

A Guide to Offshore Jurisdiction







Introduction for Members

This guide provides a broad overview of common issues arising from the laws and regulations which govern offshore shipping operations. We hope you will find it practical and interesting.

The same key questions have been answered for each of the 17 jurisdictions featured. This information has been compiled with the assistance of Thomas Cooper and CTRL Marine Solutions Ltd and obtained from leading practitioners in each jurisdiction. The information is correct to the best of our knowledge and belief at the time of writing. However, please be advised that this is a developing area.

Every effort has been made to ensure that matters of concern to Members are covered. However, the information provided in this guide is general and might not apply in a specific situation. Up to date legal advice should always be sought from suitably qualified professionals.

This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The Shipowners' P&I Club accepts no responsibility for any losses which may arise from reliance upon information contained in this guide.

Australia



1. Limitation

a. The LLMC 1996 Protocol is in force

There have been a large number of cases which have followed the standard interpretation of the Convention.

Australia has also adopted Article 6 Paragraph 3 of the Limitation Convention which provides that a claim for damage to harbour works, basins, waterways or aids to navigation has priority over any other claim.

b. Are there examples of a limitation fund having been established?

Yes.

c. Can a limitation fund be established with a Club LOU?

Unknown. There are no reported cases on this.

d. Is it possible to limit for wreck removal?

No.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

Wreck removal is governed by Federal and State Legislation. The Australian Maritime Safety Authority (AMSA) has considerable power to require owners to remove wrecks or provide security to AMSA for state removal. Port authorities also have power under state legislation to require repair, removal or destruction of wrecks.

b. Any of the Dumping Conventions

The London Protocol 1996 is in force.

c. The Arrest Convention

i. 1952

ii. 1999

Neither version of the Arrest Convention is in force, but the Admiralty Act 1988 closely follows the 1952 Arrest Convention.

d. Civil Liability for Oil Pollution Damage

The 1992 Protocol is in force.

e. The International Oil Pollution Fund

The 1992 Protocol and 2003 Protocol (Supplementary Fund) are in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

In force.

3. Legal Framework and Court System

Australia's legal system is inherited from, and is similar to, the UK system. Law is derived from the Parliament and the common law. Legislation is interpreted by the Courts. There is a system of binding precedent.

There are two systems which run in parallel; the Federal Court and the State Supreme Courts. Maritime claims can be commenced in either. Appeals from first instance decisions are referred to the Full Federal Court or the Court of Appeal. The ultimate appeal is to the High Court of Australia.

The Federal Court of Australia maintains a list of judges who undertake Admiralty and maritime work, as well as other types of cases. The list includes judges who have considerable experience in maritime matters. A relatively straightforward case can be disposed of at first instance within 12 to 18 months.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes unless one party is a 'consumer'. This is defined by the Competition and Consumer Act 2010. Under the act, if the services are provided to a business and cost in excess of AUS\$ 40,000, the customer is not a consumer.

b. Do the courts recognise the knock for knock regimes?

Generally yes, subject to the reservation for 'consumers' above.

In *PNSL Berhad v Dalrymple Marine Services Pty Ltd*, ('The Koumala'), the Queensland Supreme court found that the tugowners, operating on the UKSTC, could not exclude liability for the tow because this would conflict with the Australian Trade Practices Act 1974 which provided that services provided during the course of a business must be rendered with due care and skill. The 1974 act has now been replaced by the Competition and Consumer Act 2010. Accordingly, Members operating in Australia under the UKSTC will not be able to rely on the Clause 4 exclusions of liability if the cost of the tow is less than AUS\$ 40,000.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, subject to the restrictions for 'consumers' set out above.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

If the Convention or Statute contained a greater limit than the contractual limit we would expect the Convention or Statutory limit to prevail unless the Convention or Statute specifically allowed the parties to agree to a lesser amount.

e. Is there any concept of gross negligence or wilful misconduct?

Yes, although the significance of the distinction between negligence and gross negligence is probably one of degree only.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

There is no state oil company in Australia.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes unless they are excluded under the contract or are too remote.

b. How remote does the loss have to be before it is unrecoverable?

Contractual claims must pass the *Hadley v Baxendale* test. In other words, the loss must flow naturally from the breach or be in the reasonable contemplation of the parties at the time the contract is made. Losses in tort must be reasonably foreseeable.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

The owners of a vessel which leaves seafarers behind at port are liable for their repatriation costs.

There are extensive fines for breach of immigration law of up to around AUS\$25,000.

b. Accidental escape or discharge of oil or other substance

Up to AUS\$18,000,000 for corporations and AUS\$ 3,600,000,000 for natural persons.

c. Smuggling or infringement of customs law except for in relation to carried cargo

Penalties can include forfeiture of ship if she is knowingly used. Owners or Master could face a penalty of up to five times the amount of duty payable or, in some states, a fine of around AUS\$ 100,000.

8. Time bars

a. Tort

Personal injury claims must be brought within three years of the cause of action arising.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

No.

b. Contract

Within six years of the cause of action arising.

c. Other

Collision and salvage claims must be brought within two years of the cause of action arising or the salvage being performed.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or contract or both.

Brazil



1. Limitation

a. **The Limitation Convention is not in force**

Shipowners' civil liability in Brazil is strict.

It is not possible to limit liability for damage to the environment and third parties caused by pollution.

b. **Are there examples of a limitation fund having been established?**

No.

c. **Can a limitation fund be established with a Club LOU?**

No.

d. **Is it possible to limit for wreck removal?**

In theory although it is unclear whether it is possible to limit liability at all.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

The London Convention 1972 is in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions is in force. It is not possible to carry out a security arrest in Brazil unless the Brazilian courts have jurisdiction to decide the underlying claim.

d. **Civil Liability for Oil Pollution Damage 1969**

The 1969 Convention is in force.

The 1976 and 1992 Protocols are not in force.

Civil liability for pollution incidents in Brazil is strict. There is no need to prove fault or wilful misconduct on the part of owners. Anyone who contributes (even indirectly) to environmental damage is considered a polluter.

e. The International Oil Pollution Fund 1971

Not in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Brazil operates a civil law system.

Previous court judgments are not binding, although they can be persuasive.

