



Japan-ASEAN Cooperation



AFFA

## Sustainable Human Resource Development in logistics services for ASEAN Member States

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## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Forwarders' Liability Insurance



## Sustainable Human Resource Development in logistics services for ASEAN Member States



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Objectives

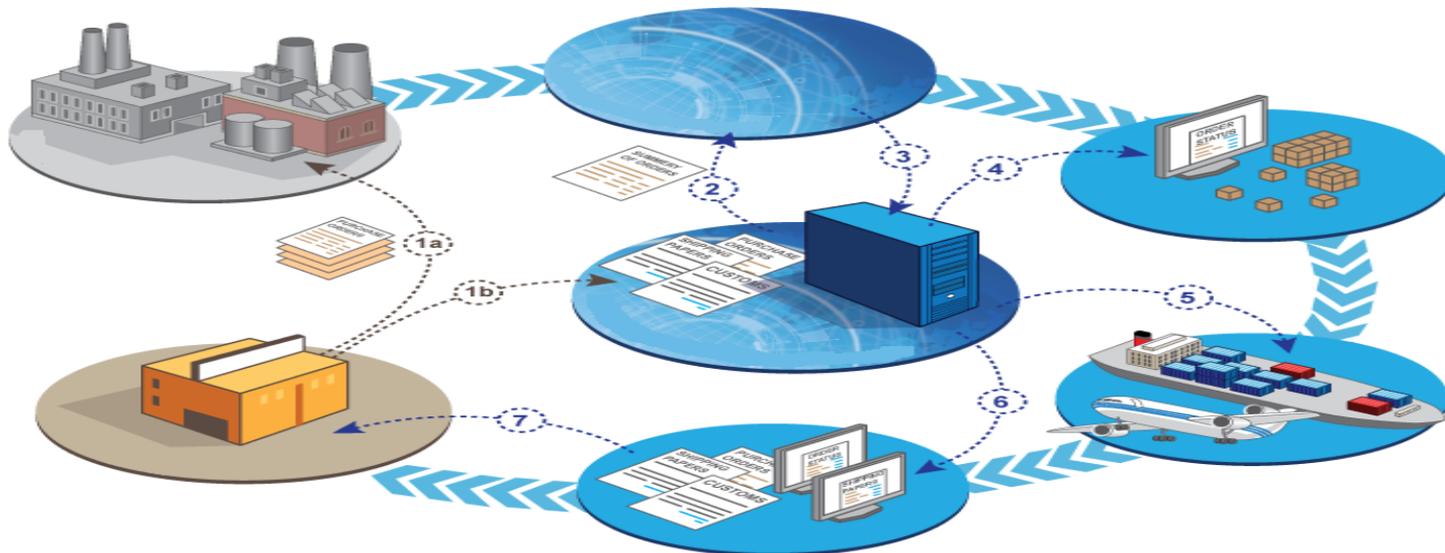
- To understand the legal role and risk exposure of freight forwarder
- To know the general make-up of a liability policy and type of liability covers available



# Sustainable Human Resource Development in logistics services for ASEAN Member States

## Topics

- The modern role of the freight forwarder
- The legal regimes in which the LSP operates
- Common instances of liability
- The risk exposures of the LSP
- The liability policies necessary for the LSP



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Role of the Freight Forwarder

- Traditional role: freight/transportation agent
- Modern role: One-stop logistics shop
- Change from agent to principal status
- SFFA to SLA
- Freight forwarder to logistic service provider (LSP)



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

What is Negligence?

The term, in effect means 'lack of care' and include both acts of commission and acts of omission.



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

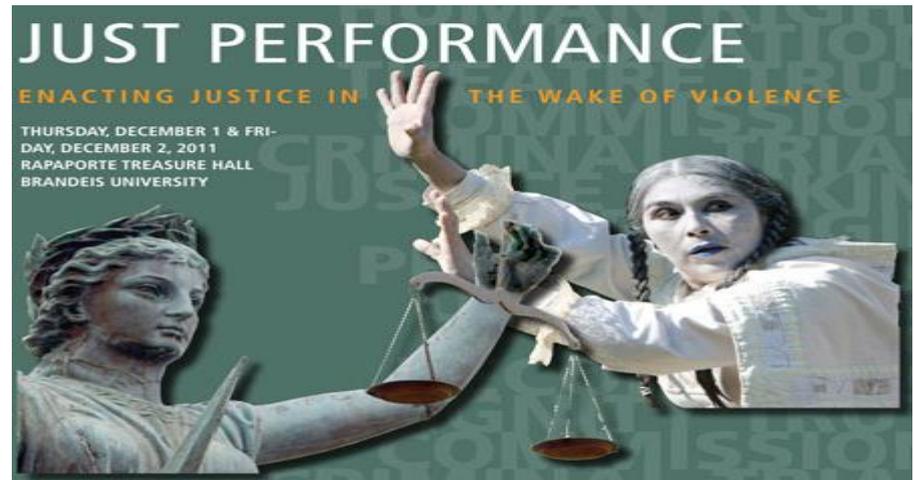
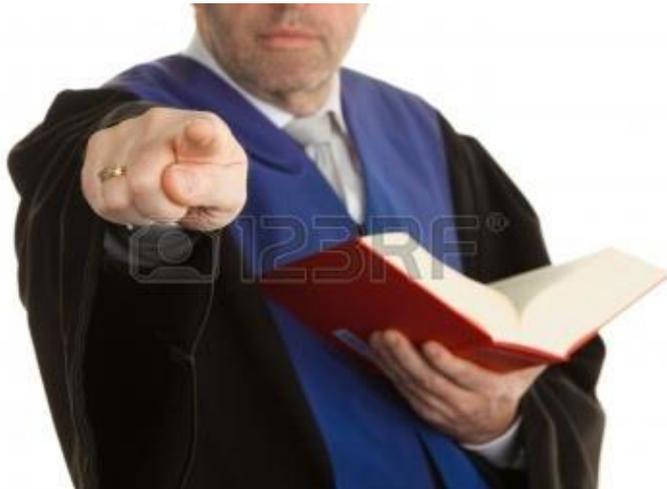
**Lady Justice is the symbol of the judiciary.** Justice is depicted as a goddess equipped with 3 symbols of the rule of law: a **sword** symbolizing the court's coercive power; **scales** representing the weighing of competing claims; and a **blindfold** indicating impartiality.



