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MARITIME LAW I
(International Carriage of Goods by Sea)

Course Outline

Course Number – CMPL 515, CRN 53 (Undergrad) CRN 2659 (Grad)

- I. References: Marine Cargo Claims IV, 2008;
On website www.mcgill.ca/maritimelaw/mcc4th/
Casebook
Handouts during the course. Questions during the course
- II. Lectures: Monday & Wednesday at 08:00 to 09:30 (Sept. 6 to Dec. 4, 2006) –
New Chancellor Day Hall – Room 200
- III. Each week we will deal with a chapter in Marine Cargo Claims IV at
www.mcgill.ca/maritimelaw/mcc4th/, and a corresponding chapter in the Casebook.
- IV. There may be occasional interruptions for special lectures on special subjects, for review
or for written questions, or for new cases or for new legislation which arises during the
course.
- V. There are also occasional breaks in the routine, because of holidays (Thanksgiving),
power failures, etc.
- VI. In case of Jewish holidays - There will be private make-ups for those who missed, but
the lectures will continue as scheduled.
- VII. No paper - Open book exam for 100% - The exam is 3½ hours long and will be held on
Friday, December 15, 2006 at 14:30 to 18:00.
- VIII. Students for this course are not permitted to register for another course at the same time
or an exam at the same time.

**Nota Bene: The Course Outline contains, in some cases, details which are not essential
to the course, but which may be useful in future practice.**

See also my Website (which has Prof. Tetley's Glossary of Maritime Law Terms, 2 Ed., 2004
(www.mcgill.ca/maritimelaw/glossaries/maritime/) and other matters, including chapters of
Marine Cargo Claims IV, 2008): See www.mcgill.ca/maritimelaw/mcc4th/.

Preliminary Matters

I. Explanation of the Course

II. Explanation of maritime law:

- 1) Not a branch of law, but a slice of law or system of law;
- 2) Comparative law
 - a) civil/common
 - b) international
 - c) over a period of time;
- 3) Civilian in nature, but great inroads by the common law.
- 4) Basic law;
- 5) Conflicts;
- 6) Material advantages of maritime practice and study.

III. Civil law, maritime law and common law – International law. This course has been a transsystemic course (tri-systemic) course for 27 years. In particular the law is international, yet much jurisprudence, especially in the U.K. and the U.S., is far too nationalistic. See The Starsin [2003] 1 Lloyd's Rep. 571, [2003] 2 All ER 785, 2003 AMC 913 (H.L.) (C.B. at p. 148). We must look beyond our borders.

IV. Basic International Conventions and Instruments

- 1) Hague Rules, 1924 (in force June 2, 1931) (COGSA 1936) (C.B. at p.22)
- 2) a) Visby Protocol to Hague Rules 1968 (in force June 23, 1977)
b) S.D.R. Protocol to Hague Rules 1979 (in force February 14, 1984)
- 3) Hamburg Rules 1978 (in force November 1, 1992)
(C.B. at p. 6).
- 4) ISM Code (International Safety Management Code) (C.B. at p.14)
- 5) ISPS Code (International Ship and Port Security Code) (C.B. at p. 17)

V. Conventions and Instruments of Interest

- 1) Multimodal Convention 1980 (not yet in force)
(www.jus.uio.no/lm/un.multimodal.transport.1980/doc.html).
- 2) Liability of Operators of Transport Terminals 1991 (not yet in force).
(See text at A/CONF. 152/13, April 18, 1991; (1990-91) 14 Fordham Intl. L. Journal 1115 and also at www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/1991_Convention_operators.html).
- 3) N.B. York Antwerp Rules 1974 (A private international agreement). (Slightly amended in Paris, 1990, considerably amended in Sydney, 1994, ((1995) 26 JMLC 485-502; DMF 1996, 137) and re-amended in Vancouver, 2004 (see www.comitemaritime.org/cmidoocs/yar.html).
- 4) The CMI/UNCITRAL Preliminary Draft Instrument on the Carriage of Goods by Sea (December 10, 2001, and January 8, 2002).
See www.mcgill.ca/maritimelaw/maritime-admiralty/cmi-uncitral/

N.B.: The “CMI” is the Comité Maritime International;
 “UNCITRAL” is the United Nations Commission on International Trade Law.

The Draft Instrument is now referred to as the “Draft convention on the carriage of goods [wholly or partly] [by sea]”. All working papers relating to the Draft convention, including its most recent text (Doc. No. A/CN.9/WG.III/WP.56) may be found on the UNCITRAL website at:

www.uncitral.org/uncitral/en/commission/working_groups/3Transport.html.

An explanatory note on the background and current status of the Draft convention may be found on the CMI website at:
www.comitemaritime.org/draft/draft.html.

The document is not yet official, however, and continues to be the subject of discussion at UNCITRAL.

- 5) “Reform of Carriage of Goods – The UNCITRAL Draft and Senate COGSA '99” (2003) 28 Tulane Mar. L.J. 1-44 – Commentary of William Tetley on the CMI’s Final Draft Instrument on Transport Law of December 10, 2001 and the UNCITRAL Preliminary Draft Instrument on Transport Law of January 8, 2002 and on U.S. Senate COGSA '99. See www.mcgill.ca/files/maritimelaw/uncitralcogsareform.pdf.

VI. Basic Statutes

1) Canada

- a) Marine Liability Act, S.C. 2001, c. 6, Part 5, Liability for Carriage of Goods by Water (being sects. 41-46 of the Act), in force August 8, 2001.
 (Schedule 3 of this Act is the Hague-Visby Rules, which is the law in Canada; Schedule 4 of this Act is the Hamburg Rules, which is to be considered every five years as a possible replacement to the Hague-Visby Rules). (C.B. at p. 2).
- b) Bills of Lading Act, S.C. 1889, c. 30; R.S.C. 1985 c. B-5
 Rights of bill-of-lading holders (C.B. at p.22).

2) United States

- a) Carriage of Goods by Sea Act 1936, 46 U.S. Code App. 1300-15.
 (It is the Hague Rules with slight modifications) (C.B. at p. 22).
- b) Harter Act, 1893, 46 U.S. Code App. 190-196 (Inland carriage & goods ashore)
www.access.gpo.gov/uscode/title46a/46a_7_.html.
- c) Pomerene Act, 1916/1994, 49 U.S. Code 80101 et seq. (U.S. Bills of Lading Act.)
 (C.B. at p. 26)
- d) See Tetley Website for the text of the proposed U.S. COGSA '99:
www.mcgill.ca/maritimelaw/maritime-admiralty/cogsa/
- e) See Tetley comments on the proposed U.S. COGSA '99 at:
www.mcgill.ca/maritimelaw/maritime-admiralty/tetley-cogsa/
- f) Reactions to Tetley's comments:
www.mcgill.ca/maritimelaw/maritime-admiralty/reactions/

3) United Kingdom

- a) Carriage of Goods by Sea Act 1971 U.K. 1971, c. 19, as amended by the Merchant Shipping Act 1979, U.K. 1979, c. 39 and by the Merchant Shipping Act 1981, U.K. 1981, c. 10
Hague/Visby Rules (with two Visby Protocols of 1968 & 1979)
- b) Carriage of Goods by Sea Act 1992, U.K. 1992, c. 50
(Rights of bill-of-lading holders) (C.B. at p. 18).

