Chapter 2: Carriage of Goods by Sea (Part 1)

Objective:

- To gain an overview of the law of Carriage of Goods by Sea

Carriage of Goods by Sea is still by far the most common unimodal form of transport.

The legal issues arising are best discussed by a look at the detailed provisions of the Carriage of Goods by Sea Act 1972 itself and the Carriage of Goods by Sea (Singapore Currency Equivalents) order 1982.

Carriage of Goods by Sea Act (COGSA)
Background to the Rules

The Harter Act, Hague and Hague-Visby Rules

The Singapore COGSA Gives effect to the Hague-Visby Rules which described The Hague Rules as amended by the Protocol Made at Brussels on 23 Feb 1968. The Hague Rules, in turn, have their roots in the United States Harter Act of 1893.

Prior to the Harter Act, a carrier whose contractual rights and liabilities were governed by the terms of a bill of lading had a relatively free hand to include in the B/L exceptions which allowed the carrier to avoid liability where the carrier or his agents/servants had been in fault.

An absurd situation arose as shipowners issued bills of lading with as many different sets of clauses as there were bills.

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

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

The powerful cargo interest lobby in the USA resulted in a compromise with the ship-owning community in the form of the Harter Act.

The bargain was that if the shipowner exercised due diligence for the purpose of providing the shipper with a seaworthy ship, he would be entitled to avoid liability where loss of or damage to cargo has been caused by negligence in the navigation or management of the ship. This stood on the premise that a shipowner has a deemed interest in ensuring that his ship was properly navigated and/or managed.

The Harter Compromise formed the basis of the Hague Rules.

In return for being unable to contract out of his obligation to exercise due diligence to have his ship made seaworthy, a carrier was given the right to rely on a list of exceptions, including one relating to negligence in the management of the ship; limiting his liability for loss or damage to goods to a fixed value per package or unit unless the value of the goods had been declared by the shipper before shipment and duly noted in the bill of lading; and the time bar for instituting cargo owner's claim.

The Harter Act, The Hague Rules and the subsequent UK Carriage of Goods by Sea Act were designed to stem the growing dissatisfaction of having different bills of lading with different terms. A uniform legislation was then introduced into the UK and colonies and dependencies and eventually other countries quickly adopted this.

The Hague Rules laid down, among others, three important areas of law:

- A minimum obligation of shipowners;
- Care in receipt, keeping, stowing, custody, carriage and discharge;
- Limitation of liability of sterling pounds 100 per package or unit;

The Hague-Visby amendments were introduced to counter some of the problems of the Hague Rules Legislation. However, they only mitigated but did not remove all the problems.

A presentation by Mr VCS Vardan on **International Conventions and Carrier Liability – A Comparison** at the UN ESCAP Workshop in Bangkok is attached for further reading.

Appendix

International Conventions and Carrier Liability
- A Comparison

Economic And Social Commission For Asia And The Pacific (ESCAP)
Sub-Regional Workshop : Maritime Transport For Shippers – Training Of Training Managers (Senior Course) Held At Bangkok, Thailand
Presented By V. C. S. Vardan

The two most important parties in an international carriage of goods are the shippers and the carriers.

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

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

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

The law in this area has been with us for a long time. The Law of Merchants and the Rules of the Hanseatic League are earliest on records. The concept of a bill of lading and its development led to an onerous situation.

Two basic questions arose. The first was the basis of liability. Was it to be strict or based on negligence and a duty of care? You had the common carrier situation in *Coggs V Bernard* that was "primitive in concept but sensible. You carried the goods. You were paid to do it. You lost or damaged the goods. You are fully liable."

The second question was that of freedom to contract. The law generally does not interfere with individuals' freedom in business arrangements. This had disastrous results. Carriers put in absurd exception clauses. The judges distinguished and overthrew them because they were ambiguous, because of public policy, proximate cause was different or because of deviation.