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# Legal Regimes

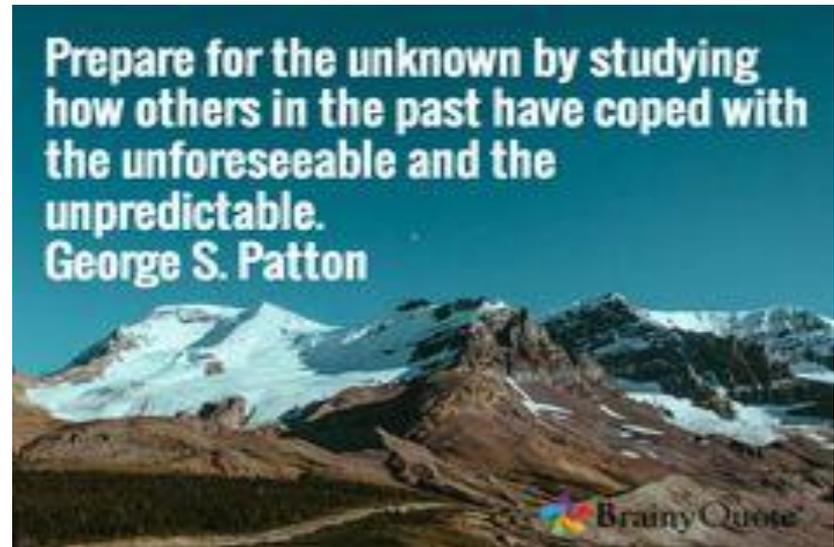
**The law of negligence** through a series of judgments on actions in tort i.e. in cases where there is no contractual relations between the wrongdoer and the person who has suffered thereby. The essence of the tort of negligence is the breach of a legal duty of care which one person owes to another, and results in unintentional harm to the latter.



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# Legal Regimes

As a judge put it: “...the duty is not to be careful. It is, to put it broadly, a duty not to cause damage by carelessness, and it is restricted in its ambit to those who can reasonably be foreseen as likely to be damaged by the action in question.”



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

### What Happened?

- Defendants owned a freighter that discharged a large quantity of furnace oil into harbor. Oil came in contact with plaintiff's wharf for shipbuilding.
- Later, cotton waste that was floating was ignited by molten metal, igniting oil and seriously damaged wharf and two ships.



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# Legal Regimes

**Foresight of Damage** in the case of Overseas Tankship v Morts Dock & Engrg (1961) AC 388 aka “The WagonMound No 1”

The defendants negligently discharged fuel oil into Sydney harbour. The oil spread to plaintiff’s wharf, app 600’ away, where welding operations were in progress. A spark from a welding touch ignited the oil and considerable damage was caused to the wharf.

The Privy Council held that the damage was not reasonably foreseeable, and so the defendant was not liable. For negligence to be established the plaintiff had to prove foreseeability to show that a duty of care existed and, in addition that the damage which resulted from breach of that duty was not too remote.

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# Legal Regimes

**Foresight of Damage** in the case of Overseas Tankship v Miller SS Co. Pty. Ltd (1967) aka (“The WagonMound No 2”)

Concerned the same defendants and facts as The WagonMound No1. The plaintiff owned 2 ships which were being repaired at the wharf, and the fire damaged both.

The trial judge found that there was a bare possibility of fire, but this was so remote that it could be ignored.

The Privy Council reversed this decision. As long as fire was a foreseeable kind of damage, the degree of likelihood of damage was irrelevant and the defendants were therefore found liable. If damage is foreseeable, it does not matter that the full extent of the damage is unforeseeable.

