

# **INSTITUTE OF CHARTERED SHIPBROKERS – LINER TRADES**

## **Session 8**

### **Bills of Lading and other Contractual Documents**

**Hellenic Management Centre – Feb/Mar 2021**

**TONY MASON**

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# Course Outline

- (1) Introduction – Liner Shipping and the Container Revolution
  - (2) Liner Ships
  - (3) Ports, Terminals and Cargo Handling
  - (4) Through transport systems – containers and intermodal transport
  - (5) Container Lines and their networks – co-operation
  - (6) Container Lines and their networks – service structures
  - (7) Types of businesses in the liner sector – structure and organization
  - (8) Bills of Lading and other contractual documents
  - (9) Contracts between sellers and buyers
  - (10) Revenue and Costs in the Liner Business
  - (11) The Future for Liner/Container shipping
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# Topics for this session

- Contracts of Carriage
  - Bills of lading and Waybills – role in liner shipping
  - Cargo Liability Conventions (Hague, Hague Visby, Hamburg, Rotterdam)
  - General Average
-

# Contract of Carriage

- Contract for the transportation of goods (or passengers)
  - Sets out the agreement between carrier and shipper
  - Defines
    - The parties
    - Goods being transported
    - Places of receipt and of delivery
    - Freight to be paid/by whom/when
    - Rights, duties and liabilities of the parties
  - Types of agreements – bill of lading/waybill/contract of affreightment
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# COMBICONBILL 2016

NEGOTIABLE COMBINED TRANSPORT BILL OF LADING PAGE 1

|                                                                                                                                                                                                                                                  |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------------------------|--|
| Shipper                                                                                                                                                                                                                                          |                                   | Bill of Lading No.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                  | Reference No.                      |  |
| Consigned to order of                                                                                                                                                                                                                            |                                   | Notify address                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                  | Vessel                             |  |
| Place of receipt                                                                                                                                                                                                                                 |                                   | Port of loading                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| Place of delivery                                                                                                                                                                                                                                |                                   | Port of discharge                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                  |                                    |  |
| Marks and Nos                                                                                                                                                                                                                                    | Quantity and description of goods |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Gross weight, kg | Measurement, m <sup>3</sup>        |  |
| Particulars above declared by Shipper                                                                                                                                                                                                            |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| Freight payable at:                                                                                                                                                                                                                              |                                   | <b>RECEIVED</b> the goods in apparent good order and condition and, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated.                                                                                                                                                                                                                                                                                                |                  |                                    |  |
| Freight and charges                                                                                                                                                                                                                              |                                   | The Carrier, in accordance with and to the extent of the provisions contained in this Bill of Lading, and with liberty to sub-contract, undertakes to perform and/or in its own name to procure performance of the combined transport and the delivery of the goods, including all services related thereto, from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services. |                  |                                    |  |
| Shipper's declared value of                                                                                                                                                                                                                      |                                   | One of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.                                                                                                                                                                                                                                                                                                                                                             |                  |                                    |  |
| subject to payment of above extra charge.                                                                                                                                                                                                        |                                   | IN WITNESS whereof TWO (2) original Bills of Lading have been signed, if not otherwise stated below, one of which being accomplished the other(s) to be void.                                                                                                                                                                                                                                                                                                         |                  |                                    |  |
| <b>Note:</b> The Merchant's attention is called to the fact that according to Clauses 9-12 and Clause 25 of this Bill of Lading, the liability of the Carrier is, in most cases, limited in respect of loss of or damage to the goods and delay. |                                   | Place and date of issue                                                                                                                                                                                                                                                                                                                                                                                                                                               |                  | Number of original Bills of Lading |  |
| Carrier:.....(insert name)                                                                                                                                                                                                                       |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| Signature:.....(Carrier*/Master*/Agent*)                                                                                                                                                                                                         |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| *Delete as appropriate                                                                                                                                                                                                                           |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| If signed by an Agent indicate with a tick <input type="checkbox"/> whether for and on behalf of:                                                                                                                                                |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| <input type="checkbox"/> Master; or                                                                                                                                                                                                              |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| <input type="checkbox"/> Carrier                                                                                                                                                                                                                 |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |
| Agent.....(insert name)                                                                                                                                                                                                                          |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                  |                                    |  |

**Bill of lading is an agreement between the shipper and the carrier**

**Three key functions:**

- (1) Receipt for good shipped
- (2) Evidence of a contract
- (3) Document of title

# **Main Functions of a B/L - (1) Receipt for Goods Shipped**

**Evidence of quantity and condition of goods shipped  
– carrier is responsible if difference in  
volume/condition at destination**

