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The carrier strict liability in the carriage of goods by sea: Instituting the carrier liability regime under Hague and Hague-Visby rules

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Abstract
The present rules governing the carriage of goods by sea evolved in different climes variously in form and substance. Different rules were developed by many maritime nations and merchants at their pace and time. Until the later part of the 19th century, the general law principle was that the carrier was strictly liable as an insurer of the cargo. Nevertheless, this idea of strict liability of the sea carrier is not clear in the civil law jurisdictions contrastingly, there are abundant evidence of this in common law countries. With time, the bills of lading began to allocate risks between the carrier and cargo interests, legislative measures to control a considerable exemption of liability of the carrier in the bills of lading were put in place. The Hague rules came into being as the first set of rules creating a uniform international carrier liability regime, followed by The Hague-Visby rules. This article seeks to appraise the carrier's strict liability in contemporary liability regime.

Keywords: carrier strict liability, carriage of goods, law principle

Introduction

The main thrust of international maritime conventions has to do with the rules governing liability of the sea carrier. These conventions govern the assignment of risks and balance of rights and responsibilities between the carrier and the cargo interests. At what time and the degree of carrier's liability for economic loss resulting from loss of, or damage to goods or delay arising while the goods were in custody of the carrier are all issues specifically determined by the rules [1].

In many legal systems, the carrier was strictly liable for the damage of goods during transportation of cargo by sea; meaning that, the fault or negligence of the carrier was not a basis of its liability. It was usual that the carrier did not appear to have any excuse or defence regarding the strict liability (liability without fault). He did not bother to guarantee the safe delivery, because only small maritime vessels were in use and goods were not usually of a perishable nature [2].

Over time, this procedure experienced an attempt to apportion liability between the carrier and the cargo interests in the bills of lading. Bills of lading were initially issued by carriers only to acknowledge the receipt of goods. As time went by, bills of lading assumed the function of allotting of risks between the carrier started to provide for stipulations in their bills of lading not only to exempt themselves from liability relating to the common law exceptions but also liability arising from all risks of the sea and navigation of any kind whatsoever [3]. This marked the end of liability without fault extensively known and followed before. The import of this was to exculpate the ship-owners from all liability as carriers and reduce the justifiability to the condition of reckless bailees [4].

Carriers utilized their assertive negotiating influence and mishandle the freedom of contract in their interest. This adversely impacted the interests of cargo owners and warranted the statutory intervention to afford a minimum safeguard for the cargo interests. The basis of statutory regulations in international maritime conventions is to bring about a just balance between carriers and cargo interest by instituting the carriers' liability regime.

Central to the carrier liability regime are the basis of carriers liability [5] and the allocation of burden of proof. Subsequently, however, statutory elaboration in Hague Rules and Hague-Visby Rules have instituted and brought about fault based liability schemes. Article III of the Hague-Visby Rules [6] provides the basis of carrier's liability. It states that, in very general term, the two basic obligations of the carriers are to provide a seaworthy vessel and to care for the cargo [7].

It places the duty of due diligence on the carrier to maintain the ship to be seaworthy 'carefully' and 'properly' care for the cargo. Where damage or loss occurs while cargo is under the custody of a carrier (within the period of responsibility), the method adopted under The Hague-Visby rues is that the carrier is taken to be at fault. Flowing form this, the onus of disproving this presumption rests on him. Even at this, carriers enjoy immense immunity as stipulated in Article IV (2) of the convention, hence, the adoption of a system called incomplete fault liability by the convention [8].

International Convention on the carriage of Goods by Sea, 1978 [9], equally replicated the carrier liability for the loss or damage to the goods as well as the delay in delivery [10]. The Hamburg Rules effect serious changes to the basic rules on allocation of risks between cargo owners and carriers; it deletes the series of old concepts [11]. However, the process of speculative fault has still been the one reason of carrier's liability [12]. This provision has invalidated the schedule of exculpations in the Hague-Visby Rules [13]. This has changed the system of carrier's liability from incomplete fault liability system to complete fault liability system.

