



Japan-ASEAN Cooperation



AFFA

Sustainable Human Resource Development in logistics services for ASEAN Member States

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Cargo Policy Coverage

LIFM 6.6.0

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Cargo Policy Coverage



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Objectives



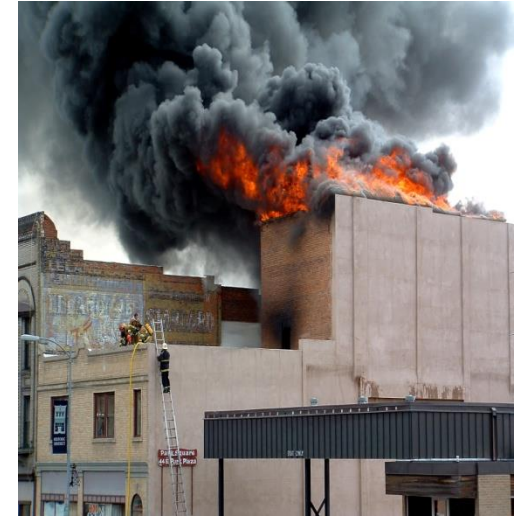
- Identify important terms of a cargo policy and understanding the open cover
- Identify different coverage between the ICC (A), (B) and (C)
- Understand the concept of burden of proof and warranties
- Understand the duration of cargo insurance

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Insurance Policy

Marine Insurance can be broadly categorize into 2 classes;

- Property: insures against financial loss or damage to physical property
- Liability: insures against financial loss or damage to third party property or bodily injury



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Insurance main groups

Property

- Cargo insurance
- Hull and Machineries (H&M)
- Loss of Income insurance

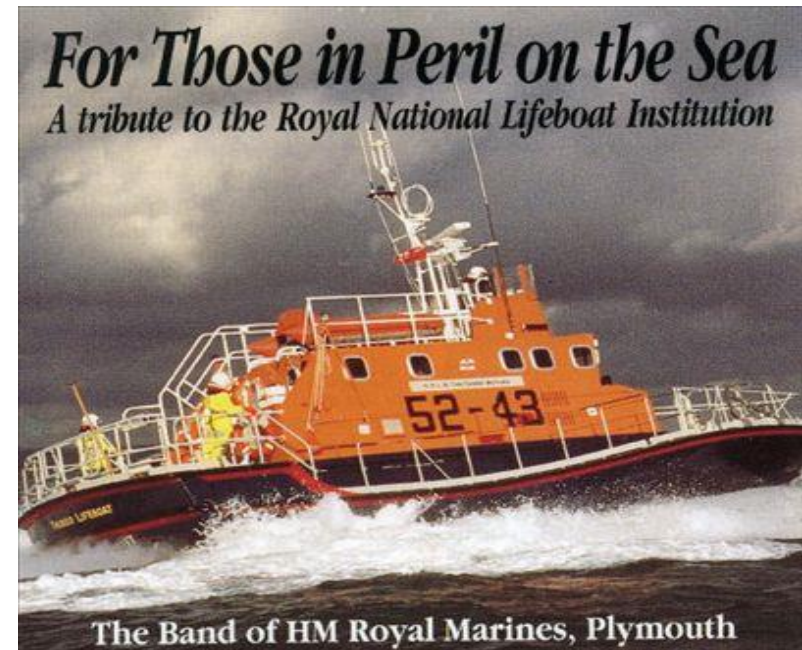
Liability

- Collision Liability Insurance
- Protection and Indemnity Insurance (P&I)
- Others e.g. Ship repairers, stevedores

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Policy Wordings

What is 'Perils of the Seas'?





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Policy Wordings

What is 'Perils of the Seas'?

MIA Rule 7 define it as:

'...only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.'

Trinder, Anderson & Co v Thames and Mersey Mar Insc Co (1898) held the terms has the same meaning in marine insurance as in the law of carriage of goods by sea.



Policy Wordings

What is ordinary action of the winds and waves?

What is regular and normal?

What is the unusual and unexpected?



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Policy Wordings

Example 1 (What is ordinary action of the wind and waves?)