- Received in apparent good order and condition – any deficiencies in the goods themselves to be stated
  - Difference between a clean and dirty B/L
  - Number and kind of packages/description of goods for liner/containerised cargo
  - Description and Weight/Volume for bulk cargo
  - FCL container – ‘said to contain’
-

## **Main Functions of a B/L - (2) Evidence of a contract**

- Sets out the rights and responsibilities of the shipper and the carrier
  - Lists the parties, the goods, place of acceptance and delivery, payment of freight etc.
  - Bills of lading are normally only issued after the ship has sailed; the contract must therefore have been finalised at an earlier stage
  - Contract can be telephone conversation, email, booking note etc.
  - Small print on the back of the bill of lading taken as terms of contract, but if in conflict with verbal contract or booking note, the latter takes precedence
  - However once the title (see below) is transferred to a third party, the B/L can be presumed to represent the full terms of the contract of carriage
  - For liner cargo, contract also contains terms of relevant international convention (Hague, Hague Visby, Hamburg Rules) even if not explicit in the B/L.
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## **Main Functions of a B/L - (3) Document of Title**

- Document of title proves the right to ownership of property even if not in your possession
  - Three main purposes for a B/L as a document of title:
  - Enables the holder to take delivery at the port of discharge
  - This is the most common use – B/L has to be surrendered to the carrier before delivery is taken
  - Permits the holder of the B/L to transfer ownership of the goods while in transit
  - Many commodities are ‘traded’ while they are in transit; all the named consignee has to do is to sign and stamp (company stamp) on the back of the B/L;
  - Can be used as security for payment for example by a bank
  - This is a prime role of the B/L when shipment is under a Letter of Credit
-

# **Different types of Bills of Lading**

- **Clean/Dirty B/Ls**
  - **Combined Transport and Through B/Ls**
  - **To Order and Straight B/Ls**
  - **Received for shipment vs shipped on board**
  - **Switch B/L**
-

## To Order vs Straight B/Ls

- A B/L made out 'To Order' is a document which can be negotiated
- This involves putting 'to order' in the consignee box on a B/L instead of (or as well as) a named consignee
- If stated 'to order' a 'notify party' should then be inserted – to provide a contact for the carrier at destination – however the notify party has no legal status
- In case of a 'to order' B/L, it is the shipper who must sign and stamp the back of the B/L.
- If 'to order' of (a named consignee), it is the consignee who must sign/stamp
- The title to the B/L then belongs to the 'bearer' of the B/L – this is important when the B/L is being negotiated via a bank, since the title belongs to whoever holds the B/L – therefore the bank holds the B/L as security after it has paid the seller, and before receiving payment from the buyer (or the buyer's bank)
- Straight B/L – does not show 'to order' – not negotiable

### Contrast the uses of To Order and Straight B/Ls

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# Combined Transport vs Through Transport B/Ls

- A CT bill of lading requires the carrier to take responsibility/liability as principal from place of acceptance to place of delivery, even if the actual carrier is different for some part of the through transport; in that case the actual carrier is a sub contractor of the contractual carrier
  - A through transport bill of lading is issued when the ocean carrier arranges the pre or oncarriage on behalf of the shipper as agent only
  - Under a CT B/L, the shipper only deals with the issuer of the b/l in the event of a claim; under a TT B/L, the shipper will have to deal with the actual carrier for the pre or on-carriage
  - A carrier will issue a CT B/L when it is confident that it is able to control the complete movement even if it does not undertake the full door to door transport itself; it is more likely to issue a TT B/L when, for example, the oncarriage arrangements are outside its direct control
  - A shipper is likely to prefer a CT B/L so it only has to deal with one contracting party; it may however accept a TT B/L as an alternative to needing to make its own separate arrangements with different carriers
-

# Switch Bill of Lading

- An issued b/l is substituted by a new set called a switch bill of lading
  - Purpose is when changed commercial circumstances mean that the parties wish the b/l to show different shipper/consignee/notify party
  - e.g.
    - Shipper is Company B, Consignee is Company A
    - Company A does not wish the final buyer (Company C) to know who the supplier (original shipper) is, to avoid them doing direct commercial deals
    - Therefore switch b/l shows Company A as the shipper and Company C as the consignee
  - A new invoice and packing list will also have to be issued with the new details
  - Switch b/l does not show that it has been switched; however if asked, the line must advise that the b/l has been switched, but should not disclose details
  - Only Shipper/Consignee/Notify Party can be changed; also minor changes to cargo description
  - Other details should remain unchanged e.g. POL/POD, weight/number of packages
  - Issuing date same as on the original b/l
  - ALL original b/l's must be surrendered to get a new set; can only be requested by the cargo owner
  - B/L can be switched any time after the original set has been issued, and before the ship arrives at destination (lines will stipulate a deadline of a number of days before arrival)
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# COMBICONWAYBILL