Judges have wide discretion to interpret legislation.

Maritime disputes are dealt with by the civil courts except in Rio de Janeiro where they are dealt with by the specialist corporate and commercial courts. Brazil also has an Admiralty Court which can rule on maritime accidents and impose fines and penalties on owners and crew.

The Admiralty Court is part of the Ministry of Defence.

Brazilian proceedings tend to be slow. It takes on average four to six years for a claim to be disposed of. There are multiple opportunities to appeal.

Interest is awarded on judgments at a high rate of around 18–20% per annum, which makes litigation costly.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes provided the parties are of equal bargaining power.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes subject to the reservation above.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Yes provided it is not against public policy.

NB. The courts do not always allow owners to limit liability for claims under bills of lading. This is a controversial issue in Brazil.

e. Is there any concept of gross negligence or wilful misconduct?

There is no real distinction between negligence and gross negligence.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The Brazilian state oil company is Petrobras.

b. Is it easy to organise surveys?

Petrobras usually runs its own investigations into accidents. Joint surveys are not common. Owners are advised to carry out their own surveys and invite Petrobras to join.

c. Are they quick or slow to start litigation?

Slow. Petrobras standard contracts often allow them to make deductions from hire to cover their losses which means that they do not usually refer charterparty disputes to court.

d. Is the legal system fair to foreign litigants?

Yes. Owners have taken Petrobras to court in the past and the courts will grant injunctions or give judgment against Petrobras.

However, foreign litigants in proceedings in Brazil are unusual because Brazil has not ratified most of the international conventions and proceedings are slow.

Also, foreign claimants might be required to provide security for costs in the amount of 10–20% of the claim in case they lose.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

Brazilian law does not distinguish between direct and indirect losses, provided that the claimant can establish a causal link between the breach and the loss.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo or failure to comply with regulations for declaration of goods or documentation of cargo

Where the declared value differs from the actual value there is a penalty of 100%

of the difference. The penalty can be increased to 150% in cases of fraud or money laundering.

If the goods are wrongly classified, there is a fine of 1% of the goods' customs value.

b. Breach of immigration law

Ships which operate for more than 90 days in Brazilian waters must employ Brazilian crew. There is a fine of USD 500 per breach.

c. Accidental escape or discharge of oil

Fines of up to USD 14 million, which can be tripled for repeated infractions.

d. Smuggling or infringement of customs law except for in relation to carried cargo

There is a fine for non-payment of import taxes of between 75%–225% of the tax due.

There are multiple fines for customs infractions, e.g. failing to obtain the correct import licences, the fine for which is around 10–30% of the goods' declared value.

8. Time bars

a. Tort

Three years from the date of the event causing the damage.

b. Contract

Three years for claims for interest or specific performance. Five years for debt claims.

One year for cargo claims under a contract of carriage.

c. Other

General average claims are subject to a ten year time bar where no other time limit is provided for.

NB. Time bars are a controversial topic in Brazil and the law is sometimes uncertain.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

Yes.

Burma (Myanmar)



1. Limitation

a. **The Limitation Convention is not in force**

The Burmese Courts do not apply the Limitation Convention. There are no examples of a limitation fund having been established and it is unknown whether a limitation fund could be established with a Club LOU.

It is not possible to limit for wreck removal or for oil pollution clean-up.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

Not in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Not in force.

d. **Civil Liability for Oil Pollution Damage**

i. 1969

ii. 1976 Protocol

iii. 1992 Protocol

Not in force.

e. **The International Oil Pollution Fund**

i. 1971

ii. 1992

iii. 2003 Protocol (Supplementary Fund)

Not in force.

f. **Civil Liability for Bunker Oil Pollution Damage 2001**

Not in force.

3. Legal Framework and Court System

Burma is a common law system which recognises precedents. Decisions are somewhat unpredictable.

Marine disputes are dealt with by Township Courts.

Cases can take between 1 and 3 years to resolve depending on the value and complexity of the claim. Legal costs are not recoverable except at a court-permitted rate which is very low.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

In theory, although there are no known cases on this.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Again, in theory.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Again, in theory.

e. Is there any concept of gross negligence or wilful misconduct?

Yes, the Burmese courts recognise both these concepts.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is Myanmar Oil and Gas Exploration ('MOGE').

b. Is it easy to organise surveys?

Surveys are often delayed due to a shortage of experienced surveyors.

c. Are they quick or slow to start litigation?

This varies. MOGE can be keen to compromise claims.

d. Is the legal system fair to foreign litigants?

The Courts tend to rule on MOGE's favour, particularly on issues of the admissibility of evidence on which foreign litigants wish to rely.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

Loss of opportunity (e.g. lost sales) might be too remote.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

Fines for overstaying visas of USD 3 per day.

b. Accidental escape or discharge of oil

Minimum USD 10,000 fine for pollution of the Yangon River.

c. Smuggling or infringement of customs law except for in relation to carried cargo

Confiscation of goods and a small fine.

8. Time bars

a. Tort

One year for death and personal injury claims.

Otherwise three years.

b. Contract

One year for cargo claims. Otherwise three years.

c. Other

Three years each for oil pollution and wreck removal claims. These limits can be extended.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

Unknown.



India



1. Limitation

a. **The LLMC 1996 Protocol is in force**

BUT Owners cannot limit under the Limitation Convention in India if the vessel in question is flagged in a country which is not a signatory to the Limitation Convention (e.g. Panama).

b. **Are there examples of a limitation fund having been established?**

Yes.

c. **Can a limitation fund be established with a Club LOU?**

There is no precedent for this but s.352(c) and (k) Merchant Shipping Act 1958 seems to give the courts discretion to allow it.

d. **Is it possible to limit for wreck removal?**

No.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

The Basel Convention on Hazardous Waste 2008 is in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the arrest conventions are in force. However, the Indian courts allow security arrests for the types of claim set out in both Conventions.

d. **Civil Liability for Oil Pollution Damage 1969**

The 1992 Protocol is in force.

e. **The International Oil Pollution Fund**

i. 1971

ii. 1992 Protocol

iii. 2003 Protocol (Supplementary Fund)

Not in force.

f. **Civil Liability for Bunker Oil Pollution Damage 2001**

Not in force.

