



EDITOR'S CABIN.

Welcome to our 2nd edition of OFIANYI CHAMBERS NEWSLETTER for the year 2021. In this edition, we are pleased to present to you, research analysis on topics featuring: Introduction to Shipping, Break Bulk, Construction of Contracts and more...

This edition is authored by Oliver Omoredia, Olaleye Oladimeji and Ruth Abanum. It also features legal comic(s), which we trust you will find most intriguing and rib-cracking, riddled with legal dilemmas.

We hope you find this edition informative, engaging and entertaining.

Editor-in-Chief: Olaleye Oladimeji. Esq.

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- i. Ofianyi Chambers Congratulates the Director-General And the management of NIMASA on the launch of The Deep Blue Project
- ii. Ofianyi Chambers felicitates with the Nigerian Shippers' Council on the Successful Inauguration of the North-West offices of the Shippers' Council.
- iii. Mrs Jean Chiazor Anishere. SAN has been nominated a member of the Coordinating Group of the prestigious Blue Economy Resources Nigeria.

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I. AN INTRODUCTION TO SHIPPING

Shipping is recognized as one of the oldest trades in the world. It is an industry of service, meeting the needs of different categories of persons.

It is reckoned that at least 95% of international commerce is carried by sea going vessels, and this is why shipping is one of the highest



revenue earning ventures in many Worlds' economies

Types of Ship:

These are close to 50 different types of ships, many of which are highly specialized. The most popular kind of vessels are:

- a. General cargo
- b. Tanks
- c. Ferries
- d. Fishing vessel

The group of ships used in the transportation of dry cargoes is even greater in number and includes some highly sophisticated vessels.

The primary players in the Shipping Industry include:

- Ship owner
- Insurers
- The crew
- Authorities
- Charterers
- Other key parties (suppliers, bunker traders etc.)
- Shareholders, businessmen, employees, and society in general.

The 2 major methods of transporting cargoes are: Tramp services (transport on demand) or Liner services (scheduled sailings from pre-arranged ports to pre-arranged destinations).

In addition to the carriage of goods, many ships are used for the movement of passengers either in the traditional form of trans-oceanic passage or for cruising.

References:

“Essays in Admiralty” (2012)
Volume One: By Jean Chiazor Anishere. SAN.

..... **Ruth Abanum**
(Associate, Jean Chiazor & Co.)

II.THE COMMAND OF LANGUAGE: A VITAL TOOL FOR A LAWYER'S TRADE

Language is a lawyer's tool of trade and its mastery is a fundamental skill for an advocate. Whether the expression of this mastery of the language is reflected in written contracts, written briefs or oral arguments in Court, the mastery of the language



is at the very heart of the service which a lawyer offers to his clients and is the distinction which sets him apart as learned! Borrowing from the words of popular English Jurist and legal scholar, **Lord Denning, MR**, in his book: *The Discipline of Law*¹:

“To succeed in the profession of law, you must seek to cultivate command of language. Words are the lawyer’s tools of trade”.

Interestingly, the Learned Jurist in his work, used the phrase “command of language” on an assumption that the reader understands what language is referenced-without particularizing what language a Lawyer must possess a command of. Is it English language, Spanish, or perhaps French? Should it be, as we call it in this part of the world, our mother tongue? While the position of Lord Denning, might seem an oversight for failing to particularize the language a lawyer must master the command of, some clarity can be

found from the immediate next sentence where he says:

“When you are called upon to address a Judge, it is your words which count the most”

It therefore makes proper logic, that the language which a lawyer should seek to master command of, is the language of the Court or law in the jurisdiction within which he practices! It is the language of the Court in the Country where he conducts his trade. Indeed, a lawyer in the United States, for all his skills and competence, may find it difficult, on first attempt, to demonstrate his mastery of the language of the Nigerian Courts. Hence, such Lawyer is statutorily required to undertake the retraining of the Nigerian Council of Legal Education before he becomes qualified to practice within the walls of our Court rooms, except he obtains an exemption from so doing. This is because, the law, like language, is diversified!

It is perhaps worthy of mention here that poor choice of language may also serve as a barrier to meaningful communication.