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

The result was that there was no uniformity. The bill of lading terms became very harsh and difficult for shippers. It soon developed into a situation where shipowners had no responsibility except to collect their freight.

These exception clauses led to concern among cargo-owning countries and steps were taken to control the situation.

First came the **Bills Of Lading Act of 1855**, which had these provisions:

- Empowered consignees and endorsees of bill of lading to sue directly;
- Preserved "stoppage in transit" and right to claim freight from the shipper;
- Bill of lading was "Conclusive Evidence against Master".

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

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

The New Hamburg Rules will come into operations one year following the twentieth state to ratify or accede to it.

The History of The law relating to Contracts of Carriage has been a swing of the pendulum between excessive protection of the carrier and excessive protection of the shipper.

The latest convention appears to benefit shippers and consignees in user countries more than that of carriers. While this may be desirable from certain points of views, it may carry with it some intended results that may work against shippers. The liability of carriers will rise and with it may raise the cost of providing the transport service. Insurance premiums for cargo may also fall, as they are absorbed into freight rates, which may correspondingly rise as significant liability increases occur to carriers.

I intend to go into the actual rules set out above separately and in some detail so that good working knowledge of the different international regimes of carrier liability are fully grasped.

The clauses will be examined in detail and opportunities will be available to discuss the nuances, significance and application in a practical way.

There will be some discussion of case law as it applies in decided United Kingdom and Commonwealth Legislation to these various conventions.

The following is intended to briefly highlight some of the major problems and differences between the various legal regimes set out above.

They are not intended to be comprehensive but to provoke thought and discussion when the actual clauses are analysed.

Situation Prior To The Hague Rules

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

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

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

The introduction of the Harter Act, the Bills of Lading Act and The Hague Rules, consignees received the right to sue on the bill of lading. The bill of lading became conclusive evidence of shipment as against the master "Stoppage in Transit" was preserved.

The Harter Act and The UK Carriage of Goods by Sea Act were designed to stem the growing dissatisfaction of having different bills of lading with different terms. A uniform legislation was then introduced into the UK and these were quickly adopted by colonies and dependencies and even other countries.

The Hague Rules laid down three important areas of law:
1) A minimum obligation of shipowners;
2) Care in receipt, keeping, stowing, custody, carriage and discharge;
3) Limitation of liability of sterling pounds 100 per package or unit;

"Muncaster Castle"
Some criticisms were:
a) Exemptions given for the consequences of acts of carriers' servants or agents for negligence in navigating or managing of vessel;
b) The rules apply only when a bill of lading is issued;
c) Carriage period was limited to "tackle to tackle"

There were also various technical and drafting defects.

Introduction of the Hague-Visby Amendments

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

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

The main defects of the Hague-Visby amendments were:
a) The Burden of Proof in Article III and IV is placed on the shipowners.
b) What is a "Package"?

*See **"The American Astronaut"***
"The Alexander Serafomovich"
The question of Sterling Pounds 100 now become Sterling Pound 100 gold value translated into 10,000 Gold Francs (Poincare).
c) The Hague Rules only dealt with contract liability and not tort. The hague-visby only brought about a partial solution to this.

d) Conflict of Laws – Uniformity/Terms should be mandatory on all contracting parties.
   Vague as to jurisdiction and law – See ***"The Epar"***. Everything depends on national legislation. Situation somewhat modified by ***"The Morviken"***.
e) Box losses not accounted for.

Introduction of the Hamburg Rules

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

It is still far short of the 20 ratifications necessary to come into operation.

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

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

a) A decision to abolish the defences of negligent navigation/management of vessel which is presently available to shipowners.
b) Abolishes the defence of fire caused by negligence of owner's servants or agents – the burden of proof of negligence is shifted to the cargo interests.
c) An extension of period of liability of the carrier to cover the period the carrier is "in charge of the goods at ports of loading and discharge".
   See ***"The New York Star"***
   "Hossain Bros"
   "Rambler Cycle V Sze Hai Tong Shipping and Southern Shipping Corporation

d) Application not only to bills of lading but to all contracts of carriage of goods except under a charter party. These are substantial differences. The impact is to place a higher and more onerous liability on carriers and a significant transfer of risk from cargo owners to carriers.

