Leisure Industries

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From the Chair

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Friends and colleagues,

Welcome to the June edition of the IBA Leisure Industries Section newsletter! A reminder that this year's IBA Annual Conference is just over three months away. It's taking place in Dublin from 30 September–5 October. As usual, the Section will be participating in some stimulating sessions, full details of which can be found on page 151.

The preliminary programme has recently been published and this, together with the conference registration form and other relevant material have been placed on the IBA website at www.int-bar.org/Conferences/Dublin2012. Register before 13 July to receive the early bird discount.

Our sessions are:

- The global 'gamification' of online gaming
  Joint session with the Leisure Industries Section and the Technology Law Committee
- The criminalisation of sport and the fashion industry
  Joint session with the Criminal Law Committee and the Leisure Industries Section
- BRICS and stones – social media pitfalls in hospitality
  Joint session with the Leisure Industries Section and the Media Law Committee

The next newsletter will be published in September on the eve of the Annual Conference. The Section's Academic Liaison Officer David Grant is always on the lookout for good quality material for future newsletters. The deadline for the September issue is Monday 1 August. Submitting an article represents an ideal opportunity to showcase the work of your firm and its expertise to the rest of the Leisure Industries Section and the wider readership of the *Travel Law Quarterly*.

I will be delighted to see you at any of the events in Dublin.

Brenda Pritchard

DUBLIN

30 SEPTEMBER – 5 OCTOBER 2012

International Bar Association
the global voice of the legal profession

INTERNATIONAL BAR ASSOCIATION ANNUAL CONFERENCE

Monday 1430–1730

The global 'gamification' of online gaming

Joint session with the Leisure Industries Section and the Technology Law Committee.

Everyone is talking about gamification, regulation, hacking nation, virtualisation. All we are saying is give peace a chance. A half-day session will cover two interactive debates. The first debate will be chaired by Trevor Nagel and will consist of a European Commission regulator and a representative from the pro-online gaming industry.

The second debate will be chaired by Gabrielle Patrick and will consist of an online gaming hacker and a representative of an e-banking institution/gaming company. Topics to be discussed in both debates will be both the business and legal implications of:

- increased gamification and alternate-reality gaming;
- virtualisation of currency and regulation of virtual currencies;
- virtual property;
- the Bitcoin phenomenon;
- expectations and regulation in a digital existence;
- social media's increased footprint; and
- implications on 'real life', and cloud computing.

Wednesday 0930 – 1230

The criminalisation of sport and the fashion industry

Joint session with the Criminal Law Committee and the Leisure Industries Section.

Sports and fashion are two of the most widely participated in leisure activities worldwide. The popularity of these pastimes has led to the development of two highly profitable industries. As is often the case, however, where profit is to be made, criminal activity lurks in the shadows.

This panel discussion, led by the session co-chairs Saba Naqshbandi and Sabrina Fiorellino, will focus on the interplay between criminal activities and the sports and fashion industries. There will be a particular focus on anti-counterfeiting legislation in the international fashion industry and on the impact that crime has had on the sports and fashion industries generally as well as the reactions that have resulted at national and international level.

Thursday 1430 – 1730

BRICS and stones – social media pitfalls in hospitality

Joint session with the Leisure Industries Section and the Media Law Committee.

Social media can be a double-edged sword for the hospitality industry. A well-blogged plug can put your resort on the map while a disgruntled customer rating can destroy your dude ranch.

This interactive session co-chaired by Brenda Pritchard, Chair of the Leisure Industries Section and David Jacoby, Secretary of the Leisure Industries Section will explore legal issues such as marketplace confusion, false testimonials, damage to business reputation and defamation.

