MAHARASHTRA NATIONAL LAW UNIVERSITY NAGPUR

Online lectures on

The Law of Shipping Contracts

International Law on Shipping Contracts

M.A. (Maritime Laws)

By

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TWO SESSIONS ON:

01-10-2022 (SAT) & 02-10-2022 (SUN)

Contents

Introduction

- What is Shipping Industry?
- How Shipping? Industry is important?
- Domestic Contracts and International Contracts
- Regulatory Framework – Domestic and International

Indian Contract Act 1872 (In Brief)

WHEN A CONTRACT IS VALID

(Section 10 Indian Contract Act, 1872)

1. Proposal and Acceptance
2. Legal Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Lawful Object
7. Certainty of Terms
8. Possibility of Performance
9. Not Expressly Void Agreements
10. Legal Formalities

International Contract

- UNIDROIT Principles 2016
- Preamble
- General Provisions
- Formation and Authority of Agents
- Validity
- Interpretation
- Content, Third Party Rights
- Performance
- Non-performance (Termination, Damages)
- Assignment
- Limitation Periods etc.

ANATOMY OF AN INTERNATIONAL CONTRACT

1. Preamble
2. Interpretation and Definitions
3. Scope and Technical Specifications
4. Price
5. Terms of Payment
6. Price Variation
7. Bank Guarantees
8. Letters of Credit
9. Taxes and Duties
10. Scheduled Delivery Date
11. Force Majeure
12. Defaults, Liquidated Damages and Penalties

Contd…

13. Export Licence
14. Inspection and Acceptance
15. Shipment
16. Passing of Title and Risk
17. Warranty
18. Patents and Copyrights
19. Indemnities
20. Spares and Spares Policy
21. Options
22. Resolution of Disputes
23. Termination

24. Assignment
25. Amendments
26. Confidentiality
27. Notices
28. Governing Laws
29. Survival
30. Effective Date

Regulatory Framework of Shipping Law in India

- The Merchant Shipping Act, 1958
- The Inland Vessels Act, 1917
- The Coasting Vessels Act, 1838
- The Multi-modal Transportation of Goods Act, 1993
- The Indian Ports Act, 1908
- The Dock Workers (Regulation of Employment) Act, 1948
- The Major Ports Trust Act, 1963
- The Seamen's Provident Fund Act, 1966
- The Inland Waterways Authority of India Act, 1985
- Apart from these agreements, shipping industry is also regulated by the rules and regulations framed by International Maritime Organization (IMO).

Regulatory Framework of Shipping Law at International

- Major international shipping conventions, adopted by the International Maritime Organization (and the International Labour Organization) concerning safety and pollution prevention.

- However, many other maritime instruments concerning more specific issues are also in force worldwide.

FOUR PILLARS OF INTERNATIONAL MARITIME ORGANIZATION

1. International Convention for the **Safety** of Life at Sea (SOLAS),
2. International Convention on Standards of Training, Certification and Watch keeping for **Seafarers** (STCW),
3. International Convention for the Prevention of **Pollution** from Ships (MARPOL) and
4. Maritime **Labour** Convention (MLC)

DEALING WITH THE SHIP

- SOLAS (International Convention for the Safety of Life at Sea, 1974)
- MARPOL (International Convention for the Prevention of Pollution from Ships, 1973/1978) contains requirements to prevent pollution that may be caused both accidentally and in the course of routine operations.
- COLREG (Convention on the International Regulations for Preventing Collisions at Sea, 1972)
- LOADLINE (International Convention on Load lines, 1966)
- ISPS (The International Ship and Port Facility Security Code, 2002)

DEALING WITH THE SHIPPING COMPANY

- ISM (The International Safety Management Code, 1993) effectively requires shipping companies to have a licence to operate.

DEALING WITH THE SEAFARER

- STCW (International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978/1995/2010) establishes uniform standards of competence for seafarers.
- ILO 147 (The ILO Merchant Shipping (Minimum Standards) Convention, 1976) requires national administrations to have effective legislation on labour issues such as hours of work, medical fitness and seafarers' working conditions. **This was superseded by the ILO Maritime Labour Convention, 2006** which entered into force on 30 August 2013.

Types of Ships

Largest Cargo Ship in the World

- ROTTERDAM, Netherlands--The **Ever Ace container ship**, an Evergreen A-class, owned by the Taiwanese shipping company Evergreen Marine, is a 400m-long (1,300ft) ship with a capacity for 23,992 standard containers, the new world record for the ***Largest container ship***, according to the **WORLD RECORD ACADEMY**.