In Popham and Willett v St Petersburg Insc Co (1909), the issue was whether obstruction by ice was or was not a peril of the seas. It was held that, as the annual regular obstruction of the port by ice in winter was in 'no sense an accident being part of the ordinary course of things, like the ebb and flow of the tides – the loss was not caused by a peril of the seas'. Thus, the ice encountered has to be 'unusual' at the time of the year, creating extraordinary difficulty or danger to navigation.

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Policy Wordings

whether obstruction by ice, was or was not a peril of the seas?



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Policy Wordings

Example 2 (What is regular and normal?)

Magnus v Buttemer (1852). The ship in question was in harbour for unloading when she was damaged as a result of taking the ground on the natural falling and rising of the tide. The court held that as there was ‘nothing unusual, no peril, no accident’; the damage fell within the description of ordinary wear and tear.

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Policy Wordings

Natural falling and rising of the tide?



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Policy Wordings

Example 3 (What is unusual and unexpected?)

Mountain v Whittle (1921). House of Lord's decision where damage sustained as a result of an influx of water into the ship caused by a wash of extraordinary size and dimension, created by the tug employed to tow the insured vessel, was held to be a loss through a peril of the seas.



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Policy Wordings

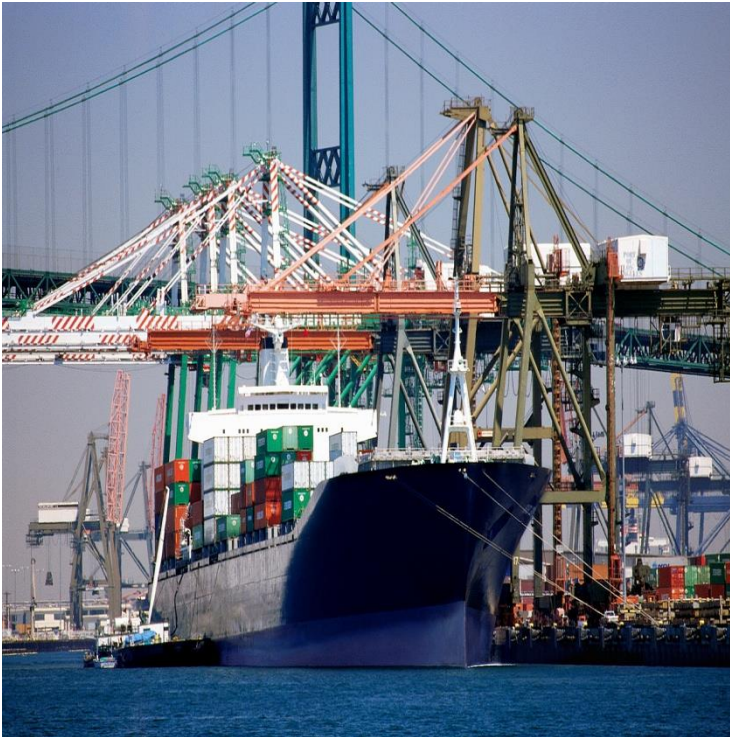
A wash of extraordinary size and dimension?



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Types of Policies - ICC

Institute Cargoes Clauses:



- (A), (B) or (C) or –
simple as ABC
- ICC (A) = All Risks
- ICC (B) and (C) =
named perils

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ICC Headings

1. Risks Covered
2. Exclusions
3. Duration
4. Claims
5. Benefits of Insurance
6. Minimising Losses
7. Avoidance of Delay
8. Law and Practice
9. Note



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ICC Headings

Cargo Insurance Basics

1. **Risks covered** (lists those risks actually covered in each case)
2. **Exclusion** (clarify the position of underwriters regarding unseaworthiness, insufficiency and unsuitability of packing including stowage and insolvency etc)
3. **Duration of cover**
4. **Claims**
5. **Benefit of insurance**
6. **Minimising losses**
7. **Avoidance of delay**
8. **Law and practice** (It applies where a foreign jurisdiction clause attaches to the policy and requires that the foreign court shall base its decisions on English law and practice)
9. **Footnote**

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ICC (C) Covers

- 1.1.1 Fire or Explosion
- 1.1.2 Vessel stranded, grounded, sunk or capsized
- 1.1.3 Overturning or derailment of land conveyance
- 1.1.4 Collision
- 1.1.5 Cargo discharged at port of distress
- 1.2.1 General average sacrifice
- 1.2.2 Jettison