4) France

- a) Law no. 66-420 of June 18, 1966, arts. 15-60
- b) Decree no. 66-1078 of Dec. 31, 1966, arts. 31-59, 80-84

VII. Basic Contracts

- 1) Bills of lading.
- 2) Waybills.
See also CMI Uniform Rules for Sea Waybills (1990), published in (1991) 22 JMLC 617-619.
- 3) Electronic documents
See U.K. Carriage of Goods by Sea Act 1992, U.K. 1992, c. 50, sects. 1(5) & (6) and 5(1).
See also CMI Rules for Electronic Bills of Lading (1990), published in (1991) 22 JMLC 620-622.
- 4) Ship's delivery orders (see U.K. Carriage of Goods by Sea Act 1992, U.K. 1992, c. 50, sects. 1(1)(c), 1(4), 2 & 3, 5(1)).
- 5) Note: See also:
 - a) UNCITRAL Model Law on Electronic Commerce 1996, arts. 16-17.
 - b) Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 (Part 2 re "Electronic Documents", sects. 31-51), in force May 1, 2000.

VIII. Charterparties

- 1) a) Bareboat
b) Demise
- 2) Time
- 3) Voyage
- 4) Slot Charters

IX. Difference between a charterparty and a bill of lading

X. Terms of Sale

Incoterms 2000 (Abbreviated) (C.B. at p. 20) no longer in the Uniform Commercial Code

- a) F.O.B.
- b) F.A.S.
- c) C.I.F.
- d) C.F.R

XI. "The General Maritime Law, The *Lex Maritima*"

(C.B. at p. 30 and at www.mcgill.ca/files/maritimelaw/genmarlaw.pdf).

XII. W. Tetley, "Good Faith in Contract: Particularly in the Contracts of Arbitration and Chartering" (2004) 35 JMLC 561-592. (Students are invited to read the entire article, including the sections on arbitration and chartering at pp. 592-617). (C.B. at p. 31).

Topic One
Seaworthiness & Common Venture
 (See MCC IV, Chap. 15 at www.mcgill.ca/files/maritimelaw/ch15.pdf)
 (C.B. at p. 55)

I. Two main themes in maritime law

- 1) Seaworthiness
- 2) Joint venture

II. Seaworthiness

- 1) Civil law (art. 2560-2563 c.c. Québec (1994)) (C.B. at p. 60)
- 2) Common law - Steel v. The State Line (1877-78) 3 App. Cas. 72 (H.L.) (C.B. at p. 56)
Canadian Pacific Forest Products v. Belships [1999] 4 F.C. 330, (1999) 175 D.L.R. (43th) 449, 1999 AMC 2606 (Fed. Ct. of App.), leave to appeal denied, May 25, 2000, [1999] S.C.C.A. No. 421 (C.B. at p. 56)
- 3) Hague Rules 1924 (C.B. at p. 22)
- 4) Hamburg Rules 1978 art. 5(1) by implication (C.B. at p.6)
- 5) ISM Code (C.B. at p. 14)
- 6) ISPS Code (C.B. at p. 17)
- 7) Charterparties
 - a) voyage (art. 2022 c.c. Québec (1994)) (C.B. at p. 60)
 - b) time (art. 2015 c.c. Québec (1994)) (C.B. at p. 60)
 - c) demise & bareboat (art. 2008 c.c. Québec (1994)) (C.B. at p. 60)
- 8) Is seaworthiness in the common law a condition or a warranty or an indeterminate term?
 - a) Hong Kong Fir v. K.K.K. [1962] 1 All E.R. 474 (C.A.) (C.B. at p. 56)
 - b) Bunge Corp. v. Tradax Export [1981] 2 Lloyd's Rep. 1 (H.L.) (C.B. at p. 57)
- 9) Seaworthiness in Public Law
 - a) Ship safety – Canada Shipping Act, R.S.C. 1985, c. S-9, sects. 301 et seq. (C.B. at p. 61) and Canada Shipping Act, 2001, S.C. 2001, c. 26, sect. 119 et seq. (C.B. at p. 62)
 - b) Hiring of seamen – Canada Shipping Act, R.S.C. 1985, c. S-9, sect. 391(1). See generally sects. 163 et seq. (C.B. at p. 61) and Canada Shipping Act, 2001, S.C. 2001, c. 26, sect. 85 (C.B. at p. 62).
 - c) ISM Code (C.B. at p. 14).
 - d) ISPS Code (C.B. at p.17)
- 10) Seaworthiness in private law
 - a) Hague/Visby Rules, art. 3(1) (C.B. at p. 2)
 - b) Hamburg Rules, art. 5(1) (C.B. at p. 6)
 - c) Insurance 1994 Civil Code Québec, arts. 2560 et seq. (C.B. at p. 60)
Marine Insurance Act 1906, sect. 39 (C.B. at p. 60)
Marine Insurance Act, 1993 S.C., c. 22, sect. 37 (C.B. at p. 60)
 - d) General Average
 York/Antwerp Rules 1994 (1995) 26 JMLC 485-502; DMF 1996, 137, as amended in 2004 (www.comitemaritime.org/cmidocs/yar.html)
 - e) Charter parties
 - f) ISM Code (C.B. at p. 14)
 - g) ISPS Code (C.B. at p.17)

III. The Common Venture

- 1) Shared risk & venture
- 2) Rôles of Oléron
- 3) Absolute in 19th Century
- 4) Seen in Hague Rules, Hague/Visby, Hamburg, Marine Insurance
- 5) Moving the other way today - particularly in public law

IV. F.O.B., F.A.S. & C.I.F. and C.F.R (C.B. at p. 20)

Where does ownership pass?
Where does risk pass?

Topic Two
The Contracts of Carriage
(See MCC IV, Chap. 9 at www.mcgill.ca/files/maritimelaw/ch9.pdf)
(C.B. at p. 63)

I. Common Law

- offer
- acceptance
- consideration

II. Civil Law - art. 1385 c.c. Québec (1994)

- 1) Two parties capable of contracting
- 2) Legal cause
- 3) Legal object
- 4) Consent

III. Quasi-Contracts, Contracts, Delicts, Quasi-Delicts

IV. Parties to the Contract

Civil - Tripartite - arts. 2041-2044 c.c. Québec (1994)
Common - requires the intervention of a statute - a bill of lading act

V. Bill of Lading - 3 Qualities

Waybill - 2 qualities
Electronic documents
Ship's delivery orders

VI. Charterparty - Differs from a b/l

VII. B/I-Best Evidence of the Contract

Ardennes (1950) 84 Ll. L. Rep. 340 at p. 344; [1951] 1 K.B. 55 at p. 59 (per Lord Goddard) – not the contract but the best evidence of the contract.
Canastrand Industries Ltd. v. The Lara S [1993] 2 F.C. 553, (1993) 60 F.T.R. 1. (Fed. Ct. of Can. (C.B. at p. 120), upheld (1994) 176 N.R. 31 (C.B. at p. 142) (Fed. Ct. of App.).