Sailing Ship

Sea-going Ship

Cargo Liner

A vessel which operated a regular scheduled service on a fixed route between designated ports and carries many consignments of different commodities. Cargo liners transported general freight, from raw materials to manufactures to merchandise. Many had cargo holds adapted to particular services, with refrigerator space for frozen meats or chilled fruit, tanks for liquid cargos such as plant oils, and lockers for valuables. Cargo liners typically carried passengers as well, usually in a single class.

Cargo Ship

A **cargo ship** or a **freighter ship** is any sort of ship or vessel that carries cargo, goods, and materials from one port to another. Thousands of cargo carriers ply the world's seas and oceans each year, handling the bulk of international trade Cargo ships are usually specially designed for the task, often being equipped with cranes and other mechanisms to load and unload, and come in all sizes.

General Cargo Vessel

General cargo vessels carry packaged items like chemicals, foods, furniture, machinery, motor and military vehicles, footwear, garments, etc.

Tankers

Tankers carry petroleum products or other liquid cargo.

Dry Bulk Carriers

Dry bulk carriers carry coal, grain, ore and other similar products in loose form.

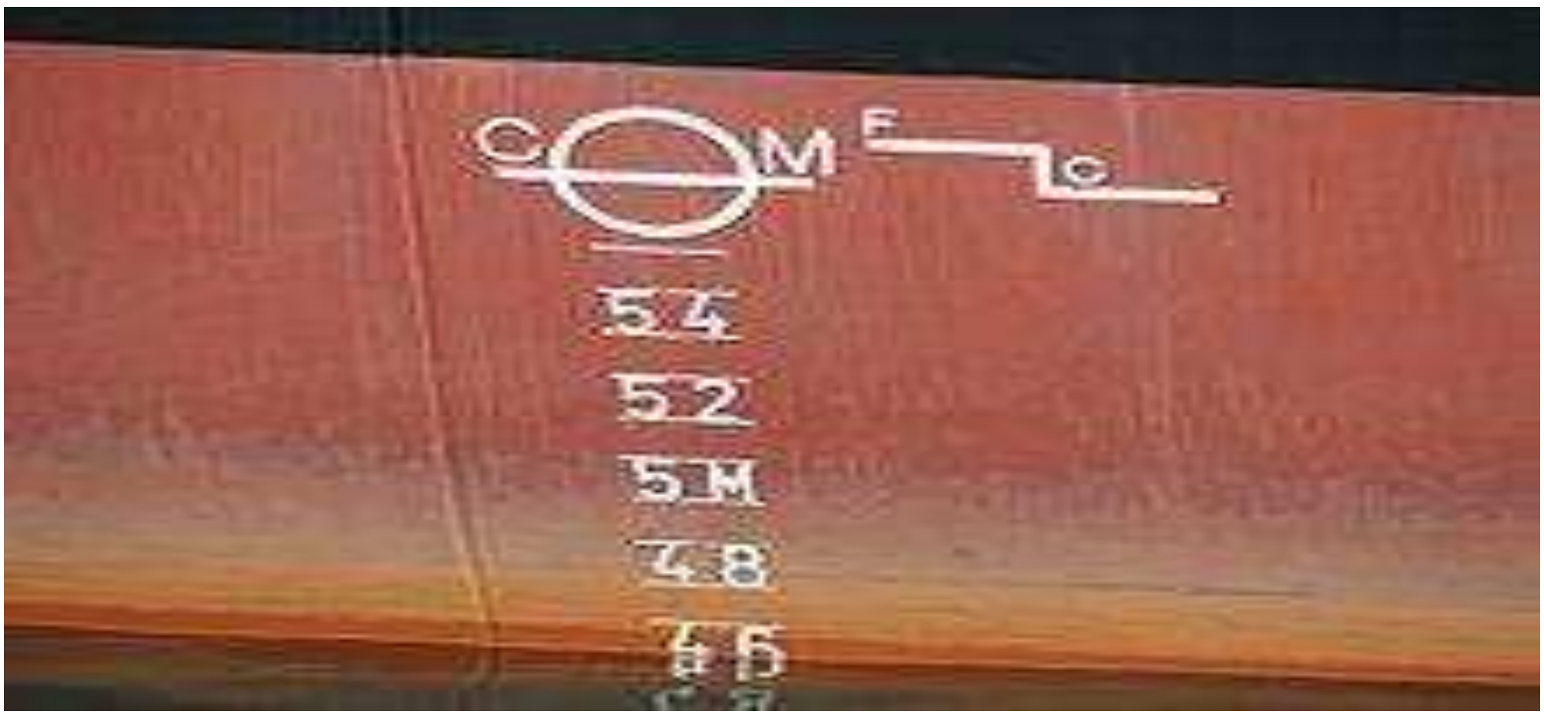
Multipurpose Vessels

Multi-purpose vessels, as the name suggests, carry different classes of cargo – e.g. liquid and general cargo – at the same time.

