**International Contracts of Sale**

**Formation of Contracts in Australia**

*A binding contract requires the following elements:*

Offer & Acceptance (clear, non-conditional and in reliance on offer)

Intention to be legally bound by agreement

Consideration

Certainty

*Term or Condition*

* **Terms** can be oral or written but must be promissory in nature
* A term cannot be inserted into a contract after formation.
* Breach of a **condition** (essential term) entitles the innocent party to elect to terminate, but breach of a warranty only gives a right to damages

*Breach*

Anticipatory breach of a condition (ie repudiation) also gives the innocent party to right to elect to terminate.

*Damages*

* Damages are only compensatory.
* Damages are determined pursuant to the rule in *Hadley v Baxendale* (1854) 156 ER 145
* Which states entitlement to damages which

1. flow in the usual course of business
2. might reasonably have been in parties contemplation at the time of formation

**Goods Act 1958**

* + Goods be of “merchantable quality”
  + Goods be fit for specified purpose
  + Goods conform to description
  + Where a sale by sample (express or implied) bulk of goods conform to sample

provided

*Determined* according to:

1. Context of sale
2. Nature of goods including
   * 1. Price & Marketability at Price
     2. Suitability of goods of usual purpose
3. Grant v Australian Knitting Mills

*Sections and there Implications*

1. *Transfer of property when contract made (s s23) - applies unless contract evidences a different intention*
2. *Risk passes with the property (s25)* – Refer Vienna Convention
3. *Transfer of title sections (ss26-31)* -Cant sell something that you don’t own, must hold the title
4. *Delivery to Buyer’s carrier is delivery to buyer (s39) –* Must have proper carrier to transfer the goods s39(2)
5. *Buyer’s assumption of risk in transit (s40)*
6. *Deemed acceptance of goods (s42)* – Ensure complaint is lodged immediately as the time to complain may assume that goods have been accepted
7. *Unpaid seller’s rights (s46)* – Have possession of goods
8. *Unpaid seller’s lien (s47 - 49) ­*– Holding of the property until paid.
9. *Duty of Seller (s34)* – Duty of seller to sell goods & buyer to have received goods as long as seller has obeyed the contract.
10. *Right to exclude (s61)* – Parties entitled to exclude parts of the Goods Act & limit their respective liabilities as they see fit.

**“Choice of Law” clause**

**Where there is no specified choice of law clause in the contract, use Kaldor OR apply similar logic**

In Australia use *John Kaldor Fabric Maker v Mitchell Cotts* – **PAGE 7.17**

* Intention of the parties expressed in words in the contract in general determines the proper law
* Where the intention is not expressed in words the intention is to be inferred from the terms and nature of the contract and the general circumstances of the case
* When the intention of the parties is not expressed and cannot be inferred the contract is governed by the system of law with which the transaction has its *close and most real connection*

*Where the inference can be drawn the proper law of the contract is to be determined by the inferred actual intention of the parties. It is only where that inference cannot be drawn that the court should impute an intention by reference to the system of law having the closet and most real connection with the transaction.*

ALSO USE:

* Where is the contract formation? (i.e. where was it signed)
* Where are the goods being delivered?
* Where is the principle place of business of the BUYER/SELLER?
* Where is the carrier of the goods located?

**Choice of Forum**

* 1. Wherever the Choice of Forum exists so will the governing law be applied
  2. If the choice of Forum indicates a foreign country to the judge the case then it will

decide on where the contract was formed

* 1. Foreign countries ensure that no bias exists in ultimate decision of the case

**Force Majeure**

1. Generally relied upon by a party unable to perform
2. Enables *termination of contract* when there has been a radical change in the

surrounding circumstances making performance of a contract impossible

***Phillips Puerto Rico Core v Tradax*** ***782 F2d 314 (1985)*** – PAGE 2.10

1. Contract for PPR to buy c.30,000 t. of naphtha from Tradax
2. No dates, ports, ships, specified but “subject to Phillips review and acceptance” - which was given.
   1. No delivery date specified
   2. Then Philips specified a delivery date of 30th Oct
   3. Tradax said that this is a shipping contract, and fulfilled when naphtha is loaded
3. PPR accepted nomination of ship, etc.
4. Contract made by telephone, telex and letter.
5. Cargo to be carried from Algeria to Puerto Rico.
6. Ship and cargo detained and reshipped mid-voyage.
7. Contract term - Risk and property in goods passed to buyer when goods pass over ship’s rail (C&F term)\*.
8. PPR sued for breach of contract, having failed to pay purchase moneys for cargo.
9. PPR argued Force Majeure as its defence.

*Fore Majeure Defined as (PAGE 2.13)*

“In the event of any strike, fire or other even failing within the term “Fore Majeure” preventing or delaying shipment or delivery of the goods by the seller or occurring prior to shipment or delivery and preventing or delaying reception of the goods by the buyer, then the contract period of shipment or delivery shall be extended by 30 days on telex request made within seven days of its occurrence. Should shipment or delivery of the goods continue to be prevented beyond 30 days, the unaffected party may cancel the unfulfilled balance of the contract. The contract thus be cancelled or performance be prevented during any extension to the shipment or delivery period neither party shall have any claim against the other”

PPR raised 3 arguments:

* Force majeure
* Unreasonable delay in Tradax’s performance *(delivery)*
* Discrepancies in Tradax’s shipping documents *(documents were examined by Philips which said NO PROBLEM)*
* Unsuitability of the ship *(No argument as ship was nominated by Tradax and there was NO objection by PPR)*

**US Court of Appeal said:**

* Force Majeure relieves “a party from its contractual duties when its performance has been prevented by a force beyond its control or when the purpose of the contract has been frustrated”
* “The burden of demonstrating force majeure is on the party seeking to have its performance excused – the non-preforming party must demonstrate its efforts to perform its contractual duties despite the occurrence of the event that it claims constituted force majeure”
* Even if the ships detention constituted Force Majeure, this did not prevent PPR from preforming.
* Allowing PPRs argument would overturn the terms of the contract.
  1. **INCOTERMS** **(ENSURE SECTION IS STATED i.e. A5, A6)**

**PAGE 2.1**

* **EXW [1.16]** - Ex Works - Title and risk pass to buyer including payment of all transportation and insurance cost from the seller's door. Used for any mode of transportation.
* **FCA** **[1.17]** - Free Carrier - Title and risk pass to buyer including transportation and insurance cost when the seller delivers goods cleared for export to the carrier. Seller is obligated to load the goods on the Buyer's collecting vehicle; it is the Buyer's obligation to receive the Seller's arriving vehicle unloaded.
* **FAS** **[1.18]** - Free Alongside Ship - Title and risk pass to buyer including payment of all transportation and insurance cost once delivered alongside ship by the seller. Used for sea or inland waterway transportation. The export clearance obligation rests with the seller.
* **FOB** **[1.21]** - Free On Board - Risk pass to buyer including payment of all transportation and insurance cost once delivered on board the ship by the seller. Used for sea or inland waterway transportation.
* **CFR [1.22]** - Cost and Freight - Title, risk and insurance cost pass to buyer when delivered on board the ship by seller who pays the transportation cost to the destination port. Used for sea or inland waterway transportation.
* **CIF** **[1.23]** - Cost, Insurance and Freight - Title and risk pass to buyer when delivered on board the ship by seller who pays transportation and insurance cost to destination port. Used for sea or inland waterway transportation.
* **CPT** **[1.24]** - Carriage Paid To - Title, risk and insurance cost pass to buyer when delivered to carrier by seller who pays transportation cost to destination. Used for any mode of transportation.
* **CIP** **[1.25]** - Carriage and Insurance Paid To - Title and risk pass to buyer when delivered to carrier by seller who pays transportation and insurance cost to destination. Used for any mode of transportation.
* **DAF [1.26]** - Delivered at Frontier - Title, risk and responsibility for import clearance pass to buyer when delivered to named border point by seller. Used for any mode of transportation.
* **DES** **[1.27]** - Delivered Ex Ship - Title, risk, responsibility for vessel discharge and import clearance pass to buyer when seller delivers goods on board the ship to destination port. Used for sea or inland waterway transportation.
* **DEQ** **[1.28]** - Delivered Ex Quay (Duty Paid) - Title and risk pass to buyer when delivered on board the ship at the destination point by the seller who delivers goods on dock at destination point cleared for import. Used for sea or inland waterway transportation. DDU - Delivered Duty Unpaid -- Title, risk and responsibility of import clearance pass to buyer when seller delivers goods to named destination point. Used for any mode of transportation. Buyer is obligated for import clearance.
* **DDU [1.29]** - Delivered Duty Unpaid - Seller fulfils his obligation when goods have been made available at the named place in the country of importation
* **DDP [1.30]** - Delivered Duty Paid - Title and risk pass to buyer when seller delivers goods to named destination point cleared for import. Used for any mode of transportation.

**Ex Works Case (EXW) –**

***Calzaturificio Claudia (CC) snc v Oliveieri Footwear (OF) Ltd***

***Outline***

CC a shoe manufacturer under Italian Law, with principal place of residence in Italy

OF was a US company in New York

Oral agreement for sale of shoes by CC to OF.

CC argued that the shoes were delivered to OF EXW but OF refused to take delivery in New York or to pay contract price.

***Decision***

Court found CC argument to unconvincing and if CC invoices represented acceptance, the terms of acceptance must not contain additions, limitations or other modifications in art 19(3) of Vienna Convention.

Referred to Art 8(3) of Vienna Convention, which requires a court to take due consideration of all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties for determining their intention.

Court not satisfied of CC argument or by its past business dealings and concluded that CC did not notify OF as required by EXW term.

***FAS –***

***Metro Mea (MM)t Ltd v Fares Rural (FR) Co Pty Ltd***

***Outline***

MM was the plaintiff and seller in an FAS contract for sale of lamb

FR was the respondent and buyer

Oral agreement for sale of 20K tonnes of lamb FAS at a port in Australia for shipment to Iran

Oral agreement confirmed in writing by parties

Seller knew that the buyer brought the goods for the purpose of fulfilling its obligations as a seller under a matching contract in CFR terms to Iranian Meat Organization

Buyer chartered vessel to carry the goods

Seller only delivered 10K tonnes due to rising meat prices and refused to send anymore and applied to the court.

***Decision***

Trial court held that several terms in dispute were consistent with the FAS contract.

Held that buyer was entitled to accepted repudiation of the contract and claim damages.

Privy Council also held that the sellers conduct constituted an anticipatory breach, and dismissed Sellers appeal.