¹ Lord Denning, *“Command of language”*. The Discipline of Law. Butterworths, 1979 pp. 05



Empathetic communication requires the selection of words that convey respect and understanding, rather than judgment. Furthermore, counsel must be wary of technical jargon that may confuse and alienate his clients. However, this is not the only hurdle to overcome by a lawyer seeking to master the command of his language – for a lawyer may have all the appropriate lingua for the expression of his thoughts, but fail to understand when to say what, when to be silent, when to speak, and when to gesticulate!

In some jurisdictions, there is a jury and the lawyer's language must play to the sentiments of the jury. In our jurisdiction, there is a Judge (or Justices, in the appellate Courts) and the deployment of language is to communicate with the judge, the lawyer's convictions. To communicate one's thoughts to the judge or jury requires good command of language!

Judges have high expectations with respect to the formality and precision of counsel's language. A

judge needs to be focused on counsel's arguments, and not distracted by counsel's sloppy language or inappropriate use of slang. So, on one hand, the mastery of language requires understanding the law, and on the other hand, the mastery of language requires understanding how to communicate with the particular audience! In our jurisdiction, the most important person in our audience is the Judge and our ability to communicate our brief by a proper demonstration of our mastery of language should be our stand out feature! Understanding the best way, the judge prefers to be spoken to – this is the psychology of communication!



1. Read broadly to expand your vocabulary and to enhance your ability to express your ideas succinctly.
2. Practice proper pronunciation and constantly use newly learnt words in applicable situations.
3. Put your thoughts into writing. Edit them. Return to previous works and see how to make them better.
4. Preparation is Key-Learning the law of the Court or the cause you intend to express yourself at. You cannot properly communicate what you actually do not know!
5. Structure your information.
6. Be succinct-the more you understand, the less words you need to explain it.

REFERENCES:

Lord Denning, "Command of language". The Discipline of Law. Butterworths, 1979 pp. 05

..... **Oliver
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III. BREAK BULK, BREAK OF BULK OR BREAKING BULK?

"Break Bulk" is a common shipping method used to successfully transport cargo or goods that cannot fit in standard-size shipping containers or cargo bins. The term "Breaking bulk" or "Break of bulk" is the extraction of a portion of the cargo on a ship, or the beginning of the unloading process from the ship's holds.

Break bulk may refer to goods carried in drums, bags, pallets, and boxes; such as lumber and paper, and containerized cargo, which includes all types of cargo that can be shipped in a container unit.

Break bulk are usually oversize freight that are transported via shipping and delivered to a consignee. Loading and unloading break bulk cargo can be very labor-intensive. Often times, heavy duty cranes are required in the unloading process. Once on board, each individual item must be secured and stowed separately



as well. It is useful for transporting large volume goods to desired destinations.

Examples of common breakbulk goods include reels and rolls, steel girders, structural steel, heavy or oversized goods, manufacturing equipment, construction equipment, steel and vehicles.

Break Bulk relates to trades where the cargoes are carried in unitized form such as palletized, bagged, strapped, bundled, drummed and crated and also non unitized general cargo.

The typical Vessels that transport break bulk cargoes are known as:

- i. Break Bulk Cargo vessels
- ii. Multi-Purpose Cargo vessels
- iii. General Cargo vessels

They come in a variety of sizes and types such as Single Decker, Tween Decker and Box Holds.

A benefit of break bulk is the chance to ship oversized goods without breaking them down into smaller, separate shipments. For example, a huge piece of

construction equipment being transported from overseas; the equipment can be transported in one piece, arriving altogether or alternatively disassembled and transported in a container.

It is beneficial for businesses hoping to deliver a large volume of items over a long distance. Goods are easily shipped straight to the customer, avoiding additional transportation costs and other issues.

Disadvantages

- i. Break bulk shipping cost is usually more expensive;
- ii. Break bulking costs more in labor and sometimes require heavy machinery to move, compared to shipping containers;
- iii. Break bulk is not suitable for food items. Mostly, food items are transported in Reefer vessels;
 - i. At the break of bulk point, the cargo reaches a port and is transported by another means to its final destination.



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IV. SHIPPING AND ITS LOGISTICS.