Conference report
IBA Annual Conference 30 October–4 November 2011, Dubai

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Thursday 3 November 2011

From Desert to Dessert: Leisure Development in MENA Nations and Beyond

Joint session of the Leisure Industries Section with the Arab Regional Forum, the International Franchising Committee, the Leisure Industries Section and the Real Estate Committee

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This interactive session began with an introduction to a novel hypothetical fact pattern in which global hotel operators were asked to respond to an RFP (Request for Proposal) to provide hotel services in two new-dedicated areas of Dubai, Dubai Fashion City and Dubai Green City. The three hotels chosen as finalists in the RFP included: Star of India Hotels, 'G' Brand of Globotel Hotels, and Luxe/Vert/Magnifique 'LVMHotels'.

The fact pattern provided the foundation for the day-long session. Speakers and delegates commented directly on the scenario and also used it as a basis for discussion of wider issues. The scenario can be found in the December 2011 issue of the newsletter and on the IBA website. The morning session was also reported in the last newsletter.

Afternoon session Part Two

Speakers:
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The afternoon session reviewed the more operational issues that present themselves in the MENA countries. It also discussed emerging issues in hotel and leisure property operations. The following topics were discussed: a comparison of the fashion or eco-friendly hotel; franchise operations and dispute resolution/termination; use of the internet and whether social media is consistent with the applicable law and custom in MENA countries when marketing an hotel property; privacy issues; and branding and trademark issues.

The afternoon session was divided into two parts. The first part included three presentations followed by a roundtable discussion. The report of this part can be found in the March issue of the newsletter at [2012] TLQ 82. The second included two presentations followed by a roundtable discussion.

Speaker: Sara Holder

Sara gave a presentation on social media and advertising.

Advertising

Misleading statements can be prosecuted and promotions need to be approved. For example, it is illegal to offer a prize for travel to Saudi Arabia.

User generated content ('UGC')

UGC is a relatively recent phenomenon in MENA countries. In order to reduce liability companies need to review the law on a country-by-country basis.

Good practices for UGC include:

- always include a monitor on the webpage to remove any inflammatory or illegal content;
- include clear guidelines and rules for posting on the webpage;
- include rules with respect to what constitutes intellectual property violation e.g. using imagery that is copyright protected;
- Include rules with respect to what is considered offensive in MENA countries – cultural sensitivities are key for avoiding liability;
- Understand what could constitute criminal liability.

Kuwait case study

Having sound legal advice is necessary before responding to any type of UGC-related issue. In Kuwait a situation arose where a customer blogged about his negative experience at a franchised restaurant. The franchisee became quite upset about the negative review and posted a false positive review. In addition the franchisee sued for defamation. The court in the first instance found in favour of the blogger but the franchisee has now appealed to a higher court. In this particular instance, the franchisee's lawyer should have advised the franchisee that pursuing this issue will lead to brand deterioration. In addition, the franchisor should have stepped in to assist.

The bottom line with respect to UGC is that the approach needs to be assessed on a territorial basis. The UGC campaign needs to be well planned and all sources of liability need to be addressed. Finally, moral sensibilities need to be taken into consideration at all levels of planning the campaign and at the final execution of the promotional venture.

Speaker: Babette Marzheuser-Wood

Babette gave a presentation on franchise disclosure, operations and termination.

Various countries have franchise disclosure options and customised local disclosure laws. The speaker is an advocate of no disclosure where no disclosure is required.

Overview of hypothetical hotels – disclosure

In the case of Star of India Hotels there is no franchise, as such there is nothing to disclose. The 'G' brand of Globotel Hotels incorporates a franchise arrangement and so disclosure would only be appropriate where it is warranted. Finally, LVMH does not include any franchise opportunities.

Operations

A franchisee owns and operates a business. There are differences between those entities which are franchised and those entities which are simply managed. In a situation where there is no franchise, the budget will be prepared differently as investment decisions will be made solely by the owner of the property. In addition any staff decisions would be solely made by the owner of the property. In a franchise situation, although staff decisions can be made by the franchisee, there may be specific clauses in the disclosure document which limit the type of relationships that could exist between the franchisee and its employees.