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ICC (B) Covers

1.1.1 to 1.1.5 in (C) Clause

1.1.6 Earthquake, volcanic eruption or lightning

1.2.1 General Average

1.2.2 Jettison

1.2.3 Entry of water

Including Total Loss of package lost overboard or
loading/unloading from vessel



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ICC (A) Covers

All risks of physical loss or damage i.e. accidental not inevitable

Specifically excludes loss from **inherent vice or delay**



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Perils	A	B	C
Rough/Improper handling	✓	X	X
Water damage	✓	X <small>Unless entry of water into vessel's hold/container</small>	X
Theft, Pilferage & Non - Delivery	✓	X	X
Road Accidents	✓	X	X

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Table of comparison

Risk	(A)	(B)	(C)	Remarks
Handling damage	Yes	No	No	>70% of Claims
Wet damage	Yes	Yes, if entry into vessel but not wet by rain	No	Common
Theft/Pilferage	Yes	No	No	Esp. valuable cargo

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Table of comparison

Risk	(A)	(B)	(C)	Remarks
Non-delivery / missing	Yes	No	No	Common
Contamination/staining by other cargo	Yes	No	No	
Washing overboard	Yes	Yes	Yes	Impt for deck cargo
Fire & Explosion	Yes	Yes	Yes	Major casualty
Stranding/grounding/sinking/capsizing of vessel	Yes	Yes	Yes	ditto
Overturning or derailment of land conveyance	Yes	Yes	Yes	ditto

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Table of comparison

Risk	(A)	(B)	(C)	Remarks
Collision	Yes	Yes	Yes	Major casualty
Heavy weather, stowage collapse/break loose in ship's hold	Yes	No	No	
Discharge cargo at port of distress	Yes	Yes	Yes	Major casualty
Earthquake, volcanic eruption or lightning	Yes	Yes	No	Uncommon, tsunami covered
General average contribution	Yes	Yes	Yes	Major casualty
Salvage contribution	Yes	Yes	Yes	Major casualty
Piracy – both land and sea	Yes	No	No	Common in S.E.A. waters and parts of Indo-china

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Specialized Insurance

Other Institute Clauses

- Institute Bulk Oil Clauses
- Institute Frozen Food Clauses
- Institute Sugar Clauses
- Institute...



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Bulk Cargoes



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Bulk Cargoes

Risks factors to consider:

- Cargo shifting
- Spontaneous combustion in cargoes such as coal and grains
- Corrosion
- Attitude of ship-owners



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Oil Cargoes



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Oil Cargoes

*How much is
60 million
barrels of oil?*

■ **US\$6.42 billion (\$8 billion):** The value of 60 million barrels, based on the Brent crude oil benchmark.

■ **30 supertankers** would be needed to transport the oil by sea. One supertanker carries 2 million barrels. By contrast, Italy consumes 1.5 million barrels per day.

■ **3,815:** The number of Olympic-sized swimming pools you could fill with the oil.

■ **2/3:** 60 million barrels is roughly two-thirds of just a day's global oil demand.

■ **3.75 per cent** of all emergency stocks held by the International Energy Agency's 28 member countries, which total around 1.6 billion barrels.

■ **8.3 per cent** of the US Strategic Petroleum Reserve, which stands at 726.5 million barrels.