NON-NEGOTIABLE COMBINED TRANSPORT SEA WAYBILL  
SUBJECT TO THE CMI UNIFORM RULES FOR SEA WAYBILLS PAGE 1

|                                                                                                                                                                                                                                           |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Shipper                                                                                                                                                                                                                                   |                                   | Reference No.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |
| Consignee (not to order)                                                                                                                                                                                                                  |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Notify party/address                                                                                                                                                                                                                      |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Place of receipt                                                                                                                                                                                                                          |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Ocean Vessel                                                                                                                                                                                                                              |                                   | Port of loading                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Port of discharge                                                                                                                                                                                                                         |                                   | Place of delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                             |
| Freight payable at                                                                                                                                                                                                                        |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Marks and Nos                                                                                                                                                                                                                             | Quantity and description of goods | Gross weight, kg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Measurement, m <sup>3</sup> |
| Particulars above declared by Shipper                                                                                                                                                                                                     |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |
| Freight and charges                                                                                                                                                                                                                       |                                   | <p>RECEIVED the goods in apparent good order and condition and, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated.</p> <p>The Carrier, in accordance with and to the extent of the provisions contained in this Sea Waybill, and with liberty to sub-contract, undertakes to perform and/or in its own name to procure performance of the multimodal transport and the delivery of the goods, including all services related thereto, from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services.</p> <p>The Shipper shall be entitled to transfer right of control of the cargo to the Consignee, the exercise of such option to be noted on this Sea Waybill and to be made no later than the receipt of the cargo by the Carrier.</p> |                             |
| Shipper's declared value of                                                                                                                                                                                                               |                                   | Place and date of issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                             |
| subject to payment of above extra charge.                                                                                                                                                                                                 |                                   | Signed for                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                             |
| Note:<br>The Merchant's attention is called to the fact that according to Clauses 9-12 and Clause 25 of this Sea Waybill, the liability of the Carrier is, in most cases, limited in respect of loss of or damage to the goods and delay. |                                   | ..... as Carrier                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             |
|                                                                                                                                                                                                                                           |                                   | by .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                             |
|                                                                                                                                                                                                                                           |                                   | As agent(s) only to the Carrier                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |

## Waybills

- Receipt for Goods
- Evidence of Contract of Carriage
- NOT a negotiable document of title
- Delivery is given to named consignee – no requirement for surrender of document
- When to use Waybills?
  - Short transit
  - No letter of credit requirement for b/l
  - High level of trust between parties
  - 'In house' shipment
- Can be covered by CMI Uniform Rules (if not covered by Cargo Liability Convention)

# Release of Cargo to Receiver

- Original b/l must be surrendered, properly endorsed
  - Check that freight has been paid (either by shipper or consignee) before release
  - What if the bill of lading is not available?
  - Role of Letter of Indemnity (LOI)
    - Risk that a different party has the original b/l
    - Check with the shipper
    - LOI should be bank supported (unlimited value)
  - Waybill or Consignment Note do not need to be produced
  - Electronic release (if electronic b/l)
-

# Cargo Liability Conventions

- Hague
  - Hague-Visby
  - Hamburg
  - Rotterdam (not yet in force)
-

# Why have Cargo Liability Conventions?

- 19<sup>th</sup> Century – early liner services – shipowners put their own clauses into B/Ls to avoid liability
  - Shippers, bankers and insurers were unhappy with this, and pressed for legislation
  - Early legislation was at national level, so only applied to goods shipped to/from that country
    - USA – Harter Act – 1893
    - Australia – 1904
    - Canada - 1910
  - This legislation laid down **minimum terms of liability below which a carrier could not go**
  - Recognition that uniform international rules were required
  - First international convention was Hague Rules, signed in Brussels ( 25 August 1924)
-

# Cargo Liability Conventions – what do they cover?

- Intention is to ensure that **minimum standards** apply under B/Ls and other contracts
  - Set out the rights and responsibilities of both parties (carrier + shipper)
  - Set out situations where carriers are exempt from liability
  - Financial limits on carriers' liability
-

# Cargo Liability Conventions – why are there three (or four) Conventions?

- Hague Rules – 1924
- By 1960's, there were problems with e.g.
  - Application to Containers
  - Setting limits of liability
- Hague Visby Rules – brought into effect by the Brussels Protocol of 1968 (a 'Protocol' amends an existing international convention)
- Developing countries felt that Hague/Hague Visby favoured maritime/shipowning nations
- Hamburg Rules signed in 1978 (came into force 1992)
- Developed countries thought the balance had swung too far – few supported the Hamburg Rules
- Attempt during 2000s to produce a new 'balanced' convention
- 4<sup>th</sup> Maritime Convention – Rotterdam Rules – not yet in force