Basis of Liability under Hague Rules and Hague/Visby Rules

In order to reveal the basis of the carrier's liability and the onus of proof in transportation of cargo by sea, the analysis of duties of the carriers and available immunities need to be discussed. The breach of these duties constitutes the reason for liability. The most outstanding duties of the carrier under the Hague-Visby rules are to issue a bill of lading to exercise due diligence to keep the ship seaworthy, not to deviate from the agreed route and care for the goods [14]. The duties of a carrier in Article III(1) &(2) states that:

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to: (a) make the ship seaworthy; (b) properly man, equip and supply the ship; (c) make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe their reception, carriage and preservation.
2. Subject to the provisions of article IV (immunities), the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

This provision contains very important elements of the duties of a carrier and basis of its liability. The standard of behaviour, due diligence utilized in this provision is a popular expression which has attracted the scrutiny of scholars and interpretation in case laws. What constitutes due diligence, when it must be exercised and by whom are essential for the understanding and application of this important rule [15]. What constitutes due diligence always requires the consideration of the facts of the case and is affected by changes of the case of knowledge, technology (containerization) and other factors [16].

Due Diligence to provide Seaworthy ship

Seaworthiness connotes the fitness of the vessel in every respect to surmount the usual risks of the sea envisaged during navigation, and deliver the goods safely to the desired destination [17]. It suggests that the ship's body and equipment should be free from any damage, its engine must function correctly, its crew should be competent, documentation and other matters that has bearing on the fitness of the ship and its efficiency to overcome the usual risks of the sea. A ship which is properly crewed and equipped can be unfit to carry certain type of goods. This makes seaworthiness part and parcel of the fitness of a ship to carry the designated goods (cargo worthiness). Generally, a ship might be qualified to carry any cargo, but certain cargo requires special procedures like refrigeration, clean holds, etc. Therefore, any carrier who agreed with the cargo-owner to carry certain cargo has to undertake that his vessel is prepared and fit to carry it [18]. As a general rule, a ship should decline carrying perishable items if it is not properly equipped to carry them safely [19]. The essence of the carrier's duty to exercise due diligence in making the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation is to make the ship cargo-worthy [20]. Cargo-worthy vessel may still be unseaworthy, because the cargo can be stored safely in the hold though it cannot travel through its destination due to the defects in the ships engine, crew, chart, etc., also, uncargoworthy vessel will always be unseaworthy [21]. It is important to consider the nature of cargo to be carried, weather condition and the condition of the voyage while assessing the condition of seaworthiness.

At common law, the duty of the carrier to provide a seaworthy vessel is an absolute duty [22], meaning that there is no absolvements from liability for loss or damage if the ship is unseaworthy. However, the onus of proving unseaworthiness is on the party asserting same [23]. Moreover, there was no governing legislation and parties were at liberty to contract in such terms as pleasing to them, subject of course to such agreements not being contrary to public policy [24]. The carriers had the contractual freedom of escaping liability for unseaworthiness by expressly negotiating and contracting out the terms concerning such responsibility; it is posited that this freedom had been determined to cargo interests.

The Hague-Visby rules provided for three important modifications to the undertaking of carriers relating to unseaworthiness. The first is the reduction of an absolute and/implied warranty of the seaworthiness under common law to a duty to exercise due diligence to provide a seaworthy vessel [25]. Under this rule [26], unseaworthiness which is potentially undetectable by due diligence before the voyage commences or unseaworthiness that occurs after the voyage commences does not make the carrier liable. In spite of this, carriers are at liberty to assume a more stiff obligation by expressly warranting or guaranteeing the seaworthiness of a vessel in the contract for carriage of goods [27]. Secondly, the contractual freedom to do away with responsibility in relation to seaworthiness is abolished. Lastly, the burden of showing unseaworthiness, which was previously upon the party asserting it, is changed. Under the Hague-Visby rules the burden of showing that a carrier or his servants and agents had exercised due diligence to keep the ship seaworthy is upon the carrier [28]. The carrier is liable for cargo damage caused by unseaworthiness of its vessel only when it cannot prove that before and at the commencement of a voyage it exercised due diligence to discover and correct all the unseaworthiness conditions [29].

The duty of seaworthiness may be a non-delegable one. As a matter of necessity, shipping involves many people other than the carrier such as agents, servants, ship repair yards, surveyors, etc. derelictions committed by these persons could render a ship unseaworthy. A carrier is therefore liable for their fault, which was the decision in the case of *Riverstore Meat Co. Pty. Ltd v. Lancashore Shipping Co. (the Manchester Castle)* [30]. In this case, the court decided that the faults of these persons does not exonerate the carrier of its duty to exercise due diligence to make the ship seaworthy and by its nature this duty is non-delegable. The cargo was destroyed in the course of the journey due to the failure of a fitter of the ship repairers to carry out inspection cover to on storm valve. It was held that the fact that the repairs had been undertaken by a reputable independent contractor is no defence. The duty of making a ship seaworthy is fundamentally that of the owner, a duty which he cannot transfer to another [31]. The rules place an unavoidable and non-delegable personal obligation. It is important whether the ship-owner has given the duty of making the ship seaworthy to an independent contractor [32]. There may however be some variations in other jurisdictions.