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

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

Examples of technical defects:

The Hague Rules set out the duty of carriers and their defences in detail under Article III and IV. In the Hamburg Rules, Article 5, Paragraph 1 States "carrier is liable for loss of or damage to goods: if the occurrence which caused the loss/damage took place while the goods were in his charge …… unless the carrier proves he, his

servants or agents took all measures he could reasonably be required to avoid the occurrence and its consequences."

There is a total lack of any clear guidance or definition of these terms and they must be left to practice and to the courts.

The Hamburg Rules place a mandatory liability on the carrier for delay. This is defined as: "…. Not delivered at port of discharge within expressly agreed time or if no agreement as to the time of delivery, within a reasonable time."

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

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

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

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

Points in favour of a Hamburg Rules Legislation are:
a) There is a need for a new sea transport convention or amendments to existing ones.
b) The 1924 Rules are outdated and are biased in favour of developed countries.
c) Overall policy of Hamburg Rules are praiseworthy and a welcome simplification.

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

Some questions that need to be looked at thoroughly in the analysis of existing and contemplated legislation may be as follows:
a) The new liability problem raised by container/box operation.
b) Local as against international carriage operations.
c) The freight forwarder's growing role in inter-modal transportation and concepts such as NVOCC, conference pressures, slot and space sharing, banking security and the effect of the uniform customs procedures on documentary credits and standard trading conditions.
d) The role of the surveyors who ascertain the nature, cause and extent of loss/damage and the importance of professional loss determination – the need to establish when, where and how.
e) Jurisdiction and the law of contract – the conflict situations.
f) Role of insurance and the applicability of institute cargo clauses.

The Warsaw Convention

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

c) Liability and responsibility.
d) Liability ceiling and how that works.

The Multi-Modal Convention

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

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

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

UNCTAD took the initiative to introduce the multi-modal convention of 1980 but it met considerable resistance and was not adopted.

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

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

On balance, I am of the view that the Hamburg Rules and the multi-modal transport convention hold out some promise for the future.

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

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

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

The Singapore COGSA

We Will Be Examining Some Of The Main Provisions In This Act.

Section 3 – Application of Rules
The incorporation of The Schedule of Hague-Visby Rules in respect of Carriage of Goods by Sea in ships applies where the port of shipment is a port in Singapore.

Section 4 – Absolute Warranty of Seaworthiness not to be implied in contracts to which rules apply

The Schedule – The Hague-Visby Rules
Article I – Definitions

Article III – Responsibilities of the Carrier
This section details the responsibilities of the carrier in respect of the following:

- Exercising of (i) due diligence on ship's seaworthiness; (ii) proper crewing, equipping and supplying of ship; and (iii) cargo care precautions for receiving, handling, stowing, carriage and preservation in all areas where cargo are to be kept – all these to be done prior to and at the start of voyage.
- Issuing of bill of lading to shipper detailing identification markings as supplied by shipper; packages/pieces/weight as appropriately supplied by shipper; and the apparent order and condition of goods as received.
- Within 3 days of receipt of goods, person entitled to delivery must give notice in writing in respect of loss or damage, which were not apparent at the time of such receipt – "non-fatal".

- The carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods unless suit brought within one year of their delivery or of the date when they should have been delivered.

Article IV – Exceptions and Immunities accorded to Carrier/Ship

- Listed in the rules are the areas where the carrier/ship is not responsible for loss or damage arising or resulting from.

- Where the nature and value of the goods are not specifically declared before shipment and inserted in the bill of lading, the carrier/ship's liability for loss or damage is limited to the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost/damaged, whichever is the higher.

