Specimen for Implementation

TITLE OF CONVENTION******** `

The above convention has been implemented in ***
by incorporating its (most of its)provisions into***
or
by giving it the force of law***
or
by*******************

SPECIMEN FOR COMMENTARIES

I. General comments

name of author

title

place and year of publication

II. Specific comments

title

journal in which the article or note has been published

SPECIMEN FOR JURISPRUDENCE

THE 1924 BILLS OF LADING CONVENTION AND ITS 1968 AND 1979 PROTOCOLS (HAGUE-VISBY RULES)

Obligations to make the ship seaworthy (Art. 3.1)

Japan

Tokyo K&6 Saibansho (Court of Appeals of Tokyo) 14 September 2000, Taiwan Fire and Marine Insurance Co. Ltd. v. Unison Navigation Corp. (K6t6 Saibansho Minji Hanreishu vol.53, no.2, p.124)

The ship that had carried Malaysian lumber from Miri, Malaysia, to Su-ao, Taiwan, took a heavy list on her port side before unloading due to leakage caused by a crack in her port bow. All the lumber fell into the sea and was totally damaged by the oil spilt from the ship. The cargo insurer sued the carrier, alleging that the carrier had breached his duty to make the ship seawort y. During the proceedings it appeared that the ship, fifteen years old, had had her starboard bow repaired one month before the accident at issue, after a leakage due to another crack.

Held, by the Court of Appeals of Tokyo, that:

[1] The carrier has not exercised due diligence to make the ship seaworthy when, after a leakage in the port side had occurred and it was found that such leakage was due to a crack in the plate it failed to cause the starboard side to be inspected and the cargo was severely damaged as a consequence of a further crack in the hull.

Obligation to properly care for the goods (Art. 3.2)

Australia

Great China Metal Industries Co. Ltd v. Malaysian International Shipping Corp.-The "Bunga Seroja", High Court, 22 October 1998 ([1999] AMC 427).

A consignment of 40 cases of aluminium can body in coils loaded in Sydney on board the MVL Bunga Seroja was partly damaged during the passage from Sydney to Keelung, Taiwan on account of heavy weather. Great China Metal Industries Co. Ltd., to which the property in the goods had passed, claimed damages from the carrier, Malaysian International Shipping Corp. Berhad but the claim was rejected by the trial Judge whose decision was affirmed by the New South Wales Court of Appeal. The claimant appealed to the High Court of Australia contending that the exception of perils of the sea did not apply because damage to the cargo resulted from sea weather conditions which could reasonably be foreseen and guarded against. The question to which the submission primarily was directed was the meaning and effect of Art. IV r. 2(c) of the Hague Rules.

Held, by the High Court of Australia, that:

[1] The fact that responsibility under Art. 3 r. 2 is expressly made subject to the exemptions in Art. 4 does not mean that the duty of care imposed by Art. 3 r. 2 is in some way qualified by Art. 4 r. 2.