Reefer

A Reefer (or Refrigerated) ship is specifically designed and used for shipping perishable commodities which require temperature-controlled, mostly fruits, meat, fish, vegetables, dairy products and other food stuff.

Load-Line



Load-Line

Session - II

THE LAW OF SHIPPING CONTRACTS

BREACH OF CONTRACT

16:15 – 18:15 HRS

SUNDAY

02-10-2022

Types of Shipping Contracts

- Ship or Vessel Sale and Purchase Agreements
- Transportation Services Agreement or Logistic Service Agreement
- Ship Management Agreements
- Vessel Lease Agreement or Ship Charter Agreement
- Contract of Affreightment
- Marine Insurance Contract
- Seafarer’s Employment Contracts
- Collective Bargaining Agreement
- Freight Forwarding Agreement

1. Ship or Vessel Sale and Purchase Agreements

- A Memorandum of Agreement (MoA) is customarily the governing sales contract. Various standard Forms of MoA exist.
- **Stages**
- **First State:** Negotiations and Recap
- **Second Stage:** Memorandum of Agreement
- **Third Stage:** Closing
- **Fourth Stage**: Post-Closing

- Ships are not like any other movables because of their high economic value.
- Proceedings with regards to sale and purchase of a ship might be complicated as there are many factors to be considered by the parties.
- Parties to the contract are free to determine the content of the contract and to draft the clauses and terms.
- However, in international practice, standard form contracts are used for sale and purchase transactions of ships.

- The most common forms of standard contracts in the market are the Norwegian Sale Form, the Japan Shipping Exchange Form (Nippon Sale Form) and the Singapore Ship Sale Form. With regards to yacht sale and purchase, the most common standard form is the Mediterranean Yacht Brokers Association Memorandum of Agreement.

Stages

First Stage: Negotiations and Recap

- Prospective buyers usually approach a ship broker (S&P Broker) to find a ship for their needs. Similarly, a seller may appoint a broker for the transaction or may advertise the ship on the market and choose not to depend on an exclusive broker. Alternatively, parties may decide to handle the whole transaction by themselves.

- Ship brokers act as intermediary between the buyer and the seller. Once a suitable ship is found, buyer through the broker receives technical information about the vessel.

- If the particulars of the vessel meet the criteria of the buyer, an inspector appointed by the buyer usually makes an inspection to understand the general condition of the vessel.

- If the buyer is satisfied with the results, negotiations between the brokers start. At this stage, offers and counter offers are exchanged where the brokers usually focus on main issues such as price, required deposits, particulars of the ship, inspections etc.

- Both brokers have a duty of care to their principals and will be liable in case of a misrepresentation. Therefore, they should stay within the limits of their authority.

- In some cases, there may be only one broker for both the seller and the buyer. In such circumstances, the broker should avoid in engaging conflicts of interest. Brokers will have a right to a commission based on the sale price of the vessel.

- Once there is an agreement on the basic terms of the deal, a recap, drawn up by the brokers, will be exchanged via email between the parties for confirmation.

Second Stage: Memorandum of Agreement

- The recap includes the basic terms of the deal; however, details of the agreement should be worked out. Therefore, the next step is signing the Memorandum of Agreement (MoA).

- As mentioned above, there are three types of commonly used sales forms in the international market. Norwegian Sale Form (NSF), adopted by the Baltic and International Maritime Council (BIMCO) in 1956, is the most commonly used among these forms. NSF has been revised many times and the latest version came out in February 2012 to replace NSF 1993. Apart from the NSF, Nippon Sale Form or Singapore Sale Form, albeit relatively more common in the Asian market, are used by the parties.

- The terms of the sale will be based on the agreed MoA once it is signed. As the NSF is the most common form in ship sale and purchase practice, it is worth noting the following steps under the terms of NSF 2012.