VIII. What is the Contract?IX. Standard Form Contract and Contract of AdhesionX. Types of B/L and related documents

- 1) Booking note
- 2) Dock receipt
- 3) Received for shipment b/l
- 4) Short Form b/l
- 5) Long form b/l
- 6) Nominative (straight) b/l
- 7) Order b/l
- 8) Bearer b/l
- 9) Waybills
- 10) Ship's delivery order
- 11) Advice note

XI. What is the Contract?

- 1) B/l
- 2) Advertisements
- 3) Tariffs
- 4) Telephone advices
- 5) Correspondence
- 6) Custom
- 7) Past practices

XII. Clean Bill of Lading

- 1) Hague, Hague/Visby Rules, art. 3(4) (C.B. at p. 2)
- 2) Silver v. Ocean (1929) 35 Ll. L. Rep. 49 at p. 55
- 3) Hamburg Rules, art. 16(3) (C.B. at p. 6)
- 4) Clean b/l means underdeck
- 5) Estoppel
- 6) Bills of Lading Act, R.S.C. 1985, c. B-5, sect. 4. (C.B. at p.22)

XIII. Suit in Tort & Delict

- 1) Visby Rules - art. 4 bis (1)
- 2) Hamburg Rules - art. 7(1)
- 3) Multimodal Convention - art. 20(1)

XIV. Suit in PersonamXV. Suit in remXVI. Cases

- 1) Pyrene v. Scindia [1954] 1 Lloyd's Rep. 321 (C.B. at p. 64).
- 2) Anticosti Shipping v. St. Amand [1959] S.C.R. 372 (C.B. at p. 71).
- 3) Silver v. Ocean (1929) 35 Ll. L. Rep. 49.

Topic Three
Application of the Rules

(See MCC IV, Chap. 1 & 2 at www.mcgill.ca/files/maritimelaw/ch1.pdf and
www.mcgill.ca/files/maritimelaw/ch2.pdf)

(C.B. at p. 73)

I. Distinctions between:

- 1) Public (common) carrier
- 2) Private carrier

II. Better Distinction - Contracts of Transportation

- 1) Contract of carriage
- 2) Contract of affreightment

III. Application of Hague Rules

- 1) Art. 10 - bills of lading issued by any contracting state
- 2) Outwards
- 3) Art. 2 - Every contract of carriage
- 4) Art. 3(2) - Obligations of carrier
- 5) Art. 1(b) - b/l or similar document of title
- 6) Art. 1(e) - tackle to tackle
- 7) Does not apply to c/ps. except when -
- 8) Paramount clause
- 9) No b/l issued
- 10) Waybills argument
 - a) Hague Rules:

art. 2
art. 1(b)
but art. 2
art. 6
 - b) Marine Liability Act:

sect. 43(2)

- 11) Rules apply by agreement
- 12) Package limitation - art. 4(5)
- 13) Public order - art. 3(8)

IV. Application of Hague/Visby

- 1) No paramount clause
- 2) New art. 10

“The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) the bill of lading is used in a Contracting State, or
- (b) the carriage is from a port in a Contracting State, or
- (c) the Contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.

This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs.”

- 3) Package limitation - art. 4(5)(a)

V. Application of Hamburg Rules

- 1) Port to port - art. 4
- 2) Exclude c/ps. - art. 2(3)
- 3) All contracts of carriage - art. 2(1)
- 4) In a series - art. 2(4)
- 5) Inward and outward - art. 2(1)
- 6) Package limitation - art. 6

VI. U.S. COGSA 1936

- 1) Apply inwards & outwards
 - Preface
 - Sect. 13
- 2) \$500.00 U.S.

VII. Seven Rules of Interpretation

VIII. Superseding clauses

- 1) Fraudulent misrepresentation
- 2) Collateral warranties
- 3) Whole contract taken together

IX. Cases

- 1) Pyrene v. Scindia [1954] 1 Lloyd's Rep. 321 (C.B. at p. 64).
- 2) Anticosti Shipping v. St. Amand [1959] S.C.R. 372 (C.B. at p. 71).
- 3) C.S.L. v. Desgagné [1967] 2 Ex. C.R. 234 (C.B. at p.74).
- 4) The Rafaela S [2005] 1 Lloyd's Rep. 1 (H. L.) (C.B. at p. 80)
- 5) ETS Gustave Brunet, S.A. v. M.V. Nedlloyd Rosario, 929 F. Supp. 694, 1997 AMC 803 (S.D. N.Y. 1996) (C.B. at p. 306).
- 6) Sidmar N.V. v. Fednav International Ltd. [1997] F.C.J. No. 206, (1997) 211 N.R. 143 (Fed. Ct. of App.), leave to appeal denied Sept. 18, 1997, [1997] S.C.C.A. No. 227.
- 7) The Ebn al Waleed [2000] 1 Lloyd's Rep. 270 (Fed. Ct. of Can.) (Turkish Com. Code enactment of Hague Rules in 1956 prevailed over 1955 Turkish ratification of Hague Rules; so lower 1956 limitation held applicable).
- 8) The Jordan II [2005] 1 Lloyd's Rep. 57, 2005 AMC 1 (H. L.) (C.B. at p. 82).

Topic Four

Who is the Carrier? (Whom to Sue?)

(See MCC IV, Chap. 10 at www.mcgill.ca/files/maritimelaw/ch10.pdf)
(C.B. at p. 85)

I. Four possible defendants in marine cargo claims

II. The carrier

- actual carrier
- contracting carrier

III. The carrier by contract and the carrier under law

IV. Definition of carrier

art. 1(a) (Hague and Hague/Visby)
but see art. 3(8) (Hague and Hague/Visby)

V. The Ship

1) Hague

- art. 3(6) para. 4
- art. 3(8)
- art. 4(1)
- art. 4(2)
- art. 4(5) first para.
- art. 4(5) fourth para.

2) Hague/Visby

- art. 4(5)(a) & (e)
- art. 4(5)(h)

VI. In rem & in personam

VII. Charterer

- under law
- contracts in his own name

VIII. Owner

IX. Demise Clause

X. Identity of Carrier Clause

XI. Hamburg Rules art. 1(1), 1(2), 10(4) & 15(1)(c)

XII. Advantages and Disadvantages of the Demise Clause

XIII. Master or Crew

Visby, art. 4 (bis) (2)
Hamburg, art. 7(2)

XIV. Sue in Tort & Delict

Hamburg, art. 7(1)
Visby, art. 4 bis (1)

XV. Cases

- 1) The Berkshire [1974] 1 Lloyd's Rep. 185 (C.B. at p. 86).
- 2) Paterson S.S. v. Aluminum [1951] S.C.R. 852 (C.B. at p. 91)
- 3) Delano Corp. v. Saguenay Terminals [1965] 2 Ex. C.R. 313 (C.B. at p. 98).
- 4) Canadian Klockner v. D/S A/S Flint [1973] F.C. 988, [1973] 2 Lloyd's Rep. 478 (Fed. Ct. of Can.) (C.B. at p. 101); [1975] 2 Lloyd's Rep. 371 (Fed. Ct. of App.) (C.B. at p. 106).
- 5) Aris Steamship v. Associated Metals (1980) 110 D.L.R. (3d) 1 (Supr. Ct. of Can.) (C.B. at p. 106).
- 6) Yeramex Intl. v. Tendo 594 F. 2d 943, 1979 AMC 1282 (4 Cir. 1979) (C.B. at p. 109).
- 7) Glynwed Steels Ltd. v. Great Lakes and European Lines 1979 AMC 1290 (N.D.Ill.1978) (C.B. at p.112).
- 8) Canficorp v. Cormorant Bulk Carriers 1985 AMC 1444 (Fed. Ct. of App.) (C.B. at p. 113).
- 9) Carling O'Keefe v. CN Marine [1990] 1 F.C. 483 (Fed. Ct. of App.) (C.B. at p. 119).
- 10) Canastrand Industries Ltd. v. The Lara S. [1993] 2 F.C. 553, (1993) 60 F.T.R. 1 (C.B. at p. 120); (1994) 51 A.C.W.S. (3d) 778, (1994) 176 N.R. 31 (Fed. Ct. of App.) (C.B. at p. 142)
- 11) Lantic Sugar Ltd. v. Blue Tower Trading Corp. (1991) 52 F.T.R. 161 (Fed. Ct. of Can.) (C.B. at p. 143), upheld (1993) 168 N.R. 191, 1994 AMC 2771 (Fed. Ct. of App.) (C.B. at p. 143).