- Definition of number of packages or units in respect of consolidated cargo within a container, pallet or similar article of transport.

- Dangerous goods shipment where not consented by carrier/master/agent may be removed, destroyed or rendered innocuous by the carrier at any time without compensation and the shipper shall be liable for all damages and expenses resulting from such shipment.

- Defences and limits of liability provided for whether action be founded in contract or in tort.

- 'himalaya clause' in a bill of lading gives the servants, agents and sub-contractors of the carrier the right to rely on the carrier's defences and limitations under the bill of lading, in the event that they are sued themselves.

Article V – Surrender of Rights and Immunities
Carrier may increase his liability of lower his immunities by special clausing in the bill of lading issued to the shipper.

Article X – Applicability of the Rules
The provisions of the rules shall apply to every bill of lading issued in Singapore.

Carriage of Goods by Sea Act 1972 (Cap 13, 1985 Edition of Singapore Laws)

Arrangement of Provisions

1 Short Title

2 Definition

3 Application of Rules

4 Absolute Warranty of Seaworthiness not to be implied in contracts to which rules apply

Modification of paragraphs 4 and 5 of Article III of rules in relation to bulk cargoes

Saving and operation of other written law

The Schedule
The Hague Rules as amended by the Brussels Protocol 1968

Short Title
1. This act may be cited as the carriage of goods by sea act.

Definition
2. In this Act, "Rules" means the International Convention for the unification of certain rules of law relating to bills of lading made at Brussels on 25th August 1924, as amended by the Protocol made at Brussels on 23rd February 1968, and as set out in the Schedule.

Application of Rules
3. (1) The provisions of the Rules, as set out in the schedule to this act, shall have the force of law.

[6/95]

(2) Without prejudice to Subsection (1), the provisions of the rules shall also have effect (and have the force of law) in relation to and in connection with the carriage of goods by sea in ships where the port of shipment is a port in Singapore, whether or not the carriage is between ports in 2 different states within the meaning of article x of the rules.

[6/95]

(3) Subject to Subsection (4), nothing in this section shall be construed as applying anything in the rules to any contract for the Carriage of Goods by Sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

[6/95]

(4) Without prejudice to paragraph (*c*) of article x of the rules, the rules shall have the force of law in relation to —

(A) Any bill of lading if the contract contained in or evidenced by it expressly provides that the rules shall govern the contract; and

(B) Any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the rules are to govern the contract.

(5) Where Subsection (4) (*b*) applies, the rules shall apply —

(A) As if the receipt referred to therein were a bill of lading; and

(B) Subject to any necessary modifications and in particular with the omission of the second sentence of paragraph 4 and of paragraph 7 in Article III of the rules.

[6/95]

(6) If and so far as the contract contained in or evidenced by a bill of lading or receipt referred to in paragraph (*a*) or (*b*) of subsection (4) applies to deck cargo or live animals, the rules as given the force of law by that subsection shall have effect as if Article I (*c*) did not exclude deck cargo and live animals.

[6/95]

(7) In Subsection (6), "Deck Cargo" means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

[6/95]

(8) The Minister may, from time to time by order published in the *Gazette*, specify the respective amounts which, for the purposes of paragraph 5 of Article IV and of Article IV BIS of the rules, are to be taken as equivalent to the sums expressed in francs which are mentioned in paragraph 5 (*a*) of Article IV.

[6/95]

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply

4. There shall not be implied in any contract for the carriage of goods by sea to which the rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Modification of paragraphs 4 and 5 of Article III of Rules in relation to bulk cargoes

*__5.__ Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.
* the former sections 5 and 6 were repealed by act 6/95.
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Saving and Operation of Other Written Law

*__6.__ Nothing in this act shall affect the operation of sections 135 and 136 of the merchant shipping Act (cap. 179) as amended by any subsequent act, or the operation of any other enactment for the time being in force limiting the liability of the owners of sea-going vessels.