The extent of carrier duty under Hague-Visby Rules

It could be shown that the duty of seaworthiness is restricted

to exercising due diligence before and at the beginning of the voyage. In other words, before loading of cargo has commenced and until the vessel weights anchor or ships her line to sail [33]. The duty does not seem continuous and ends after the voyage commences. The carrier is obligated to provide a cargoworthy ship starting from pre-loading and during the time of loading. The provision of the Hague-Visby rules are not clear as to whether the carrier is duty bound to provide a fully staffed, equipped and supplied vessel while the loading is on-going. It may not be logical to expect a carrier to put in place a fully staffed, equipped and supplied vessel during loading in as much as the vessel is ready to receive the agreed cargo. It may suffice to say that the duty of a carrier is fulfilled if he supplies a fully manned, equipped and supplied ship immediately before the commencement of a voyage. The obligation under the Hague rules concerning the seaworthiness terminated at the commencement of the voyage.

Literarily read, the relevant provisions of the Hague-Visby rules show that the time of obligation is "before and at the beginning of the voyage: A ship, which is unfit for the reception of cargo, is unseaworthy from the very beginning". In practice, the undertaking applies from the beginning to the end of the voyage, because the concept of seaworthiness includes cargo worthiness and the duties provided for in sub-paragraphs (b) and (c) of Article III (1). After the voyage the carrier may avoid liability for damage caused by unseaworthiness, relying on Article IV (2)(p), unless the unseaworthiness is detected by the use of the due diligence before and at the beginning of the voyage [34].

Proper and Careful handling of Cargo

The responsibility of a carrier to examine the cargo is set out in Article III(2) of the Hague-Visby rules. According to the provision, "the carrier shall properly and carefully" show that the obligation for the care of cargo is stringent [35]. Additionally, it does not reflect the expression of due diligence utilized in relation to the carrier's duty of seaworthiness. Rather, due diligence is interpreted by courts to mean "properly and carefully". 'Properly and carefully' are interpreted to have distinct meanings and therefore creating distinct obligations [36]. 'Carefully' has a narrow meaning of merely taking care, whereas 'Properly' is carefully plus an element of skill or the use of sound system [37]. However, there has been serious argument that the two expressions have a very little practical difference [38]. The duties are, the responsibility to study the cargo upon receipt and determine whether certainly the carrier is prepared to load, carry and discharge it [39]. Accordingly, if the carrier knows that it is not able to do so 'properly and carefully', the carrier must refuse the goods [40].

The Hague-Visby rules unarguably states that the duty to undertake due diligence to keep the ship seaworthy related to the period prior to or at the beginning of the voyage. As regards the duty of proper and careful handling of cargo notwithstanding, there is nothing like 'before or at the commencement of voyage'. However, it is unusual to apply this qualification on this type of duty. This duty should be unbroken. The period of responsibility under the Hague-Visby rules is from tackle to tackle. The duty of properly and carefully looks after the cargo is expected only within this period. It is in the period of time when the goods are in custody of the carrier regulated under Article 1(e) of The Hague-Visby rules. Even though the duty bordering on seaworthiness is not continuous from the clear wordings of Article III, there is no practical importance regarding the damage to the cargo since many situations fall under the duty to properly care for the cargo. The carrier's duty as provided for in this section commences from reception of the cargo through its discharge. The duty is extinguished when the cargo is properly discharged.

There is a specific provision in Hague-Visby rule regarding liability of a carrier for delay in delivery of the cargo. Therefore, if there is physical damage due to delay in delivery of the cargo, it is normally recovered under this general duty to "properly and carefully" care for the goods [41]. The rules are not clear whether the economic losses other than damage to the cargo such as a pure delay is recoverable under the Hague-Visby rules. Some countries provide express liability under their maritime codes [42].

It is a personal obligation to exercise due diligence to provide seaworthy vessel without delegating such duty. Similar position is established in case laws regarding the obligation of the duty of properly and carefully handling the cargo. Consequently, carriers may not be excused for improper care of cargo by arguing that the loss or damage is attributable to their having followed the advice of the competent contractors whose services they retained [43]. The duty of keeping, caring for and carrying the cargo is non-delegable duty of the carrier [44].

