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# An analysis of the carrier's liability regime under the Hague-Visby, Hamburg and Rotterdam rules

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**Abstract**
International conventions on the carriage of goods by sea came into existence in order to ensure better allocation of risks between carriers and cargo owners. These conventions such as the Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules contain rules regulating the liability of the carrier for loss of or damage to the goods, or delay in delivery. Dissatisfaction with the Hague-Visby Rules on the ground that it contained provisions which were more favourable to the carriers led to the emergence of the Hamburg Rules. However, contrary to expectations the Hamburg Rules have not gained widespread acceptance in the shipping industry. In order to achieve uniformity in the international law on the carriage of goods by sea, the Rotterdam Rules were created. In addition to its provisions on the carriage of goods by sea, the Rotterdam Rules also cover multimodal carriage. This article critically examined the carriers' liabilities and the allocation of the burden of proof under the different regimes of the Hague-Visby rules, the Hamburg rules and the Rotterdam rules. The carrier's duties and limits of liability were analysed with a view to highlight the differences and improvements under the regimes of the different international conventions.

**Keywords:** liability, hamburg rules, Hague-Visby rules, Rotterdam rules, burden of proof

## Introduction

The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1924 (Hague Rules) came into existence in recognition of the need to ensure the protection of shippers and to 'allocate risks in line with their commercial needs' [1]. Prior to the nineteenth century the carriers could only escape liability if the goods were lost or damaged as a result of any exceptions at common law [2]. However, the freedom of contract changed this position, enabling the carriers to devise methods to escape liability by structuring the contracts in their favour [3]. In response to this development, countries either enacted laws or introduced the use of particular forms of bills of lading [4]. It was however realised that the only way to effectively resolve this problem was by a collective effort on an international level. Therefore the Hague Rules were developed in 1921 by the Maritime Law Committee of the International Law Association after consultations with stakeholders in the maritime industry [5]. After the relevant changes, the Hague Rules came into effect in 1924. With time however, it was argued that the cargo owners' interests were not given due consideration, as the shipowners had an undue advantage under the Hague Rules [6].

The Hague Rules were amended in 1968 [7] and 1979 [8] and became known as the Hague-Visby Rules. However, the Hague-Visby Rules have not been implemented by all the parties to the Hague Rules. The Hague-Visby Rules have been criticised as being skewed in favour of the carriers to the detriment of the cargo interests, this is hinged on the fact that the carrier can avoid liability for the loss or damage to cargo arising from the negligence of its agents [9]. Additionally, the provisions of the Hague-Visby Rules with respect to its period of application was regarded as unsatisfactory [10]. Following the failure of the Hague-Visby Rules to achieve widespread acceptance, efforts to improve the rules and thereby establish a uniform international law on the carriage of goods by sea were set in motion by United Nations Conference on Trade and Development (UNCTAD) in the late 1960's. UNCTAD aimed to set up a 'balanced allocation of responsibilities and risks between suppliers and users of shipping services' [11]. Subsequently, the United Nations Commission on International Trade Law (UNCITRAL) was charged with the responsibility of developing the new rules on the carriage of goods by sea [12]. In 1978, the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) were adopted, the rules entered into force in 1992, however the number of countries which have ratified the Rules has been low [13]. The major shipping nations have failed to adopt the Hamburg Rules on the ground that:

'the mandatory character of the liability rules with respect to the scope of application of the rules was too wide and the deletion of the exculpatory clauses make the liability floor too slippery as compared to the tackle to tackle regime under The Hague/Visby Rules which they were used to' [14].

In a bid to achieve uniformity in the international law on the carriage of goods by sea, efforts were initially made by the Comite Maritime International (CMI) and subsequently completed by UNCITRAL to establish a new set of rules to govern the carriage of goods by sea [15]. The United Nations Convention on Contracts for the

International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) opened to signature at Rotterdam on September 23 2009. The convention will enter into force one year after ratification by the twentieth member state [16]. This article examines the carrier's liabilities under the different regimes of the Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules. The carrier's duties, burden of proof, order of proof and limits of liability are analysed with a view to highlight the differences and improvements under the various international conventions.

