

LEGAL PRINCIPLES IN SHIPPING BUSINESS

– Syllabus

Introduction to the law

English law is the most widely used law in shipping business. Nearly all practical documents of an international nature involved with shipping business are based on English law, therefore, students must thoroughly understand concepts of common law, case law and precedent and how these contrast with statute law (knowledge of specific national statutes is not required.)

Be aware of the fact that in many countries case law does not apply as all law is codified.

Be aware of the difference between civil and criminal courts and of their structure, methods of appeal and choice of forum.

Contract

Thoroughly understand the principles of the law of contract especially the essential ingredients of offer, acceptance, consideration and legality. Understand how and when a contract comes into existence.

Understand how a contract may be broken and the circumstances under which it may be voided and how force majeure may prevent its performance.

Understand how some breaches may frustrate a contract completely whereas others may require the contract to be fulfilled with compensation for the breach.

Tort

Thoroughly understand the precise nature of tort.

Understand the specific situations related to shipping including failure of a duty of care; ie negligence and contributory negligence, misrepresentation and vicarious liability outside a contractual situation.

Understand the tort of conversion including delivery of cargo to the wrong party and the tort of defamation.

Be aware of the differences between libel and slander.

Agency

Thoroughly understand general principles of law of agency and how an agency may be created.

Be aware of the difference between general agency, specific agency, and agents of necessity.

Understand the duties and rights of an agent or broker under each type of agency.

Understand the two different forms of authority; express and implied.

Understand the responsibilities of the principal to the agent. Understand the agent's right to remuneration and the procedures available to ensure payment.

Understand the authority of an agent in concluding contracts with third parties on behalf of the principal including the importance of ensuring that the agents' role is clearly defined.

Thoroughly understand the consequences of breach of warranty of authority.

Be aware of the procedures for terminating an agency.

Voyage Charterparties

Understand the essential legal difference between voyage charter including consequent voyages and contracts of affreightment, time charters and demise (bareboat) charters.

Thoroughly understand the importance of "time" in charters particularly including the "arrived ship" and laytime.

Understand the carriers' right to be paid freight for the carriage of cargo and his liens for non-payment.

Time Charterparties

In time charter thoroughly understand speed and consumption and "off-hire".

Be aware of the possibility of disputes over final voyage under time charters.

Understand the right of the owner to receive hire for his vessel and remedies in the event of non-payment.

Bills of Lading

Thoroughly understand the role and functions of bills of lading, namely as a receipt (quantity and condition), evidence of a contract (not the contract itself) and as a document of title.

Understand the principal customary clauses in bills of lading including identity of carrier, Himalaya, protection clauses, and clause paramount incorporating one of the international conventions for cargo liability.

Be aware of the customary clauses in bills of lading in respect of carriers and merchants rights and responsibilities.

Thoroughly understand the legal differences between combined transport bills of lading, through bills of lading and port-to-port bills of lading and difference and role of waybills.

Be aware of electronic alternatives to paper bills of lading.

Thoroughly understand the role of bills of lading acts relating to the endorsement and negotiability of the bill of lading as a document of title eg in UK Carriage of goods by sea act (COGSA) 1992.

Law and the carriage of goods by sea

Thoroughly understand the need for an internationally agreed framework of law governing carriage of goods by sea.

Understand the differences between the law involved in private carriage ie charterparties and common carriage ie liner bills of lading

Thoroughly understand the role and function of international conventions relating to cargo liability.

Thoroughly understand the principle rights, liabilities and exclusion of liability contained in Hague Rules, Hague/Visby Rules and Hamburg Rules and the differences between the three conventions.

Understand the impact of the principle clauses relating the seaworthiness and limitations of liability.

Be aware of other additional rules ie UNCTAD/ICC Combined transport rules

Be aware of discussion to revise or replace these conventions

Be aware of bills of lading problems relating to multimodal transport arising from differing liability regimes applying to individual modes of transport.

Common areas of dispute and dispute resolution

Thoroughly understand statutes of limitations and time bars and their impact in shipping business. Be aware of those time bars imposed by statutes or international conventions and those which are contractually agreed.

Thoroughly understand the role of arbitration in dispute resolution.

Understand the different services provided by maritime arbitrators including short form arbitration and mediation.

Be aware of the main arbitration centres especially London, New York and Paris and their respective maritime arbitration associations.

Thoroughly understand the advantages and disadvantages of arbitration v litigation.

Understand how losses may be recovered. (contract)

Understand the remedy against tort feasons and the limitations of compensation that may be obtained.

Be aware of the main areas from which bill of lading disputes arise; title; clean and cloused documents; negotiability and liability.

Some other International Conventions and General Average

International law

Be aware how international conventions are agreed and the process of ratification, their coming into force and incorporation into national legal systems

Understand that international maritime conventions have a major impact upon day to day shipping business.

EU law

Be aware of the impact of European law and understand the potential for conflict with national law.

Be aware of the key elements of the following conventions:

SOLAS

- Safety construction
- Fire protection and prevention
- Safety equipment & life-saving appliances
- Radio communication
- Safety of navigation
- Carriage of dangerous goods (IMDG Code)
- Safety management (ISM Code)

MARPOL

- Prevention of operational pollution
- Prevention of oil cargo pollution
- Limitation of pollution following an incident

STCW

- Standards of Training, Certification & Watchkeeping
- Port State Control Convention
- International Convention of Arrest of Sea going vessels.

General Average

Thoroughly understand the precise nature of General Average and the particular circumstances leading to the declaration of General Average.

Understand the voluntary nature of the actual sacrifice being fundamental to the declaration of General Average.

Understand the manner in which all parties involved are obliged to contribute to losses suffered by any of the parties.