In most disclosure documents there is a great amount of detail on the obligations of the franchisee. In contrast, there is little detail in most management agreements.

It is a fundamental different reality with remedies, for example liquidated damages may be difficult to get in some cases.

Termination agreements

In these agreements, sales are generally not permitted. In addition, post termination procedures need to be in place by the franchisee to ensure that there is no longer a link between the franchisor and the franchisee.

Local laws

Local laws may make it difficult to terminate the agreements which are the subject of the franchise relationship. Issues to consider include: material breaches, whether compensation is payable, renewal rights, court orders or similar remedies and agency registration.

Roundtable discussions

Advertising and social media

The group discussed the types of content that are not permitted. The group also reviewed instances of censored material in MENA countries and what not to post on websites. There was also a discussion of the Kuwait case and best practices for avoiding this particular type of issue.

Franchise disclosure, operations and termination

The group concluded that it is possible for franchisees to register as commercial agents in the UAE. Although a non-exclusive licence would prevent registration. The group also discussed the renewal process and whether countries have renewal options. The group also reviewed the lack of franchises in the UAE and discussed the reasons why this may be the case. In particular, the group determined that it is hard to franchise in the UAE and the risk of getting sued is higher if you franchise. Entering into a franchise arrangement is a balance of legal and commercial risk.

The session was a great success and the day concluded with the grand prize awarded to Anurag Bana and second prize pens were given to: Paul Davies, David Grant, Carolina Avellenada, Babette Marzheuser-Wood, Jeff Brimer, Robin Bynoe and Gabrielle Patrick.

The regulation of airport charges: an important input into the price of travel

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The costs of air travel and airport charges

The cost of air travel has risen in recent years. The two reasons most often given are: the high price of jet fuel, and the costs imposed by the regulation of aviation (e.g. passenger rights legislation, or legislation aimed at protecting the environment). It is not surprising that other areas of cost, such as the charges levied by airports on airlines, attract relatively less attention. If anything, much of the debate about airport costs concerns secondary airports, municipally-owned, allegedly receiving state aid (i.e. subsidies) or directing it often for the benefit of low cost operators. Yet there is a category of costs borne by airlines which falls generally within the discretion of airport operators where the question arises: what can an airline do to mitigate the effect on its operations of discriminatory increases in airport charges? This could matter greatly – the price of a holiday involving air transport is made up of many elements, including airport charges. The effect of high and especially discriminatory increases in airport charges could distort competition on individual routes. The holiday price may increase directly – because of higher input costs by the operator – and indirectly, because the damage to competition caused by discriminatory price rises, may provoke an operator to leave a particular market, perhaps allowing the remaining operator(s) to increase their prices.

Section 41 in principle: the restraint of 'unreasonable discrimination'

The law in the UK relating to the setting of airport charges in principle allows airlines to challenge 'unreasonable discrimination' by regulated airports in the setting of airport charges. Through implementation of European law,[1] it is now also possible to challenge both discrimination as well as non-transparency in the setting of airport charges. What appears to be a division of interests between airports and the airlines (taken as a group) becomes in reality a division of interests between different airlines – between 'winners' and 'losers' – winners being those who benefit from lower charges as a result of changes by the airport; losers being those who suffer higher charges as a result of those changes. It is essential to have a robust mechanism that allows regulators and airlines to know at what point a 'loser' has been discriminated against unfairly. Put another way, at what point does the airport over-step its discretion to set airport charges within an overall price cap? What is the relationship between the obligation to be transparent in the setting of airport charges, and the non-discriminatory outcome?