**Duties of the carrier**

The main duties of the carrier are to provide a seaworthy ship and to take care of the cargo from the beginning until the end of the voyage [17].

**Seaworthiness**

In order to be deemed seaworthy the ship must be in such a condition at the commencement of the sea voyage that it can carry out the contractual voyage 'in safety, both as regards the vessel itself and the particular cargo to be carried on the voyage' [18]. In *McFadden v Blue Star Line* [19] it was noted that in order to ascertain the seaworthiness of a ship the:

> …vessel must have that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage, having regard to all the probable circumstances of it... If the defect existed, the question to be put is: Would a prudent owner have required that it should be made good before sending his ship to sea had he known of it? If he would, the ship was not seaworthy within the meaning of the undertaking.

A ship may be unseaworthy as a result of inadequacies relating to the safety of the ship or the safety of the cargo. In *Lyon v Mells* [20] a ship with a leaking hull was held to be unseaworthy. Unseaworthiness may also be non-physical such as where a ship lacks the appropriate certification required by law or local authorities at the port. In *Ciampa and Others v British India SN Co* [21] the ship was deemed to be unseaworthy because of the failure to present a document showing 'a clean bill of health' after calling at a port where there was a plague.

Article III (1) of the Hague-Visby Rules provides that:

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 for their reception, carriage and preservation.

The carrier is duty bound to exercise due diligence to maintain a seaworthy vessel. Due diligence has been described as 'indistinguishable from an obligation to exercise reasonable care' [22]. The standard of due diligence is the same as the duty to take reasonable care in common law [23]. In *Papera Traders Co Ltd and Others v Hyundai Merchant Marine Co Ltd and Another (The Eurasian Dream)* it was noted that 'the exercise of due diligence is equivalent to the exercise of reasonable care and skill: lack of due diligence is negligence…..' [24]

The duty to exercise due diligence is of relative nature and will be decoded according to the circumstances of each case owing to the fact that the degree of diligence expected of the carrier will be based on the conditions of the sea voyage set out in the contract and the type of cargo which the carrier has agreed to carry on board the ship [25].

The duty of the carrier to exercise due diligence to provide a seaworthy ship cannot be delegated to agents or independent contractors. In *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd (The Muncaster Castle)* [26] a firm of reputable repairers were employed by the carrier to repair the ship. The repairers left one of the storm valves open which caused water to enter the ship and damage the cargo. It was held that the carrier has a duty to exercise due diligence to ensure that the ship is seaworthy and the duty cannot be transferred. Under Article III (1) of the Hague-Visby Rules the duty to provide a seaworthy vessel arises before and at the beginning of the voyage. In *Leesh River Tea Co v British India Steam Navigation Co* [27] it was held that the duty does not extend throughout the duration of the voyage. It ends at the beginning of the contractual voyage. Article I (e) of the Hague-Visby Rules provides that the period of application of the Hague-Visby Rules is from the time when the goods are loaded on the ship to the time when they are discharged from the ship.

The duty to exercise due diligence to make the ship seaworthy is not expressly stated under the Hamburg Rules. However, article 5(1) makes it clear that the carrier will be liable for loss or damage to the cargo unless it is shown that he and his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. The absence of an express provision on seaworthiness reinforces the need for the carrier to discharge its burden of proof by showing that it acted with due diligence [28]. The period of responsibility of the carrier under the Hamburg rules are set out in article 4 which provides that the carrier is responsible for the goods from the time it is in charge of the goods 'at the port of loading, during the carriage and at the port of discharge'. Therefore, in contrast to the position under the Hague-Visby Rules under which the period of application of the rules is from tackle to tackle, the Hamburg rules widen the carrier's period of responsibility and the period of application of the rules to port to port. This means that the Hamburg rules will

apply 'to any period of storage at the port of loading in the carrier's custody prior to actual loading and any equivalent period at the port of discharge prior to taking of delivery' [29].

