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An Analysis of Contract Law in Terms of Shipping

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ABSTRACT

Nowadays, transportation is a crucial part of commerce; even we cannot imagine trade or business without transportation facilities. But it is also very important to ensure that this facility does not cause any harm or damage to the dealing parties (buyer and seller), so we require some laws regarding the proper functioning of this facility.

This paper deals with the laws or legislations under which parties abide while making contracts related to shipping or transportation. This paper is also talking about the role of negotiable instruments used while making shipping contracts and also what types of agreements made between the parties (buyer and seller) in this transaction. In this paper, the remedies both parties have in case of any breach of contract or its conditions are also mentioned.

I. INTRODUCTION

We can all see how transportation plays a significant role in the world economy and trading; without transportation, we cannot imagine trade or business. The transactions and trade carried out through the channels of the oceans, the air, the trains, and the freight drive the global economy.

These transactions must be carried out under the guidelines established by the global regulatory bodies. Every company engaged in foreign trade must ensure that these regulations have been strictly followed.

This paper will discuss shipping contracts, so we will pay more attention to transportation that occurs through waterways and how various laws regulate it.

Since the shipping business is the oldest one still in operation, it plays a crucial role in the global economy. In the past, shipping was the primary method of all trading, transactions, travel, and transportation. There is no denying that it is essential to the current economy as well.

So, when conducting any international maritime transaction, the shipping industries abide by the laws of the individual countries and the rules and regulations established by the International

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Maritime Organization (IMO).

Now we will see the meaning **of 'shipping'** and **shipping industry,** respectively. Shipping is a process of transporting physical goods from one place to another. For example, when goods are delivered from a company's warehouse to a consumer. The shipment process will be held under the supervision of the shipping company, after the production and packaging process of the items.

(A) Shipping Industries

The shipping industry allows domestic and international businesses to conduct transactions, such as sales, purchases, and trading, by providing facilities for transporting goods and commodities. It also offers direct client delivery options for domestic and international shipping.

(B) Shipping Contracts

A shipment contract requires the seller of a good to entrust the goods to a carrier or transporter rather than delivering them directly to the customer. The seller's "shipment" obligations are completed when the items are delivered to the carrier, and any further loss or damage to the products is the buyer's responsibility.

Bills of lading or charter parties are used in most contracts governing the shipment of goods by ships. The term "charter party" is a transliteration of the Latin phrase "split charter," or Carta partita. Three contracts involving the use of ships owned by or under the control of third parties fall under this category. In a demise charter, the shipowner turns over control of the vessel to the charterer, who hires the crew and master, makes arrangements for maintenance and supplies, accepts responsibility for the cargo, and otherwise behaves much like the owner for the duration of the charter.

STATEMENT OF PROBLEM

What are the different contracts or agreements made between the parties while trading goods occurs through shipping mode of transportation?

RESEARCH OBJECTIVES

The objectives of doing this research are the following-:

1. To find out how shipping contracts take place?
2. To find out under which legislations do these contracts take place?
3. To find out the agreements made between the parties in shipping contracts?

RESEARCH METHODOLOGY

In this research paper, the doctoral method of research has been applied. Data from different sources like articles, research, websites, legislation, etc., have been collected.

REGULATORY LEGISLATIONS INVOLVED IN THE SHIPPING BUSINESS

Since India was independent in 1947, the shipping sector has been crucial to expanding the Indian economy. Every primary industry has risks and disadvantages that could harm the nation more than benefit. As a result, the Ministry of Shipping manages and oversees the industry, which is primarily governed by the following Acts:

1. The Merchant Shipping Act, 1938
2. The Inland Vessels Act, 1917
3. The Coasting Vessels Act, 1838
4. The Multi-modal Transportation of Goods Act, 1993
5. The Sales of Goods Act, 1930
6. The Indian Contract Act, 1872
7. The Indian Ports Act, 1908
8. The Dock Workers (Regulation of Employment) Act, 1948
9. The Major Ports Trust Act, 1963
10. The Seamen's Provident Fund Act, 1966
11. The Inland Waterways Authority of India Act, 1985
12. In addition to these accords, the International Maritime Organization has established rules and regulations governing the shipping industry (IMO).

II. HOW INTERNATIONAL SHIPPING WORKS

The primary participants in this transactional process are the seller or shipper, consignee or buyer, shipping industry, and freight forwarder.

Firstly, both parties must sign a contract that will be legally bounded to establish responsibility for future transactions. Once all paperwork has been completed, work can begin on export transportation. This transports products from the seller’s warehouse to the freight forwarder's location.

A nearby logistics firm will now be hired to provide transport services. Using a forwarding firm with export haulage services is far-reaching when the buyer is responsible for transporting the purchased products from the shipper’s warehouse.