In the UK, section 41 of the Airports Act 1986 defines the rights of an airline to challenge airports on the scale of any proposed increases. It applies to airports that require permission to levy charges, which is the case where their annual turnover is £1m or more. This is a low threshold. In the UK, a large number of airports hold a permission to levy airport charges under the Airports Act 1986. These include the London airports Heathrow, Gatwick, Luton, Stansted, City; the peripheral London airports Oxford, Southend; the principal Scottish airports Aberdeen, Glasgow, Prestwick and Edinburgh; as well as key regional bases such as Liverpool, Manchester, Blackpool, Bristol, Leeds Bradford, Nottingham East Midlands, Birmingham and Southampton. The CAA's powers relate to the airport's 'relevant activities' which means, according to section 36 of the Airports Act, the provision at the airport of any services or facilities for the purposes of the landing, parking or taking off of aircraft; the servicing of aircraft (including the supply of fuel) or the handling of passengers or their baggage or of cargo at all stages while on airport premises (including the transfer of passengers, their baggage or cargo to and from aircraft). 'Relevant activities' do not include the provision of facilities for car parking, for the refreshment of passengers at the airport or for the supply of consumer goods or services there.

Section 41 permits the CAA to impose conditions 'for the purpose of remedying or preventing what it considers are the adverse effects' of a course of conduct, including, at section 41(3)(a), 'the adoption by the airport operator, in relation to any relevant activities carried on by him at the airport, of any trade practice, or any pricing policy, which unreasonably discriminates against any class of users of the airport or any particular user or which unfairly exploits his bargaining position relative to users of the airport generally.'

The airline may thus complain to the CAA under section 41 if it considers that it will suffer unreasonable discrimination (as compared to other airport users) as a result of a proposed pricing policy adopted by the airport. Equally, the airline may complain if it considers that the airport has exploited its bargaining position relative to the airline. An airline is unlikely to complain if its airport charges fall; but may have reason to complain if its charges rise. Where an airport changes its pricing policy, there may be winners and losers. Where there is no change to the status quo, there is perhaps little basis for a complaint, and this seems to be borne out by the paucity of complaints decided by the CAA under section 41.

Section 41 admits that an airport may discriminate between its users. The test is whether such discrimination is 'reasonable'. Deciding whether a pricing policy may constitute unreasonable discrimination is not straightforward. What is the correct test to apply? There is a temptation to regard this test as equivalent to competition law (Articles 101 and 102 of the Treaty on the Functioning of the EU) which would mean that discrimination would be framed as the application of dissimilar conditions to equivalent situations. Discrimination would be condemned as 'unreasonable' if there were no objective justification for the conduct. The CAA has chosen to follow this line in its policy statement on section 41, where it states that it would expect to adopt an approach that is consistent with the OFT's guidelines on the application of competition law, and that section 41 should not necessarily give users greater protection than would be available under competition law. Importantly, the CAA recognises that the circumstances of a particular case or the CAA's powers and duties suggest that it should follow a different approach.[2]

Section 41 in practice

There have been only 12 decisions under section 41, and of these only two related to complaints by airlines against the pricing policies of airports. Both complaints related to Heathrow. The first complaint was made by British Midland, Dan-Air, Air UK and Manx and was decided in the airlines' favour in 1989. The second complaint was made by BMI in 2010 and was decided in the airport's favour. At the time of writing, a third complaint by Flybe Ltd against Gatwick Airport has yet to be decided.

The 1989 decision[3] remains the only case under section 41 where the CAA has intervened to protect airlines from excessive price increases levied by an airport. The condition provided that where an airline experiences, over a four-year period, an increase in its charges on a per-passenger basis of more than twice the maximum percentage increase in yield per passenger permitted under the airport's charging condition, the excess should be repaid to the airline. The CAA was able to come to this conclusion without expressly linking its analysis with the requirements of competition law. This indicates two things. First, it is not necessary, in order to determine a case under section 41, for the CAA to have explicit regard to the tests that would be applied by a competition authority investigating a case of abuse of a dominant position under Article 102 of the TFEU. The case-law and mode of analysis under Article 102 are instructive but not binding. Secondly, the UK did not acquire the domestic law equivalent of the EU Treaty provisions on competition law until the 1998 Competition Act came into force a decade later. In the BMI case,[4] decided in 2012, the CAA decided that Heathrow Airport Ltd ('HAL') enjoyed a position of substantial market power, i.e. in competition law terms, the equivalent of a 'dominant position'. The CAA accepted that HAL was therefore under a special responsibility not to impair the competitive structure of the market. However, they found against the complainant on the question of unreasonable discrimination.

