, or tenancy, enforceable by law.

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[1] Available at http://www.abyssinialaw.com/study-on-line/item/1072-historical-development-of-maritime-law#

Carriage - the conveying of goods or passengers from one place to another is called carriage.[2]

Bill of Lading:

It is one of the most important documents in the whole shipping and freight chain to ship any goods; a bill of lading is required and acts as a receipt and a contract. A completed BOL legally shows that the carrier has received the freight as described and is obligated to deliver that freight in good condition to the consignee.

Charter Party:

A charter party is a document of contract by which a ship-owner agrees to lease, and the charterer agrees to hire, a vessel or all the cargo space, or a part of it, on terms and conditions forth in the charter party. If permitted to do so by the terms of charter party,

Seller: A party that makes an offer or contract to make a sale to an actual or potential buyer for an exchange of consideration.

Buyer: a person who purchases stock or materials from the seller for a large retail or manufacturing business.

Freight: goods, but not passengers that are carried from one place to another, by ship, aircraft, train, or truck, or the system of transporting these goods

Freight insurance: Insurance coverage for goods during shipment. Freight insurance can be purchased directly from a shipper or from a third-party insurer. Also called cargo insurance.

[2] Available at https://economictimes.indiatimes.com/definition/bill-of-lading

INTERNATIONAL SALES CONTRACT[3]

While making or exploring a business contract, it is key to know which terms are most imperative and what things to look out for. Knowing this will help you to maintain a strategic distance from issues with the exchange not far off and guarantee that your advantages are by and large very much secured. [4]

A business contract is an agreement that lays out the terms of an exchange of products or administrations. It distinguishes:

- The Buyer
- The merchant
- The goods
- Other essential terms.

Most importantly, give careful consideration to the accompanying components:

1. **Portrayal of the Goods** [5]

The portrayal of the products is typically the most critical term in a business contract. This is on account of there is a considerable measure of space for mistake with the portrayal. Make certain that it distinguishes the correct goods the Buyerneeds to buy and incorporates all the applicable subtle elements, for example,

- Type
- Model number
- Weight
- Color
- Size

[3] Available at https://www.inc.com/encyclopedia/sales-contracts.html
[4] Available at https://www.legalnature.com/article-center/sales-contract/the-5-essential-elements-of-a-sales-contract
[5] Available at https://iccwbo.org/resources-for-business/model-contracts-clauses/sale-of-goods/

This will guarantee that the vender conveys the right goods. Issues with alternate terms of the understanding tend to determine themselves insofar as the Buyergets what they expected.

2. Conveyance Instructions

Conveying late or to the wrong area is another simple method to influence an exchange to go into disrepair. Thusly, ensure the agreement is clear about the time and date of conveyance, the conveyance area, and which party is in charge of the danger of loss of the goods while they are in travel.

3. Assessment Period

Numerous business contracts forget the assessment time frame. This period gives the Buyer time to review the goods after conveyance and reject any nonconforming products. The investigation time frame differs relying upon the kind of goods included.

4. Guarantees from the Seller

Purchasers regularly ignore the guarantees being made by the dealer. There is no such thing as "standard guarantees." Warranties fluctuate crosswise over enterprises and from organization to organization, so make sure to nearly audit the dealer's guarantees. Are the goods being sold "as-seems to be"? Is the vender disavowing the guarantees of merchantability or wellness for a specific reason? Provided that this is true, this may fix any verbal guarantees about the goods made by the dealer.

5. Installment Details

The aggregate cost of the goods is critical, yet bears in mind about the other installment points of interest. Will the goods be paid for in portions or in one singular amount? Does the merchant require a particular strategy for installment? In the event that the Buyerwon't pay immediately, it is basic for the gatherings to likewise execute a promissory note to explain the reimbursement

terms. In addition to other things, this enables the dealer to charge intrigue and diagram a reimbursement plan.