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# Legal Regimes

**Law** is a system of rules, usually enforced through a set of structures in a civilized society.

- Contract law regulates everything from buying a bus ticket to trading on stock market.
- Property law defines rights and obligations to the transfer and title of personal and real property
- Tort law allows claims for compensation if a person's rights or property are harmed
- Criminal law offers means by which the state can prosecute the perpetrator when the harm is criminalized in a statute

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## ILLUSTRATION

home.

# Invalid sues friend, gets \$250k

### Friend caused bike crash that led to son's present

BY THAM YUEN-C

HE DID not have a driver's licence, and was also drunk. But Mr Thangaraju Subramaniam ended up riding his friend Simon Silva's bike after the two went on a drinking session on Feb 25, 2007.

While travelling along Corporation Road, the bike skidded, flinging Mr Silva into a tree. His spine was fractured in many places and he also sustained head



Mr Simon Silva, 36, lying in a vegetative state after a fall at his home, which include feeding, cleaning and sucking out phlegm from his mouth. (PHOTO BY NAI CHOW)

injuries. On his first two nights in intensive care, doctors said he could die any time.

However, he recovered after spending more than a month in hospital. When Mr Thangaraju - who suffered minor injuries - saw that his friend had returned to work and resumed his diploma studies, he thought the worst was over.

But more than three years later, he found himself suing after Mr Silva ended up in a vegetative state after

THE STRAITS TIMES FRIDAY, MARCH 11 2011 PAGE C10

sound after the fall.

Her claim was that Mr Thangaraju's recklessness caused the accident that left her son, now 36, with head injuries that were worsened by the fall.

About two weeks ago, the case was settled out of court without going to trial, with Mr Silva awarded about \$250,000, one-quarter of the \$1 million he had claimed. The payout is coming from the insurer of Mr Silva's bike, MSIG Insurance, which is the co-defendant in the lawsuit.

Said Mr Thangaraju, 29, a delivery assistant: "I feel very sorry for him, but I was very angry when they sued me.

"After the accident, he still worked, rode his bike and studied. If he can do these three things, how can it be my fault? If he was in this state after the first accident, then I can understand."

The night they went drinking was the first time they had hung out with each other. Mr Thangaraju is closer to Mr Silva's older brother.

But Mr Silva's lawyer Pritam Singh Gill produced evidence from a neurosurgeon that linked the later injuries to those from the traffic accident.

Ever since her son became bedridden and was forced to live off a feeding tube, Madam Asotha has had to quit her job to tend to his needs. The divorcee feeds and cleans him daily without help, and also sucks out the phlegm in his throat at least six times a day to prevent blockage.

She said Mr Silva's older brother does not help out with the family expenses as he has to take care of his own family.

The monthly cost of adult diapers, catheters and medical supplies is some \$500. In a year, Mr Silva's upkeep can amount to \$12,000.

Madam Asotha has tried to save where she can, by dimming the lights in her three-room Housing Board flat in Jurong West Street 42 and limiting her use of electrical appliances.

She turns on the fan and radio only in Mr Silva's room so he can be comfortable. About two months ago, her electricity supply was almost cut off.

"I have been borrowing from friends. I will leave

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## ILLUSTRATION

B20 | HOME

SATURDAY, AUGUST 3, 2013

THE STRAITS TIMES

# Woman and hotel settle lawsuit over wet floor slip

VIP Hotel accepts 50% liability for fall that left her wheelchair-bound

By K.C. VIJAYAN  
SENIOR LAW CORRESPONDENT

A FORMER endurance racing driver left using a wheelchair after she slipped on a hotel lobby's wet floor settled her court suit yesterday, with the hotel accepting 50 per cent liability for the accident.

Mrs Pamela Mykytowych, 49, is the only woman in the world to have successfully completed the 15,000km "Peking to Paris" rallies in 2007 and 2010.

But the London-based managing director fell in the VIP Hotel near Newton MRT in May 2011,

twisting her ankle and injuring her left knee and back.

Further complications meant she now suffers from "complex regional pain syndrome" - a condition that leads to bouts of pain in different areas of the body.

She sued the hotel for negligence and is seeking \$5 million in damages for business losses, future earnings and medical costs. If successful, she will get 50 per cent of the amount.

Yesterday's agreement in the High Court has paved the way for both parties to meet and have the damages to be paid assessed by a

court registrar. It is understood that the hotel's insurers wanted to avoid a lengthy trial and settle for practical reasons.

This pre-empted court proceedings later this month that would have seen Australian specialist materials scientist Richard Gorman provide expert evidence. Mrs Mykytowych on the slip resistance of wet marble floor reviewed CCTV footage which partially showed her accident.

The hotel had prepared a forensic expert, a consulting forensic engineer and an official of the Slip Resistance Group to testify on its behalf.

Mrs Mykytowych said she was staying at the hotel to be with her engineer husband Andrew, who had been deployed here from India. Prior to the accident, she



a successful senior executive in the health and social care sector. She was also the managing director of her own health-care services consultancy.

She even appeared in the 2007 Travel Channel series Peking To Paris in which she won the Coupe de Dames. The show culminated with the announcement of her engagement to her husband - a fellow competitor. But the accident reversed her active lifestyle.