* The Former Sections 5 and 6 were repealed by Act 6/95.
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The Schedule
Sections 2 And 3 (1)
The Hague Rules As Amended By
The Brussels Protocol 1968
Article I
In these rules the following words are employed, with the meanings set out below:
(A) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(B) "Contract Of Carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(C) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the Contract of Carriage is stated as being carried on deck and is so carried.
(D) "Ship" means any vessel used for the Carriage of Goods by Sea.

(E) "Carriage of Goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II
Subject to the provisions of article vi, under every contract of Carriage of Goods by Sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article III
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 for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other.

Things —
(A) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(B) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(C) The apparent order and condition of the goods.
Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*) and (*c*). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within 3 days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6*bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has risen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6*bis*. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than 3 months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of article iii, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to 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 in accordance with the provisions of paragraph 1 of Article

III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from —
(a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
(b) fire, unless caused by the actual fault or privity of the carrier.
(c) perils, dangers and accidents of the sea or other navigable waters.
(d) act of god.
(e) act of war.
(f) act of public enemies.
(g) arrest or restraint of princes, rulers or people, or seizure under legal process.
(h) quarantine restrictions.
(i) act or omission of the shipper or owner of the goods, his agent or representative.
(j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
(k) riots and civil commotions.
(l) saving or attempting to save life or property at sea.
(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
(n) insufficiency of packing.
(o) insufficiency or inadequacy of marks.
(p) latent defects not discoverable by due diligence.
(q) 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 or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5.—(a) unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(*b*) the total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(*c*) where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(*d*) a franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900. The date of conversion of the sum awarded into national currencies shall be governed by the law of the court seized of the case.

(*e*) neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(*f*) the declaration mentioned in sub-paragraph (*a*) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(*g*) by agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (*a*) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(*h*) neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IV BIS

1. The defences and limits of liability provided for in these rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled

to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail Himself of the Provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article V
A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these rules. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI
Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.
Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII
Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article VIII
The provisions of these rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX
These rules shall not affect the provisions of any international convention or national law governing liability for nuclear damage.

Article X
The provisions of these rules shall apply to every bill of lading relating to the carriage of goods between ports in 2 different states if:
(a) the bill of lading is issued in a contracting state, or
(b) the carriage is from a port in a contracting state, or
(c) the contract contained in or evidenced by the bill of lading provides that these rules or legislation of any state giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

The Carriage of Goods by Sea Act
(Chapter 33, Section 3(2))
Carriage of Goods by Sea
(Singapore Currency Equivalents) Order

In exercise of the powers conferred by section 3 (2) of the Carriage of Goods by Sea Act, 1972, The Minister for Trade and Industry hereby makes the following order: -

1. This order may be cited as the Carriage of Goods by Sea (Singapore Currency Equivalents) Order, 1982 and shall come into operation on 25th day of June, 1982.

2. For the purposes of paragraph 5 of Article IV of the Rules and of Article IV BIS of the Rules set out in the schedule to the act, one thousand five hundred and sixty-three dollars and sixty-five cents and four dollars and sixty-nine cents are hereby specified as the amounts which shall be taken as equivalent to 10,000 gold francs and 30 gold francs respectively.

Made this 23th day of July, 1982.

Ngiam Tong Dow
Permanent Secretary
Ministry Of Trade and Industry
Singapore.

[Td. 590:5/9; Ag./Sl./19/82]

Case Summary
Carriage of Goods by Sea

Issues
1) Dispute as to convenient forum – forum stated in bill of lading as Indonesia.
2) Purposive construction and interpretation.

"The Epar"
Mlj 1984

Facts
Defendants contracted to deliver 349 pallets of drilling mud from Singapore to Belawan.

There was damage to 53 pallets. An action was commenced in Singapore.

