

Finlaysons

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BARRISTERS SOLICITORS & NOTARIES

*MUSTY WINE -
WHO IS RESPONSIBLE?*

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MUSTY WINE - WHO IS RESPONSIBLE?

INTRODUCTION

You have now had the opportunity of hearing five eminently qualified speakers, all of whom have dealt with a particular aspect of perishable cargos. Each of them have presented informative and practical information which I am sure that all of you have absorbed.

I do not propose to deliver a paper to you, I have decided that you need to earn your lunch and therefore, I will introduce a case study and will ask for audience participation.

The simplest way to outline the fact situation is by the following diagram.

BROADMORES

CONTRACT

**MACKAYS
WINE
COMPANY**

CONTRACT

PHILIPPIDES

CHARTER PARTY

**LEAN
TRANSPORT**

PARTIES

BROADMORES - SUPPLIER OF FLEXIBAGS

MACKAYS WINERY - EXPORTER OF WINE

LEAN TRANSPORT - SHIP OWNER

PHILIPPIDES LTD - CONSIGNEE

FACTS

Mackays are regular exporters of wine throughout the world, generally in bottles, but also from time to time in bulk. In this particular case, Mackays receive an order for bulk wine from Philippides. Unfortunately, there is a shortage of stainless steel containers which creates a dilemma for Mackays. Broadmores approach Mackays suggesting that they use flexibags to carry the wine on the voyage. Broadmores explain that these flexibags are like the inside of a 4 litre carton of wine, but on a bigger scale. The procedure is that the wine is pumped into the flexibag which expands, the flexibag is suspended inside a shipping container, is sealed and then transported. Broadmores agree to supply flexibags and the shipping container to the winery. Mackays fill the flexibags with vin rouge, seal it off and the containers are then carted from Adelaide to Melbourne for shipping. Approximately 5 days elapse between sealing the containers and the containers being loaded on a vessel. The shipment is f.o.b. The containers arrive at their destination. Upon opening, Philippides tastes it, only to find the wine contaminated. Scientific tests show that it is contaminated with tri-chloro anisole (TCA). Further tests showed that TCA is also evident in the wooden frame of the container and the wooden supports of the flexibag. Quite clearly, the TCA has permeated through the "impregnable" flexibag into the wine causing contamination. The wine is totally undrinkable and has to be dumped. Philippides (the cad) refuses to pay Mackays.

ISSUES

- ◆ Mackays have not been paid - who can they sue?
- ◆ Who is liable?
- ◆ What causes of action arise?
- ◆ What insurance issues arise?
- ◆ What law applies?
- ◆ When did the “damage” occur?