When the items are delivered to the forwarder's location as part of the haulage service, they are also unloaded from the vehicle. You will then need to participate in the export customs clearance procedure. Since different nations have distinct policies, there are observable differences in how customs and rules are applied.

In order to release the products from the nation of origin, a clearance transaction entails submitting all necessary documentation to the appropriate authorities. For a deeper understanding of all the relevant rules, this section requires further information. Working with a licensed clearing agency is preferable if this seems overly complicated.

The following action is known as origin handling. Expressed origin handling refers to the physical examination of the cargo by the freight forwarder or designated agency prior to loading it onto a ship.

Ocean freight comes immediately after origin handling. The freight forwarder's shipping line transports the container/vessel to the location indicated on the B/L i.e., bill of lading. The shipping pathways are just as important when picking a shipping firm as the schedule.

A shipping lane is akin to a maritime path or road that ships go through. The consignee shall pay all applicable ocean freight fees. The import customs clearance portion will then need to be completed by the consignee.

While the products are being transported, this procedure can start. The primary purpose of customs clearance is to fulfil tax responsibilities. Your products will be kept in the customs area pending inspection. The buyer may need to cooperate with a nearby clearance and forwarding agent to speed up this process.

Another crucial phase in the shipment process is destination handling. It involves taking the container off the ship and moving it to the freight forwarder's storage facility. At that point, the buyer can finally pick up their shipment and pay the agreed-upon fees.

III. Agreements made between the parties

In shipping agreements, the seller or shipper, consignee or buyer, shipping company, and freight forwarder are the primary stakeholders in this process. Cargo ships, tankers, container ships, and bulk carriers are all used by the shipping companies. Companies must follow laws and regulations for their firm to run smoothly. They must also ensure that their trading is legal and that they do not engage in illegal activity.

In this situation, the parties can consult an attorney to discuss and establish agreements that will meet their needs and be legally binding. The shipping contracts look like this.

Following are some shipping contracts made by the parties-:

1. **Ship or Vessel Sale and Purchase Agreements**

One of the maritime sector's crucial duties is selling and purchasing *ships and vessels*. A ship or vessel's seller and buyer enter into a sale and purchase agreement. The protection of the consignee and shipper, their obligations, the payment terms, the termination clauses, and the remedies offered to the consignee and shipper in the event of a breach are all essential topics covered by the parties in this agreement. During the negotiating process, the parties may reach an agreement on the final price and terms of the contract for the sale and purchase of a ship through multiple communications.

2. **Transportation Services Agreements**

A transportation services agreement is entered into between the provider of commodities and those who provide transportation for those commodities. In these contracts, the service provider agrees to receive a certain amount from the supplier of the goods in exchange for promising to deliver the products to the vendors, distributors, or customers. The parties must agree on the delivery date and time, the quality requirements, each party's obligations and rights, termination clauses, and damages in the event of a breach in this contract. The insurance clause will also be discussed by the parties. What happens if shipping items are damaged due to an unforeseen event? What are the consequences of a product delivery delay caused by an uncontrollable event? In the event of a contract breach, what is the negotiated compensation? Who is responsible for compensating the other party for their loss?

3. **Import & Export Contracts**

An import-export agreement is a pact made between importers & exporters from different nations to sell and purchase products or goods. The contract can be used to trade certain goods internationally, such as industrial supplies, raw materials, manufactured commodities, or electronic commerce deliveries. These agreements will stipulate things like quantity ordered, price per product, delivery terms, payment conditions, paperwork, and title retention, among other things.

4. **Contract of Affreightment**

It is an agreement between the owner of a ship or vessel and other person to carry the goods within a stipulated time. Small coasters used for brief travels enjoy this arrangement since it is convenient and affordable. Government agencies also use contracts of affreightment for foreign trade.

5. Marine Insurance Contracts

Marine insurance protects the damages to ships or vessels, cargo, terminals, and other modes of transportation used to move, acquire, or hold products and commodities between the sites of origin and the point of delivery. This is crucial to shield the parties' goods from harm or an unforeseen event. An agreement between an insurer and a person that has suffered losses or damages at sea is known as a marine insurance contract. A maritime insurance contract must include general contract requirements, insurable interests, the highest degree of good faith, warranties, proximate cause, assignment and nomination of the policy, and the return of payment. Brokers or the insurer themselves may propose marine insurance.

6. Freight Forwarding Agreements

A kind service used by businesses that import and export commodities are freight forwarding. It offers assurance that the goods will arrive at their intended location in excellent shape. Companies enter into a contract with a freight forwarder for this reason. A freight forwarder is a commission-based agent who handles tasks including loading and unloading, storing products, ensuring product quality, coordinating local transportation, obtaining money from clients, etc., on behalf of importers and exporters. To put it simply, a freight forwarder is a person who will offer the services that encompass the entire transportation and distribution process.