**CIF –**

***Bowden Brothers (BB) and Co Ltd v Robert Little (RL)***

***Outline***

BB was plaintiff and seller. RL was defendant and buyer

RL contracts to purchase 450t of Japanese onions CIF Sydney, but when received were not of “merchantable quality” (ie GA s19).

RL refused to pay/accept goods and was sued for non payment.

Seller argued damage to goods caused by “marine risks”

Risk passes to the buyer when the goods have passed over the ships rail

**High Court Ruled:**

Seller was liable to put the onions on board the ship as agreed and pay for costs, freight and insurance under CIF.

**General Approach to Appropriate Regime for International Sale of Goods where law of State of Victoria applies**

**1. Vienna Sales of Goods Convention**

Applies under **Art 2**,

Can be excluded, under **Art 6**

*If excluded*

**2. Goods Act 1958**

Terms can be excluded,

*If excluded*

**3. Common Law**

Terms as agreed by parties, express including *Incoterms*, etc.

**1. Vienna Convention: When does it apply?**

**Art 1(1):** contracts for sales of goods between parties whose places of business are in different states and

1. states are both contracting states (NOTES 2.52); or
2. under the rules of private international law.

**Art 1(2)** evidence of domicile must be apparent from contract, dealings, etc.

**Art 10 (1)**

If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance…..

*Also if Australian Based Contract – Refer to John Kaldor Fabric Maker*

**When does it NOT apply?**

**Art 2** – Convention does not apply to sales of -

(a) Consumer goods

(b) Auctions

(c) On execution

(d) Stocks, shares

(e) Ships

(f) Electricity

**Art 3(2)** – Supply of Labor

**Art 5** – Not apply to liability of seller for death or personal injury

**Art 6** – Exclude application of Convention

**Art 12** – Any provision of **Art 11**, **Article 29**…that allows a contract of sale or its modification or termination by agreement or any offer….Art 96.

**Oberlandesgericht Keln**

Sale of market research from Switzerland to Germany

Germany ruled that sale of **intellectual information** is NOT governed by Vienna convention as per Art 3

**INCOTERMS take precedence**

*Art 3 - “the seller must deliver the goods… as required by the* ***contract*** *and this Convention”*

Depending on which INCOTERM look for

*Term A1.* “*Must provide goods and documents or equivalent electronic message in conformity with the contract of sale*”

*Article 9 (1)* *“the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves”*

The INCOTERM is considered an **express** **term** of the contract and therefore its detailing principles take priority.

*REFER TO* ***PASSING OF RISK*** *BELOW FOR OVERLAPPING*

**Vienna Sales Convention: Formation, Offer, Acceptance**

**Art 11** & **Art 13** – Evidence in Writing including telegrams and telex

**Art 12**; **Art 96** – Parties do not have to apply all of the convention if agreed

**Art 29** – Agreement to terminate the contract between the parties

***Offer***

**Art 14(1)** - Must be sufficiently definite and indicate the intention of the offeror to be bound in case of acceptance

**Art 15(1)** – An offer becomes effective when it reaches the offeree.

**Art 16 (1)** – Until the contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

**Art 17** – An offer..is terminated when a rejection reaches the offeror.

***Acceptance***

**Art 18 (1)** – Statement made by offeree….indicates acceptance. Silence is not acceptance.

**Art 18 (2)** – Acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror.

***Counter offers* - Art 19 (1)** – Any additions to an offer mean counter offer in a reply to an offer

***Time limits*** - **Art 20 (1) –** Begins from moment the offer is hand or dispatched

***Withdrawal of Acceptance* - Art 22 –** Withdraw acceptance if the reaches the offeror before acceptance becomes effective

**Fundamental Breach - Art 25**

Fundamental if “...substantially deprive him of what he is entitled to expect the contract”. *[Did party receive any of the goods? If so maybe not Fundamental]*

Concept qualified by

* Foreseeability of effect of breach by breaching party
* Reasonable person would also foresee effect of breach.

As in ***Kong Kong Fir Shipping v Kawaski***

**BREACHES – Talk about the following in regards to**

**BREACHES**

**Sellers Obligations – Art 30 – Also REFER INCOTERM**

**Art 31**- Detailing if seller not bounds to deliver goods to particular place

**Art 32 (2)** – If bound to arrange for carriage of goods, must make such contracts necessary ***(CONSISTENT WITH INCOTERMS)***

**Art 32 (3) –** Help with insurance if doesn’t have to provide it

**Art 33** – Time periods on delivery the goods

**Art 34** – Bound to hand over documents at a time or place

\*\*IMPORTANT\*\*

***Conformity of Goods***

**Art 35 (1)** – Seller must delivery goods inline with contract

**Art 35 (2)** – Goods must conform with contract

***(CONSISTENT WITH INCOTERMS)***

***Seller liable until risk passes to buyer***

**Art 36 (1)** – Liability for lack of conformity, even if lack of conformity becomes apparent after that time.

**Art 36 (2)** – Lack of conformity that arises due to a breech of obligations

**Art 37** – If delivered goods before date, may ensure delivery of any missing goods up till the specified date

***Buyer loses right if fault not noticed in reasonably time***

**Art 38** – Buyer must examine the goods

**Art 39** – Buyer looses right to rely on lack of conformity if he does not inform seller of lack within a reasonable time after receiving the goods. **(\*\*IMPORTANT\*\*)**

**Art 40** – Can not rely on 38/39 if seller knew about lack of conformity.

***Seller can Avoid the contract* - Art 64 (1)** – May declare contract avoided if buyer fails to perform his obligations

**Buyer’s Obligations**

***Pay the contract price* - Art 53 –** Pay for the goods and take delivery of them

***Take delivery of goods* - Art 60 – (a)** Doing all act which could reasonably expected of him in order to enable seller to make **(b)** delivery and in taking the goods.

***Preserve the goods* (IMPORTANT)**

**Art 86 (1)/ Art 87** – Must take steps to preserve them as are reasonable in the circumstances and is able to reimbursed for these expenses by the seller.

**Art 88 (2)** – If the goods cant be preserved, then take reasonable measures to sell them

***Passing of Risk (REFER INCOMTERMS)***

**Art 66** – Loss or damage after the risk has passed still means buyer must pay unless omission by seller.

**Art 70** – If fundamental breach committed then art 67,68,69 do not impair remedies available to buyer.

\*\*\*\*\*\*\*Breach may be waived **(Phillips Puerto Rico v Tradax)** if one party does not raise complaint regarding a matter\*\*\*\*\*\*\* **(Ship Breach, Documents Breach)**

**Remedies under the Convention**

*Buyer’s Remedies*

***Specific Performance* - Art 46 (1) –** Require performance by seller of obligations

**Art 46(2)** – Non-conformity, Buyer may require delivery of substitute goods only if fundamental breach occurred **(Art 39 as well)**

(\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*IMPORTANT\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*)

***Buyer’s right to avoid contract* - Art 49 –** Declare contract avoided if seller fails to perform any of his obligations under the contract (Fundamental Breach must have occurred)

***Reduction of Price* - Art 50 –** Non-conformity, Buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery

***Remedies where partial/excessive performance***

**Art 51 –** Only part of goods delivered, Art 46 to 50 apply in part which doesn’t conform.

**Art 52 –** Refuse delivery if goods don’t confirm and are delivered before the fixed date

***Anticipatory breach remedies***

**Art 71 (1)** – Suspend performance if one party doesn’t perform a substantial part of obligations

**Art 72 (1)** – Declare the contract avoided if it is clear that one of the parties will commit a fundamental breach

*Seller’s Remedies*

**Art 62 -** Pay price, take delivery etc. unless inconsistent with another remedy sought **Art 63** - Fix additional time for Buyer to perform

**Art 64 (1)** - Seller may declare contract avoided if failure by the buyer to perform any of his obligations

**Art 64 (2)** - Seller’s right to avoid contract

**Damages & Avoidance**

**Art 74 –** Damages for breach consist of sum equal to the loss and may not exceed the loss, including profits

**Art 75 –** Party claiming damages may recover the difference between the contract price and the price of the goods

**Art 77 –** Mitigate the loss (\*\*\*IMPORTANT\*\*\*)

**Art 81 (1)** – Releases both parties from their obligations subject to any damages which may be due.

**Art 81 (2)** – Performed the contract wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract.

***Deutsche Schachtbau v Ras Oil***

**Outline**

1. Contract between parties for oil in Persian golf
2. Dispute between parties would be by arbitration in Geneva.
3. Deutsche got award from arbitration in Geneva
4. Ras Oil got award from court in Gulf state
5. Neither decision meant anything as they didn’t have assets in either country
6. Deutsche found Ras Oil did have money in England and enforced it decision to seize Ras Oil assets by using its original injunction
7. Used a **MAREVA INJUNCTION** preventing Ras Oil from removing any of its assets from England
8. Ras Oil argued couldn’t give money to Deutsche as contract did not specify which “international accepted principles of law governing contractual relations” was being applied and it was contrary to public policy.

**Decision**

1. Parties intended to create legally enforceable rights and liabilities
2. The enforcement of the award by Deutsche would not be contrary to public policy.
3. By choosing to arbitrate, parties left the proper law be decided by arbitrators and not in terms defined by international law
4. Monies were given to Deutsche

**Marine Insurance**

**Is the contract within the following? – PAGE 4.2**

**s7 – Marine Insurance Defined**

A contract of marine insurance is a contract where the insurer undertakes to indemnify the assured in a manner and to the extent agreed against marine losses... incidental to marine adventure.

**s9 (2) - Marine Adventure**

* 1. any ships, goods, or other movables exposed to maritime perils
  2. the earning or acquisition of any freight, money, commission etc
  3. any liability to a third party may be incurred by the owner, or other person interested/responsible for the insurable property

**Maritime Perils –**

Perils consequent or incidental to:

1. navigation of the sea
2. perils of the sea (fire, war, pirates etc. REFER HAGUE-VISBY)

**Gaming Purposes**

**s10 (1) –** Every contract of marine insurance by way of gaming or wagering is void

**Is there an Insurable interest?**

**s11 (1)** – Every person has an insurable interest who is interested in marine adventure

**s11 (2)** – May benefit….or be prejudiced by its loss….or may incur liability in respect thereof. (\*\*\*\*\*\*\*\*\*\*IMPORTANT\*\*\*\*\*\*\*\*\*\*)

***The Moonacre – Insurable Interest***

**Outline**

1. Sharp owned the *Moonacre* (a motor yacht)
2. Yacht sold to S’s co, Roarer Investments Ltd, which granted S exclusive right to use yacht
3. S took out policy of insurance
4. Fire broke out on boat causing damage
5. S claimed under policy
6. Insurers argued no liability as contract was void because S had no ownership or insurable interest

**Decision**

Sharp had exclusive right to use and control the boat under the terms of power of attorney granted by the registered owner.