The vessel owners argued that Indonesia was the most convenient forum and clause 17 of the B/L stated "any claim shall be dealt with by the courts in Jakarta to the exclusion of all courts".

If the claim went to Jakarta, the shippers claim would be limited to a far lower sum than under Singapore COGSA.

Held
a) The Singapore COGSA applied to all bills of lading issued in Singapore.
b) The jurisdiction clause applying domestic law limiting the carriers' liability to a lower sum will be treated as of no effect.

[Note: See Also "*The Blue Fruit"* And *"The Morviken".*

Case Summary
Carriage of Goods by Sea

Issues
1) Shipping and navigation.
2) Obligation of ship-owners to exercise due diligence.
3) Breach of duties of bailee?
4) Defence under Article IV of Hague Rules (COGSA).
5) Seaworthiness.
6) Title to sue.

The Patraikos 2
(2002) SLR
Facts

Plaintiffs shipped cargo from various European ports. While sailing, the vessel ran aground. The vessel was re-floated and dry-docked. Vessel was arrested. The cargo was damaged by seawater.

Plaintiffs alleged failure to take reasonable care of the cargo and to deliver same in the same good order as shipped, breach of article iii paragraphs 1 & 2 of the Hague Rules.

Defendants put plaintiffs to strict proof of their right to sue in view of sub-bailment. They counterclaimed for average.

Held
The plaintiffs' claim was granted and counterclaim was dismissed.

Furnishing the general average bonds was proof of ownership.

The mate on duty was not competent and there was proper bridge management system.

As a result, ship would not rely on Article IV of the Hague Rules.

On a balance of probabilities, the vessel was unseaworthy because of incompetence and vessel's corrosion.

The obligation under Article III paragraph 2 was a continuous one. Proximate cause was grounding (not a peril of the sea) but seawater ingress due to corrosion of bulkheads.

The defendants were not entitled to their counterclaim as they did not act with due diligence and could not claim ga.

Case Summary
Carriage of Goods by Sea

"The Rafaela S"
House of Lords 16 February 2005
J I Macwilliam Co Inc (Boston) V **Mediterranean Shipping Co SA**

The long odyssey of the good ship Rafaela S, which started in Felixstowe in January 1990, has finally come to an end with a ruling by the House of Lords.

Four containers of printing machinery, carried on the ship as part of a through movement from Durban, South Africa, to Boston, Massachusetts, were found to be damaged on arrival. The carrier, Mediterranean Shipping Co. SA, ("msc") had issued a bill of lading for the consignment, showing the buyer, J.I. Macwilliam of Boston, as the consignee.

The bill was classed as "straight" or "non-negotiable". When presented with a claim, MSC contended that, because it was a straight bill, the document did not fall within the compulsory application of the Hague-Visby Rules.

Article i (b) of the rules states that they apply "only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea…"

MSC argued that, because it was not negotiable, a straight bill of lading was not "a document of title" and was therefore outside the scope of the rules. As a result, they said, the contract was subject to the United States' COGSA, giving a maximum compensation of USD 2,000 instead of the rather more generous USD150,000 available under the Hague-Visby Rules.

The case went before arbitrators, who agreed with MSC; and from there to the commercial court, which also found in the carrier's favour. The appeal court overturned the lower court's decision; MSC then appealed to the House of Lords.

In a unanimous decision delivered on February 16, the house upheld the appeal court's judgment.

The house considered the document issued by MSC. It was headed "bill of lading"; it contained clauses referring to "this bill of lading"; it bore the usual time-honoured attestation clause found on bills of lading ("the number of bills […] has been signed, all of this tenor and date, on of which being accomplished, the others to stand void"); and it contained the sort of clauses usually found on bills of lading.

In short it looked like a bill and it smelt like a bill: therefore, the judges concluded, it was a bill.

They found it rather strange that MSC was trying to deny that their document was not a bill, or would only be a bill if it were addressed "to order".