THE FOB AND CIF CONTRACTS[6]

The FOB (Free On Board) and CIF [7](Cost, Insurance and Freight)[8] contracts are included with worldwide fare deal contracts additionally called 'trade exchanges', in spite of the fact that the FOB contract is inexactly utilized as a part of neighborhood business exchanges. These terms have been set up to look after consistency, assurance and consistency in worldwide exchange understandings. These terms are not entirely authoritative as a standard on the gatherings to the fare contract as they can be altered by assertion or need as the gatherings have the opportunity to contract. These agreements are a piece of the standard exchange terms created by the International Chamber of Commerce (ICC) called Inco terms 2010 and have been always changed to fit in with business routine with regards to the time since they were first settled in 1936. These exchange terms are imperative to global fare deal contracts as they set out the obligations and commitments of the contracting parties including value, technique for conveyance and some other accidental charges identifying with the exchange.

Seller's Obligations :

1) Supply conforming goods in accordance with the contract.
2) Deliver the goods by placing them on board nominated ship and port of shipping.
3) Pay any costs up to delivery, i.e. when goods have safely crossed the ship's rail.
4) Obtain export license and bill of lading
5) Produce a commercial invoice
6) Tender documents to the buyer

[6] International Chamber of Commerce
[7] Available at http://www.iccwbo.org/incoterms_faq/#3
[8] TD BAILEY SON& COV ROSS T SMYTH&CO(1940) 56 T.L.R

Buyer's Obligations:

1) Inform the dealer of assigned vessel and port of shipment.
2) Get the goods.
3) Pay for the goods and coincidental charges.
4) The FOB Contract is beneficial to the Buyer in that he controls the development of the goods from the dealer in to the extent controlling the season of shipment and would arrange lessened protection and cargo accuses when they contract of organizations that they much of the time work with.

CIF Contracts :

This kind of agreement looks like the FOB "with extra administrations" and is the most exhaustive and generally utilized global fare exchange contracts and typifies three distinct contracts. [9]

- Contract or offer amongst seller and buyer.
- Contract of carriage (dealer/bearer and purchaser/transporter).
- Contract of marine protection.

Donaldson J. observed in one case [10]
"The contract called for Chinese rabbits, c.i.f. their obligation was, therefore to tender documents, not to ship the rabbits themselves. If there was any Chinese rabbits afloat, they could have bought them"

From the business point of view "it is not a contract that goods shall arrive, but a contract to ship goods complying with the contracts of sale to obtain, unless the contract otherwise provide the ordinary contract of carriage to the place of destination, and the ordinary contract of

[9] TS ELLIOT EXPLANATION (IN NOTES ON THE WASTE LAND ,1.210) THAT C.I.F DENOTES "CARRIAGE AND INSURANCE FREE "IS A USE OF POETIC LICENCE
[10] PJ VAN DER ZIJDEN WILDHANDEL NV V TUCKER & CROSS LTD [1975] 2 LYOLD'S REP. 240 AT 242.

insurance of the goods on that voyage, and to tender these documents against payments of the contract price.[11]

The fact that the delivery of the shipping documents is "in business sense, the equivalent of the goods.[12]

They may be able to group several consignments to the same consignees in order to make the best use of it.[13]

The seller's obligations to incorporate the accompanying.[14]
-Ship the goods as depicted in the agreement and inside concurred dispatching period [15]and marine protection.
-Acquire a bill of replenishing proving the agreement of carriage via ocean.
-Secure an agreement of carriage.
-Create a business receipt.

Delicate the archives to the Buyer to impact installment.

In a CIF get, the cost paid by the Buyer would ordinarily be comprehensive of all expenses up to the concurred port of goal and soon thereafter the Buyer has an obligation to get the products. This sort of agreement as can be seen from above liberates the Buyer shape the dealer's nearby fare traditions. Additionally, this facilitates the work load on the Buyer of orchestrating protection and cargo as he may think that it's troublesome in a remote nation.
This kind of agreement is invaluable to the vender as he is more familiar with the nearby fare traditions and would arrange decreased rates on protection and cargo as a normal exporter and thus lessening the expenses for the bringing in party.

