

**BEFORE LOADING AND AFTER DISCHARGE IN  
MULTIMODAL TRANSPORT**

The Hague-Visby Rules only apply for loss or damage which arise during the sea transit of the goods unless the contract extends the period of coverage. Where the rules do not apply the parties are free to contractually agree other terms. With multimodal transport different parts of the carriage may involve other international conventions such as the Warsaw Convention (Air) or CMR Convention (Road). Each of these conventions impose its own compulsory duties and limitation amounts. Identifying at what stage the loss or damage occurred will help clarify which (if any) convention applies. Often it is not possible to clearly identify when the goods were damaged. In such cases many bills of lading provide that the Hague-Visby Rules will apply.

*The law is as stated at January 2003*

*The law relating to carriage of goods by sea is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should seek the advice of a solicitor.*

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LAW GUIDE SERIES No. 2

***Carriage of Goods by Sea***

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## TYPES OF CONTRACT

There are basically two types of contract for the carriage of goods by sea. Firstly where it is desired to simply ship goods from port A to port B a bill of lading is issued. However, where it is desired to hire the whole ship (or perhaps part of the ship) then a charterparty is used.

### BILLS OF LADING

#### 1. Three Functions

- (a) It may contain or evidence the terms of the contract of carriage.
- (b) It is a receipt for the goods as to (a) quantity, and (b) condition.
- (c) It may be negotiable document of title.

#### 2. Who Can Sue

Hong Kong has recently followed the UK and brought into force new ordinance which has greatly improved position as it provides that the lawful holder of a bill of lading will have automatically conferred on him contractual rights irrespective of the passing of ownership in the goods. Previously a consignee or endorsee only acquired contractual rights if ownership of the goods has passed upon or by reason of the consignment or endorsement of the bill of lading. It was often difficult or impossible to establish this and the new law more closely reflects the business community expectations in respect of who should be entitled to sue.

#### 3. Who is the Carrier

Bills of lading can be issued by shipowners, by charterers or by freight forwarders. The terms of the bill of lading need to be carefully checked to establish who is the contractual carrier. Sometimes both a charterparty and a bill of lading is issued. In such circumstances as between the shipowner and the character the charterparty will be the governing contract of carriage. However if the bill of lading is subsequently endorsed to a third party then the contract of carriage between the shipowner and endorsee is governed by the terms of the bill of lading. Usually where a charterer issues a bill of lading there is a presumption (especially if signed by the master) that it is a contract with the shipowner. However this can be rebutted by a term to the contrary in the bill of lading.

#### 4. The Hague-Visby Rules

During the 19th century shipowners included wide exclusion clauses in their bill of lading. After much discussion shipowners and cargo interests agreed on the wording on an international convention known as the Hague Rules. Subsequently an amended convention was drafted known as the Hague-Visby Rules. Recently a new convention has come into force known as the Hamburg Rules. The present position is that most states are parties to either the Hague Rules or the Hague-Visby Rules and some states none of whom are major maritime nations, are parties the Hamburg Rules. Other states are not a party to any convention. In Hong Kong as in UK, the Hague-Visby Rules compulsorily apply to all shipments from a contracting state or where the bill of lading has been issued in a contracting state. The Hague-Visby Rules fall into two main categories, first those establishing minimum obligations on the carrier, and secondly those limiting liability.

##### (a) Duties of the Carrier

- The common law imposes an absolute obligation to provide a seaworthy vessel. Under the Hague-Visby Rules this is replaced by an obligation to use due diligence to make a ship seaworthy and fit and safe for the carriage of goods. However the obligation only exists before or at the beginning of the voyage. A claimant has to prove that the vessel was unseaworthy whereupon the shipowner then has to prove that due diligence has been exercised.
- The carrier must properly and carefully care for the goods. However the carrier is exempted from liability in respect of 17 exceptions which include neglect in the navigation of the ship fire (unless caused by actual fault or privity of the carrier), peril of the sea, act of God, etc.
- The carrier must on demand of the shipper issue a bill of lading showing various information including the number of packages or weight and the apparent order and condition of the goods.

##### (b) Limitation of liability

- Under the Hague Rules limit carriers can limit their liability to GBP100 gold value per package. The Hague-Visby Rules imposes a limit of 666.67 SDR's ("Special Drawing Right's") per package or 2 SDR's per kilo, whichever is higher (1 SDR = approx US\$1.4). The limit can only be broken if the carrier

has acted with intent to cause damage or recklessly.

- Both the Hague and Hague-Visby Rules impose a 1 year time limit and unless either legal proceedings are commenced or a time extension obtained, the claim becomes time barred.

## CHARTERPARTIES

A ship can be hired for a certain time (time charter) or for certain voyage (voyage charter). In addition where it is desired not just to hire the ship but to take over the running of the vessel this is possible under a bareboat charter.

Unlike bills of lading the Hague-Visby Rules do not compulsorily apply to charterparties although the parties can contractually agree to incorporate them. Over the years various standard charterparty forms have gained acceptance and usually their terms are well known having been the judicially interpreted. Frequently disputed involve determining when a ship is on or off hire and whether shipowners can withdraw a ship for a non-payment of hire etc.

## TONNAGE LIMITATIONS

As well as package limitation imposed by the Hague-Visby Rules a shipowner can limit liability by reference to the ship's tonnage. The calculation of owner's maximum liability is complex and governed by international convention. Hong Kong like UK applies the 1979 Tonnage Convention which imposes a higher limit than the 1975 Convention.

## FREIGHT

Freight is the consideration paid to the carrier for the carriage of the goods. It is payable even if the goods are delivered in a damage condition. A cargo owner is not allowed to claim a "set-off" if sued for unpaid freight.