Plainly, it is rare for an airline to complain about unreasonable discrimination under section 41 and it is not possible to draw much by way of conclusion on an airline's chances of success: the two decisions to date have approached the questions in different ways, reflecting perhaps the CAA's policy concerns of the day. Equally, it is not straightforward to draw firm conclusions about what the law means, from the absence of complaints. The question for airlines (whether charter operators or scheduled) is whether the new Airport Charges Directive and its implementing regulations[5] will provide a more fertile complaining ground for airlines in the future.

The Airport Charges Directive

The original proposal from the European Commission suggested that 'EU air carriers on the one hand and airports on the other are often in disagreement on charging systems and the charges levels.'[6] If the Community did not act, over time, 'the tensions between airports and the airport users would increase', whereas the proposed Directive would put a 'downward pressure on charge levels.'

Article 3 of this Directive requires Member States to 'ensure that airport charges do not discriminate among airport users, in accordance with

Community law. This does not prevent the modulation of airport charges for issues of public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent.'

The criterion for being regulated during a year is to have more than five million passenger movements in the year but one preceding that year. In 2012 and 2013, the regulated airports in the UK are: Heathrow, Gatwick, Stansted, Manchester, Luton, Edinburgh, Birmingham, Glasgow, Bristol and Liverpool.[7] This is a smaller set than those regulated on the basis of turnover for the purpose of section 41, but all those who are regulated under the Airport Charges Directive have previously been subject in principle to the regime established by section 41, even if in practice, only Gatwick and Heathrow have faced section 41 complaints from airlines.

It is notable that the regime established by the Airport Charges Directive places strong emphasis on the transparency of the process by which airport charges are set – i.e., proper process, not just proper outcome. The CAA in the recent BMI decision under section 41 was unimpressed with HAL's transparency of process, but felt that it could not find for the complainant on the basis of transparency alone. Thus the new regime may afford a new avenue for consideration by airlines, or at least a stronger emphasis on proper process. The new regime will have to weigh the merits of intervention where a poor process leads to the incorrect pricing outcome, and where poor process leads to the correct outcome.

Conclusions

At this early stage in the implementation of the Airport Charges Directive, it is difficult to ascertain whether this will provide effective rights for airlines to challenge airport pricing decisions. It is clear that in an environment of softer consumer demand and higher input costs, airlines will look to all areas where cost reductions may be effected. The new regime will be an important area to consider across Europe. The new Directive will be subject to review by the Commission by 15 March 2013, only two years after its effective implementation in the Member States. One might question what the Commission will usefully be able to say after two years. More than one year has elapsed, and for the UK, the questions relate still to the scope of the section 41 regime, as well as the passage of the Civil Aviation Bill through Parliament. It should not be surprising that one possible outcome of the Commission's review could be further legislation. The evolution of this area of law should be watched closely, as the ongoing relationship between airline and airport, and between one airline and another, depends on it.

Notes

1 The Airport Charges Directive, discussed below.
2 The CAA's use of section 41 of the Airports Act 1986: The CAA's policy and processes, December 2006. See paragraph 3.13.
3 Decision on investigation under Regulation 11(1) of the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, APD 3, 22 March 1989.
4 Investigation under Section 41 of the Airports Act 1986 of the structure of airport charges levied by Heathrow Airport Limited, CAA Decision 12 March 2012.
5 Directive 2009/2012/EC of the European Parliament and of the Council of 11 March 2009 on airport charges; the Airport Charges Regulations SI 2491/2011;

required to be transposed into Member State law by 15 March 2011.