The Federal Court of Appeal confirmed that the time charterer was not a carrier and thus not bound by the bill of lading which was issued to a named consignee by the shipper and signed by the master "as agent only." The Court held, in passing, that treating owners and charterers together as the carrier (the "latest position of Professor Tetley") had "possible merits from the policy point of view." Given that this position had not been argued before the Court in this case, however, the Court relied instead upon the law as established "to this point".

- 12) Pacific Employers Ins. Co. v. M/T Iver Champion 1996 AMC 2535 (E.D. La. 1996) (C.B. at p. 144).
- 13) Thyssen Steel Co. v. M/V Kavos Yerakas 50 F. 3d 1349 at p. 1353, 1995 AMC 2317 at p. 2322 (5 Cir. 1995); on remand, 911 F. Supp. 263, 1996 AMC 1469 (S.D. Tex. 1996) (demise clause held invalid).
- 14) Union Carbide Corp. v. Fednav Ltd. (1997) 131 F.T.R. 241, 1998 AMC 429 (Fed. Ct. of Can.) (C.B. at p. 145).
- 15) Jian Sheng Co. Ltd. v. Great Tempo S.A. [1998] 3 F.C. 418, (1998) 225 N.R. 140 (Fed. Ct. of App.) (C.B. at p. 145), leave to appeal denied, Dec. 10, 1998, [1998] S.C.C.A. No. 287 (Supr. Ct. of Can.).
- 16) The Demise of the Demise Clause? - Fairplay magazine, Dec. 3, 1998 (C.B. at p. 147).
- 17) The Demise of the Demise Clause? (1999) 44 McGill L.J. 807 and www.mcgill.ca/maritimelaw/maritime-admiralty/demiseclause/.
- 18) The Hector [1998] 2 Lloyd's Rep. 287 (B/L with typed provision on its face identifying time charterer as carrier held to be a charterer's bill despite an identity of carrier clause).
- 19) The Starsin [2003] 1 Lloyd's Rep. 571, [2003] 2 All ER 785, 2003 AMC 913 (H.L.) (C.B. at p. 148) (B's/L with signature boxes completed to show signatories signing "as agents for" time charterer held to be charterers' bills, despite identity of carrier and demise clauses).
- 20) W. Tetley, "Case Comment: The House of Lords decision in *The Starsin*" (2004) 35 JMLC 121-139 and at: www.mcgill.ca/files/maritimelaw/starsin.pdf (C.B. at p. 151)

XVI. Role of the Freight Forwarder and NVOCC. – Who is the carrier?
See MCC IV, Chap. 33: "Responsibility of Freight Forwarders"
at www.mcgill.ca/files/maritimelaw/ch33.pdf.

Topic Five
Who May Sue?

(See MCC IV, Chap. 8 at www.mcgill.ca/files/maritimelaw/ch8.pdf)
(C.B. at p. 161)

I. The three nightmares of cargo claimant attorneys

II. Shipper Who Contracts (as opposed to person under law)

III. F.O.B., F.A.S., C.I.F., C.F.R (C.B. at p. 20)

IV. Consignee

Bills of Lading Act, R.S.C. 1985 c. B-5 (C.B. at p.22)

V. Types of B/L

- Non-negotiable receipt
- Named or nominate
- Order b/l
- Bearer of b/l

VI. U.K. Carriage of Goods by Sea Act 1992, U.K. c. 50 (C.B. at p. 18)

1. The lawful holder of a bill of lading may sue the carrier in contract by virtue of being such a lawful holder, regardless of whether the property in the goods passed to him upon or by reason of the consignment or endorsement of the bill, and regardless of whether he suffered any loss (sect. 2(1) and (4)). Substantial damages recovered by suit are held for the benefit of the party who suffered the loss.

2. The named consignee under a sea waybill and the party entitled to take delivery of the goods under a ship's delivery order may sue the carrier in contract by virtue of being such a consignee or party (sect. 2(1) and (5)).

3. The shipper and every intermediate holder of a bill of lading lose the right to sue the carrier in contract once the bill passes into the hands of its next lawful holder (sect. 2(5)), but without prejudice to their rights to sue the carrier in tort.

4. Endorsement of the bill of lading after delivery of the goods transfers to the endorsee the right to sue the carrier in contract, provided that such endorsement occurs pursuant to arrangements conducted before the delivery (sect. 2(2)).

5. Any party who takes or demands delivery of the goods or claims against the carrier becomes subject to all contractual liabilities on the bill (e.g. unpaid freight, demurrage), without prejudice to the liabilities of the original shipper (sect. 3). This provision does not, however, make banks subject to such liabilities if the bank held the bill only as security.

6. A bill of lading representing goods to have been shipped or received for shipment shall be conclusive evidence of such shipment or receipt, in the hands of the bill's lawful holder (sect. 4).

7. Electronic bills of lading may be governed by future regulations of the Secretary of State.

VII. Ship's Delivery Orders

VIII. Electronic Documents

IX. Person with Interest under Law

X. Notify Party?

XI. Waybill

- 1) Pomerene Act, 1916/1994, 49 U.S. Code, sects. 80106(c) & 80113(a). (C.B. at p. 26)
- 2) U.K. Carriage of Goods by Sea Act 1924 U.K. c. 50 (C.B. at p. 18).
- 3) Give the right to sue in the waybill or b/l.
- 4) CMI Uniform Rules for Sea Waybills.

XII. Underwriter

XIII. Suit in Delict & Tort - Owner

XIV. Cases

- 1) (The Roseline) Union Industrielle v. Petrosul 1985 AMC 551 (1984) (Fed. Ct. of Can.) (C.B. at p. 162).
- 2) E.Y.K. Int'l v. Sea-Land Service 1992 AMC 2575 (C.D. Cal. 1992) (C.B. at p. 166).
- 3) Hof Van Cassatie Van België, January 11, 1991, [1992] ETL 87 (C.B. at p. 167).
- 4) Cour d'Appel de Rennes, 1992 DMF 410 (Nov. 7, 1990) (C.B. at p. 167).
- 5) The Future Express, [1992] 2 Lloyd's Rep. 79 (C.B. at p. 167).
- 6) The Aegean Sea [1998] 2 Lloyd's Rep. 39 at pp. 59-60 (possession of B/L by its "lawful holder" must be in good faith and not the result of error).
- 7) The Berge Sisar [2001] 1 Lloyd's Rep. 79 (C.B. at p. 169).