- After signing of the MoA, a deposit of 10% or any other agreed percentage of the ship purchase price is deposited to an escrow account within three banking days after the agreed date. If the deposit is not lodged, the seller has a right to cancel the contract and is entitled to claim compensation for the losses and all expenses incurred together with interest pursuant to NSF 2012.

- NSF 2012 further gives the buyer the flexibility to inspect the vessel before or after signing the MoA. Inspection covers not just a physical inspection but also the inspection of the documents of the ship including ship's class records, insurance policies, certificates of compliance etc.

- Buyer or his surveyor will make a physical inspection on diverse components of the vessel such as the machinery, tools, equipment and the general shape of the vessel.

- Inspections are of vital importance as the buyer may choose to accept or reject the vessel depending on the results of these inspections. If the buyer is not pleased with the outcome of the inspections, the sale may fail. On the other hand, if the buyer decides to accept the vessel, a written notice must be issued to the sellers within seventy-two hours after completion of the inspections.
- Underwater inspections may be conducted by diving professionals. Alternatively, the vessel may be placed for dry dock for the inspection of its underwater parts.

Third Stage: Closing

- When the vessel is at the place of delivery which is determined under the relevant clause of the NSF 2012, a written notice of readiness for delivery is given by the seller to the buyer. Further, the parties designate the time and venue for the closing meeting.

- On the day of closing, the buyer, the seller, their legal representatives, brokers (if any), and the bank representatives (if the purchase is financed by a bank loan) attend the meeting. In the meeting, the relevant documents that are mentioned in the NSF 2012 are exchanged by the parties. The number of documents that must be delivered by the seller is much higher than those to be delivered by the buyer.

- The vessel is physically delivered to the buyer and the payment is made by the buyer either through an escrow agent or the buyer's bank directly at the same day.
- Unless the buyer prefers to continue with the existing crew, the new crew will board while the existing crew will leave the vessel. It is the seller's duty to arrange the repatriation of the seamen who left the vessel.

- The vessel must be delivered in the same condition as it was at the time of inspection. Not only remaining bunkers but also remaining oils and greases in storage tanks and other *provisions* in the store rooms (Remaining on Board or "ROB") are calculated and the amount is paid by the buyer in accordance with the NSF. A protocol of delivery and acceptance which confirms the date and time of the delivery is signed and exchanged between the buyer and the seller.

- **Bunker:** the shipping industry, the word bunker is used for fuel and lube oils, which are stored on a ship and used for machinery operation only. If a vessel is carrying marine fuel or lube oil to discharge it to another port, it will not be called "bunker.


PROCEDURE FOR BUNKERING
OPERATION ON A SHIP
Bunker Receiving Ship
Bunker Supply Ship
APL

- If the purchase price is not paid, the seller will have a right to cancel the MoA and the deposit will be released to the seller. On the other hand, if the seller cannot make the vessel physically ready for delivery, the buyer may choose to cancel the MoA and in such case the deposit must be released to the buyer.

- Seller is under the obligation of delivering the vessel free from all charters, encumbrances, mortgages and maritime liens or any other debts and further has to warrant that the vessel is not subject to Port States or other administrative detentions. Therefore, the seller bears full responsibility for claims made against the vessel that have been incurred prior to the time of delivery.

Fourth Stage: Post-Closing

- Once the ship is delivered to the buyer, the seller should cancel its insurance policy and inform the classification society about the change in ownership.
- Buyer, on the other hand, will arrange the registration of the ship under the existing flag or the new flag under its name. In case the buyer chooses to change the vessel's flag, a Certificate of Deletion and a Continuous Synopsis Record (CSR) are prepared by the previous flag state authority. Without these documents, it is not possible to register the vessel under the new flag.

- If the buyer has used a bank loan for the purchase, the bank’s mortgage will also be registered on the vessel. Furthermore, a new insurance policy will be issued on behalf of the buyer and the buyer will also notify the classification society about the date and time of the purchase.

2. Transportation Services Agreements or Logistic Services Agreement

- Transportation Services Agreements are entering between the goods provider and those who offer transportation for those goods. In these types of agreement, the goods provider will agree to pay some amount to the service provider and in return, the service provider will agree to deliver the goods to the vendors or distributors or customers.
- This agreement the parties shall agree on the delivery date and time, quality standards, obligations of each parties, rights of the parties, terminations and compensation in case of breach. The parties shall also discuss the insurance clause.