3. Legal Framework and Court System

India has a common law system and precedent is binding.

The High Courts of Mumbai, Kolkata and Chennai exercise admiralty jurisdiction, as well as a few other coastal courts.

Litigation is slow and cases at their quickest take five – seven years to resolve, sometimes much longer.

There are few judges who are familiar with maritime law.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes, unless doing so would offend public policy.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, unless doing so would offend public policy.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No. The Convention or Statute would prevail.

e. Is there any concept of gross negligence or wilful misconduct?

These concepts have not been considered by the Indian Courts.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Indian Oil Corporation.

b. Is it easy to organise surveys?

This can be done relatively easily.

c. Are they quick or slow to start litigation?

They can be quick to start litigation against other parties.

d. Is the legal system fair to foreign litigants?

Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

S. 73 of the Indian Contract Act 1872 applies, which is a statutory codification of the rule in *Hadley v Baxendale*. This limits damages to 'compensation for any loss or damage...which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it'.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo

The fine for short delivery is an amount not exceeding twice the duty on the amount which should have been delivered. The fine for over-delivery is Rps 5,000.

b. Breach of immigration law

Maximum fine unknown.

c. Accidental escape or discharge of oil

Indian law recognises the CLC and provides for a fine of up to Rps 500,000.

d. Smuggling or infringement of customs law except for in relation to carried cargo

Confiscation of ship, unlimited fine for evasion of duties, confiscation of smuggled goods or a fine of Rps 5,000, whichever is greater.

8. Time bars

a. Tort

Various time bars apply depending on the nature of the claim. There is a time limit of two years for fatal accident claims (one year for Legal Representatives Act claims).

b. Contract

One year for cargo claims.

Nine months for multi modal claims.

Three years for other contract claims.

c. Other

Three years for salvage, collision and GA claims.

One year for customs claims.

One year from discovery of the fraud for fraud/concealment/mistake claims.

Three years from the accrual of the right of action for general limitation claims.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant may sue in tort or contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

Unknown.



Indonesia



1. Limitation

a. The Limitation Convention is not in force

Indonesia does not allow owners to limit except for CLC oil pollution-like risks, save arguably in collision cases, where owners might be able to limit to 50 Dutch Guilders per square metre of net tonnage.

b. Are there examples of a limitation fund having been established?

Yes.

c. Can a limitation fund be established with a Club LOU?

Unknown. We are unaware of any precedent.

d. Is it possible to limit for wreck removal?

No.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

Indonesian law requires owners to remove the wreck at their expense if it obstructs navigation. If owners do not do so the government may remove the wreck and claim costs from owners.

b. Any of the Dumping Conventions

Not in force.

Regulations forbid the disposal of waste at sea but do not impose any sanctions on foreign shipowners.

c. The Arrest Convention

i. 1952

ii. 1999

Not in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund 1971

The 1971 Convention is in force.

The 1992 Protocol and the 2003 Protocol (Supplementary Fund) are not in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Indonesia has a civil law system. Precedents are not binding. Legislation is codified and judges have wide discretion in its interpretation.

Indonesia has no specialist maritime court. All maritime cases are heard by the general civil district courts. Accidents in Indonesian waters are investigated by the Maritime Council and the court's findings of fact are heavily influenced by the Council's findings.

Court proceedings can take a long time to reach a conclusion.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes, but there are provisions of the Commercial Code which limit 'a carrier's' ability to limit or exclude liability for cargo claims.

b. Do the courts recognise the Knock for Knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, subject to the provisions of the Commercial Code described above.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Yes, subject to the provisions of the Commercial Code described above.

e. Is there any concept of gross negligence or wilful misconduct?

These concepts are interpreted on a case by case basis.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The Indonesian state oil company is called Pertamina.

b. Is it easy to organise surveys?

It is not easy to organise surveys.

c. Are they quick or slow to start litigation?

Slow.

d. Is the legal system fair to foreign litigants?

Outcomes of Indonesian court cases are unpredictable. Foreign litigants may feel that the courts do not treat them fairly.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

No. Only direct losses are recoverable.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

Fines of 500–1500 IDR.

b. Accidental escape or discharge of oil

Fines of 1 billion–9 billion IDR.

c. Smuggling or infringement of customs law except for in relation to carried cargo

Fines between 50 million and 5 billion IDR.

8. Time bars

One year time bar for cargo claims.

Two year time bar for collision claims and salvage.

Three year time bar for claims in connection with delivery and performance of work or supplies to a ship or maintenance or repair to the ship.

Otherwise, there is a general time bar for civil claims of 30 years.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

No, the claim must be brought for breach of contract.



Malaysia



1. Limitation

a. The LLMC 1957 is in force

In Sabah and Sarawak only.

b. The LLMC 1996 Protocol is in force

In the rest of Malaysia.

c. Are there examples of a limitation fund having been established?

No.

d. Can a limitation fund be established with a Club LOU?

There is no precedent for this yet.

e. Is it possible to limit for wreck removal?

Yes.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

This is not in force in Sabah and Sarawak.

The rest of Malaysia has adopted the Convention provisions on financial security and compulsory insurance for wreck removal.

b. Any of the Dumping Conventions

Not in force.

Malaysian law prohibits the discharge of harmful substances from vessels in Malaysian waters. This law does not apply in Sabah or Sarawak.

c. The Arrest Convention

i. 1952

ii. 1999

Not in force, but ship arrests are permitted under Malaysian legislation which follows the UK Senior Courts Act 1981 and the 1952 Arrest Convention.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund 1971

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

In force.

3. Legal Framework and Court System

Malaysia has a common law system and precedent is binding. As such, decisions are fairly predictable. English case authorities are highly persuasive.

A specialist admiralty court was established in Kuala Lumpur in 2010.

Straightforward cases are usually disposed of within nine months of filing.

First instance decisions can be appealed as of right, to the Court of Appeal, and then on to the Federal Court provided the Federal Court gives permission.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

There is no specific case law on this, but it seems likely.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, although possibly not in cases involving fraud or fundamental breach.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Yes, but a provision for tighter time limits than those under Convention or Statute may be void under the Contracts Act 1950.

e. Is there any concept of gross negligence or wilful misconduct?