Had interest in the preservation and use of the boat under the power of attorney and therefore an insurable interest **[s11 (2)]**

***Macaura v Northern Assurance Co***

**Outline**

Insured owned a timber company and put the boat into another company for tax purposes

**Decision**

Does not have an insurable interest because separate entities and not sufficient evidence to suggest an equitable interest

**What is the policy being taken out & what must it contain?**

* Relevant to the INCOTERM adopted by the parties in the contract of sale
* If contract not based on INCOTERMS, the parties should agree expressly on the duty to insure the goods against the marine risks and the specifications of the contract to be concluded if the seller insures the goods on the buyers behalf.

***Cargo Policy******[Page 4.9]***

* 1. Agent must enter the principals name in the contract, otherwise principal cannot claim any loss under the policy directly
  2. Risk of breaching the duty of utmost good faith if the agent deliberately conceals the true identity of the principal in certain circumstances where the insurer has specifically inquired about the identity of the principal, or the identity of the principal affects the decision of the insurer.
  3. Offer only starts by submission of application to get goods insured.
  4. Conclusion – **s27** – contract concluded upon insurers acceptance of the assureds proposal.

***Hull Policy [Page 4.9]***

1. Same as Cargo except:
   1. Can include not only owners but also
      1. Charterers
      2. Operators
      3. Financiers
2. Parties having interest in the safety of the vessel must expressly agree on the duty to insure the vessel against potential risks which may affect the vessel
3. Can apply to both a vessel in operation and one under construction

***Voyage Policy*** - s31(1)- Subject matter is insured from one place to another

***Time Policy*** - s31(1) - Insurance for a definite period of time

s31(2) – If a Time Policy, then 12 Months or less

***Contract must be embodied in policy* - s28** - Contract inadmissible as evidence unless embodied in a marine policy **(REFER PAGE 4.40)**

***Policy Must Include***

**s29** - Policy must include

1. name of assured
2. subject matter and risk insured against
3. voyage or period of time covered by ins.,
4. sum/s insured
5. name/s of insurers

**What is a Warranty?**

**s39 (1)** – Warranty is where the….assured undertakes…a particular thing that shall or shall not be done

**(2)** Can be expressed or implied

**(3)** Is a condition which must be exactly complied with, whether material to risk

or not….otherwise insurer is DISCHARGE FROM LIABILITY

**Implied Warranties**

**(ALSO REFER s61 BELOW UNDER INSURERS LIABILITY)**

***Seaworthiness of Ship* -**

**s45 (1)** – Implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

**(4)** – A ship is deemed to be seaworthy when she is reasonably fit in all respects

to encounter the ordinary perils of the sea for which they are insured.

**(5)** – In time policy there is no implied warranty that the ship shall be seaworthy

at any stage of the adventure

**REFER TO AQUACHARM CASE**

***Legality – s47 –***

Implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

***Deviation - s52 –***

* + 1. Where a ship…deviates from the voyage contemplated by the policy, insurer is discharged from liability

(3) Intention to deviate is immaterial – there must be a deviation in fact to discharge the insurer from liability

***Delay - s54 -***

*Voyage policy* - Insured must ensure that adventure is executed throughout its course with reasonable dispatch

**If NOT** then insurer is discharged from liability when delay becomes unreasonable

**Exceptions to Implied Warranties**

**s40 (1) –** Non-compliance is excused when, change of circumstances mean warranty is not longer applicable OR when compliance is rendered unlawful by any subsequent law.

**s55 (1)** – **Derivation** or **Delay** is excused when:

1. Authorized by any special term in the policy
2. Caused by circumstances beyond control of the master or employer
3. In order to comply with an express or implied warranty
4. For the safety of the ship or subject-matter insured
5. Purposes of saving human life, or aiding a ship in distress where human life may be in danger
6. Necessary for the purpose of obtaining medical or surgical aid for any person on board of the ship
7. Caused by barratrously conduct of master or crew, or barratry (unlawful acts by master or crew that cause harm) of the perils insured against.

**Breach/Waiver of Warranties**

**ANY BREACH OF THE ABOVE WARRANITIES MEANS THAT CONTRACT IS VOIDED s39 (3) (above)**

***Mowie Fisheries (MF) v Switzerland Insurance (SI)* (BREACH OF WARRANTY)**

**Outline**

MF sought an indemnity for the loss of its fishing vessel which sank off the coast of Victoria.

SI denied liability on two warranties as policy stated that ship would be:

1. in full survey and remain so at all times during the policy
2. would be skippered, manned and crewed in accordance with regulations and law of the state

SI alleged that MF breached the warranties on the basis that a crew member was not on board at the time of sinking.

Also alleged that because it new that there wasn’t a crew member on board it was acting illegally.

**Decision**

s47 (legality) was not breached and that there was not inadequate crew on the ship and SI paid MF for loss.

***Doakes v Weekes* (BREACH OF WARRANTY)**

**Breach of Contract** – no information on case so just mention it

***The Good Luck* (WAIVER OF WARRANTY; DIDN’T INFORM OF BREACH)**

**Outline**

1. s20 specifies that insurer can specify zones or areas at additional premiums in which a vessel could enter
2. s25 specifies insurer is entitled to impose prohibitions on areas directly affected by warfare and not insure a vessel
3. Insured vessels went into war area and got hit by a missile and claimed insurance as had told insurer about going into area and that they were ignorant of prohibited zone
4. Insurer did not inform bank about knowledge of going into war areas and paid insured money as was holding it insurance policies in mix up with insurance company
5. Bank sued insurance for monies that it had paid out.

**Decision**

* + “Any statement of fact bearing on the risk introduced into the written policy was to be construed as a warranty and that compliance with that warranty was a condition precedent to the attaching of risk”
  + Vessel had entered in prohibited zone in breach of warranty and the insurer was required to inform the bank of this fact within a short time.
  + Postponement of telling bank meant they were exposed to risk without knowledge of the event
  + Therefore the bank made an advance that was not secured and would otherwise have not been made, it was evident that the banks loss had been caused by the insurers breach of its undertaking and that the damage suffered by the bank was not its fault.

**Expressed Warranties (Excluded but can be added to contract at a Premium) ADD EXCLUSION NUMBER ON PAGE 4.41**

**PAGE 4.41 –** Lists some of the warranties that can be added

INCLUDE:

* ***Inherent Vice***

A quality within an object, material or property that results in its tending to deteriorate or destroy itself.

*Example:* The spoilage of fruit during storage or shipping would be excluded from a policy. The destruction of unspoiled fruit by a fire would be covered.

* ***War (Page 4.43)***
* ***Strikes***
* ***Terrorism***

***Soya GmbH KommanditgeseUschaft v White* (INHERENT VICE)**

**Outline**

Cargo of Indonesian Soya beans to be shipped to Antwerp.

Insurance obtained by seller through broker from Lloyds for benefit of Buyer to cover risk of heat, sweat and spontaneous combustion of cargo.

Cargo arrived at Antwerp heated and deteriorated.

Insurers refused to pay on ground that damage caused by inherent vice.

**Decision**

Court said it was “inherent vice”, but one which was covered by the contract.

***CCR Fishing Ltd v Tomenson Inc (‘LA Pointe’)* (SEAWORTHINESS)**

**Outline**

1. CCR Fishing was assured. Tomenson was insurer.
2. Vessel *La Pointe* was insured including “port risks” and built in 1906.
3. In 1981 vessel was deemed unseaworthy and moored in the harbor from that time onwards and 1982 survey of ship revealed that vessel had been out of maintenance for more than 12 months.
4. 1982 Vessel sank through seawater which entered into open values in the engine room.
5. CCR argued that is was ordinary wear and tear of the vessel. Insurer argued that it was not.

**Decision**

* + Insurer not liable as “ingress of sea water is more an effect than a cause”.
  + “Ingress” caused the corroded condition of the values which let water in.
  + Was a expected accident of the sea and was not a peril of the sea as ship was

unseaworthy.

***Skandia Insurance v Skoljarev* (BURDEN OF PROOF; SEAWORTHINESS)**

**Outline**

1. Skoljarev was owner of a fishing vessel which was insured by Skandia.
2. Sank off coast of WA & specific reason for sinking was unknown.
3. Insurance covered perils of the sea but Skandia didn’t believe it was.

**Decision**

1. Skoljarev has the burden of the proof to establish that the loss was caused by perils of the sea.
2. Skoljarev proved the ships seaworthiness at the commencement of the voyage and therefore loss is caused by perils of sea even if the cause was not ascertained.

***Wood v Associated National Insurance Co Ltd***

**(SEAWORTHINESS; WILFUL MISCONDUCT)**

**Outline**

1. Wood owned fishing vessel, *Isothel*, which was insured by National in a time policy.
2. The vessel was damaged in a severe storm.
3. Insurer rejected insurance claim on grounds that vessel was unseaworthy and willful misconduct.
4. Wood applied to the court.

**Decision**

1. Reckless conduct may amount of “willful misconduct” for the purposes of s61
2. Held that the failure of the assured to return the vessel and to adopt appropriate measures with the knowledge of the forthcoming storm amounted to “reckless disregard” for the safety of the vessel.
3. Woods willful misconduct contributed to the damage which was in point of time caused by the perils of the sea

**Utmost Good Faith**

Assured duty to make a full disclosure is “absolute” in the sense that the assureds negligence does not exempt them from that duty.

**Utmost Good Faith – s23 –** If utmost good faith is not observed by both parties, the contract may be avoided by the non-contracting party

***The Dora* (UTMOST GOOD FAITH)**

**Outline**

1. Assured failed to disclose to the insurers that the Dora was once arrested for carrying smuggled goods n both
2. Both the skipper of the yacht and the assureds representative on board had criminal records

**Decision**

1. Non-disclosure of these facts constituted dishonesty
2. Gave rise to a right in the insurer to repudiate the contract
3. Court held that the statement by the assured that the assured was producing more yachts similar to the Dora at of a four vessels per year consistuted misrepresentation which also gave rise to avoid the contract.

***Black King Shipping Corp v Massive (“The Litsion Pride”)***

**(UTMOST GOOD FAITH)**

**Outline**

1. Insurance policy expressly require the assured inform the insurers if the vessel sailed into specified waters
2. Vessel entered into the gulf of Iran & Iraq when they were at war and it was attacked and sank.
3. Assured wrote to the insurers about the vessel entering the Gulf but letter reached insurers three days after the sinking of the vessel.

