What are Carriers’ Limits of Liability?
- a Must Know for Shippers!

Transportation is as old as the wheel and from that humble beginning has grown into today’s integrated through-transport and inter-modal sophistication.

With the industry’s rapid growth, it has become necessary to review and rethink some of the more important concepts of responsibility and liability relating to the carriage of goods.

These concepts are fundamental to everyone connected in the business of transportation of goods – be they the shippers, consignees, bankers, insurers, forwarders, carriers, warehouse operators or system operators. The question of legal liability and the parameters and limits that are placed on such liability touch us all.

The law in this area has been with us for a long time. The law of merchants and the rules of the Hanseatic League are earliest on record. The concept of a Bill of lading and its development led to an onerous situation.

Two basic questions arose. The first was the basis of liability. Was it to be strict or based on negligence and a duty of care? You had the common carrier situation in COGGS v BERNARD which was “primitive in concept but sensible. You carried the goods. You were paid to do it. You lost or damaged the goods. You are fully liable.”

The second question was that of freedom to contract. The law generally does not interfere with individuals’ freedom in business arrangements. This had disastrous results. Carriers put in absurd exception clauses.

The judges distinguished and overthrew them because they were ambiguous, because of public policy, proximate cause was different or because of deviation.

As judicial decisions were made, the shipowners’ lawyers drafted new clauses to protect their clients against the new decisions.

The result was that there was no uniformity. The Bill of Lading terms became very harsh and difficult for shippers. It soon developed into a situation where ship owners had no responsibility except to collect their freight!

These exception clauses led to serious concern among cargo-owning countries and steps were taken to control the situation.
First came the **Bills of Lading Act of 1855**, which had these provisions:

- Empowered consignees and endorsees of Bill of Lading to sue directly;
- Preserved “stoppage in transit” and right to claim freight from the shipper;
- Bill of lading was “conclusive evidence against master”.

Then came the crystallization of the merchants’ rules into the **US Harter Act of 1893** and the **Hague Rules of 1924**. The Hague Rules, wryly, and sometimes called the Vague Rules in a tongue-in-cheek fashion, underwent a face-lift following the 1979 and 1968 Protocols to become the **Hague-Visby Rules**.

The Hague-Visby Rules and the Hague-Visby amendments were themselves heavily criticized by **UNCTAD** in 1970 and arising from this was a United Nations Conference on a Carriage of Goods by Sea held at Hamburg in March 1978 which adopted new rules to be known in future as the **Hamburg Rules**.

The history of the law relating to contracts of carriage has been a swing of the pendulum between excessive protection of the carrier and excessive protection of the shipper.

The latest convention appears to benefit shippers and consignees in user countries more than that of carriers.

While this may be desirable from certain points of views, it may carry with it some unintended results that may work against shippers.

The liability of carriers will rise and with it may raise the cost of providing the transport service. Insurance premiums for cargo may also fall as they are absorbed into freight rates, which may correspondingly rise as significant liability increases occur to carriers.

**Situation prior to the Hague Rules**

No fixed law! Merchants were free to contract as they wished. An absurd situation arose as shipowners issued Bills of lading with as many different sets of clauses as there were Bills.

As judges overturned certain clauses as being against public policy, absurd or ambiguous lawyers wrote new clauses protecting the carriers.

Results were a disastrous sense of uncertainty in the transport industry and a plethora of exemption clauses.

**The Introduction of the Harter Act, the Bills of lading Act and the Hague Rules**

Consignees received the right to sue on the Bill of Lading. The Bill of Lading became conclusive evidence of shipment as against the Master “stoppage in transit” was preserved.
The Harter Act and the UK Carriage of Goods by Sea Act were designed to stem the growing dissatisfaction of having different Bills of lading with different terms. A uniform legislation was then introduced into the UK and these were quickly adopted by colonies and dependencies and even other countries.

The Hague Rules laid down three important areas of law:

1) A minimum obligation of shipowners;
2) Care in receipt, keeping, stowing, custody, carriage and discharge;
3) Limitation of liability of Sterling Pounds 100 per package or unit;

Some criticisms were:

a) Exemptions given for the consequences of acts of carriers’ servants or agents for negligence in navigating or managing of vessel;
b) The Rules apply only when a Bill of Lading is issued;
c) Carriage period was limited to “tackle to tackle”

There were also various technical and drafting defects.

Introduction of the Hague-Visby Amendments

These rules were introduced to counter some of the problems of the Hague Rules Legislation. However they only mitigated but did not remove the problems.

This was largely because many countries have yet to ratify the Hague-Visby Amendments so that instead of clarifying international law, we had two sets of rules in place of one.

The main defects of the Hague-Visby Amendments were:

a) The burden of proof in Article III and IV is placed on the ship owners.
b) What is a “package”?
   The question of Sterling Pounds 100 now become Sterling Pound 100 gold value translated into 10,000 gold francs (poincare).
c) The Hague Rules only dealt with contract liability and not tort.
d) Conflict of laws – uniformity/terms should be mandatory on all contracting parties. Vague as to jurisdiction and law. Everything depends on national legislation.
e) Box losses not accounted for.
Introduction of the Hamburg Rules

The background was that the UNCTAD severely criticized the Hague and the Hague-Visby Rules in 1970 and adopted the new Hamburg Rules.

It places a new burden shift into ship owners. Basically, it places a mandatory level of liability on carriers/ship owners based on fault or negligence.

The important areas of differences between the Hamburg Rules and the earlier rules are:

a) A decision to abolish the defences of negligent navigation/management of vessel which is presently available to ship owners.

b) Abolishes the defence of fire caused by negligence of owner’s servants or agents – the burden of proof of negligence is shifted to the cargo interests.

c) An extension of period of liability of the carrier to cover the period the carrier is “in charge of the goods at ports of loading and discharge”.

d) Application not only to Bills of Lading but to all contracts of carriage of goods except under a Charter Party.