Yes, but there is no authoritative definition of either concept.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The State oil company is Petronas. Claims tend to be resolved through negotiation.

b. Is it easy to organise surveys?

Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

s. 74 of the Contracts Act 1950 applies, which is a statutory codification of the rule in *Hadley v Baxendale*. Claims for consequential loss, business interruption etc. are only recoverable if they naturally arose from the breach, or were in the reasonable contemplation of the parties at the time the contract was made.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

There is a fine of up to RM1,000 per undeclared person for failure to provide a complete list of persons on board.

b. Smuggling or infringement of customs law except for in relation to carried cargo

Fines of up to RM 2,000.

8. Time bars

a. Tort

Two years for claims for personal injury or death as a result of a collision.

Otherwise, six years.

b. Contract

One year for cargo claims.

Otherwise, six years.

c. Other

Two years for collision and salvage claims.

12 years for enforcement of a judgment under the Limitation Act 1953.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

Yes.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

Not automatically. The court will consider whether the defences were intended by the parties to also apply to claims in tort.



Mexico

1. Limitation

a. **The Limitation Convention 1976 is in force**

However, court decisions on limitation can be unpredictable and in some cases the courts have not allowed owners to limit (particularly personal injury claims). Also, there are limits of liability available under domestic law which can be lower than the limits set by the convention.

b. **Are there examples of a limitation fund having been established?**

Yes.

c. **Can a limitation fund be established with a Club LOU?**

This has never been tested but it is unlikely.

d. **Is it possible to limit for wreck removal?**

Yes.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

Wreck removal is dealt with under environmental regulations.

b. **Any of the Dumping Conventions?**

Not in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions is in force.

d. **Civil Liability for Oil Pollution Damage 1969**

The 1992 Protocol is in force.

e. **The International Oil Pollution Fund 1971**

The 1992 Protocol is in force.



f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Mexican law is codified but there is a limited system of binding precedent.

There is no specialist maritime court and maritime cases are relatively rare.

It usually takes around three years to dispose of a maritime dispute.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, unless the case involves deceit on the part of the party seeking to rely on the limit.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Yes, unless this is expressly and specifically prohibited by law.

e. Is there any concept of gross negligence or wilful misconduct?

Yes, this is treated as analogous to the concept of 'dolum' or deceit.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is called Pemex.

b. Is it easy to organise surveys?

This is not easy.

c. Are they quick or slow to start litigation?

They are slow to start civil litigation but quick to pursue criminal proceedings.

d. Are the courts fair to foreign litigants?

Yes. The courts have ruled against Pemex in the past.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

The claimant must demonstrate that the loss is a direct or immediate consequence of the breach.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

Fines of up to 10,000 days of the minimum wage, equivalent to around USD 42,000.

b. Accidental escape or discharge of oil

Fines of between 250–50,000 days of the minimum wage.

c. Smuggling or infringement of customs law except for in relation to carried cargo

Fines equivalent to the tax and import/export duty, which is a percentage of the goods' value plus interest and charges.

8. Time bars

12 years for environmental claims.

Two years for all other claims, including SCOPIC and article 14 salvage convention claims.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

No.



Nigeria



1. Limitation

a. The LLMC 1996 Protocol is in force

b. Are there examples of a limitation fund having been established?

Yes.

c. Can a limitation fund be established with a Club LOU?

Yes.

d. Is it possible to limit for wreck removal?

Yes.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not yet in force but enacting legislation is expected.

b. Any of the Dumping Conventions

The following Conventions are in force:

- The London Convention and 1996 London Protocol.

- The Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.

c. The Arrest Convention

i. 1952

In force.

ii. 1999

Not in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund 1971

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not yet in force but enacting legislation is expected.

3. Legal Framework and Court System

Nigeria has a common law system and precedents are binding. Foreign precedents can also be persuasive but not binding.

There is no specialist maritime court. Maritime cases are heard by the Federal High Court, with appeals to the Court of Appeal and the Supreme Court. Cases can take between eight months and four years to reach judgment at first instance.

There is no automatic system of disclosure. It is necessary to obtain a court order for disclosure of any documents.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

Yes, these are similar to the English concepts.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Nigerian National Petroleum Corporation ('NNPC'). Claimants are obliged to serve them with a Notice of Intention to Sue within one month and claims are time barred if proceedings are not commenced within 12 months of the Notice.

b. Is it easy to organise surveys?

NNPC are slow to start litigation.

c. Are the courts fair to foreign litigants?

Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

The same test applies as in England i.e. the loss must flow naturally from the breach or be in the reasonable contemplation of the parties at the time the contract is made.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

Fines of Naira 2 million.

b. Accidental escape or discharge of oil

Naira 1–50 million.

c. Smuggling or infringement of customs law except for in relation to carried cargo

No fine but goods may be confiscated.

8. Time bars

a. Tort

Three years for claims for death and personal injury, including Fatal Accidents Act claims.

Otherwise, 6 years.

b. Contract

One year for cargo claims to which the Hague/Hague-Visby Rules apply and two years for cargo claims to which the Hamburg Rules apply. (The Hamburg Rules compulsorily apply to outbound shipments of goods from Nigeria and inbound shipments from a contracting state.)

Otherwise, 6 years.

c. Other

Two years for collisions, passenger claims and salvage/SCOPIC claims.

Six years for oil pollution claims.

Six years for the enforcement of judgments or awards.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

Yes.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

The position under Nigerian law is unclear, but probably not.



Oman



1. Limitation

a. **The Limitation Convention is not in force**

However, the Oman Maritime Code does allow shipowners to limit some claims. The regime is similar to that established by the Limitation Conventions.

b. **Are there examples of a limitation fund having been established?**

Not that we are aware of (there is no regular case reporting service in Oman).

c. **Can a limitation fund be established with a Club LOU?**

Not that we are aware of.

d. **Is it possible to limit for wreck removal?**

It is unclear whether it is possible to limit for wreck removal.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

The 1972 London Convention is in force (but not the 1996 Protocol).

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions are in force. Omani law allows security arrests for maritime claims. Ships can be released against cash or bank guarantees, but not Club LOU's.

d. **Civil Liability for Oil Pollution Damage 1969**

The 1992 Protocol is in force.

e. **The International Oil Pollution Fund 1971**

The 1992 Protocol is in force.

f. **Civil Liability for Bunker Oil Pollution Damage 2001**

Not in force.