**Decision**

Assured breached the duty of utmost good faith

It had enough time to disclose the matter to the insurers earlier

**Duty of Disclosure**

**Disclosure - s24 (1) –** Assured must disclose to the insurer….every material circumstance which is known to the assured….and the assured is deemed to known every circumstance…ought to be known by him. If the assured fails to make such a disclosure, insurer may avoid the contract.

**(2) –** Influence the judgment of a prudent insurer fixing the premium

or determining whether he will take the risk

**(3) –** Not need to be known:

1. Any circumstance which diminishes the risk
2. Any circumstance which is known or presumed to be known to the insurer

***Akedian Co Ltd v Royal Insurance Australia Ltd [PAGE 4.37]*** (**DISCLOSURE)**

**Outline**

1. Akedian commenced proceedings in respect to damaged goods against Royal

as the ship caught fire and the goods suffered damage.

1. Royal denied liability under the policy for non-disclosure (s24) of certain facts.
2. Akedian then sued broker in making false representations in relation to the goods in failing to disclose the true facts.

**Decision**

Two stage test:

1. Assessment of the impact of the non-disclosure upon the mind of the hypothetical prudent insurer
2. Whether the misrepresentation/non-disclosure did induce the underwriter to assume the risk that it did

***Ruled:*** Policy covered loss or damage up to $3.75m when goods only cost $500K

Age of goods was 8 years, not 5 years as represented.

The non-disclosure/misrepresentation meant that the insurer underwriter the insurance without full knowledge of the facts therefore INSURER WON.

**IF NOTHING BREACHED THEN**

**Insurer’s Liability**

**Reducing Insurers Loss – s15 –** Insurers are able to claim contributions from the sub-insurers and to reduce their own loss

**Included/Excluded Losses - s61 –** Unless policy states otherwise, insurer is liable for any loss cause by a peril insured against but is NOT liable for:

**s61 (2)** - **a)** Wilful Misconduct

**b)** Not liable for any loss cause by delay (unless express warranty)

**c)** Ordinary wear and tear, Inherent Vice (unless express warranty)

**Types of Loss**

**Partial/Total – s62 (1) –** Any loss that is not total, is consider partial

**(4)** – If assured wants total loss, and evidence indicates only

partial loss (unless policy states different) recovers only

partial loss.

**(5)** – If goods reach destination but are incapable of

identification, then the loss is partial.

**Actual – s63 (1) –** Subject matter is destroyed, or ceases to be a thing of insurability, then there is actual loss

**Constructive total loss – s66(1)/(2) – REFER FOR SPECIFICS**

Actual loss is unavoidable and the cost of salvage exceeds the value when recovered/sold.

**s67** - If constructive total loss, may treat loss as partial or

actual total loss.

**Burden of Proof**

Cause of loss must be positively proven by assured/claimant

***The Tropaiofaros* (BURDEN OF PROOF)**

**Outline**

Steamship sank in Bay of Bengal in fine weather and calm sea.

Many of the ships papers were missing and neither the shipowners nor the crew members could establish how or why the ship sank, except claiming that the ship struck an unknown object.

**Decision**

Court held that assured must prove that the loss was caused by the risk insured against when making a claim.

***Rhesa Shipping Co v Edmunds (The Popi M)* (BURDEN OF PROOF)**

**Outline**

1. Vessel built in 1952 sank in 1976 in good weather and calm sea.
2. Rhesa disagreed with Edmunds as to cause of sinking.
3. Went to court.

**Decision**

1. Assured had failed to prove the seaworthiness of the ship at the commencement of the voyage, for the purpose of establishing that the perils at sea were the cause of the sinking.
2. Loss or damage to the insured must be proved to be take gain the insurance policy payout.

**AS ABOVE**

***Wood v Associated National Insurance Co Ltd***

**(SEAWORTHINESS; WILFUL MISCONDUCT)**

***Skandia Insurance v Skoljarev* (BURDEN OF PROOF; SEAWORTHINESS)**

**Assigning the policy**

Necessary if under a CIF contract, seller is noted as assured.

**Assignment - s56(1) -** Policy is assignable unless policy expressly prohibits assignment.

The holder (assignee) is able to claim indemnity under the policy that the insurer can claim any defense against the assignee as if the assignee were the original assured.

**Subrogation**

**s85 -** Where insurer pays for a total loss of subject matter of insured he becomes entitled to take over the interest of the assured; and is subrogated to all the rights and remedies of the assured.

***Yorkshire Insurance Co Ltd v Nisbet Shipping Co* (SUBROGATION)**

**Outline**

1. Insurer indemnified (give money to) the assured under a fixed value policy for total loss of the ship.
2. Insurer subrogated assureds rights against the Canadian Government which owned the ship colliding with the assureds ship.
3. Exchange rate differences meant that monies paid to insurer were greater than what was paid to the assured.

**Decision**

1. Right of subrogation allowed the insurer to recover the total amount of the indemnity paid under the policy
2. Assured was allowed to retain the balance of the payment from Canadian Government
3. Insurers right of subrogation is restricted by the amount of indemnity made by them in a given circumstance.

If a subject has multiple insurance policies, s86 also states, any one of the insurers involved is entitled to seek contributions from other relevant insurers in proportion to the their liability under the relevant policies.

**Civil Aviation (Carriers Liability) 1959 as amended Montréal Protocol No .4 1976**

*If Montréal Protocol N0 4 DOESN’T APPLY refer to Hague Protocol List 1955 or Warsaw Convention 1929 as is fairly similar (i.e. Countries NOT SIGNATURES, Not flying to contracting parties state)*

**When does it apply?**

**Art 1(1) -** This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking

**Signatories List on Page 5.27**

**International Carriage - Art 1(2)** - According to agreement of between parties either:

1. Place of departure, and
2. Place of destination are in territories of 2 High Contracting Parties
   * 1. **DEPARTURE/DESTINATION AS ON TICKET**
3. In territory of same High Contracting Party but there is an agreed stopping place in territory of another state (whether or not a contracting party).

**International Carriage - Art 1(3) –** If carriage is to be preformed by several *successive air carriers* – it is deemed to be one undivided carriage if it has been regarded by the parties as a single operation.

**Successive Carriage - 30(1) –** If carriage to be performed by various successive carriers, within Art 1(3), carrier who accepts passengers, baggage or cargo…is deemed to be one of the contracting parties to the contract of carriage.

***In Re Air Crash Disaster at Warsaw Poland*** (**SUCCESSIVE CARRIAGE)**

**Outline**

1. US Olympic boxing team heading to Warsaw, Poland, for tournament.
2. Passengers flew from a number of destinations in United States on domestic carriers to New York , and from New York to Warsaw on LOT Polish Airlines.
3. Aircraft crashed near Warsaw resulting in great loss of life

**First Decision**

1. Court held Warsaw limitations would not apply as Warsaw notice on LOT Airline tickets too small to read.
2. LOT Airlines argued readable notice on domestic ticket. Domestic and international flights were “successive carriage”,
3. Convention limits therefore apply.

**US Ct of Appeals Held:**

1. LOT Airlines NOT covered by Warsaw Convention Limitations
2. Handling of tickets, payment, insurance for domestic flight tickets and LOT international flight was NOT successive carriage as LOT had no knowledge of knowing where the domestic tickets were issued or where the passengers had come from – nor did domestic carrier have any knowledge or where passengers were heading.
3. It was not *“regarded by the parties as a single operation”* but multiple separate arrangements.

**Claims – MUST BE ACCIDENT TO BE BODILY INJURY**

**Death and injuries – Art 17**

Carrier is liable for damage sustained in the event of death or wounding of a passenger or any other **bodily injury,** if the **accident** which caused the damage took place on board the aircraft or in the course of any of the operations of **embarking or disembarking.**

1. **Must be an accident** to be either a bodily injury or damage from embarking or disembarking
2. **Accident** – Use Air France v Saks Definition, Use Povey case for backup
3. **Once accident – Is it a bodily injury**? Use KLM Definition, Kombatsis and Eastern Airlines v Floyd. Use KRUM for “event”.
4. **Is it a mental Injury?** Use KLM Definition, Kombatsis and Eastern Airlines v Floyd AND USE WEAVER CASE TO PROVE IT.
5. **Is it in process of Embarking/Disembarking?** Process outlined in Day v Transworld and 3 test to establish are in McCarthy v Northwest

***Accident***

***Air France v Saks***

**(ACCIDDENT) - UNSUCCESSFUL**

1. Passenger Saks on Air France flight from Paris to USA.
2. After take off, S felt sever pressure and pain in left ear.
3. After flight, Dr said Saks had become deaf in left ear.
4. S claimed deafness caused by maintenance and operation of aircraft pressurisation system.
5. AF said “accident” means ***“abnormal, unusual or unexpected occurrence aboard aircraft”.***

**Decision**

1. Liability under Art 17 ***“arises only if a passengers injury is caused by UNEXPECTED or UNUSUAL event or happening that is external to a passenger”***
2. The passengers injuries ***“results from his own internal reaction to the usual, normal and expected operation of the aircraft and Art 17 cannot apply”***

***Krum v Malaysian Airlines***

**(ACCIDDENT) - SUCCESSFUL**

**Outline**

1. Passenger who was seated in a defective seat
2. He was invited by the crew to use the seat in its reclined position when the lumbar support could not be adjusted
3. Did not relocate him when the seats defect and passengers discomfort became apparent.
4. Passenger suffered a spinal injury as a result.

**Decision**

1. Characterisation of cabin crew refusing to provide proper assistance when sought by the passenger constituted “unusual or unexpected” events.
2. Refer to *Olympic Airways v Husain* were a passenger died due to asthma problems from being in a smoking section and when asking to move was not allowed. US Supreme Court found that *“rejection of an explicit request for assistance would be an event or happening”.*

***Qantas v Povey* (DVT)**

**(ACCIDDENT) - UNSUCCESSFUL**

**Outline**

A DVT suffering passenger argued that DVT was caused by *“conditions of and procedures relating to passenger travel upon the flights”* including:

1. Confined & restricted physical environment
2. Impediments getting into and out of seat
3. Offer and supper of alcohol, tea and coffee
4. Discouraging the plaintiff from moving around the cabin
5. Not provided with information regarding DVT

**Decision**

* 1. As per *Air France v Saks*, these flight conditions are quite usual and were not considered “unusual or unexpected”.
  2. It was not considered an “accident” of the airline not to inform passengers of the risks of DVT as ***“a failure by a pilot to let down the landing wheels may lead to an accident, but is not itself an accident. It is hard to see how a failure to warn or advise passengers, a ‘non-event’, can ever constitute an accident within the meaning of the article…..which would make the failure an unusual event”***

***Embarking/Disembarking***

***Day v Trans World Airlines***

**(EMBARKING/DISEMBARKING) - SUCCESSFUL**

**Outline**

1. Passengers in transit lounge waiting to screen luggage and moving on buses to take passengers to TWA airplane on tarmac.
2. Terrorists attacked passengers in transit lounge wounding 40, and killing 3 passengers
3. Passengers had presented tickets to TWA checking desk and they were proceeded.
4. Once a passenger is in the transit lounge he cannot leave that area unless they clear security again.