Topic Six

Measure of Damages

(See MCC IV, Chap. 13 at www.mcgill.ca/files/maritimelaw/ch13.pdf)

(C.B. at p. 171)

I. Basic Principle - Restitutio in Integrum

II. Must prove:

- 1) Direct & foreseeable in contract
- 2) The value

III. Common Law (Contract)

Hadley v. Baxendale (1854) 9 Ex. 341, Two rules:

- 1) Damages which arise naturally from the breach of the contract
- 2) Special circumstances at the time of making the contract

IV. France - Damages

art. 1149 c.c. - in general
 art. 1150 c.c. - contract
 art. 1151 c.c. - delict

Québec Civil Code 1994

Art. 1607. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default.

Art. 1608. The obligation of the debtor to pay damages to the creditor is neither reduced nor altered by the fact that the creditor receives a prestation from a third person, as a result of the injury he has sustained, except so far as the third person is subrogated to the rights of the creditor.

Art. 1611. The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.
 Future injury which is certain and able to be assessed is taken into account in awarding damages.

Art. 1613. In contractual matters, the debtor is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then the damages include only what is an immediate and direct consequence of the nonperformance.

V. Quick Rule - CIF less ADMV Better Rule - ASMV less ADMV

VI. Delay

- 1) Historically
- 2) Hamburg - arts. 5(2) & 6(1)(b)

VII. When Cargo Should Have Arrived

VIII. Quick Rule - C.I.F. plus administrative expenses or profits

IX. Freinte de Route

X. Vallescura Rule

- 1) Schnell & Co. v. S.S. Vallescura 293 U.S. 296, 1934 AMC 1573 (1934)
- 2) Hamburg Rules art. 5(7).

XI. Anomaly of COGSA 1936 - art. 1304(5)

- 1) actual loss
- 2) punitive damages

XII. Invoice Value & C.I.F. Clauses

XIII. Package Limitation

XIV. Package Limitation - Containers

XV. Profit & Delay

- 1) Economic loss
- 2) Consequential loss
- 3) Visby
- 4) Hamburg - delay - art. 5(2) & 6(1)(b)

XVI. Visby Rules & A.S.M.V. - art. 4(5)(b)

XVII. Punitive Damages

- 1) Visby
- 2) art. 1621 c.c. Québec, 1994.

XVIII. Inflation & Gold

XIX. Interests

XX. Mitigation

XXI. S.D.R.

XXII. Comparative Package & Kilo Limitations

XXIII. Cases

- 1) Nabob Foods v. The Cape Corso [1954] Ex. C.R. 335, [1954] 2 Lloyd's Rep. (Exch. Ct. of Can.) 40 (C.B. at p. 172).
- 2) Crelinsten Fruit v. Mormacsaga [1968] 2 Lloyd's Rep. 184, 1969 AMC 202 (Exch. Ct. of Can.) (C.B. at p. 174).
- 3) Vana Trading Co. v. S.S. Mette Skou 1977 AMC 702, 566 F. 2d 100 (2 Cir. 1977) (C.B. at p. 180).
- 4) Canastrand Industries Ltd. v. The Lara S. [1993] 2 F.C. 553, (1993) 60 F.T.R. (Fed. Ct. of Can.) (C.B. at p. 120).
- 5) Canastrand Industries Ltd. v. The Lara S. (Fed. Ct. of App.) (1994) 176 N.R. 31 (C.B. at p. 142).
- 6) Redpath Industries Ltd. v. The Cisco [1994] 2 F.C. 279, (1993) 110 D.L.R. (4th) 583, 1994 AMC 1484, (1994) 163 N.R. 161 (Fed. Ct. of App.).
- 7) Redpath Industries Ltd. v. Fednav Ltd. (1993) 63 F.T.R. 131 (Fed. Ct. of Can.).
- 8) Gosse Millerd Ltd. v. Canadian Government Merchant Marine (1928) 32 Ll. L. Rep. 91, [1929] A.C. 223 (H.L.).
- 9) Koufos v. Czarnikow Ltd. (The Heron II) [1969] 1 A.C. 350 (H.L.).

- 10) ETS Gustave, S.A. v. M.V. Nedlloyd Rosario, 929 F. Supp. 694, 1997 AMC 803 (S.D. N.Y. 1996). (C.B. at p.306).

Topic Seven
Due Diligence & Burden & Order of Proof
(See MCC IV, Chap. 15 at www.mcgill.ca/files/maritimelaw/ch15.pdf)
(C.B. at p. 185)

I. Order of Proof

- 1) ETS Gustave Brunet, S.A. v. M.V. Nedlloyd Rosario, 929 F. Supp. 694, 1997 AMC 803 (S.D. N.Y. 1996). (C.B. at p. 306)
- 2) Voest Alpine Stahl Linz G.m.b.H. v. Federal Pacific Ltd. (1999) 174 F.T.R. 69 (Fed. Ct. of Can.) (Tetley's principles of proof upheld).

II. Burden of Proof

III. The Cause of the Loss

Yellow submarine, The Popi M [1985] 2 Lloyd's Rep. 1 (H.L.) (Casebook at p.213)
Two causes - Vallescura Rule & Hamburg art. 5(7)

IV. Due Diligence

"diligence raisonnable"
"diligence"

V. Definitions of Seaworthiness

VI. Apparent Dilemma

VII. Four Qualifications to Seaworthiness

VIII. Overriding obligation

Maxine Footwear [1959] 2 Lloyd's Rep. 105, [1959] A.C. 589 (P.C.) (C.B. at p. 186) -
Hague & Hague/Visby art. 3(1)
art. 3(2) subject to art. 4 but art. 3(1) is not so subject

IX. Noel J.

X. My Order of Proof

approved in Voest Alpine Stahl Linz G.m.b.H. v. Federal Pacific Ltd. (1999) 174 F.T.R. 69.

XI. Thurlow J.

XII. Explain Art. 4(1)

XIII. Three Reasons for my Order of Proof

XIV. Theory of Stages but Hamburg?XV. In Respect of the Loss - Causal ConnectionXVI. Due Diligence and DelegationXVII. Hamburg Rules, art. 5(1) - Order and BurdenXVIII. The ISM Code and Due Diligence

XIX. The dilemma – the practice vs. the Hague and Hague/Visby Rules. Chap. 6. See also The Ralph Misener 2005 FCA 139 (Fed. C.A.) (C.B. at p. 320)

See Marine Cargo Claims, 4 Ed., 2008 on Professor Tetley's Website at: www.mcgill.ca/maritimelaw/mcc4th/