# Cargo Liability Conventions – why are there three (or four) Conventions?

## Process by which International Conventions become law

- Representatives of governments discuss and agree the terms of a convention
    - Normally over several years
    - Generally at meetings/conferences convened by a UN body (e.g. IMO, UNCTAD)
  - When agreed, the convention is ‘adopted’ by a vote of the body which oversees its development
  - Individual countries can ‘sign’ the convention to signify their support
  - Countries then ‘ratify’ the convention, which is a commitment to apply via their national law
  - Conventions normally have a threshold which has to be reached before the convention comes into force (e.g. ‘X’ countries, representing tonnage of ‘Y’m GT under their flag)
  - If the convention replaces an existing convention, then countries ratifying a convention are required to ‘denounce’ the previous convention
-

# Cargo Liability Conventions – why are there three (or four) Conventions?

Individual countries 'sign' the convention – NO EFFECT



Individual countries 'ratify' the convention – NO EFFECT



Enough countries 'ratify' the convention for it to 'enter into force' (\*)



Convention applies under the law of those countries which have ratified



More individual countries can ratify and apply as law

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(\*) Typically one year after the threshold level of ratifications has been reached

## Cargo Liability Conventions – when they entered into force

- **Hague Rules** adopted 1924  
entered into force (by consultation)  
no minimum threshold
- **Hague Visby Amendment to Hague Rules (Brussels Protocol)**  
adopted 1968  
entered into force 1979  
minimum 10 states (5 states > 1m GT)
- **SDR Protocol** adopted 1979  
entered into force 1982  
minimum 5 states
- **Hamburg Rules** adopted 1978  
entered into force 1992  
minimum 20 states

# Cargo Liability Conventions – so who applies which conventions?

- Hague Rules – 49 countries still apply these
  - Includes USA, Brazil, Chile, Turkey and many smaller countries
- Hague Visby Rules – 55 countries apply these
  - Includes China, India, South Korea, Japan, most European countries
- Hamburg Rules – 34 countries have ratified
  - Mainly smaller and developing countries
  - Includes Morocco, Egypt, Hungary, Jordan, Kenya

(numbers are approximate as some 'grey areas')

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# Cargo Liability Conventions Quiz

## 1 What is the purpose of a Cargo Liability Convention?

(tick all statements that are correct)

- (a) To ensure that all carriers have a standard minimum level of responsibility/liability to the cargo owner under a B/L (or similar contract)
  - (b) To make sure that carriers have to pay for damage to cargo, however it is caused
  - (c) To provide a cap on the financial liability of the carrier in case of loss or damage to cargo
  - (d) To help carriers take as little liability as possible when cargo is lost or damaged
  - (e) To ensure that shippers also have clear responsibilities under the terms of the B/L
-

# Detailed look at Hague Visby Rules

## Article 1

- Definitions
  - Contracts of carriage – only applies to contracts of carriage covered by
    - Bill of lading or any similar document of title
  - Carriage of goods by sea
  - Covers 'the period from the time when the goods are loaded on, to the time when they are discharged from the ship'
  - Sometimes described as 'tackle to tackle' (though these words are not in the Rules)
  - Does not cover live animals or cargo which is carried on deck and is stated to be carried on deck
-

# Hague Visby Rules – Article 3 (1)

- Requirement to **exercise due diligence – before and at the beginning of the voyage**
    - To make the ship seaworthy
    - Properly man, equip and supply the ship
    - Make the holds (etc.) fit for carriage of cargo
  - Note that the obligation does not extend throughout the voyage (which would be the position under common law)
  - Shipowner has a duty of care which cannot be delegated, even if the actions are taken by the crew, or an independent contractor
  - If the shipowner is in breach of this Article, he cannot rely on the exclusions provided elsewhere in the Rules, though this is a 'grey' area
-

# Hague Visby Rules - Article 3 (2) onwards

- Requirement for shipowner to care for cargo throughout the voyage
  - Requirement to issue a bill of lading
  - Obligation on shipper to provide accurate cargo details
  - Time Bar
    - Notification of loss/damage within three days of taking delivery
    - Carrier discharged from liability unless 'suit is brought' within one year
  - Allows the carrier an extra three months (after the one year) to commence action for indemnity against a third party  
(note: this was not in Hague Rules)
  - Any attempt by the carrier to get more protection than allowed for in the rules considered null and void ('public policy' part of the Rules)
-

# Hague Visby Rules - Article 4 (1-4)

- Reiterates the due diligence requirement
  - However gives a long list of exceptions for which the shipowner is not liable – study this list! (Article 4(2))
  - Surprising that the shipowner is not liable for negligence in the navigation of the ship (Article 4 (2) (a))
  - Absolves the shipper from responsibility for loss or damage due to accidental errors and omissions
  - Allows ship to deviate to save property and for ‘any reasonable purpose’, as well as to save life (under common law, only deviation to save life is allowed)
-