"I now face a lifetime of unremitting pain, limited mobility and eventual deterioration which has already left me using a wheelchair," she said.

The hotel, defended by lawyer Ramesh Appoo, had initially resisted her suit, arguing that she had lost her balance because she was careless, failed to put on proper footwear and did not keep a proper lookout for water on the floor.

Mrs Mykytowych credited her lawyers Salem Ibrahim and Dominique Chua for helping to settle the liability issue and speed up the process after her two-year ordeal.

She said: "The reality is that if I lost, I would have been bankrupted. I can't work the way I was before because I can't concentrate with the pain and everything else.

"This was for me to get the hotel to acknowledge what happened on principle, and secondly to safeguard my future as I know I need to be looked after."

✉ vijayan@sph.com.sg

Pamela Mykytowych, 49, now suffers from "complex regional pain syndrome" after her fall in 2011. ST PHOTO: ALPHONSUS CHERN

# Sustainable Human Resource Development in logistics services for ASEAN Member States

## ILLUSTRATION





## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

- Standard trading conditions (e.g. SLA, SAAA, etc)
- Warsaw Convention
- Hague or Hague-Visby Rules



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

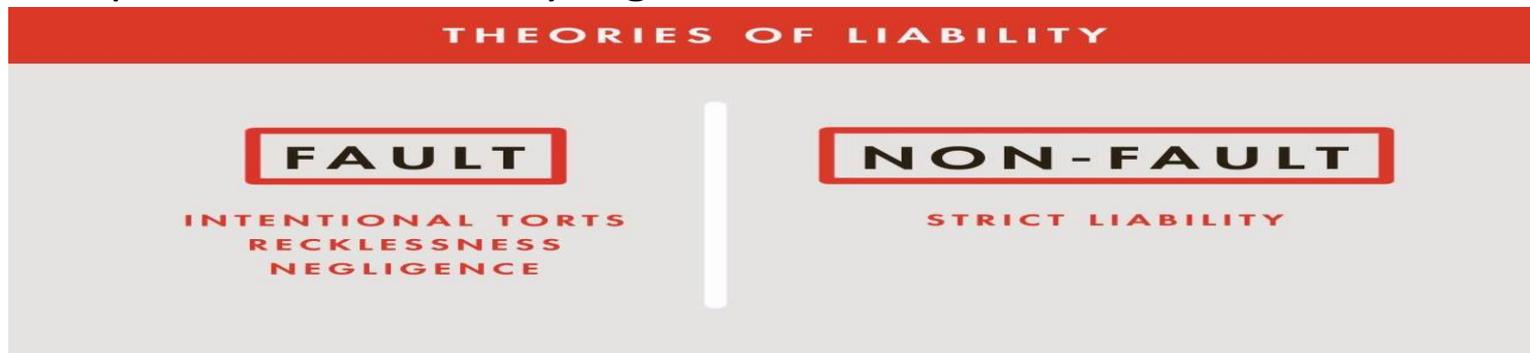
### Principal limitation clauses of SLA STC

- Notice of claim must be filed against member with 14 days from date of delivery
- Member's max liability for negligence of goods lost or damaged or misdirected/delivered: S\$5/kg up to max S\$100,000
- Time bar: 9 months from date of delivery

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

**Strict liability** is a standard for liability which may exist in either a criminal or civil context. A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his acts and omissions regardless of culpability (including fault in criminal law terms, typically the presence of *mens rea / guilty mind*). Strict liability is prominent in tort law (especially product liability), corporations law, and criminal law. For analysis of the pros and cons of strict liability as applied to product liability, the most important strict liability regime.



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# Legal Regimes

- **Strict liability** means that the offender is liable for a particular act / tort without any proof of fault. Increasingly, conventions are attracting this concept. Strict liability can be illustrated with the example of a bulk oil carrier. The owner of any ship carrying a cargo of oil in bulk is strictly liable for any damage caused by the discharge or escape of the oil in the territorial waters of a state which is a party to the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC).
- In the same example, the owner is also strictly liable for reasonable pollution prevention expenses to minimize the danger.

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# Legal Regimes

**Strict liability** classic example of strict liability is the owner of a tiger rehabilitation center. No matter how strong the tiger cages are, if an animal escapes and causes damage and injury, the owner is held liable.



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Legal Regimes

- Strict liability has also been extended to include other vessels (not bulk oil) s154 of the Merchant Shipping Act 1995.
- A further example of strict liability arises with the Oil Pollution Act 1990, which imposes it on owners of vessels which spill, or threaten to spill oil.
- There are exemptions from strict liability, but these are very limited. For example, under the US Oil Pollution Act 1990, the responsible party will not be liable if the discharge of oil was caused solely by an act of God, an act of war or an act or omission of a third party (only available if the responsible party can show that they exercised due care with respect to the oil and they took precautions against foreseeable acts or omissions of such a third party).