Lord Rodger of Earlsferry pointed out that the objective of the framers of The Hague (and Hague-Visby) rules had been to create a uniform set of minimum contractual standards, principally to protect third parties who became parties to the contract at some stage during the transport.

Contracts of Carriage were normally created between the shipper and the carrier, yet it was effectively the consignee who carried the risk of loss or damage.

In the era before The Hague Rules, he might find that his right to compensation had been severely restricted – or even excluded entirely – by onerous conditions agreed between the carrier and the shipper.

It was mainly to deal with this ill that the rules were formulated.

Lord Bingham noted that, while the focus of the Hague Rules discussions had been on Order Bills, Straight Bills Of Lading were in relatively common commercial use at the time and the rules contained nothing that excluded them.

Lord Nicholls of Birkenhead said that there was no reason why the rules should deny compensation to a consignee under a Straight Bill, when he would have got it had the bill been transferred to him by endorsement.

The words "or any similar document of title" was intended, their lordships decided, to extend rather than restrict the class of documents to which the rules applied: they were used deliberately to frustrate any attempt by carriers to circumvent the application of the rules by inventing some new form of document. However the judges drew a distinction between a bill of lading and a waybill.

The Lords quoted with approval the Singapore decision in the case of "Apl V Voss Peers", the details of which are to be found in chapter 3 of the lecture notes.

Case Summary
Carriage of Goods by Sea
Senator Lines Gmbh & Co. V. Sunway Line, Inc. & Others
Summary
The United States second circuit court of appeals held that a shipper is strictly liable under US COGSA Section 1304(6), for damages and expenses arising out of the shipment of inherently dangerous cargo where neither the shipper nor the carrier had actual or constructive pre-shipment knowledge of the inherently dangerous nature of the goods shipped.
Facts

On April 28, 1994, a fire broke out in the forward hold of the M/V Tokyo Senator as she was bound for Norfolk, Virginia. She was carrying a cargo of 300 drums of Thiourea Dioxide ("Tdo"), which she had loaded in Pusan, Republic of Korea.

The cargo originated in The People's Republic of China. At the time of the shipment, Tdo was considered to be a stable compound under normal circumstances and was not

listed as a hazardous or dangerous cargo in the International Maritime Dangerous Goods Code ("IMDG") nor in the Code of Federal Regulations ("CFR").

The vessel owner, Senator Lines, sued the cargo-shipping interests for the resulting damage to the vessel and for related expenses. After a trial, the district court (The Court Of First Instance) concluded that the fire resulted from an exothermic (or heat releasing) reaction within the container holding the Tdo Drums, although it held that the claimant shipowner had failed to establish the actual cause of the reaction.

The District Court also concluded that the evidence failed to establish that any particular party was responsible for the loss or that the defendant shippers had been aware at the time of the shipment of the hazardous nature of the cargo.
On the basis of those holdings, The District Court denied the shipowner's claim, holding that the Carriage of Goods by Sea Act, 46 U.S.C. Section 1304(6), does not impose liability on a shipper of inherently dangerous goods unless it can be shown that the shipper actually or constructively knew of the dangerous nature of the goods prior to shipment and failed to disclose that nature to the carrier.

Issue
Was The District Court correct in holding that COGSA Section 1304(6) does not impose strict liability on the shipper where neither the shipper nor the carrier knew of the inherently dangerous nature of the cargo?

Decision
The second circuit reversed the district court's ruling.
The second circuit found that a shipper is strictly liable under COGSA S.1304 (6), for damages and expenses arising out of the shipment of inherently dangerous cargo where neither the shipper nor the carrier had actual or constructive pre-shipment knowledge of the inherently dangerous nature of the shipped goods.

Comments
This decision is notable not only for its finding of strict liability on the shipper's part in these circumstances, but also in its acknowledgment that COGSA was originally enacted in the United States primarily for the purpose of obtaining international uniformity in the law governing the Carriage of Goods by Sea.