

INSTITUTE OF MARITIME LAW
The University of Southampton



LIMITATION OF SHIPOWNERS' LIABILITY

THE NEW LAW



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Foreword

The Convention on Limitation of Liability for Maritime Claims will shortly have the force of law in the United Kingdom. The effect of that will be to introduce new internationally-agreed rules in place of those previously contained in The Convention Relating to the Liability of Owners of Seagoing Ships 1957. In this situation, the need for an entirely new work, dealing with the legal and commercial consequences of those new rules, is immediately apparent. That need is met, in a remarkably diverse and comprehensive way, by this present book, which the Institute of Maritime Law of the University of Southampton has so carefully and studiously compiled and which Sweet and Maxwell Limited have so timeously published.

The work consists of twenty-one chapters, written by twenty different authors from twelve different countries. Its diversity and comprehensiveness are apparent in four main ways. First, the antecedent history leading up to the 1976 Convention is fully examined. Secondly, the effect of the 1976 Convention is described from four significantly different points of view in the United Kingdom: that of academic lawyers; that of practising lawyers, both barristers and solicitors; and that of insurers of marine risks as represented by Protection and Indemnity Associations. Thirdly, the relationship between the 1976 Convention and other International Conventions, such as the Convention on Civil Liability for Oil Pollution 1969, is carefully explained. Fourthly, there are chapters written by distinguished lawyers, both academic and practising, from a large number of countries other than the United Kingdom, explaining the impact, actual or potential, which the 1976 Convention will have to each of them. Those countries are Argentina, France, German Democratic Republic, West Germany, Greece, Japan, the Nordic countries, Poland, Spain, the United States of America and Yugoslavia.

A number of significant points emerge from a reading of this book. The first point is the long interval, in this case ten years, which is bound to elapse between the making of a Convention and its coming into force after a sufficient number of states have adhered to it. The most important aspect of this is the progressive erosion of the limits of liability agreed as appropriate in 1976 by the extensive world-wide inflation which has taken place between that year and 1986. The second point is that by no means all maritime countries have yet adhered, or can be expected in the

future to adhere, to the 1976 Convention. The most important aspect of this is that, however desirable it may be in theory for the 1976 Convention to be truly and completely international, there is no real prospect of this being achieved in practice, with some countries still applying earlier Conventions or their own special systems in their domestic laws. The third point is that, while the 1976 Convention was intended to deal with, and may well effectively have dealt with, a number of difficulties and inadequacies in the 1957 Convention, it seems likely that the 1976 Convention will also present its own problems of interpretation and application. That prospect is, perhaps, more appealing to lawyers than it is to ship operators and their insurers, for whom certainty of the law is of such vital importance.

As one who practised at the English Admiralty Bar for nearly twenty years, and was privileged to be the Judge of the English Admiralty Court for the twelve years which followed, I have no hesitation in commending this book to all those whose work or occupation requires that they should be as well informed as possible about the 1976 Convention when it comes into force in the United Kingdom later this year.

Brandon of Oakbrook

Preface

In September 1984 the Institute of Maritime Law, Southampton University held a one day conference on the 1976 Convention on Limitation of Liability for Maritime Claims. At that stage there was every likelihood that the Convention would enter into force very soon. In the event the necessary number of ratifications was achieved over a year later, in November 1985, enabling the Convention to come into force internationally on December 1, 1986. In view of the importance of the Convention for the maritime world and of the interest shown in the papers delivered we decided to publish them to a wider audience. At the same time it seemed a good opportunity to expand the areas covered in the original papers and to invite extra contributions from maritime lawyers, both in the United Kingdom and from abroad. It has been a failing, and a criticism, of lawyers in this country that we are too insular. Therefore, we are grateful to Sweet and Maxwell for continuing their support of the Institute by agreeing to publish the set of collected papers in this volume.

The scheme of the book is, first, to have a detailed analysis of the provisions of the Convention in PART A. This is followed, in PART B, by national perspectives on limitation of liability, generally, and on the 1976 Convention. In addition to the chapters in PART A by speakers at the original Conference there are now Chapters by Institute members David Jackson and Ralph Beddard. We were also fortunate in being able to persuade Andrew Dykes to deal with oil pollution and Erling Selvig to provide an introduction to the Convention. The PART A discussion of the detailed provisions of the 1976 Limitation Convention is not isolated from the practical realities of British law: nor would one expect it to be, with contributions from Geoffrey Brice Q.C., Richard Shaw and Robert Seward. PART B was designed to provide a non-British perspective on limitation. Of course, it is always difficult to comment on a Convention that is about to come into force, as national policies may still be in the process of formulation. But we are extremely grateful to our overseas lawyers for meeting the difficult deadline and contributing their views on what is a truly international subject. We hope that the Institute of Maritime Law can continue to encourage such international exchanges of information. Because PART A is not directed solely at domestic law we are grateful to Steven

Hazelwood for providing, in PART B, an overall view of the United Kingdom position.

This book is a collection of individual views about particular aspects of the Convention. It does not pretend to be a type of basic A to Z guide, although we are confident that in structure and content it will be of use and interest to shipowners, operators, their legal advisers and insurers as well as academics and students. To assist the book's practical value copious extracts from conventions and statutes have been included in the Appendices. As a result of the tolerance of Sweet and Maxwell, we have also been able to include reference to the latest 1986 statutory instruments giving effect to the 1976 Convention in the United Kingdom.

It is appropriate to record here our thanks to the Department of Transport for help and information given, especially by John Perrett and Frank Wall. We are particularly indebted to the former for his participation in the original 1984 conference at Southampton. Similarly, we have been very fortunate to have the continued support of Lord Brandon of Oakbrook who not only chaired the 1984 conference, but also agreed to write a foreword to this book. But it would not have been produced without the hard work of all at the Institute, particularly Richard Swatton, Richard Holt and Marian von Benko. The burden of proof reading and preparing the Index, list of cases and statutes fell on the shoulders of Robert Grime and Richard Holt.

August 1986

Nicholas Gaskell
Institute of Maritime Law
University of Southampton

Table of Abbreviations

CLC	Convention on Civil Liability for Oil Pollution Damage (1969)
CMI	Comité Maritime International
CMR	Convention on the Contracts for the International Carriage of Goods by Road (1956)
ECE (CLN)	European Commission for Europe (Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels) 1973
g.f.	Gold franc
HNS	Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea (Draft)
IMCO	International Maritime Consultative Organisation
IMF	International Monetary Fund
IMO	International Maritime Organisation
MAP	Decree on Civil Proceedings in Maritime Affairs
MC	Maritime Codes
MLA	United States Maritime Law Association
MSA	Marine Safety Agency
MSC	Merchant Shipping Code
OECD	Organisation for Economic Co-operation and Development
OMS	Old measuring systems
PPA	Propelling power allowance
SDR	Special Drawing Rights
UMS	Universal measurement system
UNCTAD	United Nations Conference on Trade and Development

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