**Decision**

1. Embarking process outlined on bottom of **PAGE 5.52**

2. Ruled that under **Art 17** was applicable and that injuries did occur while

embarking and as a result of the terrorist accident the Warsaw Convention does apply.

***McCarthy v Northwest Airlines Inc* (\*\*\*\*IMPORTANT 3 TESTS\*\*\*)**

**(EMBARKING/DISEMBARKING) - UNSUCCESSFUL**

**Outline**

1. Sister arrived late from a connecting flight and were worried that time had grown to short to catch their plane and were happy to catch next flight.
2. Northwest ticket agent brushed aside their concerns and tagged all their luggage etc. and led them at a “fast trot” to the customs area.
3. Sister took an escalator and it malfunctioned and McCarthy fell.
4. She sustained an injury but proceeded through customs and boarded her flight to China.
5. When she returned to the United States, it was found that she had a broken knee.
6. She sued under Art 17 for Embarking/Disembarking

**Decision**

**Three pronged inquiry**:

1. The passengers activity at the time of injury
2. His/her whereabouts at time of injury
3. Extent to which the carrier was exercising control at the moment of injury
   1. She did not have to follow the agent at a fast trot but could have proceeded at her own pace.
   2. McCarthy was not obliged to take the escalator on which she fell and she produced no evidence suggesting that the ticket agent refused a timely request to slow down or to return her travel documents.
   3. McCarthy was not under the airlines “control” and although had documents etc it was to remote a connection to be convincing of Art 17- therefore, it doesn’t apply.
   4. *\*\*\*\*\*\*“The great body of law consists in drawing such lines, yet when you realize that you are dealing with a matter of degree you must realize that reasonable men may differ widely as to the place where the line should fall” – Schlesinger v Wisconsin \*\*\*\*\*\**
      1. *In saying that there is not a sufficient connection in embarking a plane.*

***Bodily Injury/Mental Injury***

**MUST BE ACCIDENT TO BE BODILY INJURY**

**\*\*\*\*\*\*\* IMPORTANT \*\*\*\*\*\*\***

***Kotsambasis v Singapore Airlines***

**(MENTAL INJURY) - UNSUCCESFUL**

**Outline**

1. P on flight from Athens, Greece to Sydney, Australia via Singapore
2. Soon after take-off, aircraft jolted, engine on fire.
3. P claimed jolt caused back injury, and events caused psychological injuries.

**Decision**

1. Awarded damages for psychological injury but in appeal was said that:
   1. Meagher JA used definition from *Eastern Airlines v Floyd* which concluded that the definition of bodily injuries suggests *“that there is no evidence that the drafters of the Warsaw Convention considered liability for psychic injury within the meaning of Bodily Injury and there was no need to include such a remedy in the convention at the time”*

**\*\*\*\*\*\*\* IMPORTANT – DEFINITION OF BODILY INJURY\*\*\*\*\*\*\***

**Morris v KLM Royal Dutch Airlines**

**(BODILY INJURY**/**MENTAL INJURY) - UNSUCCESFUL**

**Outline**

1. 16-year-old woman awoke from her flight from Malaysia to Amsterdam from the hand of a man seated next to her touching her, caressing her between her hip and thigh.
2. Was diagnosed with clinical depression and treatment commenced after the flight.
3. Woman pleaded that her only ‘bodily injury’ was her psychiatric injury and had conceded that the assault caused her no ‘physical injury’.

**Decision**

1. Lord Hobhouse said that a *“Bodily Injury is a change in some part or parts of the body of the passenger which is sufficiently serious to be described as an injury. It does not include mere emotional upset such as fear, distress, grief or mental anguish”*
2. He did concede that *“It can now be shown by valid scientific techniques that certain psychiatric symptoms correspond to physical change in the brain. What was previously invisible can now be made visible. What these developments have changed is not the phenomena nor the meaning of the language used in Art 17 but the ability to raise factual evidence to use this article more frequently”.*

***Weaver v Delta Airlines***

**(BODILY INJURY**/**MENTAL INJURY) - SUCCESFUL**

**Outline**

Plaintiff sought damages when her emotional distress in response to aircraft mechanical difficulties resulted in a post-traumatic stress disorder.

**Decision**

Claim was allowed because it was supported by ***expert medical evidence which indicated that the condition constituted “actual trauma to brain cell structures” which resulted in “mental injury which was actually physical injury”****.*

***Eastern Airlines v Floyd***

**(BODILY INJURY**/**MENTAL INJURY) - UNSUCCESFUL**

**Outline**

1. Flight from Miami to Bahamas resulted in all engines of the aircraft failing
2. Passengers advise that a crash landing was imminent
3. One of the engines restarted before this eventuated and aircraft was safety returned to Miami
4. Number passengers sued the carrier for emotional distress under Art 17

**Decision**

There is no evidence that the drafters of the Warsaw Convention considered liability for psychic injury within the meaning of Bodily Injury and there was no need to include such a remedy in the convention at the time.

**CLAIM MUST COME FROM CONVENTION**

***Sidhu v British Airways***

**UNSUCCESSFUL – OUT OF TIME PERIOD; NOT IN CONVENTION**

**Outline**

1. 3 Passengers on flight from London to Malaysia via Kuwait.
2. Aircraft landed in Kuwait and Iraq forces took over airport and took them as prisoners.
3. Released after several weeks returned to UK.
4. After 3 years, brought action against airline for physical and psychological damage and for lost baggage under Convention
5. Also under Common law for breach of an implied condition of the contract that airline would ensure their safety.

**Decision**

1. Out of time for Convention as outside 2 year time limit as per s29.
2. *“Convention is the exclusive cause of action and sole remedy for a passenger who claimed for loss, injury and damaged sustained in the course of, or arising out of, international carriage by air notwithstanding that that might leave claimants without a remedy”*
3. Where the Convention does not provide a remedy, no remedy is available.

**Defences**

**Art 20 –** Carrier not liable if it proves it has taken all necessary measures to avoid the damage or that it was impossible to take such measures

**Grein v Imperial Airways**

***“...a promise not to injure the passenger by avoidable accident, the onus being on the carrier to prove that accident could not have been avoided...”***

**Contributory Negligence - Art 21 –** If carrier proves that the damaged was caused or contributed to by the negligence of the person suffering the damage, it may partly or wholly discharge carrier from its liability.

**Limitations of Liability**

**Exclusion Clauses - Art 23 (1) -** Any provision tending to relieve carrier of liability or fix a lower limit shall be null and void.

**Limits of Art 22(1) don’t apply - Art 25 -** Limits do not apply if proved damage resulted from intentional/reckless act of carrier, his servants or agents

**Protection of Agents & Employees – Art25A –** If action is brought against a servant or agent of the carrier arising out damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of Art 22.

**PASSENGERS - Art 22(1)** – Liability limited to Warsaw Hague 250,000 francs

**Montreal Intercarrier Agreement 1966 -** Fixes liability at US$75,000 per passenger. **REFER PAGE 5.44 and 5.34**

**FOR AUSTRALIAN CARRIERS**

**S11A – Fixed at $260K SDRs**

**Cases**

***In Re Air Disaster at Lockerbie Scotland*****US District Court 23 Avi 18194 (1991)**

1. Pan Am flight 103 (21 Dec 1988) Frankfurt to New York;
2. Bomb planted by terrorists not detected before take off and exploded over Scotland.
3. Aircraft crashed causing deaths of 243 passengers and 16 crew.
4. Family members of victims claimed against
   1. Pan Am
   2. Alert Management Systems (wholly owned subsidiary of Pan AM which was responsible for allowing bomb on aircraft).

**Decision**

* + 1. There was international carriage between two High Contracting parties under the Art 1 of the Convention.
    2. The tickets were provided with the appropriate details as per Art 3
    3. There was death which was clearly caused by “accident” as per Art 17
    4. As per Art 25, the *“damage resulted from an act or omission of the carrier, his servants or agents…with the intent to cause damage or recklessly and with knowledge that damage would result”*
    5. However, ITA agreement means that limited to US $75K Art 22(1)

***Q. Is Alert a carrier under Convention, or can it be sued for negligence with no liability limit?***

“Carrier” not defined, but as Alert was performing tasks carrier was legally required to perform, Alert was protected. However, s25A protecting agents applied.

CARRIER WAS THEREFORE PROTECT THROUGH AGENT AND CAUSE IT HAD ITA AGREEMENT ON ITS TICKETS.

**Same DECISION RULED IN TENERIFE CASE – JUST MENTION CASE**

**Tickets**

**Tickets are Prima Facie Evidence - Art 3(2) -** If with consent of carrier the passenger embarks without passenger ticket, Art 22 limits do not apply.

**Requirements of ticket Art 3(1) - REFER PAGE 5.44**

* 1. Indicates places of departure and destination
  2. Agreed stopping places
  3. Notice advising that Warsaw Convention may be applicable

**Claiming**

**Time – Art 29 (1) –** Two years from date of arrival at destination or from date at which aircraft should have arrived.

Action for damages at:

**Which Court to Sue - Art 28 (1) –** Either before the court having jurisdiction were the carrier is:

* Is an ordinary resident
* Has his principal place of business
* Establishment by which the contract has been made
* Before the court having jurisdiction at the place of destination

**NOTE**

IF PROVEN THAT ART 25 APPLIES LIMITS FROM ITA AGREEMENT **DO NOT APPLY** because:

(1) the higher limit set by "special agreement" is referred to in Art 22

(2) it follows that when the limit set by Art 22 is referred to in Art 25 and this would include that "special agreement" limit as well.

**Carriage of Goods by Air**

**Carrier - Is not defined within the Convention**

Includes FREIGHT FORWARDS AS PER CASE BELOW

**Successive Carriage - 30(1) –** If carriage to be performed by various successive carriers, within Art 1(3), carrier who accepts passengers, baggage or cargo…is deemed to be one of the contracting parties to the contract of carriage.