“Shipping” and “Maritime” are interrelated and can sometimes be used interchangeably. While “Maritime” is an all embracing term, which covers matters relating to navigable waters such as the sea, oceans, great lakes, navigable rivers, or the navigation or commerce connected therewith, “Shipping” on the other hand, involves the practice of transporting goods, (cargo) from one point to another or any stretch of water. Shipping is central to the activities of the maritime industry.

Features of Shipping

Shipping as a major contribution towards the creation and development of the Global wealth, is central to human existence.

1. It is a means of conveying goods from one place to another.

2. It is a dominant mode of transportation.
3. It is a recognized trading pattern, world wide

Merchant Shipping

Merchant Shipping can be broadly classified into liner services and tramp shipping.

How Are Ships Engaged?

1. Outright purchase terms
2. Charter.

Where an agreement is reached for the employment of the whole ship on a given voyage or for a given period of time, the contract of affrayment in a document is called a “Charter party”. The person entitled to use the ship is called the charterer and the ship is said to be under charter.

There are 3 types of parties:

- Time charterer
- Voyage charterer and
- Demise or bare boat charterer

Developing countries have a general policy which aim



aprotecting their domestic markets for industrial products through customs duties, trade regulations, multiple exchange rates and the reduction of imports.

Basis for Shipping in less developed countries:

1. Funds availability
2. The infrastructural development of the country and
3. Availability of raw materials.

Effects of Protection on Shipping Policies

1. Shipping policies provide a strategic course of action for economic development in the maritime countries applying them.
2. They restrict trade and the flow of shipping service from other nations.
3. Flag discrimination can cause service deduction.
4. Subsidies like flag discrimination have kept operators in business.

NIMASA Act 2007, Cabotage Act 2003, Local Content Act of 2003, are some the policies currently regulating the Nigerian Shipping Industry.

..... **Ruth Abanum**
(Associate, Jean Chiazor & Co.)

V. CONSTRUCTION OF CONTRACTS

The Construction of contracts is virtually a different subject when construing a statute or Will, you are considering the intention of one body only. The maxim consensus ad idem means are to discover the intention by outward expression of the intentions conveyed by written or spoken words. Hence construction of contracts is nothing more than the attempt to find the intention of parties, by giving effect to the words used.

In the past, the approach of the Court was just as strict above the written words of a deed or a contract has they were above a statute or will. Thus, the courts refused to imply any terms into them beyond what was clearly spelt out on the fact of the contract. Hence, in *Chandelor v Lopus (1603) CroJac 4*, the court gave a rigid interpretation to the maxim



caveat emptor and held that they did not imply any condition as to quality or merchantability as we they nowadays.

The position of the law has since evolved with principles such as implied terms. As Lord Denning put it in his Book *"The Discipline of the Law"*:

"Simple justice demanded that the buyer or the consumer should be protected, even though he did not insert an express term on his own behalf. So the Courts filled in the

The doctrine of 'implied terms' was a great advance in legal theory and can be traced back to *Gardiner v. Gray* when Gray. In that case, Gray showed Gardiner some samples of waste silk and offered to sell him some. The bargain was made and a sale note was written as follows "12 bags of waste silk 10s 6d a lb." On delivery the 12 bags were found to be inferior to the samples and of poor quality. Gardiner sued for damages and sought to show that an express

warranty that the bags should be equal to the samples: he failed because that was not on the written sale note. Lord Ellenborough said:

"Without any particular warranty, this is an implied term in every such contact...The purchaser cannot be supposed to buy goods to lay them on a dunghill."

Hence, the court is to identify the intention of the contracting parties. This is an objective test; the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean".

Commercial common sense

Generally, the courts would interpret contracts to make commercial common sense.



Sometimes this is done by considering the contract from the perspective of “the officious by-stander’. Greater emphasis is likely to be given to textual analysis where the dispute concerns complex agreements agreed between sophisticated parties and with the assistance of skilled professionals. Conversely, commercial context will play more of a role where the agreement is more informal, or lacking in detail. As Lord Denning puts it “Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if while the parties were making their bargain, an officious by-stander were to suggest some express provision for it in their agreement, they would testily suppress him with a common “Oh, of course”.

