International Trade, Bills of Lading, Charterparties and Arbitration

Obligations of Carrier at Common Law

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Obligations of Carrier at Common Law

**Bases of Obligations**

- Common Law (Implied Terms)
- Statutory (Hague Rules / Hague-Visby Rules)
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Implied Terms

Implied Terms at Common Law

• To provide a seaworthy (and cargoworthy) ship
• Not to deviate without reasonable justification
• Not to carry on deck, unless otherwise expressly agreed (quasi-deviation)
• To take reasonable care of the cargo
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**Implied Terms**

Seaworthiness v Cargoworthiness

- ‘**Seaworthiness**’ refers to the fitness of the ship to perform and complete the contracted voyage.

- ‘**Cargoworthiness**’ refers to the fitness of the ship to safely receive, carry and discharge the particular cargo contracted to be carried.
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Implied Terms

Doctrine of Stages

• The ship must be **seaworthy** at the time the ship **starts sailing**
  • Including sailings from an intermediate port

• The ship must be **cargoworthy** when the cargo is **loaded**
Seaworthiness

• Definition of seaworthiness
  • Include: Legal fitness and crew-competency
  • [F]it to meet and undergo the perils of sea and other incidental risks to which of necessity she must be exposed in the course of a voyage (*Kopitoff v Wilson* 1876)

• Standard of seaworthiness
  • [T]hat degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it (*McFadden & Co v Blue Star Line* 1905)
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**Implied Terms**

Seaworthiness

- **Absoluteness of the duty of seaworthiness**
  - *Steel v State Line Steamship Co* (1877)

- **Burden of Proof**
  - Burden on Claimant,
  - But inferences are common (*The Torenia* (1983))
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Implied Terms

Seaworthiness

• Causation
  • Sufficient if unseaworthiness is ‘a’ cause
    *(Smith, Hogg v Black Sea and Baltic General Insurance (1940))*

• Type
  • Innominate
    *(Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962))*
Deviation

• Duty not to Deviate without Reasonable Justification

  • Proceed without unnecessary deviation in the usual and customary course
    *Davis v Garrett* (1830)

  • Liberty clauses in bill of lading, giving wide liberty to deviate, are construed narrowly
    *Leduc v Ward* (1888)
    “liberty to call at any ports in any order” meant “the ports ... which will be passed on the named voyage”

  • Two justifications:
    (1) to save life at sea
    (2) to avoid imminent peril
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*Implied Terms*

Quasi-Deviation

- Not to carry on deck, unless otherwise expressly agreed

- *Royal Exchange Shipping Co Ltd v Dixon* (1886)
  - Benefit of exception clause lost
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**Implied Terms**

Duty to take reasonable care of cargo

- *Notara v Henderson* (1872)
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Exclusion of Implied Terms

• Implied terms may be excluded
• but only by specific exclusion clause
• not by general exclusion clause

• *The Maori King* (1895)
  • “failure or breakdown of machinery, insulation and other appliances”
  • Refrigeration system of the ship carrying a cargo of frozen mutton did not work properly at the start of the voyage
  • Held clause not protect shipowner
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Exclusion of Implied Terms

• **The Torenia (1938)**
  - “perils of the sea” excepted
  - Ship sank
  - Held clause not protect shipowner, as most likely cause was defect in ship structure

• **The Emmanuel C (1983)**
  - ‘errors of navigation’ exception
  - “negligent” errors of navigation
  - Held clause not protect shipowner

• **FC Bradley & Sons Ltd v Federal Steam Navigation Co Ltd (1927)**
  - Shipowner to prove it was not “negligent” before it can rely on any general exception clause
International Trade and Letter of Credit: Web Reference

arunkasico.com -> Maritime Law Knowledge Centre -> Conventions ...

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Legal Framework & Shipping Documents: Further Reading


**PART I: INTRODUCTION AND INTERNATIONAL TRADE**
1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

**PART II: BILLS OF LADING**
4. Obligations of Carrier at Common Law: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
11. Shippers' Obligation for Dangerous Cargo

**PART III: CHARTERPARTIES**
12. Charterparty: Introduction
13. Voyage Charter: Freight and Lien
14. Voyage Charter: Laytime and Demurrage
15. Time Charter: Orders and Indemnity
16. Time Charter: Withdrawal, Off-Hire and Redelivery
17. Time Charter: Apportionment of Cargo-Claims Liability
Legal Framework & Shipping Documents: Further Reading

Availability

**Malaysia**
- Kinokuniya

**UK**
- Wildy
- Foyles
- Waterstone
- Blackwells
- John Smith’s
- Browns Books

**USA**
- Barnes & Noble
- Books A Million
- Walmart
- The Last Bookstore
- Schuler Books
- Bookseller
- Joseph Beth
- Bluemanatee
- Literaturbookstore
- Powells
- Bookshop.org
- Kinokuniya

**Australia**
- Dymocks
- Booktopia
- Kinokuniya

**Germany**
- Hugendubel
- Weltbild
- Thalia
- Langer Blomqvist
- Buchkatalog
- Umbreit
- Stephanus Buchhandlung

**France**
- Galignani

**Brussels**
- Standard Boekhandel
- Club

**Sweden**
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- Aladin

**India**
- Books Wagon