***Royal Insurance v Amerford Air Cargo***

**Outline**

1. Amerford Air Cargo was air freight forwarder.
2. IBM delivers three cartons of goods to a consignee, whereby Amerford picked up the cartons and arrange for shipment to Japan following morning.
3. Goods were stored in Warehouse overnight and next morning couldn’t locate goods.
4. IBM claimed full value of goods and Amerford paid contractual liability of $20 per kg because goods had not been declared a higher value and Warsaw Convention limited liability
5. IBM insurer, Royal Insurance, paid IBMs claim in full and all rights were subrogated to Royal who wanted money from Amerford.

**Decision**

1. *“To allow an agent…which is performing services in furtherance of contract of carriage, and in place of carriers, to be liable without limit would undermine the purposes of the convention and the resulting limitations contained within it.”*
2. IBM contacted Japan Air Lines, as a direct carrier – whom then contacted Amerford to act as its agent for delivering the goods.
3. Amerford, as an indirect carrier & agent, is entitled to claim the limitation of liability under the Convention.

**Consignor** (shipper of goods)

**Consignee** (receiver of goods)

**Baggage and Cargo**

**Baggage - Art 18(1) -** Carrier is liable for damages sustained in event of destruction or loss of or damage to registered baggage if the occurrence which caused damage took place during carriage by air.

**Cargo Art 18 (2) -** Carrier is liable for damages sustained in event of destruction or loss of cargo if the occurrence which caused damage took place during carriage by air.

**NOTE: It is the OCCURRENCE which causes damage which needs to occur during carriage, not the actual damage.**

**Cases**

***Berman v Trans World Airlines***

**Outline**

1. Plaintiffs had disembarked from aircraft, retrieved baggage themselves, cleared customs.
2. When carrier assisted them by placing bags on conveyer belt to upper level exit one suitcase was lost
3. Claimed for lost baggage under Art 18 (2)

***Held:***

1. Used 3 tests from *Day v TransWorld Airlines:*

* 1. *The passengers activity at the time of injury*
  2. *His/her whereabouts at time of injury*
  3. *Extent to which the carrier was exercising control at the moment of injury*

1. Trans World Airlines had parted with all control over Bermans baggage before Berman entered the customs area.
2. Once left customs, plaintiffs left unrestricted area of the air terminal and the “transportation by air” had been completed.
3. Although Trans World Airlines repossessed the bags and placed them on the conveyor belt, Berman could have chosen to carry their own baggage
4. “Transportation by air” cannot be revived by Trans World Airlines election to take over the baggage and put it on a conveyor belt
5. Claim is NOT covered by Warsaw Convention

***Manufacturers Hanover Trust Company v Alitalia Airlines***

**Outline**

1. Truck delivered a package to export operations Facility of Alitalia Airlines that contained $200K of bank notes that was consigned to a bank
2. The consignment was awaiting transport aboard Alitalia flight but 3 gunmen broke in and robbed the consignment from the strong room.
3. The gunmen fled and the money has never been recovered.

**Decision**

1. Cargo was never actually moved and still deemed to be under carriage as per Art 1 (2)
2. Warsaw Convention therefore apply as sufficient nexus to Art 1 (2)

**Delay**

**Art 19 -** Carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. If no time limit set, delay occurs if carriage has not occurred in a “reasonable time”.

***Bart v British Indian Airways* – NO DETAILS**

**Decision**

If no time is fixed, this does mean delivery can occur whenever it pleases the carrier. It must be within a “reasonable time” as per Art 19.

***Panalpina International Transport Ltd v Densil Underwear Ltd***

**Outline**

1. 2 consignments of shirts – 1 of 250 cartons in November and the other of 168 cartons in December for sale on Christmas Market.
2. First consignment was fine in November.
3. Second consignment were intended to leave on 2nd of December and didn’t leave till 7th whereby Panalpina sent confirmation it was on the aircraft.
4. Shirts were sent on wrong aircraft and arrived in Lagos on the 18th of Dec and Nigeria on the 21st of Dec.
5. Nigerian purchaser who had agreed to pay $25K rejected goods as they were late and they were eventually sold for $16K.
6. Densil Underwear claimed difference of $9K

**Decision**

1. Delay of 16 and 19 days was unacceptable as Densil Underwear used air travel to enjoy speed it offered and there was breach of obligation to deliver
2. Fact that Densil had told Panalpina that it wanted to deliver the goods for the Christmas market, implies that Panalpina knew there would be damages if goods weren’t delivered in time
3. Panalpina had to pay difference of $9k

**Defenses – NO NOTICE GIVEN?**

**Delivery of Baggage/Cargo - Art 26 – WRITTEN COMPLAINT**

* 1. Receipt of goods without complaint is *prima facie* evidence of receipt in good condition.
  2. If damaged, notice required for delay or damage *but not for loss* within

- 7 days from date of receipt of Baggage

- 14 days from date of receipt of Cargo

- 21 days from date of receipt of DELAYED Baggage/Cargo

* 1. **Complaint must be in writing**
  2. No claim if no complaint - unless fraud.

**Cases**

***Fothergill v Monarch Airlines* (NO NOTICE)**

**Outline**

1. Fothergill flew internationally and when collected baggage it was damaged.
2. Reported damaged to carrier and 7 days later noticed some articles were missing from the suitcase.
3. Claimed $12 for suitcase and $17 for loss of items
4. Airline accepted $12, but rejected $17 as outside Art 26 (2) and Art 26 (4)

**Decision**

1. Fothergill required to lodge a complaint so carrier could try to locate lost items which he failed to do and therefore get $12 but not $17.
2. Ruled that “Damage” did not incorporate any kind of shortage.

***Maro Leather v Aerolineas Argentinas* (NO NOTICE)**

**Outline**

1. Maro Leather imported 9 pallets of leather which was sent by Aerolineas but only 7 arrived and were delivered on 2nd Feb.
2. Aerolineas knew about 2 missing and it was recorded in delivery tally.
3. Maro Leather freight forwarder filed for loss of the two pallets seeking $24K
4. Aerolineas said it was not liable as the claim was not filed within the applicable time period as it was 8 days after loss.
5. Airway Bill said complaint must be lodged “7 days from loss, 14 days for Delay and 120 days for non-delivery”

**Decision**

1. Loss of one or more whole packages may need no written notice. But delivery of a package or container with part of its contents missing is damage and requires notice as in *Fothergill v Monarch Airlines*.
2. Non-delivery was already apparent by Aerolineas and therefore the 120-day period applies for non-delivery.

***Stud v Trans International Airlines - Super Clint***

**(LOSS OR DAMAGE; NO NOTICE)**

**Outline**

1. Plaintiff bought racehorse “Super Clint” for $300,000.
2. Carrier carried horse from Canada to New Zealand (4 April).
3. Upon arrive horse appeared to be in good condition
4. Horse died ten days after arrival (14 April).
5. Horse died of “pneumonia…brought on by stress of travel”.
6. Written claim made against carrier on 25 June (out of time).

**Decision**

1. Condition of the goods at the time they leave the carrier determines whether notice is required. Super Clint left the carriers alive and well.
2. Art 26(2) requires notice of complaint on whether goods were destroyed or damaged.
3. In *Dalton v Delta Airlines*, Greyhound shipped were dead on arrival and therefore were deemed to have been destroyed by the carrier.
4. Super Clint arrived alive and in apparent good health but died later as a result of travel. At most, Super Clint was merely damaged and not destroyed.
5. Art 26(2) required Stud to give notice of complaint within 14 days of receipt of Super Clint but instead took 2 months which was deemed out of time.
6. Must supply written complaint as per Art 26(3) and cannot rely on Media sources because of Super Clint’s fame to be considered written notice about horses death.

**Defense for baggage & passengers NO CARGO - Art 20 –**

In the carriage of passengers and baggage, and damage occasioned by delay in the carriage of cargo, carrier shall NOT be liable if he proves that he…has taken all necessary measures to avoid the damage or it was impossible to take such measures.

**Defences for CARGO - Art 18(3) –**

The carrier is NOT liable if he proves that the destruction, loss or damage to the cargo resulted solely from one or more of the following:

1. Inherent defect, quality or vice
2. Defective packing by people other than carrier
3. Act of war
4. Act of public authority carried out in connection with entry exit or transit of cargo

**Claim brought out of time – Art 29(1) –**

The right to damages shall be extinguished if an is not brought within TWO YEARS from date of arrival

**Limitations of Liability**

**Baggage - Art 22(2)(a) –** 250 Francs or US$16 per kg

**Cargo - Art 22(2)(b) –** 17 SDR per kg unless special declaration at time cargo handed over to carrier with extra payment by consignor

**Only Weight Concerned - Art 22(2)(c)** –

Weight is only of CARGO CONCERNED not whole cargo

**Limits Not Applying – RECKLESS ACT BY CARRIER**

**CARGO – Art 22(2)(b)** - Special declaration (if declared)

**Art 25 -** Limits do not apply if proved damage resulted from intentional/reckless act of carrier, his servants or agents.

***SS Pharmaceutical v Qantas* (RECKLESSNESS BY CARRIER)**

**Outline**

1. Pharmaceutical capsules was subject to Airway Bill and was stated to ensure it “kept dry”.
2. Moved by Qantas from Melbourne to Sydney for delivery to Japan.
3. Goods unloaded and put on tarmac and then it started to rain.
4. Under cargo procedures manual “adequate protection must be given to cargo to prevent weather damage”.
5. On arrival in Japan, extensive water damage to cargo and cargo was rejected.

**Decision**

1. Evidence suggests that Qantas paid no particular attention or no any care.
2. Cargo which was vulnerable to rain should not have been left exposed to the elements without precautions
3. This conduct was deemed to be RECKLESS and therefore subject to Art 25, which offers no limitation protection under Art 22.

***Newell v Canadian Pacific Airlines* (RECKLESSNESS BY CARRIER)**

**Outline**

1. Two elderly people wanted to take their two pet dogs aboard an aircraft but where disallowed from taking them into the cabin.
2. Subsequently, the dogs were placed in one of the four cargo compartments of the aircraft which were situated in the belly beneath.
3. Canadian Pacific said that the dogs were “in first class condition”.
4. On arrival 1 of the dogs was dead and the other was in a critical condition and needed urgent medical care which was given and saved its life.
5. Dogs had been placed in a cargo compartment which had been packed with dry ice that had filled the compartment with carbon dioxide.

**Decision**

1. Art 25 requires Canadian Pacific to prove that the act or omission was done “without knowledge that damage would probably result”.
2. The airline knew that the dogs shouldn’t be placed with dry ice, and therefore Canadian Pacific Airlines was RECKLESS.
3. This means that limitation of liability is not contained within Art 22.