REUTERS

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Oil Cargoes



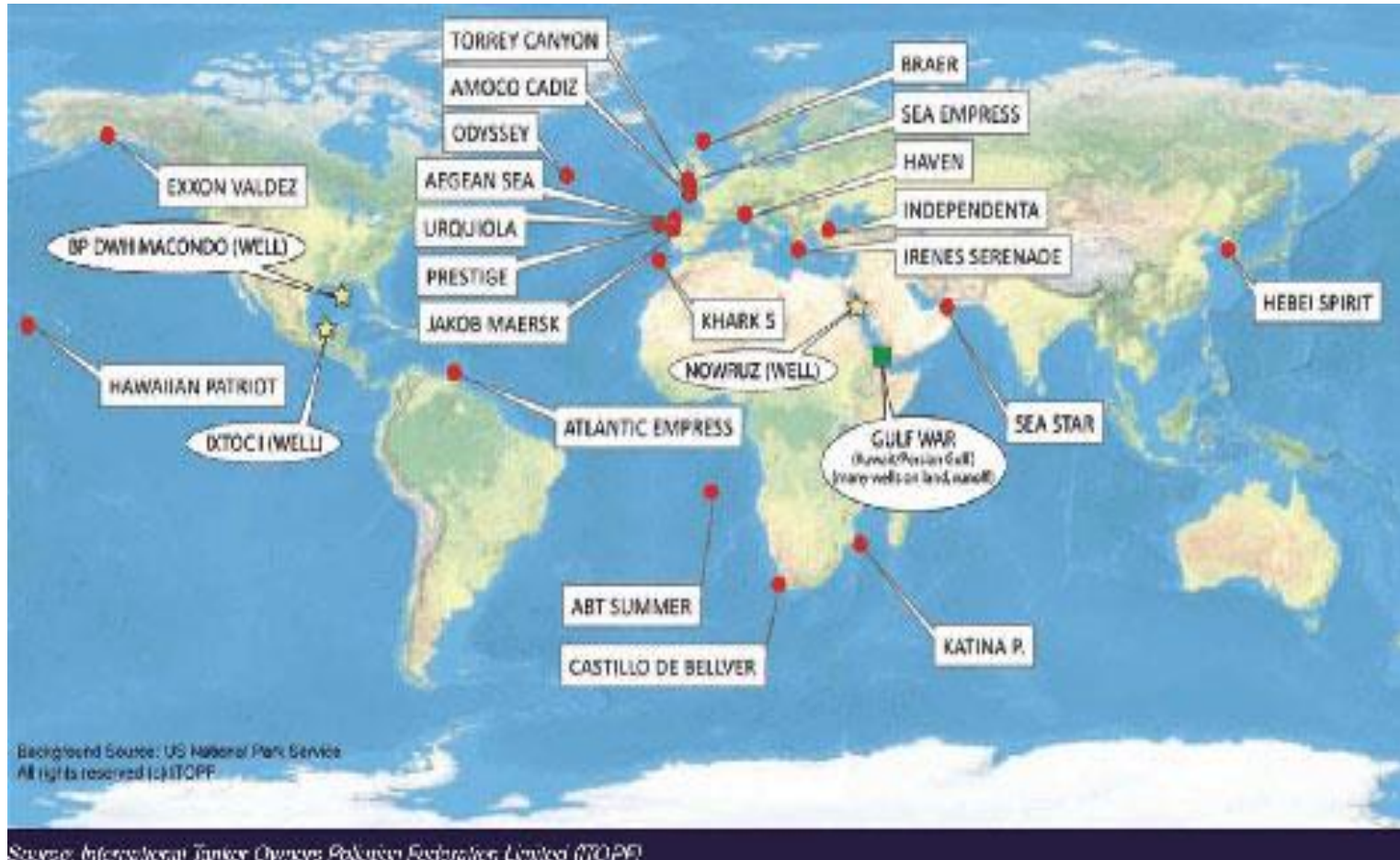
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Oil Cargoes



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Oil Cargoes



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Oil Cargoes

Risk factors to consider

- Susceptible to loss of volume due to evaporation
- High fire & explosion risk
- Serious and catastrophic pollution