3. Legal Framework and Court System

The Omani legal system is a civil system and the law is largely codified. There is no system of binding precedent but previous decisions are persuasive. Maritime disputes are dealt with in the Primary Court (Commercial Circuit) and can be appealed to the Court of Appeal and then the Supreme Court. There is no specialist maritime court. The time taken for a claim to be disposed of can vary.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, except that liability for 'harmful acts' (similar to common law torts) cannot be excluded or limited.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

These expressions are used and recognised but not defined.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Oman Oil Company Exploration and Production LLC ('OOCEP'). They tend to prefer to settle claims amicably than resort to court proceedings.

b. Is it easy to organise surveys?

Yes. It is not uncommon for foreign claimants to obtain judgment against state owned entities.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

No.

7. Fines

What covered fines might be applicable and what is the maximum for?

- a. Short or over delivery of cargo**
Up to OMR 300 per package.
- b. Breach of immigration law**
Fines vary depending on the breach.
- c. Accidental escape or discharge of oil**
OMR 0.05 per ship's ton up to OMR 25,000 plus clean-up costs and compensation to government and third parties.
- d. Smuggling or infringement of customs law except for in relation to carried cargo**
The fine for smuggling prohibited goods is one to three times the value of the goods. For customs violations the fine is twice the duty for high value goods otherwise the fine is around 10% of the value of the goods.

8. Time bars

- a. Tort**
Five years for death and personal injury claims (unless there are also criminal proceedings).
- b. Contract**
One year for cargo claims.

Otherwise, 15 years.
- c. Other**
Two years for collisions and salvage claims.

Three years from the date of the damage or six years from the incident for CLC claims.

Ten years for enforcement of judgments and awards.

9. Interaction between claims in Contract and Tort

- a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?**
Yes.
- b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?**
Yes.



Qatar



1. Limitation

a. The Limitation Convention is not in force

However, domestic legislation allows Owners some right to limit.

A shipowner may limit his liability to QR 250 per ton for loss/damage to property, QR 500 per ton for personal injury or death and QR 750 per ton for both loss/damage to property and personal injury/death.

The owner may not limit for claims for salvage, GA or crew wages and limits can be broken if the loss arose from the owner's 'personal mistake'.

b. Are there examples of a limitation fund having been established?

No.

c. Can a limitation fund be established with a Club LOU?

No.

d. Is it possible to limit for wreck removal?

Yes.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

Qatari law states that the cost of wreck removal is to be borne by the shipowner.

b. Any of the Dumping Conventions

Not in force.

c. The Arrest Convention

i. 1952

ii. 1999

Neither of the Arrest Conventions are in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund 1971

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

The Qatari system is codified.

Precedents are not binding but are persuasive.

There are no specialist maritime courts. Maritime disputes are heard by the Civil Courts and can be appealed to the appeal courts and then to the Court of Cassation.

Maritime claims usually take about two to three years to be disposed of.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes, unless the claim involves fraud, gross negligence or pollution.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, unless the claim involves fraud, gross negligence or pollution.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

Yes.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is Qatar Petroleum.

b. Is it easy to organise surveys?

Not easy.

c. Are they quick or slow to start litigation?

Quick if they consider that they have a strong case.

d. Are the courts fair to foreign litigants?
Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?
Yes.

b. How remote does the loss have to be before it is unrecoverable?

This is down to the discretion of the court. Usually damages are limited to those which could have been foreseen at the time the contract was made.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Accidental escape or discharge of oil
QR's 200,000–500,000.

b. Smuggling or infringement of customs law except for in relation to carried cargo

Double the customs duty for dutiable cargo, 10% of the value of the goods if not dutiable, and one to three times the value of the goods if the goods are prohibited.

8. Time bars

Unknown.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

Unknown.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

Unknown.



Saudi Arabia



1. Limitation

a. The Limitation Convention is not in force

It is not possible to establish a limitation fund in Saudi Arabia.

b. Is it possible to limit for wreck removal?

No. The Saudi authorities have the power to order the shipowner to remove the wreck or to carry out the wreck removal themselves at the owner's unlimited expense.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

b. Any of the Dumping Conventions

The 1996 London Protocol is in force.

c. The Arrest Convention

i. 1952

ii. 1999

Neither of the Arrest Conventions are in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

Shipowners can limit liability for damage caused by spills of oil carried as cargo under the CLC. Otherwise shipowners may not limit their liability in Saudi Arabia.

e. The International Oil Pollution Fund

i. 1971

ii. 1992

iii. 2003 Protocol

Not in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Saudi Arabia is governed in accordance with Sharia law. All laws must be consistent with Sharia principles. The length and outcome of Court or arbitration proceedings can be difficult to predict

and legal fees for shipping cases are very high.

There is no specialist maritime court so most shipping cases are either heard by general civil courts or, in the case of contract disputes, by arbitrators. Incidents involving pollution in ports and maritime navigation offences are subject to the jurisdiction of a special commission and the Seaports and Lighthouse Law.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

- a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?**
No.

b. Do the courts recognise the knock for knock regimes?

No.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

No, although arbitrators might uphold contractual limitation clauses which they find to be 'reasonable'.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?
No.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is Saudi Aramco.

b. Is it easy to organise surveys?

No.

c. Are they quick or slow to start litigation?

Slow. Saudi Aramco usually prefer to settle claims rather than litigate.

d. Are the courts fair to foreign litigants?

It is difficult to predict the outcome of court or arbitration proceedings in Saudi Arabia and some foreign litigants feel that they have not been treated fairly.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Lost profits are not recoverable.

Consequential losses are not recoverable unless the parties have an express written agreement to this effect which also sets out how such damages will be calculated.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo

Maximum fine of SR 50,000.

b. Breach of immigration law

Unknown.

c. Accidental escape or discharge of oil

Maximum fine of SR 50,000.

d. Smuggling or infringement of customs law except for in relation to carried cargo

Unknown.

8. Time bars

Sharia law does not recognise time bars so a claimant may bring a claim at any time.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

No.