**NOTE**

IF PROVEN THAT ART 25 APPLIES LIMITS FROM ITA AGREEMENT **DO NOT APPLY** because:

(1) the higher limit set by "special agreement" is referred to in Art 22

(2) it follows that when the limit set by Art 22 is referred to in Art 25 and this would include that "special agreement" limit as well.

**Who can sue?**

**Art 30(3) –**

For baggage or cargo:

* the passenger or consignor (shipper of goods) will have a right of action against the first carrier
* passenger or consignee (receiver of goods) who is entitled to delivery will have a right of action against the last carrier
* Carriers are jointly and severally liable

**Which Court to Sue - Art 28 (1) –** Either before the court having jurisdiction were the carrier is:

* Is an ordinary resident
* Has his principal place of business
* Establishment by which the contract has been made
* Before the court having jurisdiction at the place of destination

**Just in Case!!**

**Montreal Convention 1999 PAGE 5.77**

**Signatories List 5.94**

Two tiered limited liability for injuries/death (ART 17)

* $100K SDR strict liability on carrier with no right to argue defenses 21(1)
* Unlimited liability above $100K SDR but carrier CAN argue defenses 21(2)

Limit of 1,000SDRs for baggage (Art 22(2)).

Cargo limit remains at 17 SDRs per kg

Regular review of limits (Art 24)

New fifth jurisdiction - a passenger can sue in state of their residence (Art 33).

****

**CONTRACTING PARTIES TO THE CONVENTION FOR THE UNIFICATION OF**   
**CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR**   
**SIGNED AT WARSAW ON 12 OCTOBER 1929**   
**AND THE PROTOCOL MODIFYING THE SAID CONVENTION**   
**SIGNED AT THE HAGUE ON 28 SEPTEMBER 1955**