6 COM (2006) 820 Final, Commission Staff Working Document accompanying document to the proposal for a Directive of the European Parliament and of the Council on airport charges.

7 Source: CAA website.

New regulations for Canadian air carriers

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Until recently, for the unsophisticated purchaser, the prospect of a relaxing vacation in an exotic location or a sight-seeing tour to a world class destination inevitably required navigating a collection of travel brochures, newspaper ads and internet travel sites to determine exactly how much a flight was going to cost. Similarly, collectors of frequent flyer miles had to account for additional taxes and fees when making the decision to redeem their points. In the wake of recent Canadian consumer protection legislation and complementary initiatives on the part of airlines, these frustrating experiences may soon be a thing of the past. New regulations requiring Canadian air carriers to include all associated fees and taxes in their advertised prices are expected to be implemented this year and have already started to change the consumer experience associated with purchasing an airline ticket.

Background: a history of the legislation

'An Act to amend the Canada Transportation Act and The Railway Safety Act and to make consequential amendments to other Acts'[1] came into force on 22 June 2007. The Act was intended to strengthen the Canada Transportation Act[2] by providing for more comprehensive protection of the rights of air travellers. To this effect, clause 27 contained provisions that required the Canadian Transportation Agency to implement regulations that would more strictly govern airfare advertising in Canada.

In an industry where consumers can search and compare hundreds of prices with the click of a mouse, it isn't surprising that airline carriers opposed clause 27 and the apparent threat it imposed on their freedom in the realm of airfare advertising. Ultimately, the Act was implemented without clause 27 and the issue of airfare advertising was left to be addressed at a later date.[3]

A shift towards transparent airfare costs

Over four years after it was initially proposed, the Government of Canada is set to move forward with its effort to strengthen the regulations governing airfare advertising across the country. On 15 December 2011, clause 27 came into force and, with it, sections 86.1 and 86.2 of the Canada Transportation Act were implemented. These provisions require the Canadian Transportation Agency to create new regulations compelling air carriers to include all fees, taxes and additional charges in their advertised prices in all media, including the Internet. As emphasised in the *Canada Gazette*'s explanatory note, these provisions aim to 'ensure greater transparency of advertised airfares by airlines and allow consumers to readily determine the cost of an air service.'[4]

The race to redefine consumers' purchasing experience

In the wake of these statutory amendments, the Canadian Transportation Authority has begun the lengthy process of consulting key air and travel industry stakeholders and will eventually draft regulations requiring advertised airfare prices be all-inclusive.[5] Transport Canada anticipates that the process of implementing these regulations will take one year;[6] however, the transition has been drastically accelerated by the airline industry itself.

Within two months of the Canadian government announcing its plan to introduce new consumer protection legislation, several of Canada's largest airlines declared their intention to transition to 'all-inclusive fares'. These fares quote a single fee encompassing the base price and all taxes, fees and surcharges including Nav Canada fees, airport improvement charges, fuel surcharges, insurance and security charges, and HST. These additional taxes and fees can be as much as, or in many cases, substantially more than the base price of the ticket. WestJet Airlines was the first to make the shift in its print advertisements in January 2012, followed closely by Air Canada and Porter Airlines in February of the same year.

Some suggest that the airline sector's transition to all-inclusive fares is due to its alignment with a growing international industry trend. Notably, the United States recently implemented airfare honesty laws and the European Union has had similar regulations in place since 2008.[7] Others view the airlines' pre-emptive response as an ingenious marketing strategy that addresses consumer demands for increased transparency in airfares. Regardless of the motive, at least from a consumer's perspective, the expansion of consumer protection legislation into the realm of airfare price advertising will drastically change the way that consumers will research, compare and purchase airline tickets in the future.

On the marketing side, according to marketing experts, "brands that have a process for telling the truth are likely to sell more products, make more money, and keep more customers loyal – through any medium, in every market."[8] If truth really sells, there will be more time for relaxing vacations for those of us practising advertising law. I hope you enjoy this issue.