These are substantial differences. The impact is to place a higher and more onerous liability on carriers and a significant transfer of risk from cargo owners to carriers.

The drawback to the Hamburg Rules (and it is a substantial drawback) is this – the solutions are not sufficiently and clearly formulated. In the result, many of the existing technical ambiguities have not been removed.

Fresh areas of confusion have been created and new language introduced. All work of the Courts would be thrown away as past judicial decisions become no longer relevant or applicable. Fresh decisions will be awaited to see the effects of the legislation on a practical basis.

Examples of technical defects:

The Hague Rules set out the duty of carriers and their defences in detail under Article III and IV. In the Hamburg Rules, Article 5, Paragraph 1 states “carrier is liable for loss of or damage to goods: if the occurrence which caused the loss/damage took place while the goods were in his charge ...... unless the carrier proves he, his servants or agents took all measures he could reasonably be required to avoid the occurrence and its consequences.”

There is a total lack of any clear guidance or definition of these terms and they must be left to practice and to the courts.
The Hamburg Rules place a mandatory liability on the carrier for delay. This is defined as: “... not delivered at port of discharge within expressly agreed time or if no agreement as to the time of delivery, within a reasonable time.”

Can carriers put in, say, 6 months, into the fine print and escape liability?

There is also a provision that owners can treat goods as lost if there is a 60 days delay. How do you apply this?

The Hamburg Rules do not apply to charter parties. There are no definition of the charter parties contemplated and whether they apply, say, to tonnage contracts.

Contract of carriage by sea is now amended to extend the contract to sea-leg or multi-modal transportation. There are no details!

Only time will tell if the new regime, if adopted, will cure the patient or kill him with confusion, uncertainty and expense.

Some questions that need to be looked at thoroughly in the analysis of existing and contemplated legislation may be as follows:

a) The new liability problem raised by container/box operation.

b) Local as against international carriage operations.

c) The freight forwarder’s growing role in inter-modal transportation and concepts such as NVOCC, conference pressures, slot and space sharing, banking security and the effect of the Uniform Customs Procedures on documentary Credits and Standard Trading Conditions.

d) The role of the surveyors who ascertain the nature, cause and extent of loss/damage and the importance of professional loss determination – the need to establish when, where and how.

e) Jurisdiction and the law of contract – the conflict situations.

f) Role of insurance and the applicability of Institute Cargo clauses.

The Warsaw Convention

Happily, the law in the area of air carriage is much more settled and the discussion of this convention will highlight the difference between sea and air legislation in the following areas:

a) Documentation.
b) Negotiability.
c) Liability and responsibility.
d) Liability ceiling and how that works.
The Multi-modal Convention

Inter-modal operators are today a fast growing profession in Asia.

Through-transport and uniform system of liability had to go hand in hand as otherwise it will be difficult to pin-point liability rules. Once goods were sealed in a box carried over different modes of transport. Which regime should apply? What about “concealed damage”? At what level and what limit should the liability quantum hang?

Which of the competing legal regimes, practices, international conventions or national laws should we adopt?

UNCTAD took the initiative to introduce the Multi-Modal Convention of 1980 but it met considerable resistance.

A compromise may be possible. Using a uniform system of liability as set out, perhaps a higher concealed damage limit could be introduced where there is no sea-leg. European ro-ro operators could continue to use the CMR or CIM Conventions on the European short sea trade. For known damage where there exists an applicable Uni-modal mandatory limit by law or convention which is higher than the Multi-modal Convention proposal, such higher limit could be used while applying the Convention rules.

What about a fully-insured multi-modal transport contract or insured Bill of Lading? This may be expensive but may give customers a total package.

On balance, I am of the view that the Hamburg Rules and the Multi-modal Transport Convention hold out some promise for the future. Already Australia, India and Thailand have started adopting these provisions.

The Hamburg Rules widen the liability of the carrier to the period in which he is “in charge of the goods at the port of loading and discharge”. Only “a document to evidence receipt of the goods to be carried” is necessary.

The Hamburg rules and the Multi-modal Transport Convention will resolve some of the more antiquated provisions in the old Rules. No longer will the carrier be able to take shelter behind a list of peculiar exceptions such as not being responsible in the management of the ship and for deck-cargo or for fire.

The Convention makes the Multi-modal transport operator liable for the whole transport and through liability provisions. One does not have to search far to find out where the loss/damage occurred. The MTO seeks relief from his sub-contracting carriers. The door is left open for the beneficial owner of cargo to claim higher limits under any applicable convention and/or law if he can pinpoint the mode or point of occurrence of the loss/damage.
四、新课程介绍

初级工作场所华语课程

为提高本地劳动市场的竞争力，新加坡劳动力发展局（Singapore Workforce Development Agency）开发了一套称为“新技能资格”(WSQ)的通用技能培训系列课程，让各行业的工作人士得以参与相关培训，在提升工作技能的同时，也考取国际认可的技能资格。

"新加坡受雇能力技能系统"(Singapore Employability Skills System, ESS)作为新技能资格系统的一部分，英文版的 ESS 系列课程已于2004 年推出，华语版的 ESS 系列课程—“华语受雇能力技能系列课程”也于今年陆续出台。学院受劳发局委托开办此系列课程，为指定培训中心之一。当局也将给予学院首届学员高达学费的 90% 的高额津贴。学院语言文化中心将率先推出初级工作场所华语课程，上课时间订于七月中至十月末，总学时 90 小时。学院期待接下来更积极参与更多的相关培训课程，让学员有更多的课程选择，多方位自我提升。