Canons of Interpretation

The English court sometimes employs certain "canons of construction" or "rules of thumb"

in an attempt to do justice between the parties. However, these principles are just pointers and the court will only resort to applying them if the meaning cannot be found using the literal rules of interpretation.

- 1. Clear words:** Will not go outside the clear words of a contract. Hence, the literal rule will be applied. Where however the wordings of contract are ambiguous, usually the court will resolve any uncertainty or doubt surrounding a provision against the party who would benefit from the suggested interpretation. This is the "*contra proferentem*" rule by which clauses are construed against the party seeking to rely on it. For example, where there is ambiguity in the framing of exclusion or limitation of liability clauses.
- 2. Eiusdem generis:** Words used in a content of similar or preceding words are to be interpreted in each part of a



common genus or category, subsequent words will be interpreted "*ejusdem generis*", i.e. read as being part of that same class, in the absence of a contrary indication.

- i. Terms implied by law, custom and practice or a prior course of dealing
- ii. Terms implied to reflect the parties' presumed intentions

3. Subjective intent: While the court must examine the full background to the contract, it cannot look at prior negotiations of the parties i.e. the "declarations of subjective intent". This means that the court cannot look at extrinsic evidence such as antecedent agreements, oral negotiations, exchanges of letters, etc., preceding the contract.

4. Implied terms: Where the express words of the agreement do not give full meaning to the intention of parties the Court may be willing to imply certain terms. These implied terms may be:

Generally, the criteria for implying a term was established by the Privy Council in **B.P. Refinery (Westernport) Pty Ltd -v- Shire of Hastings** as: 1. it must be reasonable and equitable; 2. it must be necessary to give "business efficacy" to the contract, so that no term will be implied if the contract is effective without it; 3. it must be so obvious that 'it goes without saying'; 4. it must be capable of clear expression; 5. it must not contradict any express term of the contract."

..... **Oliver Omoredia**
(Associate, Jean Chiazor & Co.)



NEWS AND EVENTS

**OFIANYI CHAMBERS
FELICITATES WITH THE
NIGERIAN SHIPPERS
COUNCIL ON THE
SUCCESSFUL
INAUGURATION OF THE
OFFICES IN NORTHERN ZONE
OF NIGERIA.**

The Shippers' Council North-Central office in Jos, was unveiled in Jos, Plateau by the Hon. Minister for Transportation on 7 May, 2020. This expansion is projected to boost international shipping trade in the land locked region and Nigeria as a whole.

**BLUE ECONOMY RESOURCES
NIGERIA LIMITED APPOINTS
MRS. JEAN CHIAZOR
ANISHERE (SAN), ASA
MEMBER OF ITS CO-
ORDINATING GROUP.**



Mrs. Jean Chiazor Anishere. SAN. has been nominated a member of the Coordinating Group of the prestigious Blue Economy Resources Nigeria earlier in June 2021. Blue Economy Resources Nigeria, introduces innovations through Maritime Business-friendly policies, laws, strategic partnerships, security and environment suitable for increased indigenous participation in Nigeria's highly lucrative maritime sector.



OFIANYI CHAMBERS CONGRATULATES NIMASA ON THE LAUNCH OF THE DEEP BLUE PROJECT.

The assets under the Integrated Security and Waterways Protection Infrastructure otherwise known as the **Deep Blue Project** have been launched by President Muhammadu Buhari. The Deep Blue Project since its conceptualization, was meant to secure Nigerian waters up to the Gulf of Guinea.

The Project has three categories of platforms, to tackle maritime security on Land, Sea and Air. The Land assets include the Command, Control, Communication, Computer, and Intelligence Center (C4i); for intelligence gathering and data collection. 16 armored vehicles for coastal patrol; and 600 specially trained troops for interdiction, known as Maritime Security Unit. The Sea assets include 2 special Mission Vessels and 17 fast interceptor boats. The air assets comprise two special mission aircrafts for surveillance of the

country's Exclusive Economic Zone (EEZ), 3 special mission helicopters for search and rescue operations and 4 unmanned aerial vehicles.

The Deep Blue Project is targeted to protect the Nigerian coastal and territorial waters, with the inclusion of the Gulf of Guinea region.

The aim of the Deep Blue Projects to enhance safety of lives at sea and prevent illegal activities in Nigerian waters up to the Gulf of Guinea.