A freight forwarding contract must specify the parties' rights and obligations, standard quality standards, terms governing the trade of goods to clients, delivery conditions and payment methods, indemnity, termination, etc.

7. Vessel Lease Agreement or Ship Charter Agreement

The lessee or charterer and the shipowner enter into a leasing arrangement. Under this contract, the charter party rented out the ship in whole or in part for the predetermined amount of time. The shipowner, the charterer, and the market all contribute to the formation of this agreement's terms. The parties will also abide by all applicable laws to prevent any legal interference with the trading. Time charter parties and trip charter parties are the two different kinds of the charter. In the case of a trip charter, the parties can create their contract conditions and, if necessary, alter the primary conditions to suit their needs better. All parties must agree to these changes.

In a time charter, the vessel may be leased for a predetermined amount of time and any additional time that the parties have mutually agreed upon. The charterer is in charge of the ship's business operations in this type. Therefore, the contract conditions should clearly state the period for ship utilization and the ship's fuel consumption, payload capacity, and speed.

8. Ship Management Agreements

The parties also consider managing the ship for such transactions when they contract to supply products and commodities via marine. The shipowners used to focus on various tasks in the past, including technical oversight, crew employment, vessel maintenance, financial management, and operation. However, in order to control the operations carried out while shipping commodities, shipowners today frequently hire resources. A ship might be as expensive as purchasing a plant. Therefore, it is usually preferable to hire professionals to oversee ship operations. As a result, shipowners nowadays have given ship management businesses, chartering organizations, etc., responsibility for various tasks.

IV. INSTRUMENTS OF SHIPPING AGREEMENTS

Following are some instruments used in shipping agreements-:

1. Commercial Invoice- The seller who ships the items is always responsible for issuing a commercial invoice. The document is helpful for numerous purposes in export shipments. Before goods are released from customs, the destination nation must verify the invoice's information. In the event of an insurance claim, it serves as support documentation. To pay the supplier, the buyer also requires a commercial invoice. Before providing a letter of credit, a banking institution additionally examines the document.

2. Insurance Certificate- This certificate is a policy to protect the shipping or transportation company and freight forwarder from any potential liability and to pay for any damage. Your cargo insurance certificate lists the cargo's value and the proper course of action in the event of any unpredicted circumstances**.**

3. Bill of Lading- Bill of lading is a legitimate instrument that provides transparent information regarding the items which is transported by the seller. The master bill of lading or B/L, serves as a shipping receipt by indicating the kind, quantity, and location of the products. The freight forwarding business often receives this document from the shipping line and utilizes it to transfer the items to the end warehouse. The cargo receipt from the forwarder, the seaway bill, and the house bill of lading are further pertinent instrument that might be applicable.

V. REMEDIES OF BREACH OF SHIPPING CONTRACT

a) Remedies for seller- Generally, in many cases, buyers breach the contract and refuse to accept the goods or pay for them. The seller's remedy depends on the condition of goods, i.e., if goods have passed out and the buyer received them. However, the buyer cannot pay the stipulated price per the contract on a specific day, so the seller can sue him/her after that day passes.

If the goods have not passed and the buyer is not ready to accept them, the seller can sue them for the non-acceptance of goods. However, the disadvantage of this remedy is that the seller still has remained goods that he or she would be able to sell out to reduce his or her loss more or less. Therefore, he or she can recover the difference between the contract price and the selling price at which the commodities have been sold to a third party, which would be frequently negligible.

There is one more remedy that the seller has, he or she can stop the transit of the goods if he finds the buyer bankrupt and there is an prominent danger that the buyer will not be paid.

b) Remedy of the buyer- If the seller breaches the condition of the contract by giving late delivery or not delivering adequate quantity, by delivering defective goods, non-delivery, not delivering the goods according to the contract conditions, etc.

In these above conditions, the buyer may reject the supplied goods and can sue the seller for the damages that take place through non-delivering of the goods and the difference between the market price and the contract price of the products at the time the goods should have been appropriately delivered will represent such damages.

The buyer may keep the products and seek damages for defective delivery if he chooses not to reject them or if he has waived his right to do so by improperly handling the goods. In this instance, the number of damages will be determined by the disparity between the market worth of his goods as of the delivery time, and those products' value had they been appropriately delivered.

VI. Conclusion

For many years, there has been a shipping industry. This industry has a crucial part in the growth of the global economy. It is crucial to comprehend the effects of poor shipping contract management. If neglected, it may result in holdups and delays that affect the entire process. So, before signing the contract, it is crucial to appropriately consult the terms and conditions of the parties. Therefore, shipping contracts are essential for practical terms and conditions conversations between the contractual parties on the open ocean.

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