XX. Cases

- 1) Maxine Footwear v. Can. Gov't [1959] 2 Lloyd's Rep. 105; [1959] A.C. 589 (P.C.) (C.B. at p. 186).
- 2) Goodfellow Lumber Sales Ltd. v. Verreault [1971] S.C.R. 522, [1971] 1 Lloyd's Rep. 185.
- 3) (The Farrandoc) Robin Hood v. N.M. Paterson [1968] 1 Ex. C.R. 175 (Exch. Ct. of Can.) (C.B. at p. 189).
- 4) Riverstone Meat (The Muncaster Castle) [1961] A.C. 807, [1961] 1 Lloyd's Rep. 57 (H.L.) (C.B. at p. 198).
- 5) (The Amstelslot) Union of India v. N.V. Reederij [1963] 2 Lloyd's Rep. 223 (H.L.) (C.B. at p. 199).
- 6) The Jordan II [2005] 1 Lloyd's Rep. 57, 2005 AMC 1 (H. L.) (C.B. at p. 82).
- 7) North Star Cement v. Labelle 1976 AMC 944 (Fed. Ct. of Can.) (C.B. at p. 200).
- 8) Mimi Lim Procs. 1979 AMC 1680 (4 Cir. 1979) (C.B. at p. 202).
- 9) The Bunga Seroja [1999] ETL 458 (Australian High Ct.) (C.B. at p. 209)
- 10) Norman v. Canadian National Railways (1982) 39 Nfld. & P.E.I.R. 91, (1982) 111 A.P.P. 91 (Nfld. C.A.).
- 11) Kruger Inc. v. Baltic Shipping Co. (The Mekhanik Tarasov) [1988] 1 F.C. 262 (Fed. Ct. of Can.), upheld (1989) 57 D.L.R. (4th) 498 (Fed. Ct. of App.).
- 12) The Antigoni [1991] 1 Lloyd's Rep. 209 (C.A.).
- 13) The Fiona [1994] 2 Lloyd's Rep. 506 at p. 519 (C.A.) (reaffirming due diligence as an "overriding obligation").
- 14) Zim Israel Navigation Ltd. v. The Israeli Phoenix Assurance Company Ltd. (The Zim-Marseilles) [1999] ETL 535 at p. 549 (Supr. Ct. of Israel) (shipowner must prove due diligence before invoking peril of the sea defence) (C.B. at p. 240).
- 15) The Eurasian Dream [2002] 1 Lloyd's Rep. 719 (C.B. at p. 211).
- 16) The Happy Ranger [2006] 1 Lloyd's Rep. 649 (due diligence obligation begins when a newly built ship first comes into the "orbit" (i.e. the "ownership or service or control") of the shipowner as carrier).

Topic Eight**Peril of the Sea and art. 4(2)(a) to (g)**

(See MCC IV, Chap. 18 at www.mcgill.ca/files/maritimelaw/ch18.pdf)

(C.B. at p. 217)

I. Exculpatory exception

II. Definition of peril

- 1) Rosalia
- 2) Learned Hand J. - Naples Maru, 106 F.2d 32, 1939 AMC 1087 (2 Cir. 1939).
- 3) Comprehensive

III. Insurance Definition

IV. Cause of the Loss

V. Seaworthiness & Peril

VI. Burden of Proof

VII. Order of Proof

VIII. Counter-Proof

IX. Size of the Ship

X. Damage to the ship

XI. One Big Wave

XII. Causal Connection

XIII. Similar Exceptions

- 1) strikes
- 2) arrest
- 3) bankruptcy

XIV. Hamburg Rules - art. 5(1)

XV. Cannot Incite a Peril

XVI. Link Amongst Seaworthiness, Peril & Care of Cargo – Order of Proof

XVII. Cases

- 1) CNR v. Barbour [1963] S.C.R. 323 (C.B. at p. 218).
- 2) Crelinsten Fruit v. The Mormacsaga [1969] 2 Ex. C.R. 215; 1969 AMC 1621; [1969] 1 Lloyd's Rep. 515 (Exch. Ct. of Can.) (C.B. at p. 220).
- 3) Goodfellow Lumber Sales Ltd. v. Verreault [1971] S.C.R. 522, [1971] 1 Lloyd's Rep. 185.
- 4) (The Oak Hill) Eisenerz v. Federal C. & N [1970] Ex. C.R. 192; 1970 AMC 227; [1970] 2 Lloyd's Rep. 332; upheld by the Supreme Court of Canada [1975] 1 Lloyd's Rep. 105 (C.B. at p. 233).
- 5) Mimi Lim Procs. 1979 AMC 1640 (4 Cir. 1979) (C.B. at p. 202).
- 6) Kruger Inc. v. Baltic Shipping Co. [1988] 1 F.C. 262 (Fed. Ct. of Can.), upheld (1989) 57 D.L.R. (4th) 498 (Fed. Ct. of App.).

- 7) Canastrand Industries Ltd. v. The Lara S [1993] 2 F.C. 553, (1993) 60 F.T.R.1 (Fed. Ct. of Can.) (C.B. at p. 120), upheld (1994) 176 N.R. 31, (Fed. Ct of .App.) (C.B. at p. 142).
- 8) ETS Gustave Brunet, S.A. v. M.V. Nedlloyd Rosario 929 F. Supp. 694, 1997 AMC 803 (S.D. N.Y. 1996) (C.B. at p. 306).
- 9) Bunga Seroja [1999] ETL 458 (High Court of Australia) (C.B. at p. 209).
- 10) Zim Israel Navigation Ltd. v. The Israeli Phoenix Assurance Comply Ltd. (The Zim- Marseilles) [1999] ETL 535 (Supr. Ct. of Israel) (C.B. at p. 240).
- 11) The Eurasian Dream [2002] 1 Lloyd's Rep. 719 (C.B. at p. 211)
- 12) Bache v. Silver Line, Limited (The Silversandal) 110 F.2d 60, 1940 AMC 731 (2 Cir. 1940) (C.B. at p. 248).

Topic Nine
Himalaya Clause

(See MCC IV, Chap. 36 at www.mcgill.ca/files/maritimelaw/ch36-marine.pdf)
(C.B. at p. 249)

I. Himalaya Clause

II. The Problem - third party benefit

III. Adler v. Dickson (The Himalaya) [1954] 2 Lloyd's Rep. 267, [1955] 1 Q.B. 158 (C.A.)

IV. Commercial/Insurance Argument

V. Heresy or Genius

VI. Two Solutions

VII. Why Carriers Do Not Wish to Amend the Law or the Contract

VIII. My Position

IX. Lord Reid - Agency

Midland Silicones v. Scruttons [1962] A.C. 446, [1961] 2 Lloyd's Rep. 365 (H.L.) (C.B. at p.250) (five conditions).

X. Other Cases

- 1) Herd & Co. v. Krawill Machinery 359 U.S. 297; 1959 AMC 879 (1959) (C.B. at p. 254)
- 2) Buenos Aires Maru (ITO v. Mitsui) [1986] 1 S.C.R. 752, 1986 AMC 2580 (C.B. at p. 255)
- 3) The Cleveland (Eisen und Metall v. Ceres Stevedoring) [1977] 1 Lloyd's Rep. 665 (Que. C.A.) (C.B. at p. 270).
- 4) Norfolk Southern Railway Co. v. James N. Kirby Pty. Ltd. 543 U.S. 14, 125 S. Ct. 385; 2004 AMC 2705 (2004) (C.B. at p. 277)
- 5) Dannebrog Rederi AS v. M/Y True Dream 2005 AMC 2740 (S.D. Fla. 2005) (The Kirby decision is not limited to freight forwarders, but also applies to other

intermediaries “entrusted with the goods” who contract for liability limitations with downstream carriers. In this case, a shipper whose agent chartered space on a vessel to carry the shipper’s yacht was held bound by the liability limitations of the booking note which the space charterer concluded with the shipowner/carrier).