I would like to acknowledge the valuable assistance of our summer students, Nicole Zeit and Amanda MacNaughton in the preparation of this article.

Notes

1 SC 2007, c 19 (the Act)
2 SC 1996, c 10 (Canada Transportation Act)
3 See Explanatory Note to the Order Bringing into Force Sections 86.1 and 86.2 of the Canadian Transportation Act, as enacted by section 27 of the Act, SI/2011-119, (2012) C Gaz II, 146:1 for more detail on this point.
4 *Ibid*.
5 Transport Canada, 'Government of Canada moves forward with changes to airfare advertising' (News Release), H128/11 (Ottawa: Media Relations Transport Canada, 2011)
6 *Ibid*.
7 *Ibid*.
8 Sue Unerman & Jonathan Salem Baskin, *Tell the Truth* (Dallas, Texas: BenBella Books, Inc) at 3.

The six lessons the world learned from the Titanic disaster

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The world was in shock when the 'unsinkable' Titanic sank on her maiden and final voyage in the early hours of 15 April 1912. What went wrong, and what could have been done differently, was the subject of a US Senate Inquiry instigated by Senator William Alden Smith and a British Inquiry presided over by Lord Mersey, the Wreck Commissioner. It was also the subject of many private law suits.

I was very fortunate to be privy to a legal presentation on 'The Sinking of RMS Titanic' by Joseph Kilbourn from the New York law firm of Bigham Englar Jones & Houston, who were the lawyers who acted for the cargo insurers handling claims from the loss of the Titanic. The presentation was given at a business session of the International Bar Association. It was drawn from the original legal files for the Titanic law suits which are kept securely in the law firm's safe.

These are the six lessons:

Lesson One – The bulkheads should be watertight

Bulkheads on a ship are like canisters – they are lined up inside the hull, side by side, so that if water enters from a breach of the hull, the bulkhead fills up with water, not the whole hull. In this way, the ship maintains its buoyancy.

The Titanic had 15 bulkheads, the tops of which extended up above the waterline. The bulkheads were built to comply with current maritime standards. The problem was that the standards did not require the bulkheads to be capped. It was like a canister without a lid.

After the collision with the iceberg, five of the bulkheads on the starboard bow gradually filled with water. As they filled, the ship listed and because the bulkheads were not capped the water slopped over the tops into the other bulkheads. Soon the other bulkheads started to fill with water and the ship sank ever more rapidly.

The Inquiries found that the main reason that the Titanic sank was the fact that the bulkheads were not capped, and therefore not watertight.

Lesson Two – The double hull could have been better designed

The Titanic had been designed with an outer hull, and with an inner hull between 63 and 75 inches inside, to provide extra protection if the outer hull were breached, such as by grounding. The fact that the double hull extended up the sides of the hull was the main reason why the Titanic was considered by its owner to be 'unsinkable'. Or as the owner put it – the whole ship was a lifeboat.

The poor design lay in the fact that around the turbine and engines, the inner hull had not been extended above the waterline as elsewhere on the hull. Once the ship started listing, water filled the gap between the double hull to the waterline, slopping over the inner hull near the machinery space, where the pumps were unable to contain the flooding.

Lesson Three – Not enough lifeboats

The Titanic was designed to carry 32 lifeboats, which could have carried 2,160 passengers. There were 2,201 passengers on board so 32 lifeboats would have almost been enough.

A lifeboat is attached to a davit, which consists of two steel arms with ropes and pulleys to allow the lifeboat to be lowered into the water. The davits on Titanic were Wehlin double-acting davits, designed for two lifeboats per davit.

However the owners of the Titanic, the White Star Line, chose to fit only one lifeboat per davit instead of two lifeboats per davit. Therefore it carried only 16 lifeboats, one for each of the 16 davits, plus four collapsible lifeboats, which meant that there was capacity for only 1,178 passengers. This complied with current maritime standards. The standards were based on tonnage, not numbers of passengers.