Obligation to Issue Bills of Lading

The issuance of bill of lading is another typical responsibility of the carrier under the Hague-Visby rules [45]. It is stated that "the shipper can demand the carrier to issue a bill of lading showing the leading marks, the quantity of the goods". Its issue of course, is upon request of the shipper as clearly seen in article III(3). Howbeit, once issued it serves as the documentary evidence that the goods were received in good condition. This goes to confirm the speculative fault of the carrier for the cargo damage or loss happening within the time of responsibility provided for in The Hague-Visby rules. The rules stated that a carrier issues a bill of lading without providing penalty for non-compliance, by that creating room for abuse [46]. Practically, the carrier finds it difficult to confirm the correctness of information given by the shipper, in most cases cargo may be covered within package, or packed in containers [47]. Since the bill of lading is issued by the carrier, it is the carrier and not the shipper that will be liable to the consignee for any disparity in the bill of lading [48]. On account of bill of lading, the shipper is bound to provide correct information as far as the condition of goods is concerned. The carrier on his own, may refuse to issue a bill of lading if there is a rational doubt that the goods are not in good condition [49]. According to article III (5), the shipper should indemnify the carrier against any inaccuracies provided in the bill of lading.

Deviation

In most cases, the route of navigation may not be determined in the contracts for the carriage of goods. If there is no such determination, the proper route is the direct geographical routes between the ports of loading and discharging [50]. This presumption is however rebuttable because some other known routes could be followed. If the carrier intentionally deviates from the normal route and the cargo is subject to additional risks which the cargo owner

has been unable to take into account through insurance cover, he will be liable to the cargo owner [51]. The duty of the carrier not to unreasonably deviate from the route of voyage is not explicitly set out in the Hague-Visby rules [52]. Analytically, the vessel that has voluntarily deviated from its agreed route is liable for resulting damages whether it is caused by the exempted perils or otherwise. It is unclear if the carrier is liable only for delays resulting from deviation where there is no resulting loss or damage. In the event of a resulting damage, it comes under the duty to properly and carefully care for the goods. Accordingly, there is a liability for resulting loss or damage.

Immunity from Liability

The Hague-Visby rules provides for the rights and immunities of a carrier under article III. Carriers are not permitted to contract out any duties in the Hague-Visby rules [53]. Since the relationships in carriage of cargo by sea are contractual by nature, they are affected by the concept of discharge in general contract laws. In case of some unpredictable events which render a contract illegal, impossible or meaningless, parties are discharged and freed from their primary obligations. Consequently, a long list of some acts exempting the carrier from liability for damage or loss is provided for in the rules [54]. They are commonly called "excepted perils". Examples that are unique include exemption for fault or neglect in the navigation, fault in the management of the ship and fire exemption.

Navigation of the vessel covers steering and maneuvering the ship, which includes the use of lanterns, signal and navigational equipment, as well as response to signals from other ships and marks … etc [55]. Exemption for navigational error evidently arose out of clauses such as 'accidents of navigation excepted' introduced into early bills of lading and later became necessary to be incorporated during the 1880's by the Protection and Indemnity (Insurance) clubs [56]. These defences are believed to exist during the days of the sail when the owner lost the control of the ship as soon as it disappeared on the horizon [57]. This is also recognized in article IV (2)(a) of Hague-Visby rules showing that the exemptions are available for errors connected by master, mariner, pilot, or the servants of the carrier. This provision means that if the carrier himself commits the errors, he cannot invoke exemptions.

Activities in connection with the operation of the ship other than strictly navigational activities amount to the management of the ship [58]. Management of the ship include, among other things, the ship's condition, manning and equipment [59]. Usually, there is no definite difference between the acts in respect of the management of the ship and acts in the management of the cargo. Managerial error is an erroneous act, omission of the basic reason which was primarily directed towards the ship, her safety and well-being and towards the venture generally [60]. The stipulation under article IV (2)(a) does not refer to acts, neglects or defaults in the management of the cargo. As earlier mentioned, under article II of the Hague-Visby rules, the carrier is bound to "properly and carefully" look after the cargo. An error committed in the course of caring for the cargo amounts to breach of duty under this provision. Article IV of the Hague-Visby rules does not provide exemption for errors of this nature. Sometimes both ship and cargo are affected by the same negligence. If this is the case, a carrier can usually avoid responsibility but each case will be decided on the individual facts of the case [61]. Consequently, there is no consistency in legal literature as to how risk should be allocated in these situations. Therefore, the courts, tend to have recourse to the property primarily affected by the conduct in issue [62].