In an extension of the duty to exercise due diligence to provide a seaworthy ship the carrier is required under the Rotterdam Rules to ensure that this duty is carried out throughout the voyage. Article 14 of the Rotterdam Rules provide that the carrier has a duty to exercise due diligence to ensure the seaworthiness of the ship for the entire duration of the voyage. A ship will be deemed to be seaworthy under Article 14(a) where it '… is fit to confront the ordinary perils that are expected of the voyages and her engines are free of defects' [30]. The Rotterdam rules have altered the period of responsibility of the carrier from the previous position under the Hague-Visby Rules. The rules now require the carrier to ensure that the ship is seaworthy before, at the beginning of and during the sea voyage.

It was previously suggested at the Diplomatic Conference held in 1922 that the duty of seaworthiness of the ship should be made continuous by using the word 'maintain' instead of 'make'. The suggestion was however jettisoned on the ground that it would be unfair to expect the shipowner to ensure the seaworthiness of a ship which was already on the high sea. The subsequent introduction of the continuous obligation of maintaining seaworthiness throughout the voyage has been justified on the ground that there is now constant communication between the shipowner and the ship [31]. In an attempt to explain the meaning of the words 'duration of the voyage at sea' which appear in article 14 it has been opined that the carriers' duty to keep the ship seaworthy ends after the delivery of the cargo to the consignee [32]. Additionally, article 14 (c) of the Rotterdam Rules in contrast to the position under the Hague-Visby Rules require that the carrier in carrying out his duty to provide a seaworthy ship ensures that only adequate containers that are fit and safe to receive, carry and preserve the cargo are provided. The carrier's period of responsibility has been expanded under Article 12 from what was previously applicable under the Hague-Visby Rules and the Hamburg Rules to include the time from which the carrier receives the goods to the time when the goods are delivered.

**Care of cargo**

Article III (2) of the Hague-Visby Rules charges the carrier to 'properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried'. This duty has been described as an '… absolute obligation on the carrier during the voyage, and it is only qualified by the exceptions in Article 4' [33]. In *Albacora SRL v Westcott and Laurence Line* [34] it was noted that the use of the word 'properly' together with the word 'carefully' signifies that 'the element of skill or sound system is required in addition to taking care', the carrier had a duty to 'adopt a system which is sound in light of all the knowledge which the carrier has or ought to have about the nature of the goods' [35]. Additionally it was stated that a 'sound system does not mean a system suited to all the weaknesses and idiosyncrasies of a particular cargo, but a sound system under all the circumstances in relation to the general practice of carriage of goods by sea'. The duty to load, handle, stow, carry, keep, care for and discharge the goods carried is continuous and it is to be carried out for the entire duration of the contractual journey [36].

Although the Hamburg Rules do not specifically provide for the carrier's duty to care for the cargo, it is intended that the carrier will take care of the cargo throughout the duration of the voyage. This is covered by article 5(1) which provides that:

The carrier is liable for the loss resulting from loss of or damage to the goods, as well as delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

The provisions of articles 13 and 14 of the Rotterdam Rules revise the already existing provisions of the Hague-Visby Rules in such a manner as to ensure that the duties of the carrier are in line with the scheme of multimodal carriage adopted by the Convention [37]. Article 13(1) of the Rotterdam Rules provides that throughout the period of responsibility the carrier has a duty to 'properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods'. Contrary to the provisions of article III (2) of the Hague-Visby Rules delivery has been included owing to the expanded scope of the Rotterdam Rules which applies to door to door carriage. The shipper or consignee in line with the provisions of article 13(2) of the Rotterdam rules, may carry out any of these activities in accordance with the agreement reached between the parties provided that such an agreement is referred to in the provisions of the contract. By virtue of article 11 of the Rotterdam Rules the carrier has a duty to 'in accordance with the terms of the contract of carriage carry the goods to the place of destination and deliver them to the consignee'. Therefore, the goods will only be delivered to the consignee if the delivery of the goods is included in the contract of carriage entered into by the parties. Article 15 of the Rotterdam Rules provide that the carrier is entitled to refuse to load or unload, destroy or take any other necessary measures if the goods are or may potentially become dangerous to persons, property or to the environment during the carrier's period of responsibility.