- What will happen if shipped goods get destroyed in the event of force majeure? What are the consequences for delay in delivery of goods because of the event which is uncontrollable? In case of breach of contract, what is the agreed compensation? Who will stand responsible for making good to the loss occurred to the other party?

3. Ship Management Agreements

- When the parties enter into a contract to supply the goods and commodities through maritime, they also think about managing the ship for such transactions.

- In earlier days, the ship owners used to look at several functions like financial management of vessel, employment of personnel, maintaining the vessel, technical supervision, operation etc. But now, the ship owners usually hire resources to manage the operations carried on ship while supplying goods.

- A ship may cost as much as cost of buying a factory. Thus, it is always better to employ professionals to manage the operations of the ship.

- Thus, ship owners nowadays delegated their functions in various areas to ship management companies, chartering companies etc.

- When ship manager enters into contract with a third party for purchase of goods or services and transport, become obligated as contracting party towards third party.

4. Vessel Lease Agreement or Ship Charter Agreement

- A lease agreement is between the ship owner and lessee or charterer. Under this agreement charter party put the vessel on rent, either in full or part, for stipulated period of time.

- The terms of this agreement are formed on the basis of ship owner, charterer and the market. The parties will also comply with the laws applicable to the transaction to keep the trading from any legal interference.

- There are two types of charter viz., time charter parties and voyage charter parties. In case of voyage charter, the parties can make their own terms of the contract and if possible, make changes in the standard terms to be align with the requirement of the parties and same should be accepted by them.

- In time charter, the vessel can be on lease for specified period of time and the time which have been agreed by both the parties. In this kind the charterer controls the ship's commercial activities. Thus, the terms of contract should explain about fuel consumption, loading capacity, speed of the ship and most importantly the time for usage of the ship should be mention clearly in the agreement.

5. Import and Export Contracts

- Import and export contract is a contract between importer and exporter of various countries for selling and purchasing of goods and commodities. The contract is useful for the international trading of certain products like industrial supplies, raw supplies, manufactured goods or e-commerce delivery. These contracts will include the requirements such as quantity order, price per unit, delivery conditions, payment terms, documents and retention of title, etc.

6. Contract of Affreightment

- A contract of Affreightment is a contract between a ship owner and another person whereby agreeing to transport the goods in a stipulated period of time.
- This contract is popular with small coasters employed in short voyages and it is cost effective also.
- Contracts of Affreightment are also used by government authorities for international trading.

7. Marine Insurance Contracts

- Since ages merchants are engaged in maritime commerce ways to minimize the impact of threats of their trade presented by natural and man-made perils.

- Marine insurance covers the loss or damages of ships, cargo, terminals, and other transport by which goods and commodities are transferred, acquired, or held between the points of origin till delivery point.

- This is important to protect parties' goods from any damages or an event which is uncontrollable.

- A contract of marine insurance is a contract whereby insurer agrees to compensate or indemnify the aggrieved party against marine losses or damages.

- A marine insurance contract shall include elements like features of general contracts, insurable interest, utmost good faith, indemnity, subrogation, warranties, proximate cause, assignment and nomination of the policy and return of premium.

- The proposal for marine insurance can be made by broker or insurer itself. The broker can prepare slip wherein all material information is recorded.

8. Seafarer's Employment Contracts

- Seafarer's employment contracts gained importance since the enforcement of the Maritime Labour Convention (MLC). MLC mandates the ship owner/employer to have written employment agreements with all seafarers working on seagoing ships. The payment of wages of seafarers shall match the standards formed by MLC.

- The agreement must be signed by both the parties i.e., the seafarer and the employer/ship owner.

9. Collective Bargaining Agreement

- A Collective Bargaining Agreement is an agreement which is made between an employer and a trade union whereby agreeing on terms and obligations of employment relating to rates of pay, hours of work and other conditions of crew employed on the ship.

10. Freight Forwarder's Agreement

- Freight Forwarding is a service used by companies engaged in import and export of goods. It provides guarantee that the goods will get delivered to proper destination and maintain good condition.

- For this purpose, companies enter into an agreement with Freight Forwarder. A Freight Forwarder is a commission agent performing on behalf of the importer and exporter, in activities like loading and unloading, storage of goods, maintaining quality of goods, arranging local transport, collecting payment from customers, etc. In simple words, a freight forwarder will provide services which cover the total transportation and distribution process.

- A freight forwarding agreement shall include rights and obligations of the parties, standard quality norms, terms relating to import and export of goods to customers, delivery terms, modes of payment, terminations, indemnity, etc.

Thank you One and All!

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