Sri Lanka



1. Limitation

a. The Limitation Convention is not in force.

b. Are there examples of a limitation fund having been established?

No.

c. Can a limitation fund be established with a Club LOU?

No.

d. Is it possible to limit for wreck removal?

No.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

Port Authorities may remove wrecks which obstruct or are a danger to navigation at the owner's expense.

b. Any of the Dumping Conventions

Not in force.

The Marine Pollution Prevention Act follows some of the provisions of the London Convention, as well as implementing MARPOL 73/38 (except Annex VI), the CLC 92 and the supplementary 1992 Fund.

c. The Arrest Convention

i. 1952

In force.

ii. 1999

Not in force.

Court interpretation of the 1952 Arrest Convention can differ from the standard interpretation. For example, the Sri Lankan courts will allow the arrest of a ship which is no longer owned by the party who would be liable for the claim, even if there is no maritime lien. The Sri Lankan courts also allow associated ship arrest.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Sri Lanka's legal system is similar to the legal system of South Africa. It combines elements of Dutch law (being a civil system) and the English common law system. The law of contract and tort are heavily influenced by Dutch system. The courts interpret legislation in accordance with the Interpretation Ordinance or, if that does not apply, by precedent.

Maritime cases are dealt with by the Commercial High Court in Colombo. A maritime case may take three to four years to arrive at a court decision. The appeal process may take another four to five years.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

Yes. These are based on the English law concepts.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Ceylon Petroleum Corporation.

b. Is it easy to organise surveys?

This is often difficult because of a lack of technical know-how.

c. Are they quick or slow to start litigation?

Slow, although proceedings in Sri Lanka tend to progress slowly in any event.

d. Are the courts fair to foreign litigants?

Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes, provided these can be quantified with reasonable certainty.

b. How remote does the loss have to be before it is unrecoverable?

In theory, the *Hadley v Baxendale* test applies, but the courts are concerned about opening 'flood gates' to remote claims.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo or failure to comply with regulations for declaration of goods or documentation of cargo
LKR 100,000.

b. Breach of immigration law
LKR 50,000–200,000 plus the costs of deportation.

c. Accidental escape or discharge of oil
Unknown.

d. Smuggling or infringement of customs law except for in relation to carried cargo
Three times the value of the goods or LKR 100,000.

8. Time bars

a. Tort
Two years.

b. Contract

One year for cargo claims but the court has discretion and has allowed claims brought after two years.

Otherwise, three or six years depending on the type of contract.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or in contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

This has not yet been considered by the Sri Lankan courts. Possibly.



Thailand



1. Limitation

a. **The Limitation Convention is not in force**

There is draft legislation to incorporate the LLMC in the future.

b. **Are there examples of a limitation fund having been established?**

No.

c. **Can a limitation fund be established with a Club LOU?**

No.

d. **Is it possible to limit for wreck removal?**

No.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

The Marine Department can remove wrecks at owners' expense.

b. **Any of the Dumping Conventions?**

Not in force.

There are various fines for oil pollution in Thai waters and owners are liable for damage to third parties. The Marine Department can require owners to cover the cost of clean-up and provide security. A Club LOU is acceptable.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions are in force.

The Thai Arrest of Ships Act follows the 1952 Arrest Convention, but the arresting party must be domiciled in Thailand.

d. **Civil Liability for Oil Pollution Damage 1969**

Neither the Convention nor the 1992 Protocol is in force.

There is draft legislation to incorporate the 1992 Protocol in the future.

e. The International Oil Pollution Fund 1971

Not in force.

There is draft legislation to incorporate the 1992 Protocol in the future.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Thailand is a civil law country. There is a limited system of precedent.

Most maritime disputes fall under the jurisdiction of the Central Intellectual Property and International Trade Court. Proceedings usually take one to two years to reach judgment. There is a right to appeal the Supreme Court and appeal proceedings usually take two to three years.

4. Industry Standard Contracts, Knock for Knock, and Freedom for parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

This has never been considered but, in principle, yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, provided that the limit is not lower than the statutory limits available. It is not possible to limit liability arising from fraud or gross negligence.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

Yes.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is PTT.

Settlement by negotiation is preferred.

b. Is it easy to organise surveys?

Surveys are subject to prior approval by PTT.

c. Are they quick or slow to start litigation?

Slow.

d. Are the courts fair to foreign litigants?

Yes.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes, in principle.

b. How remote does the loss have to be before it is unrecoverable?

Recoverable losses are limited to the direct results of the incident.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo failure to comply with regulations for declaration of goods or documentation of cargo

THB 500,000.

b. Breach of immigration law

THB 1,000–THB 100,000 depending on the offence.

c. Accidental escape or discharge of oil

THB 60,000 with THB 100,000 for incidents under the Fisheries Act.

d. Smuggling or infringement of customs law except for in relation to carried cargo

Four times the duty paid value of the goods or THB 500,000.

8. Time bars

a. Tort

One year for death or personal injury claims running from the date on which the damage is discovered and ten years from the date of the wrongful act in any event.

b. Contract

One year for cargo claims under bills of lading.

Nine months for claims under combined transport or multimodal bills.

c. Other

Two years for collision and salvage claims.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or in contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

No.



United Arab Emirates



1. Limitation

a. **The Limitation Convention 1976 is in force**

The UAE Courts regard the LLMC as discretionary rather than mandatory unless it is expressly incorporated into the contract of carriage or towage. The courts are reluctant to allow shipowners to limit liability. For example, if the limit under the Convention is less than the Sharia law compensation for death/personal injury ('diya') the court will award the full diya compensation.

b. **Are there examples of a limitation fund having been established?**

No.

c. **Can a limitation fund be established with a Club LOU?**

No.

d. **Is it possible to limit for wreck removal?**

In principle but see above regarding the court's reluctance to allow owners to limit.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

The 1996 London Protocol is in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions are in force. However the Commercial Maritime Code allows ship arrest and follows the 1952 Convention grounds.

d. **Civil Liability for Oil Pollution Damage**

The 1992 Protocol is in force. However, the right to limit is at the court's discretion rather than mandatory.

e. **The International Oil Pollution Fund**

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

The UAE is a civil law jurisdiction. There are several statutory codes governing civil and commercial relationships. The codes are supplemented by Sharia law. There is no system of precedent, but in practice lower courts will often follow the decisions of higher courts. There are no oral submissions, only written submissions.