**Carrier's Liability and the Burden of Proof**

Liability under the Hague-Visby Rules is fault-based [38]. In line with the position at common law, the burden of proving unseaworthiness lies on the cargo owner. The cargo owner must show that the loss or damage occurred while the goods were in the carrier's custody [39]. Subsequently, the carrier must prove that the loss or damage to the goods falls within one of the exceptions set out in Article IV (2) of the Hague-Visby Rules. Thereafter, the

cargo owner in order to invalidate the carrier's reliance on the exceptions contained in article IV must provide evidence to show that the cause of the loss or damage to the goods was unseaworthiness. Where the claimant successfully proves that the vessel was unseaworthy, the carrier will only be able to rely on a particular exception where he proves that he exercised due diligence to make the ship seaworthy before and at the beginning of the voyage. In *The Hellenic Dolphin* [40] it was stated that:

The cargo owner can raise a prima facie case against the shipowner by showing that cargo which had been shipped in good order and condition was damaged on arrival. The shipowner can meet that prima facie case by relying on an exception…The cargo owner can then seek to displace that exception by proving that the vessel was unseaworthy at the commencement of the voyage and that the unseaworthiness was the cause of the loss. The burden in relation to seaworthiness does not shift. Naturally the court can draw inferences…But if at the end of the day…the cargo owner fails on unseaworthiness and the shipowners are left with their defence of perils of the sea. If, on the other hand, the court comes down in favour of the cargo owners on unseaworthiness, the shipowners can still escape by proving that the relevant unseaworthiness was not due to any want of diligence on their part or on the part of their servants or agents.

The burden of proof in cargo claims for the breach of the carrier's duty in article III (2) of the Hague-Visby Rules was recently decided in *Volcafe Ltd and others v Compania Sud Americana de Vapores SA (trading as CSAV)* [41] where it was held that in order for the carrier to rely on the exceptions set out in article IV (2) of the Hague-Visby Rules it must discharge the burden of proof that reasonable care was taken to protect the goods from harm. The Supreme Court held that a contract of carriage by sea is a form of bailment in which the carrier has the onus to disprove negligence. The carrier by virtue of article III (2) of the Hague-Visby Rules has a duty to 'properly and carefully load, handle, stow, carry, keep, care for and discharge' the goods and he must show that he took reasonable care of the goods before relying on any of the exceptions set out in article IV (2) of the Hague-Visby Rules. It was stated that:

The true rule is that the carrier must show either that the damage occurred without fault in the various respects covered by article III rule 2, or that it was caused by an excepted peril. If the carrier can show that the loss or damage to the cargo occurred without a breach of the carrier's duty of care under article III rule 2, he will not need to rely on an exception [42].

The decision of the Supreme Court in the *Volcafe* case has been criticised for classifying the contract of carriage of goods by sea as bailment of goods and reducing the burden of cargo owners [43]. Article III (8) of the Hague-Visby Rules provides that any clause or agreement in the contract of carriage which lessens or relieves the carrier of liability for the loss or damage to the goods, resulting from negligence, fault or failure in the duties provided under article III otherwise than as set out in the rules is null and void.

The carrier's liability under the Hamburg Rules is based on the principle of presumed fault or neglect [44]. The carrier will be presumed liable for the loss or damage to the goods once the claimant is able to show that the loss or damage occurred while the goods were in the charge of the carrier [45]. By virtue of article 5(1) of the Hamburg Rules the carrier may avoid liability where he proves that 'he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences'. The Hamburg rules significantly increase the carrier's risks in different ways. The liability scheme is wider than what is obtainable under the Hague-Visby Rules, the period of responsibility has been extended and the liability for delay in the delivery of the goods is dealt with specifically under article 5(1) of the Hamburg Rules. In contrast to the position under the Hague-Visby Rules live animals are classified as goods under article 1(5) of the Hamburg Rules. Article 5(5) of the Hamburg Rules provides that a carrier will not be liable for the loss, damage or delay arising from the carriage of live animals where such loss, damage or delay occurred as a result of 'any special risk inherent in that kind of carriage'. Where the carrier can show that the loss or damage which occurred was caused by such special risk owing to the carriage of live animals and that it complied with any specific instructions provided by the shipper, the onus of proof will lie on the claimant to prove the carrier's negligence. The carrier will be held liable in accordance with the provisions of article 5(5) of the Hamburg Rules where the claimant successfully proves that the loss, damage or delay in delivery occurred owing to the fault or negligence of the carrier, his servants or agents.