- Buyer's obligations

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[11] Per scrutton, in Arnold karberg &co v blythe, green jourdian & co [1915] 2k.B .379 at 388.
The phraseology , but not the substance , of scrutton j's observation has been subjected to certain criticism in the courts of appeal [1916] 1k.B 495
[12] Per lord wright in TD Bailey , son&co v Ross T smyth & co ln [1940] 56 T.I.R 825 at 829
[13] On groupage bills of lading and container shipment ,
[14] These problems form the subject matter of Sassoon and merren, C.I.F and F.O.B contracts (4th edn) ch1. Generally for an analysis of the relationships implicit in a C.I.F
[15] Or to produce and tender to the buyer goods afloat which have been so shipped.

- To acknowledge the reports.
- Get the products at concurred port of goal.
- Bear all costs accidental to the fare.

The Buyer needs to acknowledge the archives despite the fact that the products have not landed at the port of goal and without knowing with regards to the state of the goods adrift as the Buyers ensured against harm or misfortune while in travel.

The CIF is profitable to the Buyers the archives could be utilized as security to acquire bank credit or could offer the goods while on high oceans in the event that they are for exchange purposes.

To pay the cost, charges and custom duties incurred in obtaining the certificate of origin and consular documents.[16]

CONTRACT OF CARRIAGE

-An agreement of carriage is an agreement between a transporter of products or travelers and the sender, proctor or traveler. Contracts of carriage normally characterize the rights, obligations and liabilities of gatherings to the agreement, tending to points, for example, demonstrations of God and including statements.

1) Carriage of goods

   Carriage of goods, in law, the transportation of products via land, ocean, or air. The applicable law oversees the rights, obligations, liabilities, and invulnerabilities of the transporter and of the people utilizing the administrations of the bearer.

2) Bill of lading

   - Bill of lading assumes a key part in global trade where ocean carriage is visualized
   - Its birthplace can be followed back to fourteenth Century

[16] Note- It will often be the intention of the parties that cost and charges have to be borne by the seller, as they are pre-shipment charges.

- It started as an archive given by the Master of the ship to the shipper demonstrating
- Nature of the freight
- None of the statutes characterize bill of replenishing
- The bill of lading , which the seller has to procure , must be a clean bill , that is a bill which must not contain a qualification of , or reservation to, the statement that the goods are shipped in apparent good order and condition .[17]
- Performs various capacities
  - Receipt
  - Evidence of the agreement of carriage
  - Contract of carriage
  - Document of title
  - In the wake of accepting the products into his charge, the transporter or the ace or operator of the bearer, might on request of the shipper, issue to the shipper a bill of replenishing appearing in addition to other things –
    - The main imprints fundamental for ID of the goods as the same are outfitted in composing by the shipper before the stacking of such products begins, gave such checks are stamped or generally demonstrated plainly upon the products if revealed, or on the cases or covers in which such goods are contained, in such a way as ought to customarily stay intelligible until the finish of the voyage.
    - Either the quantity of bundle or pieces, or the amount or weight, by and large, as outfitted in composing by the shipper;
    - The obvious request and state of the products:

Given that no bearer, ace or operator of the transporter, should will undoubtedly state or show in the bill of lading any imprints, number, amount, or weight which he has sensible ground for suspecting not precisely to speak to the goods really got, or which he has no sensible methods for checking. [18]

[17] On clean bills , Golodetz &co inc v czarnikow rionda co inc, The Galatia {1980} 1 Lloyd's rep. 453 where a bill "claused " to the effect that cargo had been damaged after loading was nonetheless "clean" but see Art.27 UCPDC .
[18] *Indian Carriage of Goods by Sea Act, 1925*