# Hague Visby Rules - Article 4 (5)

## Financial Limits of Liability (1)

Firstly, we need to go back to the **Hague Rules**

- Limitation of liability = £100 per package
- Tied to the value of gold
- UK adjusted to £400 (Gold Clause Agreement)
- Countries can convert to their national currency (USA = US\$500)

Problems:

- Problems of fluctuating currency, particularly when currencies were no longer tied to gold
  - What about bulk cargoes – when there is no ‘package’?
  - What is a ‘package’ with container shipments – is the container a ‘package’
-

# Hague Visby Rules - Article 4 (5)

## Financial Limits of Liability (2)

### Hague Visby Limits of Liability

- SDR666.67 per package, OR
- SDR2 per kilo
- whichever is the higher amount

### Comments:

- Unit of currency was set as the Poincare Franc, which is linked to the value of gold (Hague Visby 1968)
  - A second amendment (1979) changed the currency to the SDR (Special Drawing Right) **SDR Protocol**
  - SDR is defined from a basket of five international currencies
    - US\$, UK£, Euro, Yen, Chinese Yuan
  - Value published daily (currently approx. SDR1 = US\$1.39)
-

# Hague Visby Rules - Article 4 (5)

## Financial Limits of Liability (3)

What is a package?

- See Art. 4(5) (c)
- For containers and pallets etc. it is the number of packages stated on the B/L as being in the 'article of transport'
- Otherwise, the 'article of transport' is the package

When does the carrier lose the ability to limit liability?

- See Art. 4 (5) (e)
  - 'if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with the knowledge that damage would probably result'
  - Limitation of liability is not otherwise lost for breach of agreement, though some different outcomes under case law.
-

# Hague Visby Rules - Article 4 (6) and 4bis

## Article 4 (6)

- Carrier's right to deal with undeclared dangerous cargo as it sees fit

## Article 4bis

- Added to Hague Visby (not in Hague Rules)
  - Equivalent to Himalaya Clause (SS Himalaya - Adler vs Dickson 1954)
  - Provides the servants/agents of the carrier the same protections and limitations as in the contract should a claim be made against them in tort
  - As this clause is not in the Hague Rules, a specific Himalaya Clause is needed in the B/L if Hague Rules apply
-

# Hague Visby Rules – remaining Articles

## Article 5

- Carrier can voluntarily increase its responsibility/liability providing stated in B/L
- General Average can be included in the B/L

Article 6 – allows the rules to be incorporated in documents other than B/Ls

Article 7 – can be extended to include time before and after carriage by sea  
(important for container shipments)

Article 8 – preserves carrier's rights to rely on other limitation conventions

Article 9 – covers nuclear shipments

Article 10 – Which voyages?

- Carriage between two ports in different states
  - B/L issued in a contracting state, or
  - Carriage from a port in a contracting state
-

# Cargo Liability Conventions Quiz

## 2 Under the Hague Visby Rules, which of these statements are correct?

(tick all statements that are correct)

- (a) The carrier is liable for loss/damage, if the ship carrying the cargo collides with another ship, due to an error by the Master
  - (b) The receiver has a year to tell the carrier of any loss or damage to the cargo
  - (c) The shipowner is not liable for loss or damage caused by a failure to keep the ship seaworthy during the voyage
  - (d) The carrier decides whether to calculate the maximum liability for loss/damage from the number of packages, or from the weight of the cargo
  - (e) Hague Visby Rules apply if the cargo is loaded at a port in a contracting state (i.e. one which has ratified the Hague Visby Rules)
-

# Hamburg Rules (1)

- Promoted by developing nations with the support of UNCTAD because of the belief that Hague Visby Rules are weighted in carriers' favour
- Adopted in Hamburg in 1978
- Required ratification by 20 states
- Came into force 1992

## Main differences from Hague Visby

- Applies to any contract of carriage (except charter parties)
  - Applies to goods loaded **or discharged** in a contracting state
  - Limits of liability increased
  - Liability for delay included
  - Long list of exceptions from liability in H-V removed and replaced by:  
*Burden of proof on the carrier to prove that it took all measures to prevent loss or damage to the goods*
-

# Hamburg Rules (2)

## **Main differences from Hague Visby** *(continued)*

- Live animals and Deck cargo are covered by the Rules
- Time Bar is increased to two years
- Jurisdiction – claimant can bring claims in various jurisdictions at his option (even if B/L has an exclusive jurisdiction clause)