- 6) Dannebrog Rederi AS v. M/Y True Dream 2006 AMC 1089 (S.D. Fla. 2006) (The Kirby decision is retroactive).

N.B. A Canadian court has taken a different position in a case analogous to Kirby which arose from a similar rail derailment in Canada. In Boutique Jacob Inc. v. Pantainer Ltd. 2006 FC 217 (Fed. C. Can.), the Federal Court of Canada held that the railway which negligently caused the loss of the shipper’s cargo may not benefit from the Himalaya clause in the bill of lading issued to the shipper by its freight forwarder (a non-vessel operating common carrier) or from the limitations provided for in the (electronic) waybill binding the freight forwarder and the ocean carrier. The reason is that sect. 137(1) of the Canadian Transportation Act, S.C. 1996, c. 10, prohibits a railway company from limiting or restricting its liability to a shipper “except by means of a written agreement signed by the shipper.” There was no such written agreement between the shipper and the railway company in this case. The Federal Court’s decision on this point is under appeal to the Federal Court of Appeal.

XI Circular Indemnity Clause - Elbe Maru (C.B. at p. 281)

XII. Civil Law

Stipulation for another - arts. 1444-1450 c.c. Québec (1994)

XIII. United Kingdom

Contracts (Rights of Third Parties) Act 1999, U.K. 1999, c. 31, sects. 1 and 6(5) (C.B. at p. 285) (Although the Act, at sect. 1, confers no rights on third parties to contracts of carriage by sea, it includes them to extent that they are entitled to be benefited by exemptions and limitation clauses in such contracts.)

XIV. Canada

Fraser River Pile & Dredge Ltd., v. Can-Dive Services Ltd. [1999] 3 S.C.R. 108 (C.B. at p. 286)

XV. France

XVI. Cases

- 1) Midland Silicones v. Scruttons [1962] A.C. 446, [1961] 2 Lloyd's Rep. 365 (H.L.) (C.B. at p. 250).
- 2) Herd v. Krawill 359 U.S. 297, 1959 AMC 879 (1959) (C.B. at p. 254).
- 3) New Zealand Shipping Co. Ltd. v. A.M. Satterthwaite & Co. Ltd. (The Eurymedon) [1975] A.C. 154, [1974] 1 Lloyd's Rep. 534 (P.C.).
- 4) Buenos Aires Maru (ITO v. Mitsui) [1986] 1 S.C.R. 752, 1986 AMC 2580 (C.B. at p. 255).
- 5) The Cleveland (Eisen und Metall v. Ceres Stevedoring) [1977] 1 Lloyd's Rep. 665 (Que. C.A.) (C.B. at p. 270).
- 6) Elbe Maru (NYK v. Int'l Import) [1978] 1 Lloyd's Rep. 206. (C.B. at p. 281).

- 7) Santam Insurance Co. Ltd. v. SA Stevedores Ltd. 1989 (1) SA 182 (Durban and Local Coast Division).
- 8) Godina v. Patrick Operations [1984] 1 Lloyd's Rep. 333 (N.S.W.S.C. in App.).
- 9) Glebe Island Terminals Pty. Ltd. v. Continental Seagram Pty. Ltd. (The Antwerpen) [1994] 1 Lloyd's Rep. 213 (N.S.W.S.C. in App.).
- 10) Rockwell Graphic v. Fremantle Terminals (1991) 106 F.L.R. 294 (Supr. Ct. Western Australia).
- 11) BHP v. Hapag-Lloyd Aktiengesellschaft [1980] 2 N.S.W.L.R. 572 (N.S.W. S.C.).
- 12) Sidney Cooke Ltd. v. Hapag-Lloyd Aktiengesellschaft [1980] 2 N.S.W.L.R. 587 (N.S.W. S.C.).
- 13) Quadro Shipping NV v. Bizley & Co. Pty. Ltd. (The Protea Trader) (1992) 113 F.L.R. 280 (N.S.W.S.C. in App.).
- 14) Canadian Pacific Forest Products v. Belships [1999] 4 F.C. 330, (1999) 175 D.L.R. (4th) 449, 1999 AMC 2606 (Fed. Ct. of App.) (re non-responsibility clause in deck carriage) (C.B. at p.56).
- 15) Tamrock USA v. Maren Maersk 1996 AMC 676 (S.D. N.Y. 1995).
- 16) Parker Hannifin v. Ceres Marine 1996 AMC 1573 (D. Md. 1996).
- 17) Colgate Palmolive v. Atl. Conveyor, 1997 AMC 1478 (S.D. N.Y. 1996).
- 18) I.N.A. v. Savannah 1998 AMC 1029 (S.D. N.Y. 1997).
- 19) Braber Equipment Ltd. v. Fraser Surrey Docks Ltd. (1998) 59 B.C.L.R. (3d) 108 (B.C.S.C.). (Terminal operator could not prove it contracted Himalaya Clause as agent of ocean carrier or that carrier afterwards ratified Clause).
- 20) Kodak v. Racine Terminal (Montreal) Ltd. (1999) 165 F.T.R. 299, 1999 AMC 2628 (Fed. Ct. of Can.) (similar to Braber, *supra*).
- 21) The Mahkutai [1996] A.C. 650, [1996] 2 Lloyd's Rep. 1 (P.C.) (Himalaya Clause reaffirmed as preferred means of conferring 3rd party benefit and only benefit - not mutual obligations).
- 22) The Sanko Vega 1989 (1) S.A. 182 (D.) (South Africa allows Himalaya Clause).
- 23) Fraser River Pile & Dredge Ltd., v. Can-Dive Services Ltd., [1999] 3 S.C.R. 108 (C.B. at p.286).
- 24) Fruit of the Loom v. Arawak Caribbean Line Ltd. 2000 AMC 387 (S.D. Fla. 1998) (trucker in through b/l benefited by Himalaya Clause).

Topic Ten
Fundamental Breach

(See MCC IV, Chap. 5 at www.mcgill.ca/files/maritimelaw/ch5.pdf)
(C.B. at p. 287)

I. Fundamental Breach - Definition

II. Civil Law - Rupture of the Contract

III. Complicated by Conventions & Statutes

- IV. Suisse Atlantique [1967] 1 A.C. 361, [1966] 1 Lloyd's Rep. 529 (H.L.) (C.B. at p. 302)
- a rule of construction?
- a rule of substantive law?

V. Consumerism - Unfair Contracts Terms Act, 1977, U.K. c. 50

- VI. Photo Production v. Securicor Transport [1980] A.C. 827, [1980] 2 W.L.R. 283 (H.L.) (C.B. at p. 303); Ailsa Craig v. Malvern Fishing [1983] 1 W.L.R. 964 (H.L.)