- As a receipt

1) Considered as an at first sight proof of the goods got
2) The bearer can demonstrate despite what might be expected
3) However, once exchanged to an outsider acting in compliance with common decency, verification despite what might be expected can't be submitted
4) This is to secure guiltless outsiders
5) As to the imprints, a qualification is made between marks which allude to the idea of the goods, and denotes that don't have any significance with regards to the idea of the products [19]
6) Clean bill of lading against an agreement of repayment. [20]

- Evidence of Contract of Carriage

1) Civil arguments about whether it is the agreement or a confirmation of the agreement of carriage
2) In the hands of the shipper, it is just a proof of the agreement that has been finished up before [21]

- As an agreement of carriage

Upon support to an outsider, in the hands of the outsider it is the agreement of carriage Anything that occurred between the shipper and the shipowner not encapsulated in the bill of replenishing couldn't influence the underwrite .

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[19] *Parsons* v *New Zealand Shipping Co* (1901)
Frozen lambs bearing a mark of 622X – However, on delivery it was found that some of them bore the mark 522X – Refused delivery – Marks had nothing to do with the nature and quality of the goods – rule relating to prima facie evidence not applicable in these cases

[20] *Brown, Jenkinson and Co Ltd* v *Percy Dalton (London) Ltd* (1957)
Issued a clean bill of lading, despite knowing that the goods were not in good condition
Not enforceable

[21] *The Ardennes* (1951)
As per the agreement the ship was to directly sail to London, However, arrived only after diversion – Only an evidence of the contract of carriage

- As a record of title

1) Possession of the bill of replenishing is regarded to be helpful ownership of the goods. Exchange of the bill of replenishing by the dealer to the buyer is regarded to be an emblematic conveyance of the products to the purchaser, and the purchaser, on the ship's landing, could request conveyance of the goods.
2) Every proctor of goods named in a bill of lading, and each underwrite of a bill of replenishing to whom the property in the products in that said should go, upon or by reason of such committal or support might have exchanged to and vested in him all privileges of suit, and be liable to an indistinguishable liabilities in regard of such products from if the agreement contained in the bill of lading had been made with himself.
3) The holder of a supported bill of lading does not acquire a bill of replenishing free of deformities [22]
4) A holder who supports a bill of replenishing can't give a superior title than the one he has

- A bill of lading isn't, care for a bill of trade or a promissory note, a debatable instrument which goes by unimportant conveyance to a bonafide transferee for important thought, without respect to the title of the gatherings who make the exchange. In spite of the fact that the shipper may have embraced in clear a bill of lading deliverable to his doles out, his rights are not influenced by an appointment of it without his power. On the off chance that it be stolen from him, or exchanged without his power, a resulting bona fide transferee for esteem can't make title under it against the shipper of the goods. The bill of replenishing just speaks to the products, and, in this case, the exchange of the image does not work more than an exchange of what is spoken to.[23]

- Common Law obligations of the shipper and carrier.
  - Implied commitments with respect to the ship-owner
  - give a stable ship.

[22] S. 1, Bill of Lading Act, 1856

[23] Lord Campbell *Gurney* v *Behrend* (1854)

- Continue with due dispatch.
- convey the payload to the concurred goal without deviation and
- use due care and expertise in exploring the vessel and in conveying the good

- Seaworthiness

- Physical condition of the ship and its wellness for getting freight
- The previous alludes to the capacity of the ship to embrace the specific voyage
- The last alludes to the payload value – whether ready to transport the specific load; e.g., meat - refrigeration

- Due dispatch

- Common law suggests that the voyage must be indicted with due dispatch, that is, the vessel will continue on the voyage, load and release at the time concurred.
- In the nonappearance of express assertion or understanding by suggestion, the law infers the execution of the voyage inside a sensible time.
- The cure accessible relies upon the results of the break.

- Deviation

Under customary law, the ship-owner is under an inferred commitment to convey the payload to the concurred goal straightforwardly with no deviation.
The ship-owner is attempted to take the direct land and safe course to the port of release

- Exceptions

- for sparing human lives.
- the indictment of the voyage or for the security of the experience.