## **Issues with Hamburg Rules**

- Maritime nations thought the pendulum had swung too far towards cargo interests
- Considered the language of drafting was poor and would lead to legal disputes
- As this is a brand new convention (not an amendment, as was Hague Visby) all the benefit of case law would be lost

**Outcome – only 34 states – mainly relative small – have ratified**

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# International Cargo Liability Conventions

## Rotterdam Rules (1)

- Intended to replace all existing conventions – a ‘modern’ and ‘balanced’ approach
  - Adopted by UN General Assembly in 2008, signing ceremony in Rotterdam, September 2009
  - Will come into force one year after ratification by 20 states
  - 25 states have ‘signed’ the convention, but only five have ratified (Spain, Congo, Togo, Cameroon, Benin)
  - Shipowners are generally in favour of the new convention – even though it increases their liability compared to Hague Visby – they prefer a generally accepted internationally convention to a proliferation of national/regional rules (which threatened by EU and USA)
  - Shipper bodies are divided – European Shippers Council is opposed, US shippers association (NITL) in favour
-

# International Cargo Liability Conventions

## Rotterdam Rules (2)

### Main Changes

- Limitation of liability increased
  - Liability for delay (as per Hamburg Rules) but total liability capped; parties must have agreed to a delivery date for this to apply
  - 21 days to notify of damage; two year time bar
  - Obligation to keep vessel seaworthy **throughout the voyage**
  - List of exclusions as per H-V, but 'nautical fault' exclusion removed
  - Applies to any transport document, as long as part of carriage is by sea; charter parties excluded; **e-documents are included**
  - Applies from place of loading to place of delivery (unless inland sector is covered by another international convention)
-

# Cargo Liability Conventions Quiz

## 3 Which of the following statements are correct?

(tick all statements that are correct)

- (a) The Hamburg Rules came into force in 1978
  - (b) It is possible for both the Hague Visby and the Hamburg Rules to apply to the same shipment
  - (c) The shipowner is liable for loss when cargo is delayed under **both** the Hague Visby **and** the Hamburg Rules
  - (d) The Hamburg Rules were introduced due to pressure from shipowners
  - (e) A two year Time Bar applies under the Hamburg Rules
-

# Cargo Liability Conventions Quiz

## 4 Which of the following statements are correct?

(tick all statements that are correct)

- (a) The Rotterdam Rules will cover electronic documents, as well as paper documents
  - (b) There are 25 countries which are already applying the Rotterdam Rules, as they have signed the convention
  - (c) The Rotterdam Rules can cover a cargo shipment while being transported on land, as well as by sea
  - (d) The Rotterdam Rules will automatically replace the other three conventions
  - (e) Under the Rotterdam Rules, a shipowner is liable if the ship is not seaworthy at all times
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Limits of Liability – Loss/Damage

|                    |                                                                                                                                  |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Hague</b>       | £100 per package (Gold Clause Agreement to £400 per package) – some differences by country (US COGSA provides \$500 per package) |
| <b>Hague Visby</b> | SDR 2 per kilo, or SDR 666.67 per package (whichever is greater)                                                                 |
| <b>Hamburg</b>     | SDR 2.5 per kilo, or SDR 835 per package (whichever is greater)                                                                  |
| <b>Rotterdam</b>   | SDR 3 per kilo, or SDR 875 per package (whichever is greater)                                                                    |

**Note:** An SDR is a weighted currency basket of USD, Euro, UK Pound, Yen + Chinese Yuan

## Limits of Liability – Delay

|                          |                                                                                         |
|--------------------------|-----------------------------------------------------------------------------------------|
| <b>Hague/Hague Visby</b> | Normally, no liability                                                                  |
| <b>Hamburg</b>           | 2.5 times freight payable on goods delayed, subject to certain limits                   |
| <b>Rotterdam</b>         | 2.5 times freight payable on goods delayed, not to exceed amount payable for total loss |

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# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Which contracts are covered?

- **Hague+ Hague Visby** B/Ls + other 'similar documents of title' (Case law determined that Straight B/Ls are covered); not charter parties
- **Hamburg** Extended to include all contracts of carriage by sea (not charter parties)
- **Rotterdam** All transport documents, providing part of the journey by sea; charter parties excluded; electronic transport records included

## What part of the through transport movement?

- **Hague+ Hague Visby** 'covers the period from when the goods are loaded on to the time when they are discharged from the ship'
  - **Hamburg** Carrier is responsible while 'in charge' of the goods at port of loading and discharge as well as on the ship
  - **Rotterdam** From where carrier receives goods to where they are delivered; can alter by agreement, but from loading to unloading (on ship) is minimum period
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

- **What Voyages are covered?**
  - **Hague** B/L issued in a contracting state
  - **Hague Visby** Shipments from a contracting state; B/L issued in a contracting state; contract of carriage expressly applies Rules;
  - **Hamburg** As per Hague Visby + shipments **TO** a contracting state
  - **Rotterdam** Place of receipt or loading or discharge or delivery in a contracting state; load and discharge ports must be in different states
- Note:** Risk of 'jurisdiction shopping' – a shipment from a Hague Visby state to a Hamburg/Rotterdam state could be covered by either/both sets of rules!!
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Who is the carrier?