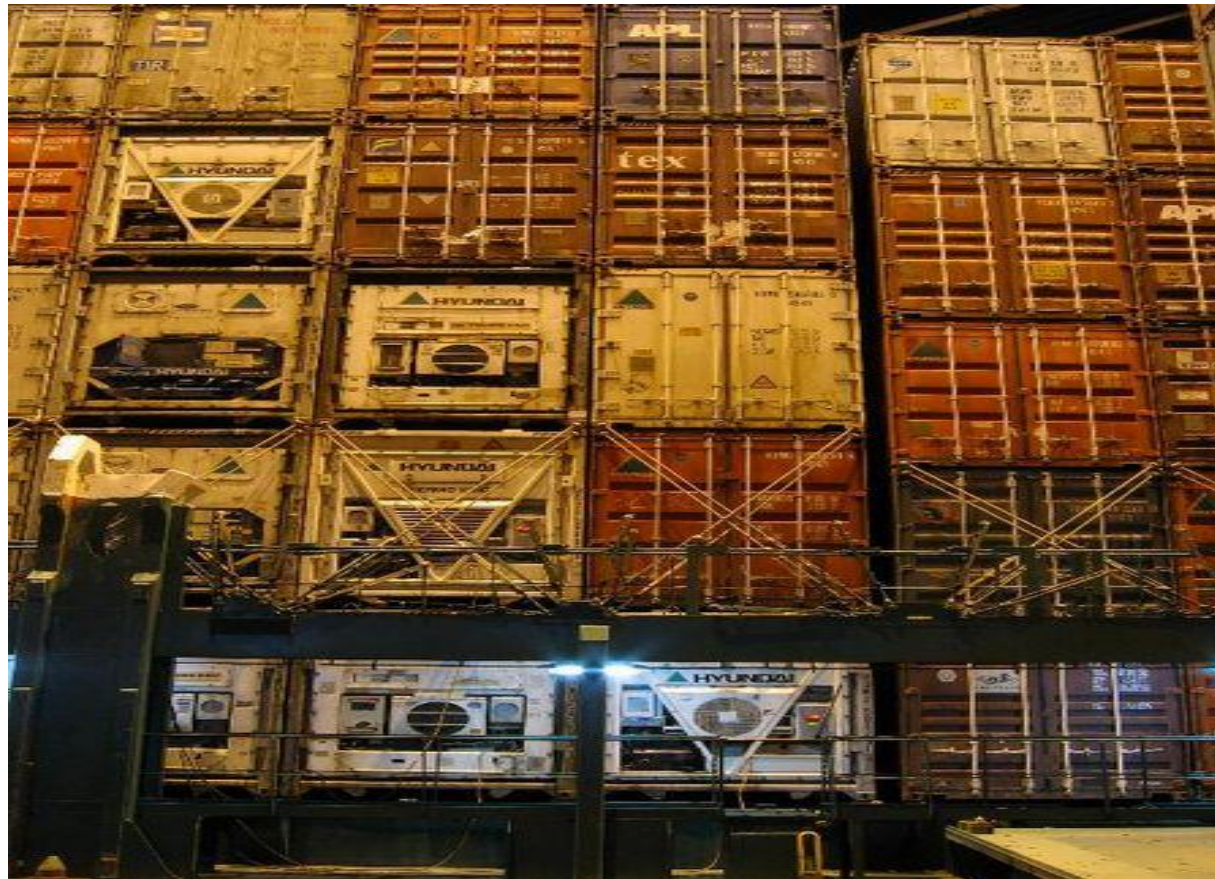
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Frozen Products



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Frozen Products



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Frozen Products

Risk factors to consider

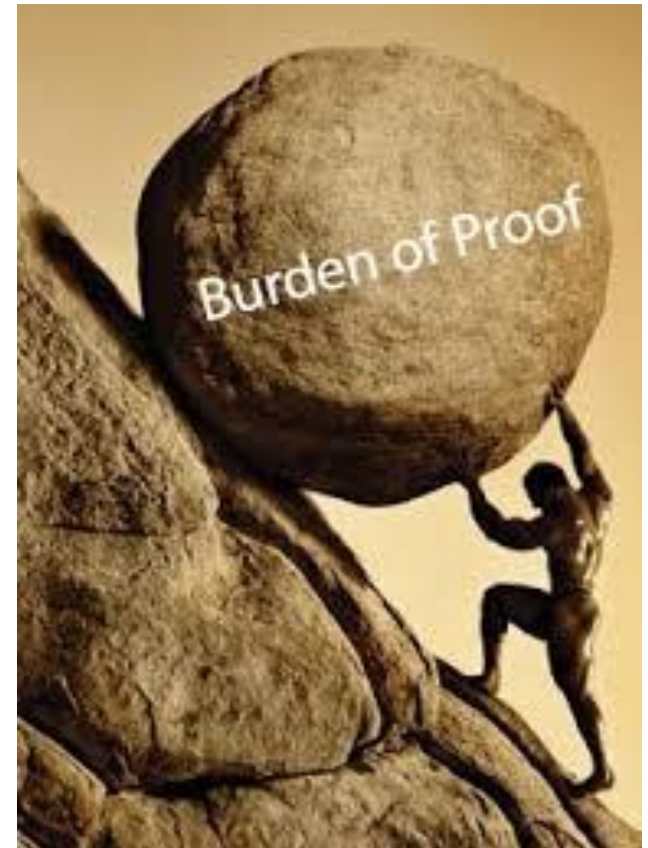
- Perishable goods
- Contamination / Taint
- Refrigeration and suitability of containers
- Package and preparation of frozen food