In the event that the goods are damaged by a fire, the Hamburg rules in article 5(4)(a) provide that if the claimant can prove that the loss or damage to the goods caused by fire occurred either owing to 'fault or neglect' of the carrier, its servants or agents, or from their fault or neglect in taking all measures that could reasonably be required to put out the fire and avoid or lessen its consequences, the carrier will be held liable. Where the claimant is unable to prove the carrier's negligence the carrier will not be held liable. The cargo owner whose goods have been damaged or lost by fire is placed in a difficult position as he is saddled with the responsibility of proving the fault or neglect of the carrier, its servants or agents [46]. Therefore, under the Hamburg Rules except in the case of a loss or damage by fire the burden of proof is on the carrier until he discharges the burden of proof. In other to determine the cause of the fire article 5(4)(b) of the Hamburg Rules provides that either the claimant or the carrier may request for the conduct of a survey in accordance with shipping practices, and on demand of both parties a copy of the surveyor's report will be provided.

Liability under the Rotterdam Rules is fault-based [47]. The basis of liability and burden of proof under the rules comprise two rounds of proof and counter proof with three presumptions of carrier's fault [48]. Article 17 of the Rotterdam Rules deals with the carrier's basis of liability. Article 17(1) provides that the carrier will be liable for the loss of or damage to the goods and for delay in delivery where the claimant proves that the event which

caused or contributed to the loss took place during the carrier's period of responsibility. The burden of proof then shifts to the carrier who in a bid to escape liability may rely on the provisions of either article 17(2) or article 17(3). By virtue of article 17(2) the carrier must prove that the cause or one of the causes of the loss, damage or delay is not attributable to its fault or to the fault of any of the parties for whom it is responsible. Alternatively, the carrier may escape liability by relying on the provisions of article 17(3) where it proves that one or more of the listed exceptions caused or contributed to the loss, damage, or delay. This stage has been referred to as the first round of proof and counter proof [49].

The carrier's reliance on article 17(3) may not preclude it from incurring liability as the burden of proof shifts to the claimant thereby leading to the second round of proof and counter-proof [50]. The claimant has three options. Firstly, by virtue of article 17(4)(a) the claimant may prove that the fault of the carrier or of a person for whom the carrier is responsible caused or contributed to the event or circumstance on which the carrier relies. Secondly, according to the provisions of article 17(4)(b) the claimant may prove that an event or circumstance not listed in article 17(3) contributed to the loss, damage, or delay. Lastly, in line with the provisions of Article 17(5)(a) of the Rotterdam Rules the claimant may prove that the:

… loss, damage, or delay was or was probably caused by or contributed to by

1. the unseaworthiness of the ship;
2. the improper crewing, equipping, and supplying of the ship; or
3. the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods;

Where the claimant successfully proves that the fault of the carrier or a person for whom the carrier is responsible caused or contributed to the exception on which the carrier relies the carrier will be held liable. However, if the claimant proves that an event other than the listed exceptions contributed to the loss, damage or delay, the carrier by virtue of article 17(4)(b) will be allowed to provide counter-proof that the said event or circumstance was not attributable to his fault or to the fault of any person for whom he was responsible. The carrier will be held liable where it fails to prove that the exception was not attributable to its fault. Where the claimant successfully proves the unseaworthiness of the ship, there will be a presumption of the carrier's fault although the carrier will be afforded the opportunity to provide counter-proof. By virtue of Article 17(5)(b) of the Rotterdam Rules if the carrier is unable to prove that the loss, damage or delay was not caused by unseaworthiness or uncargoworthiness of the ship or that he exercised due diligence to make and keep the ship seaworthy and cargo worthy, the carrier will be held liable.