Legal Blunder!

The O.J Simpson's murder trial was botched by various factors and legal blunders. One of the major legal blunders was when the officer in charge of investigations, Fuhrman was coincidentally revealed as a committed racist; a fact he had denied in open court.

He was heard to use the word "nigger" 41 times! The jury also listened to him boast that in his



days as a patrol officer, he would routinely invent charges against

black motorists and mixed –race couples. He went on: ‘if you put a bruise on a nigger, it’s pretty tough to see. I used to go to work and practice. Niggers, they ‘re easy to practice my kicks...The only good nigger is a dead nigger’.

This singular fact was a huge dent in the prosecution case, coupled with the fact that evidence was not properly gathered in compliance with required procedures. This was also at a time when racism was still widespread in America and would have been in the best interest of the prosecution to avoid any form of taint.

GLOSSARY OF SHIPPING TERMS

- i. **ADVICE NOTE:** A note sent by a supplier of goods to, for example, a ship port agent, giving a description of the goods, the date on which they are due to arrive and the method of dispatch.
- ii. **AFFREIGHTMENT:** A contract in which a

shipowner or carrier agrees to carry goods by sea, or to hire out his own vessel for the carriage of goods on payment of a mutually agreed sum, or the hiring out of a ship.

- iii. **ARRIVAL NOTIFICATION FORM:** A document used to advise a consignee or a container operator that the goods or containers have arrived at the port of discharge.
- iv. **BEARER (OF A BILL OF LADING):** Person who tenders the bill of lading to the ship at the place of discharge in exchange for the goods. Bills of lading are often made out to bearer.
- v. **BROKER:** An agent employed to make bargains and contract for a ship cargo for compensation. A buyer or seller who buys or sells stocks, bond commodities or services usually on commission. Also, a middle man between parties, who brings a buyer and seller



- together. He/she is a commission agent.
- vi. **BROKERAGE:** The commission earned by a shipbroker for securing and arranging for a ship to transport a person's cargo.
 - vii. **CARRIER:** Vessel, person or party who enters into a contract of carriage is normally the shipowner or charterer of a ship, a company that owns the means of transport in which the goods are to be transported, such as vehicle, rail, etc.
 - viii. **CARRIER'S DUTY:** Involves seaworthiness of a vessel, duty of care of goods or cargo on board the vessel and safe delivery of the cargo to the destination.
 - ix. **CARRIER'S LIEN:** The right to retain possession of goods being carried or under one's care, pending the payment of the freight charged.
 - x. **CONSIGN:** To place goods in care of a carrier for delivery to a person known as the consignee.
 - xi. **CONSIGNOR:** Seller of the goods; the person or company that is sending the goods to the consignee or buyer of the goods.
 - xii. **CERTIFICATE OF SEAWORTHINESS:** Document issued by a surveyor after repairs have been affected in the ship, certifying that the ship is seaworthy and can now proceed enroute.
 - xiii. **CONSOLIDATION:** The act of bringing several small compatible loads or goods going to the same destination together to make up a full load of a container.
 - xiv. **DOCK DUES:** Charges levied against a shipowner or ship operator by a port authority for the use of a dock.
 - xv. **FREIGHT FORWARDER:** An individual or company that solicits cargoes from shippers on behalf of a shipping line. Undertakes to transfer customer's cargo from one location to another.



- xvi. **FREIGHT, DEMURRAGE AND DEFENCE:** A class of insurance provided by a protection and indemnity club to cover legal costs incurred by a shipowner in connection with claims arising from the operation of his ship.
- xvii. **FREE ALONGSIDE SHIP:** This indicates that the quoted price for the goods which include all costs up to delivering them alongside a vessel at the loading berth is to be borne by the seller or export of the goods.
- xviii. **INTERMODAL TARIFF:**
A freight rate that covers inland and ocean transportation by shipping or conference lines.
- xix. **MASTER:** The person in charge of a ship, or who is officially qualified to command a foreign going ship.
- xx. **SHIPPER:** The party who delivers the cargo to the carrier for transport; The party who contracts for carriage with a carrier, pays

the carrier and is in a position to give the carrier handling instructions.