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Common instances of Liability

- Loss or damage to cargo
- Delay, mis-direction/delivery of cargo
- Failure or omission to follow specific instructions e.g. storage of goods in covered warehouse, stating wrong carrying temperature for reefer cargo
- Improper release of goods e.g. release of cargo without production of original bill of lading

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Common instances of Liability



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Common instances of Liability

## Unstable stacking



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Common instances of Liability

- Issuing clean bill of lading in exchange for letter of indemnity although cargo was damaged at time of receipt by them
- Loss of important documents such as bill of lading
- Inappropriate or improper stowage arrangement e.g. containerized cargo
- Mis-labelling of cargo e.g. cross-labelling causing cargo to be lost or mis-shipped

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Common instances of Liability

- Inappropriate or improper preparation of customs documents e.g. wrong declaration of import/export value
- Negligent selection of sub-contractor e.g. selection of trucker who does not have experience handling certain types of heavy machinery
- Giving inappropriate/wrong instructions to sub-contractors
- Bodily injury or damage to third party property when handling cargo or equipment

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Risk exposures of the LSP

## LIABILITIES

4 circumstances which the LSP can be liable at law:

- Contract
- Bailment
- Tort of negligence
- Statute

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## Risk exposures of the LSP

### Contractual Liability:

- Issuing own bill of lading
- Warehouse/logistics contract



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Risk exposures of the LSP

### Issuing own bill of lading

- What did you contract upon?
- CFS/CFS (Pier to Pier) - The term refers to cargo delivered at origin in less-than-containerload quantities to a container freight station (CFS) to be loaded into containers and to be unloaded from the container at destination CFS.
- Terms & conditions

# Sustainable Human Resource Development in logistics services for ASEAN Member States

## LSP liability policies

### Example of restrictive policy:

“...Covering legal liability for damage to goods caused by Fire or Accidental, External, Visible and Violent Means.”



Risk Management



Forwarders' Liability



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Risk exposures of the LSP

### Incorporation of SLA STCs

- Membership of SLA does not automatically grant you right to rely on trading conditions
- LSP must make express reference to the STCs (e.g. letterheaded paper, faxes, D.P., warehouse receipts, invoices)
- “All businesses are transacted in accordance with the standard trading conditions of the SLA, copy available upon request”
- Which trading conditions?

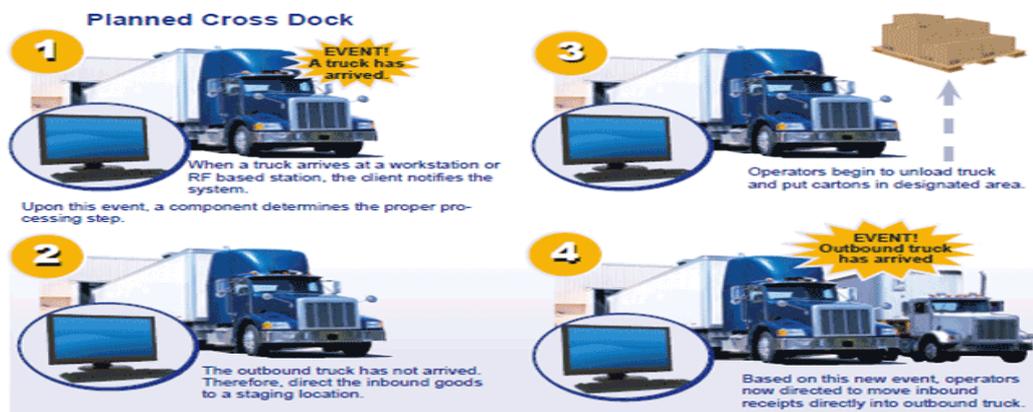
## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Risk exposures of the LSP

### Bailment:

- Entrustment with goods
- Answerable for the negligence or intentional acts of his employees/sub-contractors/agents
- Cannot escape liability by delegating his task
- A sub-bailee can be liable to the owner of goods although there is no direct contractual relationship between them

### Event-Driven WMS Processing



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Risks exposure of the LSP

### **Tort (Negligence):**

- Negligent handling of goods
- Negligent error or omission
- Conversion – wrongful interference with property rights, including right of stoppage in situ of cargo owner
- Liability towards third party – property damage, injury and death

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# Risks exposure of the LSP

### Statute (customs fines & duties):

- For unintentional breaches of statutes, regulations and law
- Fines can be imposed by port authorities, customs and government bodies
- Incorrect or wrongful declaration of cargo value or duties



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Insurers of Bailee's Liability common queries:

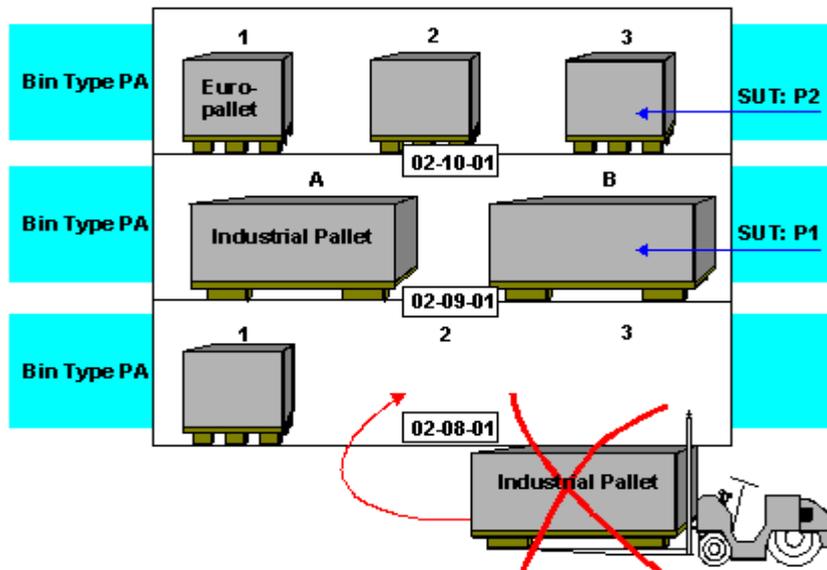
- warehouses and own do you operate transportation vehicles?
- Theft and fire risk of warehouse e.g. fire sprinklers, theft alarm, cctv cameras, security?
- Do you use standard trading conditions in the course of your business with your customers?
- Do you have any special agreement outside the standard trading conditions?

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## LSP liability policies

Liability towards a third party for property damage, death and personal injuries & consequential losses resulting therefrom

- Liability from operating a warehouse
- Liability from operating equipment



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Liability for packing

- Improper crating
- Improper design & construction of crate, pallet
- Insufficient packing e.g. chocking, stowage of cargo in container
- Insufficient marking on handling instructions



Risk Management



Forwarders' Liability

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Liability for Error & Omission

- Delay in performing contractual obligations
- Wrongful or incorrect delivery of cargo without production of original bill of lading/sea waybill/air waybill
- Unintentionally making incorrect statements in or omission in contract of carriage document



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Liability for Error & Omission

- Mis-delivery to an incorrect party or location
- Wrongful or incorrect delivery contrary to instructions to withhold delivery without taking in exchange payment



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Liability for Fines & Duties

- Covering unintentional breach of any regulation or laws
- Breach of laws relating to import/export and carriage of cargo e.g. wrong declaration of duties and sales taxes, wrong declaration of cargo, breach of IMDG rules, overloading excluded



Risk Management



Forwarders' Liability

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Liability for Fines & Duties

- Breach of laws relating to safety at work e.g. not controlling unlicensed usage of forklift, breach of fire safety in warehouse
- Breach of pollution laws (arising from physical loss of or damage to cargo or transportation equipment) e.g. truck overturned, causing spillage of hazardous goods, flexi-bag burst during transportation

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Cost & expenses cover

- Covering mitigation expenses e.g. cost of cleaning up pollution on public road
- Cost of debris removal e.g. removal of cargo and carrying equipment from public road
- Investigation costs e.g. surveyor cost, expert cost

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Cost & expenses cover

- Defence cost
- Additional cost incurred due to failure of consignee to take delivery of cargo e.g. consignee cannot be contacted and port store rent charges incurred
- **MUST ALWAYS SEEK INSURER'S CONSENT**

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Bailee's Liability Policy VS Multimodal Transport Liability Policy



Risk Management



Forwarders' Liability

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### **Bailee's Liability Policy:**

- Designed for trucker and warehouseman
- Principally covers insured's legal liability for physical loss of or damage to cargo in his care, custody and control
- Need to cover also legal liability for damage or loss of transportation equipment

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Example of Bailee's Liability Policy:

“The Company will indemnify the insured for sums which they shall become legally liable to pay as damages for loss of or damage to goods (excluding goods belonging to the insured) handled and/or transported by the insured or whilst stored in warehouses operated by the insured.”

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Bailee's Liability Policy:

- Defence cost included in policy limit
- Example:

Policy limit: \$100,000

Legal liability towards cargo \$ 80,000

Defence cost: \$ 30,000

Total cost: \$110,000

Policy pays up to: \$100,000

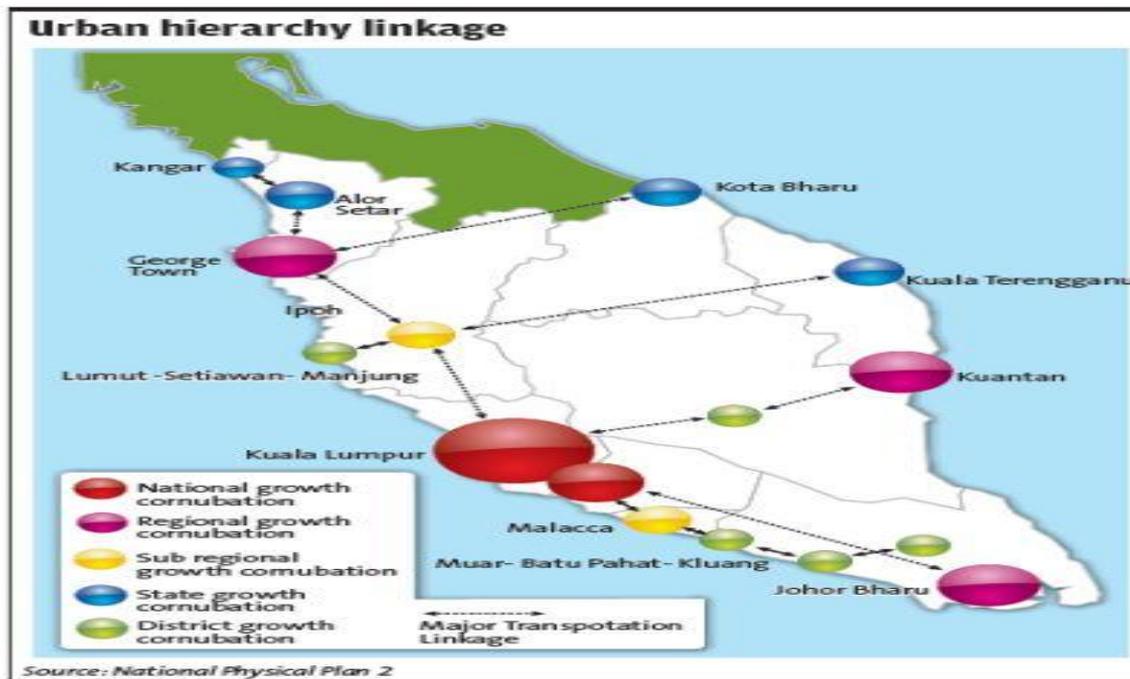
Insured pays: \$ 10,000 (insured)

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## LSP liability policies

### Bailee's Liability Policy:

Often restricted in geographical limits e.g. within Singapore & peninsular Malaysia



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy:

- Loss of damage to accounts, bank notes, letters of credit, bullions, cash, jewellery, precious stones, works of art



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy:

- Loss caused by insufficient packing
- Loss of market, loss of use, consequential loss or interruption of business



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy:

- Loss of or damage to goods carried out in a controlled atmosphere or in refrigerated, frozen, chilled or insulated condition due to loss of refrigerant or controlled temperature or variation of temperature, unless caused by direct fire, lightning storm or by collision or overturning of the conveying vehicle



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy

- Theft or attempted theft or unexplained shortage from unattended vehicles
- Loss arising out of dishonesty of the insured, his employees or persons to whom the goods have been entrusted (i.e. fidelity losses)



Risk Management



Forwarders' Liability

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy:

- Liability assumed under any agreement (i.e. contractual liabilities e.g. agreement to deliver within specific dates or time or pre-agreed value of cargo)



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Common exclusion – Bailee’s Liability Policy:

- Loss or damage resulting from war, strikes and civil commotion



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Standard Trading Conditions Warranty

“It is warranted that the insured shall incorporate the standard trading conditions of the SLA and/or trading conditions not wider than those of the SLA in the contracts with their customer”.

Terms  
&  
Conditions



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Illustration:

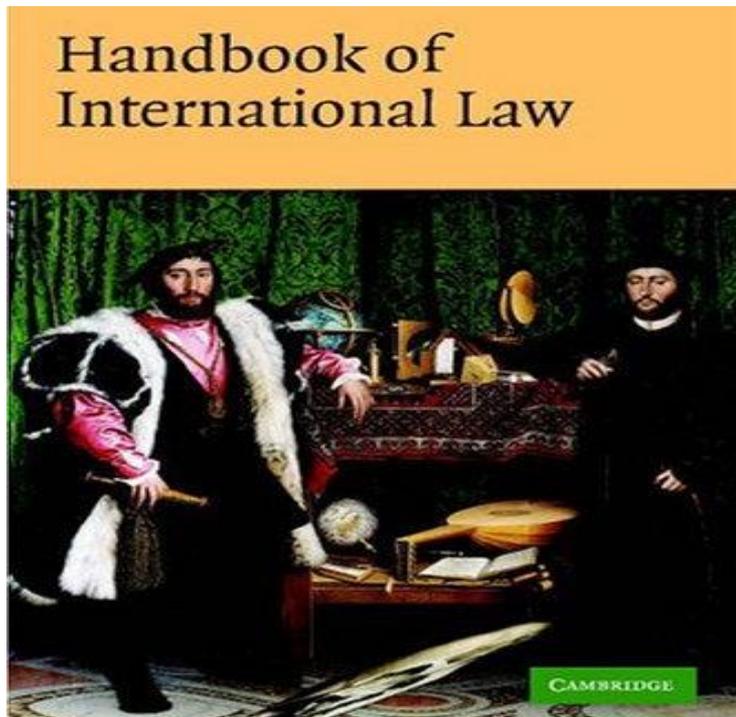
- **X issues house bill of lading for one pallet of disk drives for Singapore to Jakarta**
- **Cargo has a value of US\$100,000 and weigh 50kg**
- **Whilst in Jakarta port, the pallet is stolen**
- **X can limit his liability under Hague-Visby Rules under his bill of lading to one package i.e. S\$1,563.65**