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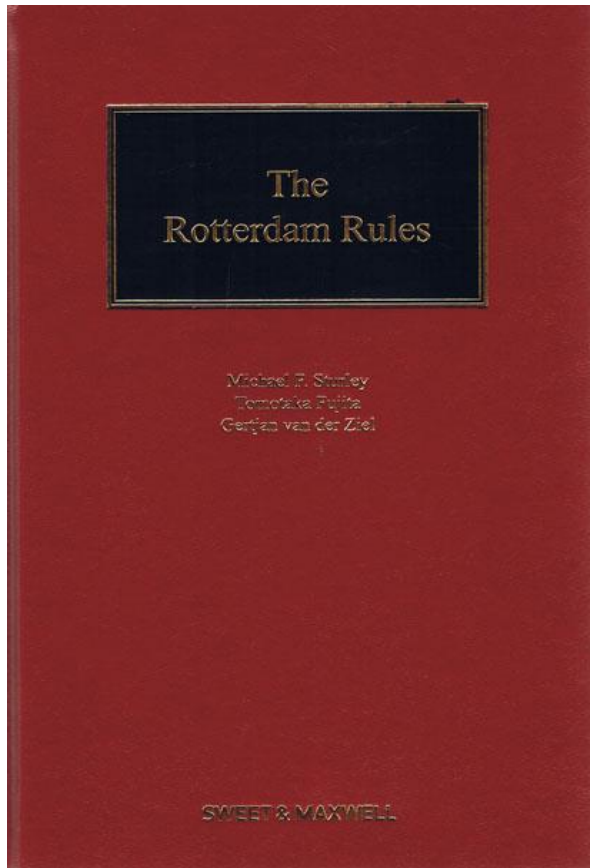
Burden of Proof

- Insurance covers the only the Insured
- Onus of proving loss lies with the Insured
- All rights against third parties are preserved and exercised
- Each carrier is responsible to exercise due care and to have own protection



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Cogsa Immunities



Chap 3 - Cogsa (A 2) after pg 20 of 20

Article IV - 1 *liant - of due diligence*

The Carriage of Goods By Sea Act of 1936

The Carriage of Goods by Sea Act of 1936 was meant to be a marked improvement on The Harter Act of 1893. COGSA governs all shipping involving American ports. Its purpose is to protect shippers from liability if cargo is damaged. If stated in the bill of lading, it can also apply to domestic shipping, this has become standard. Unlike Harter, where goods are the responsibility of the shipper from pier to pier, COGSA states that the shipper is responsible only while the cargo is on the ship, being loaded or, being unloaded. Like Harter, COGSA includes a list of immunities if damage results in certain situations. With these immunities comes some responsibility. There are several specific limitations in COGSA to further protect shippers from undue litigation. If the cargo is damaged, the claimant has one year from the stated delivery date on the bill of lading to proceed with litigation. Also, the complaint must be filed no later than three days from the date of delivery of the cargo. The Hague has recognized COGSA and has implemented it as the de-facto international standard.

Unfortunately, the act is too long to copy and annotate here, so I will summarize. There are 17 situations in which the shipper is not responsible for damage to the cargo.