Article 17(6) of the Rotterdam Rules provide that 'When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.' This could lead to a situation where liability for the loss can be divided between the carrier and the claimant [51]. Support for the Rotterdam Rules has been predicated on the ground that it contains more detailed provisions on the carrier's liability and provides a 'balanced allocation of risk' between the carrier and the shipper [52]. It has been posited that the provisions of article 17 of the Rotterdam Rules represent a marked improvement to the position under the previous conventions as it clearly sets out the burden of proof borne by the claimant and the carrier at each stage [53]. However, the Rotterdam Rules have been criticised for containing ambiguities in its central provisions of liability [54]. It has been postulated that the provisions of article 17 of the Rotterdam Rules fail to clearly set out the 'allocation of liability for losses caused by a combination of causes' [55]. Additionally, it has been noted that article 17(6) fails to provide detailed rules for the apportionment of liability in an instance where the carrier is partially liable. The article has been criticised for failing to clearly set out more on the 'apportionment of the loss e.g, burden of proof, method of calculation' [56]. The liability regime under the Rotterdam Rules has been described as an impractical solution in law for current shipping practices and it has been suggested that what is required is a new protocol to the Hague Rules and not a brand new convention, in this case the Rotterdam Rules [57].

**Limitation of Liability**

The carrier can limit its liability for loss or damage to the cargo in line with the monetary provisions contained in the Rules. In *British Columbia Telephone Co. V. Marpole Towing Ltd* [58] it was noted that:

The limitation of liability provisions... are expressly designed for the purpose of encouraging shipping and affording protection to shipowners against bearing the full impact of heavy and perhaps crippling pecuniary damage sustained by reason of the negligent navigation of their ships on the part of their servants or agents.

Under Article IV (5)(a) of the Hague-Visby Rules, unless the nature and value of the goods to be shipped have been declared by the shipper and included in the bill of lading the carrier or the ship shall not be liable for any loss or damage to the goods for an amount which exceeds 666,67 Special Drawing Rights(SDR) [59] per package or unit or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher.

The carrier's limits of liability for loss or damage to goods under Article 6(1)(a) of the Hamburg Rules have been increased to an amount equivalent to 835 SDR per package or other shipping unit or 2.5 SDR per kilogram of gross weight of the lost or damaged goods, whichever is higher. Additionally, article 6(1)(b) of the Hamburg Rules provides for limits of liability for delay which will be equivalent to two and a half times the freight

payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage. This provision on the carrier's liability for delay is not clearly stated in the Hague-Visby Rules. Article 6 (1)(c) provides that the carrier's total liability under both article 6(1)(a) and (1)(b) should not exceed the limit for the total loss of goods calculated under article 6(1)(a).

Article 59(1) of the Rotterdam Rules provides that the carrier's liability for breach of his duties under the Rotterdam Rules is 875 SDR per package or other shipping unit or 3 SDR per kilogram of the gross weight of the goods, whichever is higher. By virtue of article 60 of the Rotterdam Rules, liability for economic loss due to delay is limited to an amount equivalent to two and a half times the freight payable on the goods delayed. Additionally, the article provides that the total amount payable under article 59(1) and article 60 should not exceed the limit that would be established under article 59(1) with respect to the total loss of the goods concerned. Article 61 (1) of the Rotterdam Rules provides that where the claimant proves that 'the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming the right to limit done with the intent to cause such loss or recklessly and with the knowledge that such loss would probably result' the carrier or any of the persons referred to in Article 18 would lose the right to limit their liability.

**Conclusion**

The basis of liability under the Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules is fault. The period of the carrier's responsibility has increased under each successive convention, from 'tackle to tackle' under the Hague-Visby Rules to 'port to port' under the Hamburg Rules, and 'door to door' under the Rotterdam Rules. The Hamburg Rules increase the carrier's liability as the carrier bears the burden of proof for any loss, damage or delay except where the loss, damage or delay is caused by fire. In a departure from what is obtainable under the Hague-Visby Rules and Hamburg Rules, the provisions of the Rotterdam Rules clearly set out matters relating to the burden of proof and order of proof. The provisions of article 17 of the Rotterdam Rules leave none of the parties to a contract of carriage of goods by sea in doubt as to who bears the burden of proof at each stage. Additionally, the amount to which the carrier may limit his liability has been increased under the Rotterdam Rules to 875 SDR per package or other shipping unit or 3 SDR per kilogram of the gross weight of the goods, whichever is higher. The Rotterdam Rules present an opportunity to establish a uniform and consistent regime in international carriage of goods by sea, only time will tell whether this opportunity will be embraced or discarded.

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