The carrier is exonerated from loss or damage that occurred due to fire, unless fire is caused by the actual fault or privity of the carrier [63]. Perusing this provision literarily, reveals that the carrier will be liable for fire when it is caused by its own negligence, unlike the above two exceptions. Concerning the corporate ship owners, it has been held that only the negligence of the senior employee or officer will result in carrier liability, not that of a mere employee or agent [64]. Extinguishing fire often involves the use of water resulting in damage to the cargo. Considering damages of this kind, there should not be liability under the scope of duty and care, except the carrier made use of water in dousing fire [65].

The duty of the carrier and exemption – How connected?

Where cargo interest warrants a claim for damages arising from a breach of article III (1) of the Hague-Visby rules, the carrier has the defence of proving that he exercised due diligence for exemptions listed under article IV to avail him [66]. Gleaned from the text of article IV(1) Hague-Visby rules, it seems that for a carrier to invoke items in the catalogue of exceptions [67], it must prove that article III(1) has been complied with:

Neither the carrier nor the ship shall be liable for the loss or damage arising or resulting from unseaworthiness unless caused by due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and … in accordance with the provision of paragraph 1 of article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the existence of due diligence shall be on the carrier or other person(s) claiming exemption under this article [68].

From the above, it therefore logically follows that the carrier is not responsible for cargo damage or loss due to the many exemptions, provided that the carrier has exercised due diligence to keep the ship seaworthy, while carefully and properly handling the cargo. In practice, deciding whether the carrier has undertaken his duty under article III (2) cannot be treated in isolation with carrier's obligation of due diligence in respect of seaworthiness under article III(1) and the exonerating exceptions under article IV (2) [69]. These three key elements of Hague-Visby rules are highly interrelated [70].

Requirement of seaworthiness and the invoking of immunities

Literatures abound and are consistent as to the exact relationship between the duties of the carrier and exemptions and the construction of article IV (1) Hague-Visby rules. One outstanding position is that this provision is an indication of the overriding nature of the obligation. This common law principle dictates that the carrier must first prove that it has exercised due diligence to make the ship seaworthy before it is entitled to rely upon the exemptions [71]. At common law, if there is any casual connection between failure to fulfill an obligation and the damage, the non-excepted peril is held to be the only relevant cause and the carrier will be liable for all the damages, not merely for the portion that was caused by the

non-excepted peril [72]. The exemptions are never available to the negligent carrier irrespective of the requirement of causation.

The practicability of this common law approach under Hague-Visby rules raises pertinent questions. Furthermore, the clear wordings of the provision shows that in order to prevent reliance of the carrier on the exemptions, there should be the casual relationship between the loss or damage and the act of negligence. Therefore, negligence which is not an actual cause or has not contributed to the loss or damage does not stop the carrier from relying on the exemptions. The 'overriding obligation' used in decisions bordering on the Hague-Visby rules has different meaning from the one under the Common Law [73].

In the case of *Great China Metal Industries Co. Ltd v. Malaysian International Shipping Corp. Bhd* [74], the vessel experienced heavy weather when crossing the Great Australian Bight and the consignment of coils in containers stowed below deck damaged. The Australian court among other things, examined whether carriers could rely on the 'perils of the sea' exception while there was negligence. The court ruled that the carrier could not rely on excepted perils if negligence was a concurrent cause with the peril.

There is also a palpable doubt regarding the clarity of the consequences of the relationship between the duty of seaworthiness and availability of defences under article IV of the Hague-Visby rules. Accordingly:

It cannot mean that if the seaworthiness duty is not first proved to have been complied with, the exception of article IV cannot be invoked at all whether or not the damage occurred in connection with unseaworthiness. Rather, it must mean that if article III (1) is not fulfilled and the non-fulfillment causes the damage the immunities of article IV cannot be relied on [75].

Consequently, for a carrier to attempt availing himself of expected perils pursuant to Hague-Visby rules, he has to demonstrate positively that the latter was the real or cardinal, and perhaps the exclusive cause of the loss or damage [76]. When the carrier violates his duty of 'properly and carefully' handling the cargo and it is the cause of the damage, he can still invoke exceptions. The test to be applied is whether the damage caused by the peril was avoidable [77]. If it was avoidable, the exemptions cannot be invoked.