Article IV - 2

- a. Errors in navigation.
- b. Fires caused by non-malevolent forces or accidents on the part of the shipper.
- c. Perils of the Sea.
- d. An Act of God. This is what freak accidents are attributed to.
- e. Acts of war.
- f. An act against the ship by public enemies. This includes terrorism, vandalism, and arson.
- g. Seizure by customs or legal authorities.
- h. Quarantine restrictions.
- i. Act or omission of the shipper. This is an ambiguous catch-all phrase, still open to interpretation.
- j. Strikes and lockouts. When stevedores are unable to unload a ship, damage can be caused to many goods, such as fruit, coffee, and frozen goods.
- k. Riots and looting.
- l. Rescuing or attempting a rescue at sea.
- m. Previous damage, inherent defects, and low quality.
- n. Bad packaging. For instance, when containerization came about, the responsibility for packing containers fell to the manufacturer. If a container full of computers was packed loosely, the computers would slide into each other at sea and break.
- o. Bad markings. This is why FRAGILE, LIFT HERE, and proper shipping directions are on everything.
- p. Any defects not discoverable by due diligence.
- q. Any other damage to the product not caused by the shipper. This is the catch-all phrase.

The above 17 immunities can be enjoyed only if four conditions are met.

- 1. The ship must be seaworthy.
- 2. The ship must be manned and equipped properly.
- 3. The cargo must be stowed properly.
- 4. The spaces in which the cargo is stored must be safe and proper for the cargo. This means that ammunition is not to be stored next to the boilers.

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Policy Exclusions

4.1 Wilful Misconduct

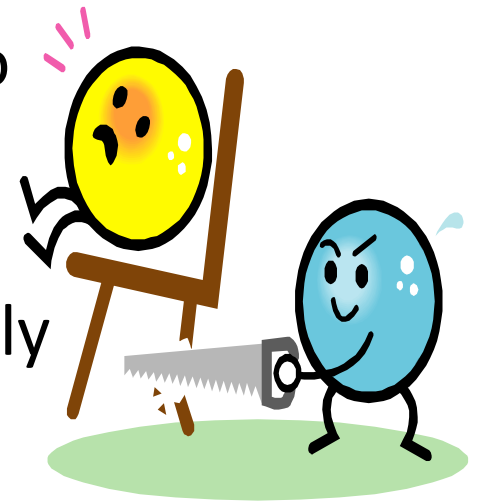
- Difficult to prove
- Fraud by Insured



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Policy Exclusions

- 4.1 loss damage or expense attributable to wilful misconduct of the Assured
- Example – Setting fire to a cargo deliberately
- Specifically referenced in s 55 Marine Insurance Act



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Policy Exclusions

4.2 Ordinary leakage or loss of weight/volume or ordinary wear and tear



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Policy Exclusions

- 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- Links back to Section 55 of the Marine Insurance Act and included/excluded perils
- Why are underwriters excluding these things?

Are they fortuitous?

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Policy Exclusions

4.3 Insufficient or unsuitability of packing or preparation of cargo



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Policy Exclusions

- 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to withstand the ordinary incidents of the insured transit
- where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance
- (for the purpose of these Clauses “packing” shall be deemed to include stowage in a container and “employees” shall not include independent contractors)

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Policy Exclusions

Inherent Vice or nature of subject matter



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Policy Exclusions

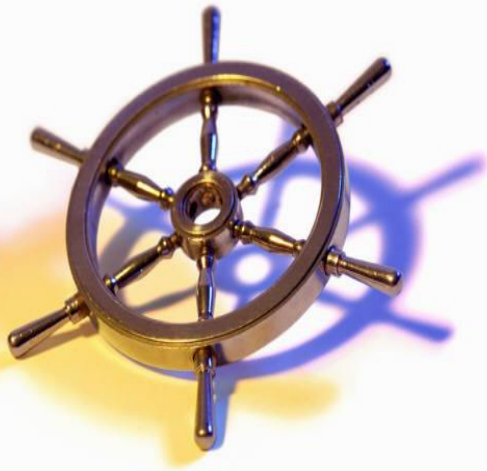
- 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
- What is inherent vice
 - Natural behaviour of things – such as fruit ripening

S 55 MIA

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Policy Exclusions

4.5 Delay even if caused by insured perils



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Policy Exclusions

- 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against, e.g. collision
- (except expenses payable under Clause 2 above)
- Why are underwriters not happy about covering delay?
- S 55 MIA

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Policy Exclusions

4.6 Insolvency or financial default of Ship-owners, managers or charterers

insolvent

[in sólvənt]

1. persons or businesses that are incapable of paying their debts as they fall due



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Policy Exclusions

- 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, **the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal process of the voyage**
- This exclusion shall not apply where the contract of insurance has been assigned to the party claiming who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
- Onus on assured to make sensible enquiries about who is shipping his cargo with!

