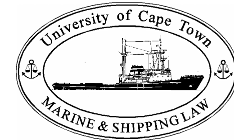
UNIVERSITY OF CAPE TOWN
Faculty of Law



www.uctshiplaw.com

Shipping Law Unit
✉Faculty of Law
Middle Campus
Private Bag
Rondebosch 7700
☎ +27(21)650 2676 Fax +27(21)686 2577
jehare@law.uct.ac.za

08 July 2003

[Short] Memorandum re 1976 Limitation of Liability for Maritime Claims

Following up on our interesting discussions on the '76 Convention at Caledon, I thought it may fuel the debate to direct members to the CMI's website at

www.comitemaritime.org

where Prof Francesco Berlingieri has put up summary references to jurisprudence on the '76 Convention - which he has been collecting for some years. It is probably fair to say that (like marine insurance) limitation does not get to court too often - largely because the system works fairly well. But what he has found, he has posted onto the site.

What is also interesting is the list of those countries which have either acceded to or ratified the convention (with or without reservations). Included in the list are

Australia	Belgium
China	Denmark
Egypt	Finland
France	Germany
Greece	Japan
Ireland	Netherlands
New Zealand	Norway
Spain	Sweden
Switzerland	Turkey
UAR	United Kingdom

This represents the bulk of South Africa's current trading partners. To them, the language of '76 has become the currency of liability, influencing freight rates and

insurances. To my knowledge, the only major trading partner of ours which retains 'actual fault or privity' is the USA which requires fault plus 'privity and knowledge' to break liability. And I think it fair to say that the USA limitation regime leaves a lot to be desired.

For this reason, I have always held the view that we should go the limitation route of '76, and then if we do not like aspects of '76 we should try to work from within to change them for the better. The Convention is now 30 years old, but has recently had an overhaul in the form of the 1996 Protocol which I have put onto the uctshiplaw.com site. The Protocol increases limits, and corrects certain anomalies of the original convention. It requires 10 signatures to come into effect. It has only two to go, so it will be a reality soon (it has a 3 month kick-in period).

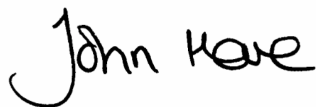
If we have difficulties with the Convention, let us rather try to work with those in the international shipping community (especially the CMI) to iron out those problems. Let's be part of the process. Douglas Shaw gave us good enough reason to warrant further research before supporting accession or ratification, and has indicated that he would be happy to give input.

But in the meantime, I believe it is wise to stick closely to the wording of the '76 Convention when amending s 261 of the MSA. For that reason I suggested that the wording of s 261 should include the same wording as Art 4 of the Convention:

> "A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result." [I underline the words left out of the draft which Andy Pike has sent to SAMSA]

I will be raising the Convention at the CMI Council meeting next week and will report back to the MLA. I will sow the seed that the main topic for a Cape Town Colloquium in 2006 should be Limitation.

If anyone needs the text of the limitation conventions and the latest protocol (and many others) they are on the uctshiplaw.com site.



John Hare
2 June 03