There is no specialist maritime court. Pleadings and documents are served over several brief hearings until the judge considers that both sides have fully pleaded their case. Cases can take between two months and five years depending on their complexity.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, unless the party seeking to limit has committed a fraud or 'gross error'.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Yes unless the party seeking to limit has committed a fraud or 'gross error'.

e. Is there any concept of gross negligence or wilful misconduct?

Yes. Liability for wilful misconduct, gross negligence, recklessness or fraud cannot be limited.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Abu Dhabi National Oil Company (ADNOC). Claims against ADNOC must first be approved by the Ruler's Court in Dubai (or equivalent in other emirates).

b. Is it easy to organise surveys?

The ease of organising surveys varies.

c. Are they quick or slow to start litigation?

ADNOC will seek commercial settlement first but might commence proceedings if no settlement is reached within about three months.

d. Are the courts fair to foreign litigants?

Generally yes, but the system is often difficult to navigate for those used to different legal systems.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes in theory but such claims often fail in practice.

b. How remote does the loss have to be before it is unrecoverable?

Losses must flow from the breach without any break in the chain of causation.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

AED 10,000–5 million.

b. Accidental escape or discharge of oil

AED 1,000–10 million.

c. Smuggling or infringement of customs law except for in relation to carried cargo

AED 50,000–500,000.

8. Time bars

a. Tort

Two years for death or personal injury from the date on which the passenger left or would have left the vessel.

b. Contract

One year from delivery or the date when delivery should have taken place for cargo claims.

One year from discovery of the defect for claims under ship building and ship repair contracts.

Six months for claims for provision of necessities (including bunkers).

90 days after payment for charterparty indemnity claims.

c. Other

Two years for collision claims (one year for claims for death arising out of a collision).

9. Interaction between claims in Contract and Tort

- a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?**

No, unless the case involves fraud or gross negligence.

- b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?**

Contractual defences probably do not apply in cases involving crime, fraud or gross negligence.

United Kingdom



1. Limitation

a. The LLMC 1996 Protocol is in force

Lower limits (1m and 500,000 SDRs) apply for personal injury/death and 'other' claims for vessels of 300gt or less.

b. Are there examples of a limitation fund having been established?

Yes.

c. Can a limitation fund be established with a Club LOU?

Yes.

d. Is it possible to limit for wreck removal?

Not under the LLMC but this right exists under the Nairobi Wreck Removal Convention which came into force in April 2015.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

In force.

The UK applies this to wrecks in territorial waters as well as its continental shelf.

b. Any of the Dumping Conventions

The following Conventions are in force:

- The 1972 London Convention and the 1996 Protocol.
- The Oslo Dumping Convention.
- The EU Transfrontier Shipment of Waste Regulations 2007.
- Basel Convention.
- EU Directive on Reduction of Asbestos Pollution.

c. The Arrest Convention

i. 1952

In force.

ii. 1999

Not in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force.

e. The International Oil Pollution Fund 1971

The 1992 Protocol and 2003 Protocol (Supplementary Fund) are in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

In force.

3. Legal Framework and Court System

Law in the UK is derived from common law, statute and EU regulations and directives. There is a binding system of precedent.

Maritime claims are heard by the Admiralty and Commercial Court in accordance with the Civil Procedure Rules and Commercial Court Guide, with appeals to the Court of Appeal and then the Supreme Court. The length of proceedings varies with the complexity of the case, but it usually takes at least a year to arrive at a first instance judgement from the outset of the case.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

Yes.

b. Do the courts recognise the knock for knock regimes?

Yes, unless the tugowner deliberately decides not to perform the contract or one of the parties is a 'consumer'.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

Yes, in commercial contracts but there is an exception for consumers, who have further protection of the Unfair

Contract Terms Act 1977 and the Consumer Rights Act 2015.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

Only if the Convention or Statute allows the parties to contract out and the contractual provision does not breach UCTA 1977 or the Consumer Rights Act 2015.

e. Is there any concept of gross negligence or wilful misconduct?

Wilful misconduct is intentionally doing something the actor knows is wrong or a reckless act where the actor is aware that loss may result.

Gross negligence is not really accepted in civil law as a concept separate from simple negligence, but the courts have construed the difference as one of degree.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

The UK does not have a state oil company.

However, the legal system is fair and the courts do not favour British litigants over foreign ones.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes.

b. How remote does the loss have to be before it is unrecoverable?

Losses must flow naturally from the breach or be in the reasonable contemplation of the parties at the time the contract was made.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

Maximum fine is £20,000 for employing illegal workers.

b. Accidental escape or discharge of oil

£250,000 for oil pollution from a ship.
£50,000 for making an unlicensed deposit on the seabed.

Unlimited fines for criminal convictions for failure to comply with notices to clean, causing or knowingly permitting a water discharge activity in controlled waters.

c. Smuggling or infringement of customs law except for in relation to carried cargo

Unlimited fine.

8. Time bars

a. Tort

3 years for personal injury/death and Fatal Accident Act claims.

Otherwise 6 years.

b. Contract

One year for cargo claims.

Two years for notification of NYPE Inter-Club Agreement indemnity claims.

Otherwise six years.

c. Other

- Two years for collision and salvage claims.
- Three years after the claim arose or six years after the occurrence causing the discharge for oil pollution claims.
- Two years for contribution claims from when the right to contribution arose.

- Six years for enforcement of judgments or awards.
- In cases involving fraud, concealment or mistake, time only runs from the discovery of the fraud, concealment or mistake.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or in contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

No.

Venezuela



1. Limitation

a. The Limitation Convention 1976 is in force

Venezuela is not a signatory to the LLMC but has incorporated the LLMC 76 provisions through legislation. Generally the courts follow the standard interpretation of the convention.

b. Are there examples of a limitation fund having been established?

Yes.

c. Can a limitation fund be established with a Club LOU?

There are no reported cases on this. It is unlikely.

d. Is it possible to limit for wreck removal?

Yes.