- Negligence

- There is a suggested commitment that the ship owner will 'use due care and aptitude in exploring the vessel and conveying the merchandise.
- Also there is an obligation to take sensible care of the products endowed to him, not only in doing what is important to safeguard them on board the ship amid the conventional episodes of the voyage, yet in addition in taking sensible measures to check and capture their misfortune, pulverization or disintegration, by reason of mischances.

-Implied obligations on the part of the shipper.

- Notification with respect to the hazardous idea of good

- The risk of any load is resolved in the light of the general idea of the circumstance
- Goods are viewed as hazardous not just where they imperil the wellbeing of the ship and the freight yet additionally where they confine the vessel.[24]

-Common law exceptions

- Act of God
- Act of Queen's enemies
- Inherent vice
- The carrier is not liable for loss or damage to goods where it is caused by defects that are inherent in the goods.

-International convention on the unification of certain rules relating to bill of lading

HAGUE RULES (VISBY RULES)[25]

- The customary law commitments of the ship owner could be avoided by embedding's statements in the bill of replenishing

[24] *Mitchell, Cotts* v *Steel Bros and Co Ltd,* (1916)
Cargo of rice was held to be dangerous, as permission from the British government was necessary to unload.

[25] Available at https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0430.pdf

- As the ship owners had a high ground, the agreements of carriage has been uneven
- The English courts were maintaining such uneven contracts based on the free enterprise hypothesis
- The US Harter Act, 1893 restricted the ship owners opportunity of agreement and ensure the enthusiasm of transporters
- It was felt that a worldwide tradition was required to change the irregularity caused by the free enterprise logic.
- The International Convention for the Unification of Certain Rules Relating to Bills of Replenishing, Brussels, 1924[26] (hereinafter 'Hague Rules') was drafted in the vicinity of 1921 and 1923 and marked by significant exchanging countries in August 1924.
- Later, because of the unmistakable shortcomings of the Hague Rules, they were supplanted by the Hague-Visby Rules 1968.[27]
- Responsibility of the carrier
- Duty to give a safe ship:

The transporter might be bound earlier and toward the start of the voyage to practice due constancy to:

- make the ship fit for sailing;
- legitimately man, prepare and supply the ship; and
- make the holds, refrigerating and cool chambers, and every other piece of the ship in which the good are conveyed fit and alright for their gathering, carriage and safeguarding

Craftsmanship. III (1)

- Cargo administration:

Appropriately and painstakingly stack, handle, stow, convey, keep, look after and release the good conveyed.

[26] Convention and protocol of signature concluded at Brussels August 25, 1924, with declarations and reservations; signed for the United States June 23, 1925
[27] Available at http://shiparrest.co.in/conventions/hague.htm

Workmanship. III (2)

- Documentary Responsibilities:

On request of the shipper to issue a bill of lading expressing the main imprints important for the recognizable proof of the products, amount, and the state of the good

Workmanship. III (3)

- Duty to seek after the agreement voyage:
- Deviation to save life, property or any sensible deviation is allowed [Art. IV (4)] [28]
- Stag Line v Foscola, Mango and Co (1932)
- deviation to maintain a strategic distance from some inescapable danger; or
- deviation in the joint enthusiasm of payload proprietor or deliver; or
- deviation as would be considered by both payload proprietor and ship
- Not bound to these. The important test is that of a reasonable individual controlling the voyage.
- Carrier’s Immunities

A broad rundown of special cases have been given

Security: His commitment is just to practice due industriousness

Workmanship. IV (1)

- The transporter isn't at risk for misfortune or harm to the products because of the demonstration, disregard or default of the ace, sailor, pilot or the hirelings of the bearer in the route or administration of the ship

[28] Available at http://shiparrest.co.in/conventions/hague.htm

Workmanship. IV (2) (a)