- **Hague+ Hague Visby** Owner or charterer who 'enters into a contract of carriage with a shipper'
- **Hamburg** Any carrier who issues a B/L
- **Rotterdam** A person who enters into a contract of carriage with a shipper

## Who is liable?

- **Hague+ Hague Visby** The carrier
  - **Hamburg** The actual carrier on the same basis as the contractual carrier
  - **Rotterdam** A 'maritime performing party' (a performing party who offers services related to sea carriage)
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Special cargoes

- **Hague+ Hague Visby**
    - Live animals not covered (though to add confusion, the UK, which follows Hague Visby, **does** include coverage of live animals!)
    - Deck cargo not covered, as long as noted on the face of the B/L;
    - Dangerous Cargo is covered; special terms cover the carrier's ability to discharge/destroy the cargo without liability
  - **Hamburg**
    - Live animals and deck cargo covered with specific requirements.
    - Dangerous goods – as H/HV + specific obligation on shipper to correctly mark/label dangerous goods
  - **Rotterdam**
    - Live animals – carrier can exclude or limit liability
    - Deck cargo covered by rules if carriage on deck required by law, or in containers, or 'custom of the trade'.
    - Dangerous goods – carrier can decline to receive/load, and may unload, destroy or render harmless
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Deviation

- **Hague/Hague Visby** A carrier who deviates on a voyage may lose right to rely on defences; however deviations in attempting to save life/property are allowed
  - **Hamburg** No special provisions – subject to the carrier's general duty of care
  - **Rotterdam** Deviation generally does not deprive the carrier of any defence or limitation
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Notification of Damage

- **Hague/Hague Visby** Notice of loss/damage to be given on day of delivery, or within 3 days with latent damage
- **Hamburg** Notice of loss/damage to be given by the working day following the day of delivery, or within 15 days with latent damage; Notice of delay within 60 days
- **Rotterdam** Notice of loss/damage to be given at time of delivery, or within 7 working days with latent damage. Notice of delay with 21 consecutive days

## Limitation of Action

- **Hague/Hague Visby** 'Suit' i.e. legal action must be started within 1 year (of delivery, or when delivery should have taken place)
  - **Hamburg** Litigation or Arbitration to be commenced within 2 years
  - **Rotterdam** 2 years after delivery or when goods should have been delivered
-

# Comparison of Hague, Hague Visby, Hamburg and Rotterdam Rules

## Carriers' general duty of care

- **Hague+ Hague Visby** Carrier must exercise due diligence before and at the beginning of the voyage to:
    - Make ship seaworthy
    - Man, Equip and supply the ship
    - Make holds fit for cargoProperly care for cargo during loading, carriage and discharge
  - **Hamburg** H/HV specific requirements replaced by a general duty of care: Carrier must prove that he, his servants or agents took all measures which could reasonably be required (etc.).
  - **Rotterdam** Carrier to properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods  
  
Additionally obligations similar to H/HV but also during the voyage (as well as before and at the beginning of the voyage).
-

# Cargo Liability Conventions Quiz

**5 Which of the four conventions provides the highest level of liability for carriers?**

- (a) Hamburg Rules
- (b) Hague Rules
- (c) Rotterdam Rules
- (d) Hague Visby Rules



# Cargo Liability Conventions Quiz

**6 Which of the four conventions apply to shipments when the discharge port is in a country which has ratified the agreement?**

- (a) Hague and Hague Visby Rules
  - (b) Hague Visby and Hamburg Rules
  - (c) Hamburg and Rotterdam Rules
  - (d) Only the Hamburg Rules
-

# Cargo Liability Conventions Quiz

- 7 Which of the four conventions will normally apply to a container shipment not only when on board the ship, but also when the container is in the loading and discharge terminals?**
- (a) Hague and Hague Visby Rules
  - (b) Only the Hague Visby Rules
  - (c) Only the Rotterdam Rules
  - (d) Hamburg and Rotterdam Rules
-

# Bill of Lading Clauses

- Clause Paramount

Incorporates a specific liability convention; not strictly necessary in a bill of lading, except where the carrier applies the terms of the convention more widely (e.g. door to door, rather than port to port)
  - Himalaya Clause

Extends shipowners limit of liability to servants of the shipowner including employees and agents
  - Both to Blame Collision Clause