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Policy Exclusions

4.7 Radio active matters



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Policy Exclusions

- 4.7 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

P.S. There is an additional exclusion in ICC B & C i.e. 4.7 deliberate damage or destruction by wrongful acts of any person or persons.

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Policy Exclusions

5. Unseaworthiness of vessel or craft



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Policy Exclusions

- 5 in no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded

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Policy Exclusions

5. Unfitness of container or conveyance



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Policy Exclusions

- 5 in no case shall this insurance cover loss damage or expense arising from
Unfitness of container or conveyance for the safe carriage of the subject-matter insured,
 - where loading is carried out prior to attachment of this insurance
 - or by the Assured or their employees and they are privy to such unfitness at the time of loading
 - e.g. not doing a light check in a container before accepting it.

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Policy Exclusions

6.1 War civil war revolution rebellion



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Policy Exclusions

- 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or
or
- against a belligerent power
- 6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat
- 6.3 derelict mines torpedoes bombs or other derelict weapons of war

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Policy Exclusions

7.1 Strike riot





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Policy Exclusions

- 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
- 7.4 caused by any person acting from a political, ideological or religious motive.

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Policy Warranties



Examples:

- Warranted no loss before xx date and time
- Warranted pre-loading inspection carried out by xx company
- Warranted no hooks (e.g. bagged cargo)
- Warranted no transshipment



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Duration of cover



- Warehouse to warehouse
- Starts when cargo leaves for commencement of transit
- Continue during ordinary course of transit



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Duration of cover

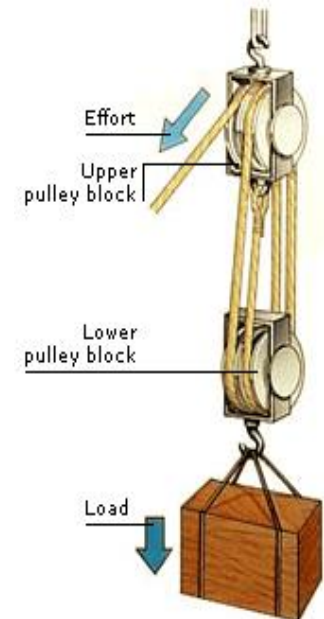
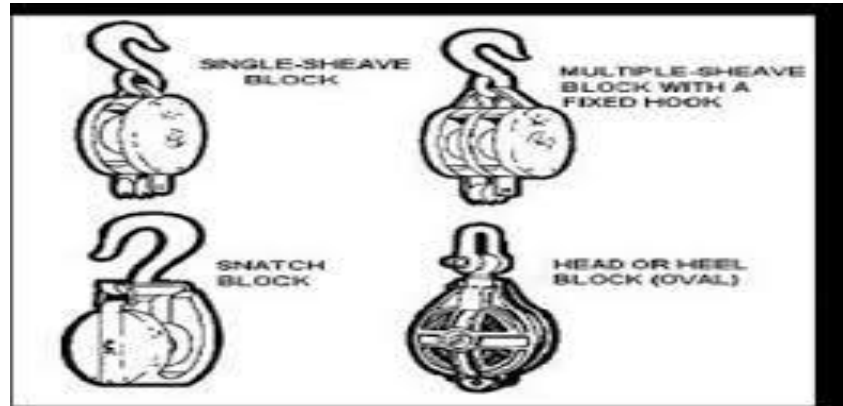
Terminates on

1. delivery to warehouse on destination
2. delivery to warehouse used by consignee for storage or distribution
3. expiry of 60 days upon completion of discharge from overseas vessel

“whichever shall first occur”

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Duration of cover



- “Ex Tackle”
- Delivery to particular location e.g. ship at anchorage, machine removers, exhibition specialists
- Lifting, shifting, positioning, uncrating, temporary storage after arrival

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Types of Losses



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Types of Losses

Yes, “**Ship** Happens!”





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