- Fire unless caused by the genuine blame or privity of the bearer
- Perils, threats and mischance's of the ocean or other traversable waters
- Act of God
- Act of war
- Act of open adversaries
- The capture or restriction of rulers or rulers or individuals or seizure under lawful process
- Quarantine confinements
- Act or oversight of the shipper or proprietor of the products, his specialist or agent Strikes or bolt outs or restriction of work from whatever reason, regardless of whether incomplete or general.
- Saving or endeavoring to spare life or property adrift
- Defective bundling
- Wastage and intrinsic bad habit
- Latent imperfections not discoverable by due perseverance
- Neither the bearer nor the ship is at risk for misfortune or harm that emerges or results from some other reason emerging without the real blame or privity of the transporter, or without the blame or disregard of the operators or workers of the transporter.

-Limitation of Liability

Workmanship. IV (5) (an): Amount of risk

The transporter and the ship lose the benefit of the constraint arrangements where it is demonstrated that the harm came about because of a demonstration or oversight of the bearer finished with aim to cause harm or heedlessly and with information that harm would most likely outcome. Workmanship IV (5) (e).

- Time Limitation: The transporter and the ship might in any occasion be released from all obligation in regard of the products unless suit is brought inside one year of their conveyance or of the date on which they would have been conveyed Workmanship. III (6)

- Charter Parties

1) Depending on the terms of the business contract either the buyeror the merchant has the duty to mastermind the vehicle of the merchandise.
2) Charter party contracts are depended on when the amount to be delivered is immense.
3) The contract between the charterer and the ship owner is known as charter party
4) There are distinctive varieties of charter party contracts
5) Depending on the terms of the charterparty the commitments additionally change. Contingent upon the time, the nature of control over the ship and its team different writes

A) Voyage Charter party –

- The ship owner consents to contract the vessel for at least one voyages [29]
- Vessel under the control of the ship owner
- Ship owner is in charge of preparing and keeping an eye on the vessel
- On the off chance that the operations surpass the allowed time, the shipowner is qualified for demurrage.
- The charter party commitments are consolidated in the bill of lading
- Cessar statement: the charterer is soothed from any commitments after the payload has been stacked
- Usually contain exceptional solutions for the ship owner if there should be an occurrence of non-installment of cargo or demurrage

"The ship owners undertaking to tender a seaworthy ship has, a result for numerous decisions as to what can amount to unseaworthiness, become one of the most complex of contractual undertakings."[30]

- Lien on load

[29] Shipping Co Ltd v. Kawasaki Kisen Kaisha Ltd that it is difficult to distinguish whether such statements are conditions or mere warranty. In this case a charter party provided that the ship was "in every way fitted for ordinary cargo services
[30] Diplock LJ in Bentsen v. Taylor sons & Co said that stipulation as to the sea worthiness of a ship is of complex nature

- An appropriate to confine the freight pending installment
- The lien on sub freights

B) Time Charter party

- Charterer enlists the vessel for a predetermined era
- The ship-owner holds control over the ship and representatives on board the ship
- the charterer is in charge of its sending, the quantity of voyages it embraces, and the goal of the voyages
- The accentuation of agreement is on work of vessel, speed of vessel, upkeep of vessel, employ period, return of vessel, installment of contract, and so on

C) Demise Charter party[31]

- The ship owner passes ownership and control of ship to the charterer
- Bareboat charter party
- The ship owner is never again in charge of preparing the ship or utilizing the team as in a voyage or time charter party
- For the span of the contract, these are the obligations of the charterer.
- The distinction between destruction sanction and different contracts.