This clause needed to deal with a situation in US Law where a cargo owner could get round the 'error in navigation' limitation by suing the 'other' ship
  - Dangerous Goods
    - Merchant to comply with all international/national law, and advise carrier in writing of the nature of the hazard before transferring the goods to the carrier
    - If hazard not declared, carrier can do whatever is necessary (including destroying the goods) without compensation, with the Merchant liable for any costs
    - Even if goods properly declared, if they become a danger to person or property, Carrier can do whatever is necessary without liability (except General Average)
-

# Bill of Lading Clauses

- Return of Containers

Containers (etc.) shall be returned in good condition (subject to normal wear and tear), clean, within the stipulated time

Shipper (referred to as Consignor) responsible for damage etc. at the loading end

Shipper and Consignee jointly and severally liable for damage etc. at destination

- Freight and Lien

Freight deemed earned when cargo handed over to the carrier

Carrier can claim additional freight if tariff currency devalues

Carrier can inspect the cargo to check weight/measurement/nature of the goods

Carrier has a lien on the goods for any amount due under the contract

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# What is General Average?

- When and only when any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the purpose of preserving from peril the property involved in a common maritime adventure
  - Costs incurred and sacrifices made in saving the 'adventure' are shared among all the parties to the adventure (which will normally be both ship and cargo interests)
  - Laid down in York-Antwerp Rules – originally in 1890; latest version is 2016 (some contracts may still apply 1994 or 2004 version)
  - They do NOT have the status of a convention like Hague-Visby; they **only** apply if specifically incorporated in the contract.
  - Invariably there will be a 'General Average' clause in the bill of lading
-

# When does General Average apply?

Four elements must be present

- Danger or peril to the common adventure; there must be a peril (e.g. risk of the ship sinking) and it must affect the whole 'adventure' and not just one interest
  - There must be intentional/deliberate action for the common safety and not just for the safety of part of the property involved
    - For example if the property would have been lost anyway it does not count as having been 'sacrificed'.
  - Extraordinary expenditure or sacrifice is involved
  - The outcome must be successful; if nothing is saved, general average does not apply
-

# How does General Average work?

- Shipowner takes the decision to declare general average
  - An 'average adjuster' is appointed to manage the process; their job is to calculate all the costs of the GA, determine the value of all the contributing interests, and so assess each party's contribution
  - Cargo interests will be contacted, and will have to provide assurances that they will pay their contribution; if their cargo has been 'saved' they have to do this before taking delivery of the cargo. They are required to provide
    - Signature to an average bond
    - A cargo valuation form
    - A bank guarantee (which is normally provided by the shipper or consignee's cargo insurer)
    - If no bank guarantee, a cash deposit will be required
  - Expenses involved in managing the GA will be included in the costs of the GA
  - Cargo interests should ensure that their cargo insurance includes GA cover
  - As the whole process of GA is expensive, administratively complex, and creates a negative reaction from shippers, lines can choose NOT to declare GA, and meet the costs of an incident themselves; however if they choose not to recover from cargo interests, they may not be able to claim on their own insurance
-

# Electronic Bills of Lading

- Electronic Bills of Lading i.e. title can be transferred electronically – this is already happening, but not commonplace;
  - Three systems approved by International Group of P and I Clubs
  - **Bolero** (approved 2010)
  - **essDOCS** (approved 2010)
  - **e-title** (approved 2015)
  - Important to lines that P and I Clubs cover their liability
  - Bolero and essDOCS both maintain their own central register for logging and storing the holder of the eBL
  - e-title has a non-centralised system which facilitates the secure transfer of the eBL from one holder to another holder
-

# Questions from Past Exam Papers

**Explain the purpose of a Letter of Indemnity and explain why such an indemnity is commercially acceptable and valid, compared to indemnity being offered for a clean instead of claused bills or pre/post dated bills.**

**(July 2020 Q3)**

**Compare and contrast ALL the following types of bills of lading and how each are used differently, depending on the needs of the seller and buyer.**

- (a) Straight bill of lading**
- (b) 'To order' bills of lading**
- (c) Sea Waybills**
- (d) Bearer Bills of Lading**

**(November 2019 Q7)**

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# Questions from Past Exam Papers

**Answer BOTH parts of the question**

- (a) Outline the main differences between a bill of lading and a sea waybill, and explain the advantages and disadvantages of both**
- (b) Define what a switch bill of lading is and when and why it is used. Outline the key processes involved in its use**

**(November 2015 Q1)**

**Describe FOUR of the following clauses and their importance to ocean carriers**

- (a) General Average**
- (b) Himalaya Clause**
- (c) Freight and Lien**
- (d) Return of Containers**
- (e) Dangerous Goods**
- (f) Both to Blame Collision Clause**

**(November 2017 Q5)**

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