

4TH ADRIATIC MARITIME LAW CONFERENCE

**THE LAW AND THE PRACTICE
IN SHIPBUILDING CONTRACTS**

FOREWORD

The primacy of soft law in the shipping industry

SHIPBUILDING CONTRACT FORMS

- a) The SAJ; Shipbuilding Contract of the Shipowners Association of Japan
- b) The NewBuildcon: BIMCO Standard Newbuilding Contract
- c) The CMAC: Standard Newbuilding Contract (Shanghai Form) drafted by the China Maritime Arbitration Commission (CMAC)
- d) Norwegian Standard Form Shipbuilding Contract 2000
- e) “taylor made” contracts

OWNER ORIENTED CONTRACTS

- a) The NewBuildcon
- b) Norwegian Standard Form

SHIPYARD ORIENTED CONTRACTS

- c) The SAJ
- d) CMA

LAW versus CONTRACT

- - Title to the ship
- - Termination (rescission) of the contract
- - Warranty of quality

TITLE TO THE SHIP

The law

- Contract of Sale
- Contract of works & materials (supply of material by Owner)

TITLE TO THE SHIP

The contract

Title passes on delivery

Title passes gradually (benefits for Owner)

TERMINATION OF CONTRACT

The law ITALY

- Termination for unfitness due to defects (art. 1668 CC)
- Termination by express stipulation (art. 1455 CC)
- Termination for «serious» breach (art. 1453-1455)

The Law COMMON LAW

- Termination by breach of «condition» (or sometime «innominate term»)
- Termination by express stipulation
- (Repudiatory Breach?)

TERMINATION OF CONTRACT

The contract

Express stipulations

- technical (speed, consumptions etc.)
- financial (bankruptcy and the like)
- legal/commercial (non payment/suspension of work etc.)
- others (total loss)

TERMINATION OF CONTRACT

Damages?

Limitation of liability clause:

“Upon such refund in full (i.e. refund of pre-delivery installments with default interest) and return of the Buyer’s supplies or refund of their originals purchase price, under Art. ___ by the Seller to the Buyer, all obligations, duties and liabilities of each of the Parties hereto to the other under the contract and applicable laws shall be forthwith completely discharged”

WARRANTY OF QUALITY

The law

Fault or strict liability?

(Italy) (common law)

Direct and consequential damages (art. 1668 CC – common law)

WARRANTY OF QUALITY

The contract

Remedy limited to defect of material or bad workmanship

Design?

WARRANTY OF QUALITY

Events excepted

Wear and tear, accidents at sea or elsewhere, mismanagement, negligence or willful neglect on the part of the Buyer, employees or agents including the crew or passengers, failure to observe instructions by Builder or Suppliers regarding maintenance and operation, modification or alteration of the vessel by Owner etc.

Burden of proof

WARRANTY OF QUALITY

General exclusion clauses

“(b) Liability for Defects discovered after delivery.

Except to the extent expressly provided in Clause 35 (Builder’s Guarantee), the Builder shall have no liability in contract, tort (including negligence), breach of statutory duty or otherwise for:

(i) any Defect discovered after delivery of the Vessel or

(ii) any loss, damage or expenses caused as a consequence of such Defect (which shall include, but not be limited to, loss of time, loss of profit or earnings or demurrage directly or indirectly incurred by the Buyer)”