MARITIME INSURANCE

-"A Contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure". [32]

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[31] *Land Securities* v *Dickinson and Co*, (1942)
the distinction between the demise and other forms of charter contract is as clear as the difference between the agreement a man makes when he hires a boat in which to row himself and the contract he makes with a boatman to take him for a row

[32] Section 3 of Marine Insurance Act, 1963:

Justice Blackburn defined a "Policy of marine insurance as a contract of indemnity against all losses occurring to the subject matter of the policy from certain perils during the adventure."[33]

MARINE ADVENTURE[34]

- Any insurable property exposed to maritime perils;
- The earnings or acquisition of any freight, passage, money, commission, profit or other pecuniary benefit, or the security for any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils;
- Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

TYPES OF MARINE INSURANCE

- CARGO INSURANCE
- HULL INSURANCE

For this situation the Respondent has taken a marine protection strategy for frame protection yet he didn't unveil the reality while taking the marine protection arrangement that he was engaged with in a ship-breaking and scrap managing business. Later on the vessel got totally harmed in transit because of harsh climate conditions and as needs be respondent guaranteed for the whole harms.

In Priya Blue Industries Pvt. Ltd

The Supreme Court held that insurance agency was not at risk to pay full pay as there was a

[33] Lloyd Vs Fleming (1872)LR 7 QB299

[34] Section 2 (d) of The Marine Insurance Act, 1963

Concealment of material reality by the respondent at the season of entering to the protection contract.[35]

ESSENTIALS OF MARINE INSURANCE[36]

- Insurable Interest: This means that the party to the insurance contract who is the insured or policy holder must have a particular relationship with the subject matter of the insurance, weather that is a life or property or a liability to which he might be exposed. The absence of the required relationship will render the contract illegal, void or unenforceable depending upon the type of insurance.[37]
- Utmost Good Faith
- Indemnity
- Subrogation
- Contribution
- Causa Proxima

CONTENTS OF MARINE INSURANCE POLICY

- The name of the guaranteed, or some other individual who impacts the protection for his benefit.
- The topic guaranteed and chance safeguarded against.
- The voyage, the timeframe, or both as the case might be secured by the protection.
- The entirety or wholes protected.
- The name or names of the backup plan or guarantors.
- The strategy ought to be marked by the safety net provider. Where the strategy is issued for more than one safety net provider, each is bound by a different contract with the guaranteed.

[35] New India Assurance Com. Ltd Vs Priya Blue Industries Pvt. Ltd (AIR 2011 SC 278)

[36] Elements of General Contract: Section 10 of Indian Contract Act, 1872

[37] Reinhart Co v Joshua Hoyle &sons ltd [1961]

TYPES OF MARINE INSURANCE POLICIES

1. On The Basis of Time
a) Time Policy
b) Voyage Policy
c) Mixed Policy

2. On the Basis of Value
a) Valued Policy
b) Unvalued Policy

3. On the Basis of Subject Matter
a) Cargo Insurance
b) Named Policy
c) Open or Floating policy
d) All Risky Policy

PREMIUM CALCULATION

Factors in Determining Marine Insurance Premium:

1. Natural forces & Topography
2. Construction Type, Quality Nationality of the Ship
3. Policy Conditions
4. Duration of Voyage
5. Character of Cargo
6. Miscellaneous Factors

Procedure for Claim:

1) Notice of Claim
2) Insurance Policy
3) Invoice or Bill

4) Bill of Lading
5) Survey Report
6) Protest
7) Letter of Subrogation
8) Notice of Abandonment
9) Payment of Loss

CONCLUSION

Maritime law also referred as admiralty law is the fundamental branch of law that regulates trade and navigation. Maritime trade has played a major role in international trade from the ancient times and in the era of quickly developing globalized economy the need for transportation, greater volumes of load in the less time conceivable is expanding step by step, this has prompted the development of the alleged super vessels, with the ability to carry huge amounts of goods into thousands of shipping containers at once. This dynamic provides advantages of economy of scale and remote exchange, import, and fare of a wide range of stock and crude materials.

"Most of world trade is done via the international shipping industry and some contribution by the aviation industry. The import and export of goods on the scale necessary to sustain the modern world would not be possible without the shipping industries.
The industry offers benefits like economical, eco-friendly and safe transportation for import and export industry and also it is the most ideal way to move large volumes of goods in comparison with the capacity of airplanes or trucks.
Hence maritime trade plays an important role in international trade and should be developed as other branches of law as no state has all resources available.