Apportionment of Burden of Proof

The legal concept of burden of proof serves to resolve a very important question, namely; if two parties are in an argument, who is expected to prove what? In resolving this question bordering on cargo liability claim, it is about the proof of a carrier having fulfilled his duties or not and the proof of the circumstances exonerating the carrier's liability or not. Frequently, litigations of international commercial disputes are subject to the commercial or civil proceeding of a country having jurisdiction at trial. However, the focus here is the rules of allocation of the burden of proof, as they exist under the Hague-Visby rules. Under the rules and in many situations there are no express burden of proof provisions and the allocation of the burden is subject to considerable uncertainty [78]. Also, the essence of invoked exception often determines what should be proved.

The first thing to be considered in proving cargo claim is the cargo interest declaring his *prima facie* case to show that he has suffered loss or damage to cargo while it was under custody of the carrier. As noted earlier, the Hague-Visby rules is from time of shipment to the time of discharge, otherwise referred to as 'tackle to tackle'. This part of proof is actually easier for the cargo owner since he can do so, for instance, by tendering a clean bill of lading issued by the carrier during shipment showing that the goods were received in good condition. This initial burden is discharged if he shows that the condition of the cargo has changed at the time of arrival (discharge). Going by the basis of liability as a 'presumed fault', the law then presumes that the carrier was at fault. At this juncture, the burden now shifts to a carrier to defend the prima facie case of the cargo owner.

Looking at the cargo interest in a protective sense, the carrier is expected to prove that he has acted in due diligence in keeping the ship seaworthy in line with article III (1). If the carrier succeeds in adequately showing that he had exercised due diligence in keeping the ship seaworthy he is exempted from the loss or damage for alleged unseaworthiness. However, the mere fact that the carrier has proved the exercise of due diligence might not exempt him from liability. Clearly, the carrier should be able to show the actual cause of loss or damage while arguing that it was either not possible to avoid loss or damage by due diligence or the cause falls under article IV (2)(a) of the Hague-Visby rules, which states thus:

Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault nor the privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or the damage.

By the text of this provision, it can be shown that the party on this exemption (the carrier) should be able to prove that the causation for damage or loss falls under 'any other cause' qualification of this rule. Reasonably, it is not possible to rely on this provision in defence without showing the real cause of the loss or damage.

On the other hand, the carrier should prove that the cause of loss or damage is one of 'perils of sea' considered under article IV (2)(a)-(e) of the Hague-Visby rules. There are some exemptions for which the carrier is exonerated from liability despite the existence of the fault. They can choose to resort to any of them. What he seeks to prove follows from his choice of exemption(s). The notable defences often relied on by carriers are the error in navigation and managerial errors. The carrier here does not prove the absence of fault, rather, the existence of fault or neglect, the nature of which has to do with the navigation or management of the ship. The difference between the management of the ship and the management of cargo is often unclear. The exemption of liability is not available for the carrier if the fault is of the nature that it relates to the management of cargo and not the management of ship.

Management of ship refers to the ship's condition, manning and equipment [79]. Exemption of fire is provided under article IV (2) of Hague-Visby rules exonerating the carrier, unless the fire is caused by the actual fault or privity of the carrier. It will be unjust and unreasonable to hold the carrier liable where the causality falls outside his expectation and control [80]. If the carrier succeeds to bring the loss within an exception, he will escape liability unless the cargo owner can succeed to establish a breach of a carrier's duty of care

under article III (2) of the rules [81]. Concerning the allocation of the respective burden of proof between carrier's duty of care under article III (2) and his reliance on the exceptions contained in article IV(2) there is a lot of difficulty in allocating the burden of proof.

Conclusion

The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading – the Hague rules, seemed to be the foremost body of rules regulating a uniform international carrier liability of the parties. It apportioned the risk of loss for injury to cargo carried on ships in international commercial transactions under bills of lading [82].

The Hague rules created the global minimum rule of the carrier's liability and the maximum exemptions to the carriers. The parties reserved the authority to arrange their own agreements concerning those parties of the contract not expressly covered by the rules [83]. It made the contractual exemption of the ship-owners from liability impossible while increasingly protecting carrier's liability.

Many specialized, commercial and political advancement subsequent to the Hague rules warranted amendments to its provisions. The CMI sponsored the revision works and an amendment to Hague rules which was approved by the Visby protocols in 1968. This gave birth to the Hague-Visby rules, which was further amended by the Brussels SDR Protocol.

The essential features of the Hague rules however were not significantly altered. They have the same basic rule as far as carrier's duty of care, duty to exercise due diligence to provide a seaworthy vessel and property, equip and staff the vessel were concerned. Both are inapplicable when documents other than bills of lading are used [84].

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