VII. U.S. Quasi-Deviation

- 1) over carriage
- 2) non-delivery

VIII. The Ratio

Fraude or dol
Gross negligence

IX. Pothier (See The Cleveland (C.B. at p. 270 *et seq.*)

See art. 1474 c.c. Québec 1994
See also art. 1437 c.c. Québec 1994 re abusive clauses

X. The Key Is IntentionXI. Hague and Hague/Visby Rules

- art. 4(5) para. four
- art. 4(4) deviation
- art. 1(c) deck cargo

XII. Misrepresentation - 4(5)XIII. Geographic Deviation - 4(4)XIV. Deck Cargo - 1(c)XV. The Sanction?XVI. Visby

- Art. 4(5)(e)
- Art. 4 bis (4)
- Art. 4 bis (2)

XVII. Hamburg - Art. 8(1)XVIII. Cases

- 1) Foscolo Mango v. Stag Line (1931) 39 Ll. L. Rep. 101 (C.A.) (C.B. at p. 288).
- 2) See also Stag Line Ltd. v. Foscolo Mango & Co. [1932] A.C. 328 (H.L.).
- 3) Krupp Intl. v. Fed. Atl. Lake 1982 AMC 1799 (E.D. Mich. 1981) (C.B. at p. 297).
- 4) Swindell-Dressler v. Hellenic Ideal 1981 AMC 921; 500 F. Supp. 649 (S.D. N.Y. 1980). (C.B. at p. 300).
- 5) Suisse Atlantique v. N.V. Rotterdamsche [1967] 1 A.C. 361, [1966] 1 Lloyd's Rep. 529 (H.L.) (C.B. at p. 302).
- 6) Photo Production v. Securior Transport Ltd. [1980] 2 W.L.R. 283 (H.L.) (C.B. at p. 303).
- 7) Hain S.S. Co. v. Tate & Lyle Ltd. (1936) 55 Ll. L. Rep. 159 (H.L.).
- 8) Karsales (Harrow) Ltd. v. Wallis [1956] 1 W.L.R. 936 (C.A.).
- 9) Ailsa Craig v. Malvern Fishing [1983] 1 W.L.R. 964 (H.L.).

- 10) Cour d'Appel de Paris le 24 mai 1976, DMF 1976, 587 (C.B. at p. 304).
- 11) Cour de Cassation le 30 janvier 1978, DMF 1978, 527 (C.B. at p. 304).
- 12) (The Cleveland) Eisen und Metall v. Ceres Stevedoring [1977] 1 Lloyd's Rep. 665; (1976) 72 D.L.R. (3d) 660 (C.B. at p. 270).
- 13) Kishinchand & Sons (Hong Kong) Ltd. v. Wellcorp Container Lines Ltd. [1995] 2 F.C. 37, (1994) 88 F.T.R. 301 (Fed. Ct. of Can.)
- 14) Canadian Pacific Forest Products v. Belships [1999] 4 F.C. 330, (1999) 175 D.L.R. (4th) 449, 1999 AMC 2606 (Fed. Ct. of App..) (C.B. at p. 56).
- 15) The Pembroke [1995] 2 Lloyd's Rep. 290 (N.Z. High Ct.) (C.B. at p. 305).
- 16) ETS Gustave Brunet, S.A. v. M.V. Nedlloyd Rosario, 929 F. Supp. 694, 1997 AMC 803 (S.D. N.Y. 1996) (C.B. at p. 306).
- 17) Mesocap Ind. Ltd. v. Torm Lines 2000 AMC 370 (11 Cir. 1999) (unreasonable deviation does not affect 1-year time bar).
- 18) The Kapitan Petko Voivoda [2003] 2 Lloyd's Rep. 1 (C.A.) ("... in any event") (C.B. at p. 307)
- 19) Z.I. Pompey v. ECU-Line, N.V. (1999) 179 F.T.R. 254, 2000 AMC 145 (Fed. Ct. of Can. per Hargrave P.); upheld (1999) 182 F.T.R. 112, 2000 AMC 851 (Fed. Ct. of Can. per Blais J.); upheld (2001) 268 N.R. 364 (Fed. Ct. of App.); appeal allowed, [2003] 1 S.C.R. 450, (2003) 224 D.L.R. (4th) 577, 2003 AMC 1280 (Supr. Ct. Can.) (C.B. at p. 308).
- 20) Tetley, Case Comment on *Z.I. Pompey v. ECU-Line, N.V.* (C.B. at p. 309), (2004) 83 Can. Bar. Rev. 245-259 (published in 2005), (2004) 10 JIML 468-476, and at www.mcgill.ca/files/maritimelaw/pompey.pdf.
- 21) Timberwest Forest Ltd. v. Gearbulk Pool Ltd. (2003) 10 B.C.L.R. (4th) 327 (B.C. C.A.)

Topic Eleven
Summary
(C.B. at p. 317)

I. Comparison between Hague, Hague/Visby & Hamburg

II. Handling a Claim and its Defense

- 1) Due diligence exercised - no responsibility of the carrier.
- 2) Peril of the sea proven - no responsibility of the carrier.
- 3) No due diligence - carrier responsible up to package & kilo limit.
- 4) No peril proven - carrier responsible up to package or kilo limit.
- 5) Fundamental breach - carrier responsible for total amount without limit.
- 6) Fundamental breach under Hague/Visby Rules.

III. Shipper's Responsibility

- 1) Effort Shipping Ltd. v. Linden Management S.A. (The Giannis NK) [1998] A.C. 605, [1998] 1 Lloyd's Rep. 337, 1998 AMC 1050 (H.L.) (C.B. at p. 318).
- 2) Senator Linie GmbH v. Sunway Line, Inc. 291 F.3d 145, 2002 AMC 1217 (2 Cir. 2002) (C.B. at p. 320).
- 3) Elders Grain Co. Ltd. v. The Ralph Misener (2003) 237 F.T.R. 37, 2003 AMC 1889 (Fed. Ct. of Can.) (C.B. at p. 320), 2005 FCA 139 (Fed. C.A.) (C.B. at p. 320).
- 4) Contship Containerlines, Ltd. v. PPG Industries, Inc. 442 F.3d 74, 2006 AMC 686 (2 Cir. 2006) (A carrier may not invoke the strict liability of the shipper of dangerous goods, if the carrier knows the cargo poses a danger and yet exposes the cargo to general conditions of carriage (in this case, heat) that trigger the known danger.)

Topic Twelve
Forms
(C.B. at p. 321)

- 1) Liner Bill of Lading (CONLINEBILL 2000) (C.B. at p. 322)
- 2) Non-Negotiable Sea Waybill (LINEWAYBILL) (C.B. at p. 324)
- 3) CMI Uniform Rules for Sea Waybills (1990) (C.B. at p. 326) (incorporated by reference in many sea waybills, e.g. BIMCO's "Linewaybill")
- 4) The Tropwood – Statement of Claim and Statement of Defence (1976) (C.B. at p. 327)

Topic Thirteen
Conclusions

I. Review of various principles

- 1) Seaworthiness & the common venture.
- 2) Condition & warranty and indeterminate terms.
- 3) The making of a contract, civil law, common law & maritime law.
- 4) Restitutio in integrum.
- 5) Contracts of carriage, contracts of affreightment.
- 6) The importance of force of law.
- 7) What is the contract?
- 8) Obligations from law & from contract.
- 9) Who are the parties to the contract and to the obligations under the contract and the law? Tripartite contracts.
- 10) Standard form contracts & adhesion contracts
- 11) Superseding clauses.
- 12) Interpretation of contracts.
- 13) Burden of proof & order of proof.
- 14) Negotiorum gestio
- 15) Causal connection.
- 16) Third party benefit
- 17) Fundamental breach
- 18) Influence and ingressions of legislators on freedom of contract.
- 19) Tetley's law.
- 20) Maritime law is international. National interpretation of the international conventions is undesirable and unfortunate.
- 21) How to draw up an opinion
- 22) Good faith.

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