At the Inquiries, the question was asked – Why did you not fit two lifeboats per davit? The official answer was that maritime standards did not require it. But the unofficial answer was that the extra lifeboats were not fitted because they would have cluttered up the Boat Deck – was this to provide more room for the deckchairs on the Titanic to be re-arranged perhaps?

Lesson Four – Iceberg warnings should not be ignored

Although the Titanic took the winter route (or southern track) across the Atlantic Ocean because it was freer of ice, it was still a route where icebergs had been sighted in April. During the day of 14 April, four separate ice warnings were received from other ships warning of icebergs within five miles of the track the Titanic was taking. Captain Edward Smith heeded these warnings and steered a more southerly course.

The last of these ice warnings was from the *Californian* which was about five miles away at 10:00 pm, and was given about an hour and a half before the accident occurred – 'We are stopped and surrounded by ice.'

This ice warning was infamously ignored by the radio operator; it was not passed on to the bridge. The radio operator was too busy sending personal messages for the first class passengers. His reply was 'Shut up. I'm too busy.'

Lesson Five – Full speed can be dangerous

The official policy of the White Star Line was that in clear weather, ships should be navigated at full speed, day and night. This policy of sailing 'at a fair clip' could have originated from the days when the White Star Line was sailing clippers to Australia in the 1860s.

In any event, J Bruce Ismay, the managing director of the White Star Line was on board, and he wanted to show that his newest and most luxurious ship could cross the Atlantic fast. His instructions to Captain Edward Smith were 'in clear weather, whether it be day or whether it be night, there should be no reduction or need be no reduction in the speed, although the master of the ship knows that he is in the ice region.'

The night of 14 April 1912 was clear, the sea was calm, the stars were out, but there was no moon. The Titanic was proceeding at full speed ahead at 22 knots, its maximum speed. At 11:40 pm one of the lookouts in the crow's nest struck three blows on the gong, an accepted warning of danger ahead. Despite turning the wheel 'hard-a-starboard' and telegraphing the engine room 'Stop. Full speed astern.' the Titanic could not avoid the iceberg less than a minute later.

The British Inquiry (somewhat unbelievably) exonerated Captain Edward Smith (who admittedly had gone down with his ship) but added – 'What was a mistake in the case of the Titanic would without doubt be negligence in any similar case in the future.'

Lesson Six – Lifeboat drills are important

The first and second class passengers had easy access to the Boat Deck by staircases and lifts. The third class passengers had to take a more difficult route to reach the Boat Deck – they could take staircases to the C deck, and then reach the Boat Deck by ladders on the port and starboard sides, or pass through emergency doors to a passageway and then take stairs to the Boat Deck.

There were no lifeboat drills held on the Titanic.

Shortly after midnight, Mr Thomas Andrews, the Managing Director of Harland & Wolff, the builders of the Titanic reported to Captain Smith that it was a mathematical certainty that the ship would founder. The stewards were ordered to awaken each passenger and to tell them to come to the Boat Deck dressed in a life jacket. Under order of 'women and children first' the lifeboats began to be filled and then lowered from 12:45 am until 2:05, by which time all 16 lifeboats and 2 of the 4 collapsible boats had been lowered. The lifeboats were just over half filled when launched. Out of 1,178 places available in the lifeboats only 706 were filled.

The lack of a lifeboat drill therefore had fatal consequences – there was a lack of familiarity with emergency procedures and with the access routes to the Boat Deck, accentuated by the fact that it has been estimated that 500 of the passengers may not have been English speaking.

The Titanic disaster shocked the world into making passenger ships safer. All of the lessons were heeded. Two years afterwards, in 1914 the International Convention for the Safety of Life at Sea was agreed.

Today, countries around the world have laws for safety on shipping, and international conventions extend these laws to sailing on the high seas.