Limitation Of Liability In England And France

It may seem strange in these litigious times that carriers of people and goods continue to enjoy the right in certain circumstances to limit liability to the modest levels that can be readily insured. Nevertheless, most countries have adopted some form of limitation based on the idea that an owner should not be liable for more than the value of his trading asset, his ship. In most countries (excluding the US), liability is calculated by reference to a notional value based on the tonnage of the ship.

There are two conventions commonly in use, the 1957 and 1976 Conventions. Limits under the 1957 Limitation Convention rapidly became too low, resulting in a number of claimants repeatedly contesting owners' right to limit.

To curb this trend, the 1976 Limitation Convention was brought into force with much higher limits and when, in turn, these were considered too low a 1996 Protocol was introduced to double the limits. This will come into force 90 days after it is accepted by 10 states. As at 31.10.03 it had only been accepted by nine: Australia, Denmark, Finland, Germany, Norway, Russian Federation, Sierra Leone, Tonga, and the UK. The UK has implemented the protocol in domestic law through the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1990 - SI 1990/1259, which will come into force on the date when the Protocol enters into force in the UK.

Under US law, the shipowner can limit liability provided he can prove that the fault causing the loss occurred without his privity or knowledge. Under the 1957 Convention, shipowners are not liable for death, injury, loss or damage occurring "without their actual fault or privity". The burden of proof in both cases lies with the owner.

The test under the 1976 Convention is very different. Article 4 sets out the way in which it is applied. A person will not be allowed 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 with knowledge that such loss would probably result".

In return for higher limits, the 1976 Convention was intended to provide for the shipowner's benefit "an almost indisputable right to limit". This view was recently reinforced in The Leerot [2001] 2 Lloyd's Rep 291 where Lord Phillips MR said, "when a claim is made for damage resulting from a collision, it is virtually axiomatic that the defendant shipowners will be entitled to limit his liability".

The 1976 Convention therefore reversed the burden of proof, with the claimant having to demonstrate one or other of the two legs of the test.

Some differences of interpretation on the rights to limit may, however, be beginning to emerge between 1976 Convention states. Certainly, the position adopted by the English and French jurisdictions show that they take very different views of a shipowner's right to limit.

This is the introduction to an article by Richard's Butler. The full article can be viewed here.