|  |  |  |
| --- | --- | --- |
| **Convention** | **Entry into force** | The Convention entered into force on 13 February 1933. |
| **Status**: | 151 Parties. |
| **Protocol** | **Entry into force** | The Protocol entered into force on 1 August 1963. |
| **Status**: | 135 Parties. |
| This list, including the footnotes and reservations, reproduces the information received from the depositary, the Government of the Republic of Poland. | | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| States | **WARSAW CONVENTION** | | | **THE HAGUE PROTOCOL** | | |
| Signature | Ratification,  Adherence or  Succession (s) | Date of entry into force | Signature | Ratification,   Adherence or  Succession (s) | Date of entry into force |
| Afghanistan |  | 20/2/69 | 21/5/69 |  | 20/2/69 | 21/5/69 |
| Algeria |  | 2/6/64 | 31/8/64 |  | 2/6/64 | 31/8/64 |
| Angola |  | 10/3/98 | 8/6/98 |  | 10/3/98 | 8/6/98 |
| Argentina |  | 21/3/52 | 19/6/52 |  | 12/6/69 | 10/9/69 |
| Armenia |  | 25/11/98 | 23/2/99 |  |  |  |
| Australia(1) | 12/10/29 | 1/8/35 | 30/10/35 | 12/7/56 | 23/6/59 | 1/8/63 |
| Austria | 12/10/29 | 28/9/61 | 27/12/61 |  | 26/3/71 | 24/6/71 |
| Azerbaijan |  | 24/1/00 | 23/4/00 |  | 24/1/00 | 23/4/00 |
| Bahamas(2) |  | 23/5/75(s) | 10/7/73 |  | 23/5/75(s) | 10/7/73 |
| Bahrain |  | 12/3/98 | 10/6/98 |  | 12/3/98 | 10/6/98 |
| Bangladesh(3) |  | 1/3/79(s) | 26/3/71 |  | 1/3/79(s) | 26/3/71 |
| Barbados(4) |  | 29/1/70(s) | 30/11/66 |  |  |  |
| Belarus |  | 26/9/59 | 25/12/59 | 9/4/60 | 17/l/61 | 1/8/63 |
| Belgium | 12/10/29 | 13/7/36 | 11/10/36 | 28/9/55 | 27/8/63 | 25/11/63 |
| Benin(5) |  | 27/1/62(s) | 1/8/60 |  | 27/1/62(s) | 1/8/63 |
| Bolivia |  | 29/12/98 | 29/3/99 |  |  |  |
| Bosnia and Herzegovina(6) |  | 3/3/95(s) | 6/3/92 |  | 3/3/95(s) | 6/3/92 |
| Botswana(7) |  | 21/3/77(s) | 30/9/66 |  |  |  |
| Brazil | 12/10/29 | 2/5/31 | 13/2/33 | 28/9/55 | 16/6/64 | 14/9/64 |
| Brunei Darussalam(8) |  | 28/2/84(s) | 1/1/84 |  |  |  |
| Bulgaria |  | 25/6/49 | 23/9/49 |  | 14/12/63 | 13/3/64 |
| Burkina Faso |  | 9/12/61 | 9/3/62 |  |  |  |
| Cambodia |  | 12/12/96 | 12/3/97 |  | 12/12/96 | 12/3/97 |
| Cameroon(9) |  | 2/9/61(s) | 1/1/60 |  | 2/9/61(s) | 1/8/63 |
| Canada |  | 10/6/47r | 8/9/47 | 16/8/56 | 18/4/64 | 17/7/64 |
| Cape Verde |  | 7/2/02 | 8/5/02 |  | 7/2/02 | 8/5/02 |
| Chile |  | 2/3/79r | 31/5/79 |  | 2/3/79 | 31/5/79 |
| China(10) |  | 20/7/58 | 18/10/58 |  | 20/8/75 | 18/11/75 |
| Colombia |  | 15/8/66 | 13/11/66 |  | 15/8/66 | 13/11/66 |
| Comoros |  | 11/6/91 | 9/9/91 |  |  |  |
| Congo(11) |  | 19/1/62r(s) | 15/8/60 |  | 19/1/62r(s) | 1/8/63 |
| Costa Rica |  | 10/5/84 | 8/8/84 |  | 10/5/84 | 8/8/84 |
| Côte d'Ivoire(12) |  | 22/2/62(s) | 7/8/60 |  | 22/2/62(s) | 1/8/63 |
| Croatia(13) |  | 14/7/93(s) | 8/10/91 |  | 14/7/93(s) | 8/10/91 |
| Cuba |  | 21/7/64r | 19/10/64 |  | 30/8/65 | 28/11/65 |
| Cyprus(14) |  | 8/5/63(s) | 16/8/60 |  | 23/7/70 | 21/10/70 |
| Czech Republic(15) |  | 29/11/94(s) | 1/1/93 |  | 29/11/94(s) | 1/1/93 |
| Democratic People's Republic of Korea |  | 1/3/61 | 30/5/61 |  | 4/11/80 | 2/2/81 |
| Democratic Republic of the Congo(16) |  | 1/12/62(s) | 30/6/60 |  |  |  |
| Denmark | 12/10/29 | 3/7/37 | 1/10/37 | 16/3/57 | 3/5/63 | 1/8/63 |
| Dominican Republic |  | 25/2/72 | 25/5/72 |  | 25/2/72 | 25/5/72 |
| Ecuador |  | 1/12/69 | 1/3/70 |  | 1/12/69 | 1/3/70 |
| Egypt(17) |  | 6/9/55 | 5/12/55 | 28/9/55 | 26/4/56 | 1/8/63 |
| El Salvador |  |  |  | 28/9/55 | 17/9/56 | 1/8/63 |
| Equatorial Guinea |  | 20/12/88 | 19/3/89 |  |  |  |
| Estonia |  | 16/3/98 | 14/6/98 |  | 16/3/98 | 14/6/98 |
| Ethiopia |  | 14/8/50r | 12/11/50 |  |  |  |
| Fiji(18) |  | 15/3/72(s) | 10/10/70 |  | 15/3/72(s) | 10/10/70 |
| Finland |  | 3/7/37 | 1/10/37 |  | 25/5/77 | 23/8/77 |
| France | 12/10/29 | 15/11/32 | 13/2/33 | 28/9/55 | 19/5/59 | 1/8/63 |
| Gabon |  | 15/2/69 | 16/5/69 |  | 15/2/69 | 16/5/69 |
| Germany(19) | 12/10/29 | 30/9/33 | 29/12/33 | 28/9/55 | 27/10/60 | 1/8/63 |
| Ghana |  | 11/8/97 | 9/11/97 |  | 11/8/97 | 9/11/97 |
| Greece | 12/10/29 | 11/1/38 | 11/4/38 | 28/9/55 | 23/6/65 | 21/9/65 |
| Grenada |  |  |  |  | 15/8/85 | 13/11/85 |
| Guatemala(20) |  | 3/2/97 | 4/5/97 |  | 28/7/71 | 26/10/71 |
| Guinea |  | 11/9/61 | 10/12/61 |  | 9/10/90 | 7/1/91 |
| Honduras |  | 27/6/94 | 25/9/94 |  |  |  |
| Hungary |  | 29/5/36 | 27/8/36 | 28/9/55 | 4/10/57 | 1/8/63 |
| Iceland |  | 21/8/48 | 19/11/48 | 3/5/63 | 3/5/63 | 1/8/63 |
| India(21) |  | 9/2/70(s) | 15/8/47 |  | 14/2/73 | 15/5/73 |
| Indonesia(22) |  | 21/2/52(s) | 17/8/45 |  |  |  |
| Iran (Islamic Republic of) |  | 8/7/75 | 6/10/75 |  | 8/7/75 | 6/10/75 |
| Iraq(23) |  | 28/6/72 | 26/9/72 |  | 28/6/72 | 26/9/72 |
| Ireland |  | 20/9/35 | 19/12/35 | 28/9/55 | 12/10/59 | 1/8/63 |
| Israel |  | 8/10/49 | 6/1/50 | 28/9/55 | 5/8/64 | 3/11/64 |
| Italy | 12/10/29 | 14/2/33 | 15/5/33 | 28/9/55 | 4/5/63 | 2/8/63 |
| Japan | 12/10/29 | 20/5/53 | 18/8/53 | 2/5/56 | 10/8/67 | 8/11/67 |
| Jordan(24) |  | 8/12/69(s) | 25/5/46 |  | 15/11/73 | 13/2/74 |
| Kazakhstan |  |  |  |  | 30/8/02 | 28/11/02 |
| Kenya(25) |  | 7/10/64(s) | 12/12/63 |  | 6/7/99 | 4/10/99 |
| Kuwait |  | 11/8/75 | 9/11/75 |  | 11/8/75 | 9/11/75 |
| Kyrgyzstan |  | 9/2/00 | 9/5/00 |  | 9/2/00 | 9/5/00 |
| Lao People's Democratic Republic(26) |  | 9/5/56(s) | 19/7/49 | 28/9/55 | 9/5/56 | 1/8/63 |
| Latvia | 12/10/29 | 15/11/32 | 13/2/33 |  | 2/10/98 | 31/12/98 |
| Lebanon(27) |  | 20/4/62(s) | 22/11/43 |  | 10/5/78 | 8/8/78 |
| Lesotho(28) |  | 12/5/75(s) | 4/10/66 |  | 17/10/75 | 15/1/76 |
| Liberia |  | 2/5/42 | 31/7/42 |  |  |  |
| Libyan Arab Jamahiriya |  | 16/5/69 | 14/8/69 |  | 16/5/69 | 14/8/69 |
| Liechtenstein |  | 9/5/34 | 7/8/34 | 28/9/55 | 3/1/66 | 3/4/66 |
| Lithuania |  |  |  |  | 21/11/96 | 19/2/97 |
| Luxembourg | 12/10/29 | 7/10/49 | 5/1/50 | 28/9/55 | 13/2/57 | 1/8/63 |
| Madagascar(29) |  | 27/8/62(s) | 26/6/60 |  | 27/8/62(s) | 1/8/63 |
| Malawi |  | 27/10/77 | 25/1/78 |  | 9/6/71 | 7/9/71 |
| Malaysia(30) |  | 16/12/70(s) | 16/9/63 |  | 20/9/74r | 19/12/74 |
| Maldives |  | 13/10/95 | 11/1/96 |  | 13/10/95 | 11/1/96 |
| Mali |  | 26/1/61 | 26/4/61 | 16/8/62 | 30/12/63 | 29/3/64 |
| Malta(31) |  | 19/2/86(s) | 21/9/64 |  |  |  |
| Mauritania |  | 6/8/62 | 4/11/62 |  |  |  |
| Mauritius |  | 17/10/89 | 15/1/90 |  | 17/10/89 | 15/1/90 |
| Mexico |  | 14/2/33 | 15/5/33 | 28/9/55 | 24/5/57 | 1/8/63 |
| Monaco |  |  |  |  | 9/4/79 | 8/7/79 |
| Mongolia |  | 30/4/62 | 29/7/62 |  |  |  |
| Morocco |  | 5/1/58 | 5/4/58 | 31/5/63 | 17/11/75 | 15/2/76 |
| Myanmar(32) |  | 2/1/52(s) | 4/1/48 |  |  |  |
| Nauru(33) |  | 16/11/70(s) | 31/1/68 |  | 16/11/70(s) | 31/1/68 |
| Nepal |  | 12/2/66 | 13/5/66 |  | 12/2/66 | 13/5/66 |
| Netherlands(34) | 12/10/29 | 1/7/33 | 29/9/33 | 28/9/55 | 21/9/60 | l/8/63 |
| New Zealand(35) |  | 6/4/37 | 5/7/37 | 19/3/58 | 16/3/67 | 14/6/67 |
| Niger(36) |  | 8/3/62(s) | 3/8/60 |  | 8/3/62(s) | 1/8/63 |
| Nigeria(37) |  | 15/10/63(s) | 1/10/60 |  | 1/7/69 | 29/9/69 |
| Norway | 12/10/29 | 3/7/37 | 1/10/37 |  | 3/5/63 | 1/8/63 |
| Oman |  | 6/8/76 | 4/11/76 |  | 4/8/87 | 2/11/87 |
| Pakistan(38) |  | 30/12/69(s) | 14/8/47 | 8/8/60 | 16/1/61 | 1/8/63 |
| Panama |  | 12/11/96 | 10/2/97 |  | 12/11/96 | 10/2/97 |
| Papua New Guinea(39) |  | 12/12/75(s) | 16/9/75 |  | 12/12/75 | 16/9/75 |
| Paraguay |  | 28/8/69 | 26/11/69 |  | 28/8/69 | 26/11/69 |
| Peru |  | 5/7/88 | 3/10/88 |  | 5/7/88 | 3/10/88 |
| Philippines |  | 9/11/50r | 7/2/51 | 28/9/55 | 30/11/66 | 28/2/67 |
| Poland | 12/10/29 | 15/11/32 | 13/2/33 | 28/9/55 | 23/4/56 | 1/8/63 |
| Portugal(40) |  | 20/3/47 | 18/6/47 | 28/9/55 | 16/9/63 | 15/12/63 |
| Qatar |  | 22/12/86 | 22/3/87 |  | 22/12/86 | 22/3/87 |
| Republic of Korea |  |  |  |  | 13/7/67 | 11/10/67 |
| Republic of Moldova |  | 20/3/97 | 19/6/97 |  | 20/3/97 | 19/6/97 |
| Romania | 12/10/29 | 8/7/31 | 13/2/33 | 28/9/55 | 3/12/58 | 1/8/63 |
| Russian Federation(41) | 12/10/29 | 20/8/34 | 18/11/34 | 28/9/55 | 25/3/57 | 1/8/63 |
| Rwanda(42) |  | 16/12/64(s) | 1/7/62 |  | 27/12/90 | 27/3/91 |
| Saint Vincent and the Grenadines |  | 3/12/01(s) | 27/10/79 |  | 3/12/01 | 3/3/02 |
| Samoa(43) |  | 20/1/64(s) | 1/1/62 |  | 16/10/72 | 14/1/73 |
| Saudi Arabia |  | 27/1/69 | 27/4/69 |  | 27/1/69 | 27/4/69 |
| Senegal |  | 19/6/64 | 17/9/64 |  | 19/6/64 | 17/9/64 |
| Serbia and Montenegro(44) |  | 18/7/01(s) | 27/4/92 |  | 18/7/01(s) | 27/4/92 |
| Seychelles |  | 24/6/80 | 22/9/80 |  | 24/6/80 | 22/9/80 |
| Sierra Leone(45) |  | 2/4/68(s) | 27/4/61 |  |  |  |
| Singapore |  | 4/9/71 | 3/12/71 |  | 6/11/67 | 4/2/68 |
| Slovakia(46) |  | 24/3/95(s) | 1/1/93 |  | 24/3/95(s) | 1/1/93 |
| Slovenia(47) |  | 7/8/98(s) | 25/6/91 |  | 7/8/98(s) | 25/6/91 |
| Solomon Islands(48) |  | 9/9/81(s) | 7/7/78 |  | 9/9/81(s) | 7/7/78 |
| South Africa | 12/10/29 | 22/12/54 | 22/3/55 |  | 18/9/67 | 17/12/67 |
| Spain | 12/10/29 | 31/3/30 | 13/2/33 |  | 6/12/65 | 6/3/66 |
| Sri Lanka(49) |  | 2/5/51(s) | 4/2/48 |  | 21/2/97 | 22/5/97 |
| Sudan |  | 11/2/75 | 12/5/75 |  | 11/2/75 | 12/5/75 |
| Suriname |  | 30/6/03 | 28/9/03 |  |  |  |
| Swaziland |  |  |  |  | 20/7/71 | 18/10/71 |
| Sweden |  | 3/7/37 | 1/10/37 | 28/9/55 | 3/5/63 | 1/8/63 |
| Switzerland | 12/10/29 | 9/5/34 | 7/8/34 | 28/9/55 | 19/10/62 | 1/8/63 |
| Syrian Arab Republic(50) |  | 3/6/64(s) | 2/3/59 |  | 3/6/64(s) | 1/8/63 |
| The former Yugoslav Republic of Macedonia(51) |  | 1/9/94(s) | 17/9/91 |  | 1/9/94(s) | 17/9/91 |
| Togo |  | 2/7/80 | 30/9/80 |  | 2/7/80 | 30/9/80 |
| Tonga(52) |  | 21/2/77(s) | 4/6/70 |  | 21/2/77 | 22/5/77 |
| Trinidad and Tobago(53) |  | 10/5/83(s) | 31/8/62 |  | 10/5/83 | 8/8/83 |
| Tunisia |  | 15/11/63 | 13/2/64 |  | 15/11/63 | 13/2/64 |
| Turkey |  | 25/3/78 | 23/6/78 |  | 25/3/78 | 23/6/78 |
| Turkmenistan |  | 21/12/94 | 20/3/95 |  |  |  |
| Uganda |  | 24/7/63 | 22/10/63 |  |  |  |
| Ukraine |  | 14/8/59 | 12/11/59 | 15/1/60 | 23/6/60 | 1/8/63 |
| United Arab Emirates |  | 4/4/86 | 3/7/86 |  | 18/10/93 | 16/1/94 |
| United Kingdom (54) | 12/10/29 | 14/2/33 | 15/5/33 | 23/3/56 | 3/3/67 | 1/6/67 |
| United Kingdom for the following territories: |  | 3/12/34 | 3/3/35 |  | 3/3/67 | 1/6/67 |
| - Bermuda |  |  |  |  |  |  |
| - British Antarctic Territory |  |  |  |  |  |  |
| - Cayman, Turks, and Caicos Islands |  |  |  |  |  |  |
| - Akrotiri and Dhekelia |  |  |  |  |  |  |
| - Falkland Islands and Dependencies |  |  |  |  |  |  |
| - Hong Kong |  |  |  |  |  |  |
| - Montserrat |  |  |  |  |  |  |
| - St. Helena and Ascension |  |  |  |  |  |  |
| United Republic of Tanzania |  | 7/4/65 | 6/7/65 |  |  |  |
| United States |  | 31/7/34r | 29/10/34 | 28/6/56 | 15/9/03 | 14/12/03 |
| Uruguay |  | 4/7/79 | 2/10/79 |  |  |  |
| Uzbekistan |  | 27/2/97 | 28/5/97 |  | 27/2/97 | 28/5/97 |
| Vanuatu |  | 26/10/81 | 24/1/82 |  | 26/10/81 | 24/1/82 |
| Venezuela |  | 15/6/55 | 13/9/55 | 28/9/55 | 26/8/60r | 1/8/63 |
| Viet Nam |  | 11/10/82 | 9/1/83 |  | 11/10/82 | 9/1/83 |
| Yemen |  | 6/5/82 | 4/8/82 |  | 6/5/82 | 4/8/82 |
| Zambia(55) |  | 25/3/70(s) | 24/10/64 |  | 25/3/70 | 23/6/70 |
| Zimbabwe(56) |  | 27/10/80(s) | 18/4/80 |  | 27/10/80 | 25/1/81 |

r Reservation