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Multimodal Transport Operator's Liability Policy

- Insuring *Legal Liability* i.e. insured also has right of the defences under contract or international conventions



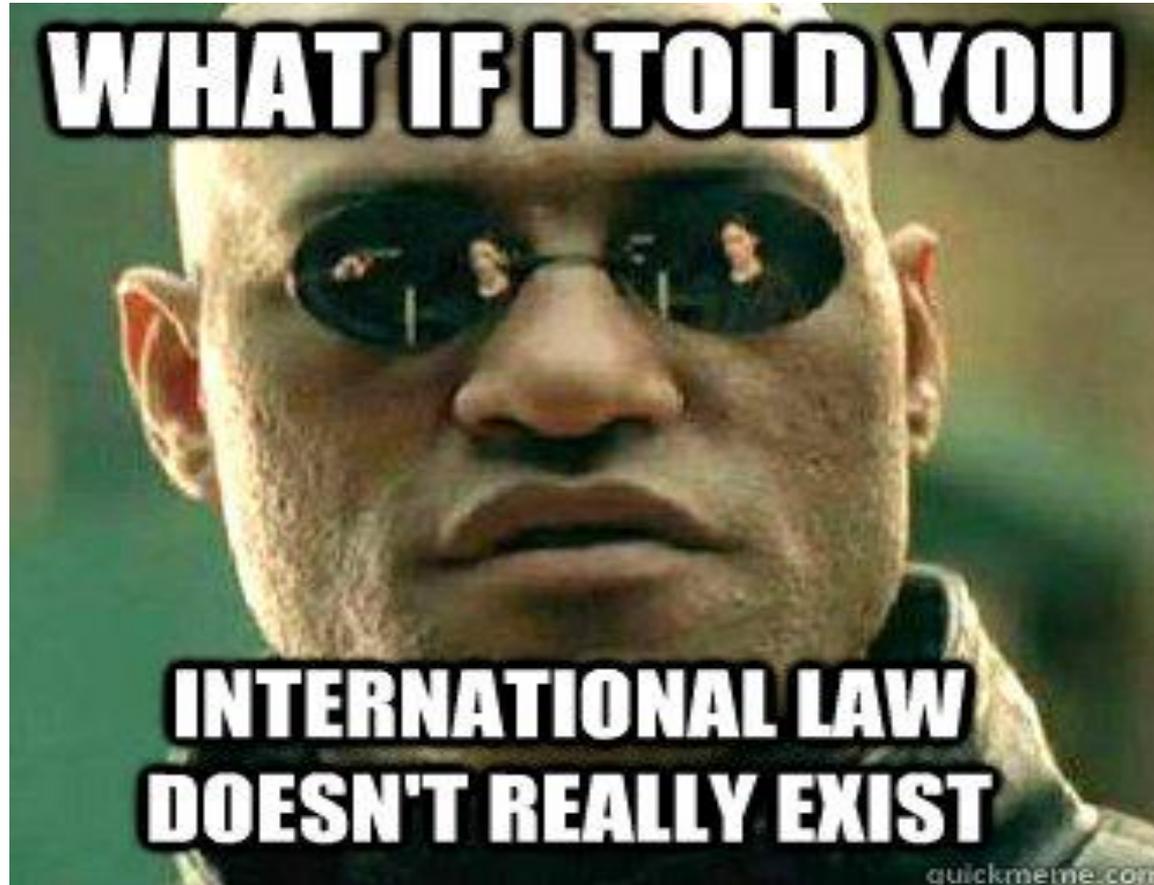
## Sustainable Human Resource Development in logistics services for ASEAN Member States

### LSP liability policies



## Sustainable Human Resource Development in logistics services for ASEAN Member States

### LSP liability policies



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### **Multimodal Transport Operator's Liability Policy:**

- Niche product offered by few insurers
- Basic coverage: Liability towards cargo
- Covering bailee's liability and liability due to issuance of multimodal transport document as carrier
- Often packaged to include: Fines & Duties, Error & Omission, Third Party Liability and Cost & Expenses

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### **Multimodal Transport Operator's Liability Policy – common exclusions:**

- **Agreed delivery time (contractual liabilities)**
- **Increased value**
- **Delivery of cargo without production of original bill of lading/sea waybill air waybill**
- **Excluded cargoes e.g. valuable cargoes, live animals**

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### **Multimodal Transport Operator's Liability Policy – common exclusions:**

- **Fidelity losses**
- **Unexplained losses/or mysterious disappearance**
- **Criminal act, illegal act, fraud by insured**
- **Chartering or slot chartering of a vessel**
- **War, riots, civil commotion**

## Sustainable Human Resource Development in logistics services for ASEAN Member States

# LSP liability policies

### Multimodal Transport Operator's Liability Policy – important conditions:

- Ensuring sub-contractors have reasonable sufficient insurance cover
- Limits and sub-limits



## Sustainable Human Resource Development in logistics services for ASEAN Member States

# Self Assessment