2. Other International Conventions

a. Nairobi Wreck Removal 2007

Not in force.

b. Any of the Dumping Conventions

Not in force.

c. The Arrest Convention

The 1999 Arrest Convention is in force.

d. Civil Liability for Oil Pollution Damage 1969

The 1992 Protocol is in force. The courts have not allowed owners to limit liability in some cases e.g. the *Maersk Holyhead* which involved a spill of fuel oil from an LPG vessel, on the grounds that the oil was not carried as cargo.

e. The International Oil Pollution Fund 1971

The 1992 Protocol is in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

3. Legal Framework and Court System

Venezuela has a codified legal system with no system of binding precedent. The Courts must consider the intention of the legislator when interpreting legislation.

Maritime cases are heard by the First Instance and the Superior Maritime Courts. Proceedings before the First Instance Court take on average one year to complete. Proceedings before the Superior Court usually take longer.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

- a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?**

Yes.

- b. Do the courts recognise the knock for knock regimes?**

Yes in principle, although there is no case law on this.

- c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?**

Yes.

- d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?**

Yes, unless it over-rode a mandatory provision of law or the damage arose from failure to take precautions to guarantee safety.

- e. Is there any concept of gross negligence or wilful misconduct?**

Yes. A party seeking to limit losses that might arise if the breach is committed with the intent to cause loss or is committed recklessly and with knowledge that loss would probably result.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

- a. State Oil Company**

The state oil company is PDVSA.

- b. Is it easy to organise surveys?**

This is not always easy.

- c. Are they quick or slow to start litigation?**

Slow. Litigation is often a last resort.

- d. Are the courts fair to foreign litigants?**

The Venezuelan courts have been described as 'government orientated'.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes in theory.

b. How remote does the loss have to be before it is unrecoverable?

Recoverable damages are limited to the immediate and direct consequences of the breach.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Short or over delivery of cargo

Over-delivery – five Tributary Units (“TU”s currently equivalent to about Bs 150) per kilo of gross weight.

Short delivery – two TU’s per kilo gross weight.

b. Breach of immigration law

151–500 TU’s.

c. Accidental escape or discharge of oil

151–500 TU’s rising to 500–10,000 TU’s if the discharge is wilful or negligent.

1,000–3,000 TU’s for damage to health, marine life or development of coastal tourism.

d. Smuggling or infringement of customs law except for in relation to carried cargo

Unlimited.

8. Time bars

a. Tort

Two years for passenger claims including death, personal injury, and loss and damage to luggage.

b. Contract

One year for charterparty claims from the end of the charter, the termination of the voyage or interruption in the execution of the contract, whichever occurs first.

One year for cargo claims.

One year for towage claims.

c. Other

Two years for collision and salvage claims.

One year for claims for GA contributions.

One year for claims against Port authorities.

The Civil Code also contains a ten year time bar for all other non-contractual claims.

9. Interaction between claims in Contract and Tort

- a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?**

The claimant can bring their claim in tort or in contract or both.

- b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?**

No.

Yemen



1. Limitation

a. **The Limitation Convention 1976 is in force**

The test for breaking limits under Yemeni Domestic Law is easier than under the Limitation Convention. The claimant only has to show carelessness with knowledge that damage could possibly occur, rather than recklessness with knowledge that damage would probably result.

b. **Are there examples of a limitation fund having been established?**

No. Yemeni law makes no provision for the establishment of a limitation fund.

c. **Can a limitation fund be established with a Club LOU?**

No.

d. **Is it possible to limit for wreck removal?**

Yes.

2. Other International Conventions

a. **Nairobi Wreck Removal 2007**

Not in force.

b. **Any of the Dumping Conventions**

Not in force.

c. **The Arrest Convention**

i. 1952

ii. 1999

Neither of the Arrest Conventions is in force.

d. **Civil Liability for Oil Pollution Damage 1969**

The 1992 Protocol is in force.

e. **The International Oil Pollution Fund 1971**

i. 1971

ii. 1992

iii. 2003 Protocol (Supplementary Fund)

Not in force.

f. Civil Liability for Bunker Oil Pollution Damage 2001

Not in force.

The Yemeni courts have power to award punitive damages in cases of recklessness or gross negligence.

3. Legal Framework and Court System

Yemen is a civil system with no system of precedent. Judges can have regard to the judgments of foreign courts.

Maritime claims are dealt with by the maritime court or one of the four commercial courts in Sanaa, Aden, Taiz and Mukalla.

The quality of the judiciary is generally poor and corruption can be a problem.

4. Industry Standard Contracts, Knock for Knock, and Freedom for Parties to Contractually Limit Liability

a. Do the courts uphold industry standard contracts such as SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKSTAGE and WRECKFIXED, HEAVYCON and UKSTC?

No.

b. Do the courts recognise the knock for knock regimes?

No.

c. Do the courts uphold clauses by which parties agree that one or both may limit their liability?

There is no case law on this, but it is unlikely.

d. Would the courts uphold a contractual provision limiting liability even if it over-rode an applicable Convention or Statute?

No.

e. Is there any concept of gross negligence or wilful misconduct?

No.

5. Status/Power of State (or Quasi State) Oil Company versus Foreign Litigants

a. State Oil Company

The state oil company is the Yemen Oil and Gas Corporation ('YOGC').

b. Is it easy to organise surveys?

It is not easy to organise surveys.

c. Are they quick or slow to start litigation?

Very quick.

d. Are the courts fair to foreign litigants?

No. We have been advised that the Courts tend to decide in favour of YOCCG.

6. Consequential Losses, Business Interruption & Remoteness

a. Are these recoverable?

Yes in theory.

b. How remote does the loss have to be before it is unrecoverable?

Unknown.

7. Fines

What covered fines might be applicable and what is the maximum for?

a. Breach of immigration law

USD 25 per day.

b. Accidental escape or discharge of oil

No fines, but compensation is payable.

8. Time bars

All 'shipping matters' are subject to a one year time bar.

9. Interaction between claims in Contract and Tort

a. If a party has committed an act which is both a breach of contract and causes tortious damage, can the claimant bring their claim in tort as well as or instead of contract?

The claimant can bring their claim in tort or in contract or both.

b. If so, can the claimant avoid any contractual defences by bringing the claim in tort?

No.



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