



RESEARCH ARTICLE

The Time Frame of the Goods Maritime Carrier's Liability

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This study examines the time frame of the goods maritime carrier liability under both Egyptian maritime law and Hamburg Convention (also known as Hamburg Rules). It focuses on determining the legal framework governing this liability and identifying the point at which it begins and ends. It demonstrates that the carrier's liability is linked to possession of the goods and extends from the moment of receipt at the port of loading until their delivery to the rightful owner at the port of discharge. This determines the scope of application of the rules specific to maritime liability. The study also clarifies that the period preceding receipt and following delivery is not subject to the specific provisions of maritime liability but rather to the general rules of liability, according to the nature of each case. The study addresses some practical cases, such as the deposit of goods and their non-receipt, as well as their impact on the continuation of the carrier's liability, while emphasizing that actual delivery to the rightful owner is the basis for the termination of the carriage contract. The study also examines the contractual terms included in bills of lading and their validity, concluding that any term that exempts the carrier or limits its liability during the period of its subjection to the provisions of maritime transport is invalid, as these provisions are mandatory and aim to protect the shipper and the consignee. Finally, the study emphasized the importance of achieving a balance between the parties to the maritime transport contract and regulating the scope of the carrier's liability to ensure fairness and stability in international maritime transactions.

INTRODUCTION

Maritime transport of goods constitutes one of the most significant forms of commercial exploitation of the marine environment. It plays a central role of international trade and is widely regarded a fundamental pillar of its prosperity. This importance stems from the fact that maritime transport controls over a large percentage of global trade volume compared to other modes of transport, owing to its ability to transport large volumes of goods at a relatively lower cost and with greater efficiency.

This pivotal role has led states to pay special attention to the regulation of maritime transport, whether through national legislation aimed at regulating navigation within territorial waters and safeguarding national economic interests and flagged vessels, or through ensuring a balance of interests among different countries, whether they are owners of maritime fleets, shipping countries, or importers of goods. Given the predominantly international nature of maritime transport contracts, the international community has sought to unify the legal rules governing them through a number of international conventions. Among the most prominent of these are the Brussels Convention and its amendments, as well as the Hamburg Convention, both of which were designed to address many issues related to maritime transport - contracts and to establish a greater balance between the interests of the parties involved (carriers, shippers, and consignees).

Section One: The Time Frame of the Maritime Carrier's Liability for Goods in Maritime Trade Law

Article 227, paragraph 1, of the Maritime Trade Law stipulates that "the carrier is liable for loss or damage to goods if the loss or damage occurs during the period between the carrier's receipt of the

goods at the port of loading and their delivery at the port of discharge to the party entitled to receive or deposit them, as set out in the preceding article."

Article 226, to which the above provision refers, pertains to the situation where the party entitled to receive the goods fails to take delivery of the goods, or if the party entitled to receive the goods is present but refuses to accept them or to pay the freight or other charges arising from the contract of carriage. In such cases, the carrier may request permission from "the judge of urgent matters" to deposit the goods with a custodian appointed by that judge.

It is clear from the text of article 227, paragraph 1, of the Maritime Trade Law that the maritime carrier's liability for goods is based on a specific period of possession, and not absolute or extended possession of all goods that come into its possession, wherever they may be found. The crucial point here is not merely the goods entering the carrier's possession, but rather the possession recognized by the legislator and its precisely defined temporal scope. This liability begins from the moment the carrier receives the goods at the port of loading and remains in effect throughout the voyage, ending upon delivery to the rightful recipient at the port of discharge (Hosni, 1990).

Accordingly, the maritime carrier's liability for goods extends to any loss or damage incurred during the period from receipt at the port of loading until delivery at the port of discharge, as the goods are under the carrier's custody during this time. Anything may occur outside this very timeframe is not subject to the provisions of maritime liability, but rather is governed by general principles of liability, depending on the nature of the operation involved—whether land transport, air transport, or the safekeeping of goods before loading or after discharge (Barrie, 1999), even if the liability arises from operations ancillary to, or supplementary to, the maritime carriage contract.

On this basis, the two stages prior to the carrier's receipt of the goods at the port of loading and subsequent to their delivery at the port of discharge are not governed by the provisions of the Maritime Trade Law. Hence, the carrier may, during these two stages, include in the transport contract any conditions it deems appropriate concerning liability, such as exemption from liability, limitation of liability to a level lower than that stipulated by law, or other modifying conditions, within the framework of the principle of freedom of contract. This remains subject to the explicit agreement of the parties to extend the application of Maritime Trade Law's rules to such stages (Gamal El-Din, 1992).

However, any conditions that exclude or limit the carrier's liability during the period governed by the Maritime Trade Law is generally considered invalid, as it conflicts with mandatory provisions designed to protect the weaker contractual party, namely the shipper. Therefore, the legislator has been keen to protect the shipper by establishing a minimum liability limit that cannot be exceeded by agreement. The legislator has, therefore, established a mandatory minimum level of liability that cannot be derogated from by agreement.

From the aforementioned, it is clear that the legislator, with regard to the system of liability, abandoned the principle of the unity of the maritime transport contract. Instead, the purely maritime stage was subjected to the special system established by the provisions of the Maritime Trade Law. The two stages preceding and following this stage remain subject to general rules (Gamal El-Din, 1992) (Hosni, 1990) and freedom of contract.

When is delivery considered to have taken place according to the Egypt Maritime Trade Law?

While the primary source for the text of the first paragraph of Article 227 of the Maritime Trade Law draws its conceptual framework from the Hamburg Convention of 1978, the provision in the first paragraph of Article 227 addresses only the case of delivery to the consignee or their representative. However, the second clause of paragraph (b) of Article 4 of the Hamburg Convention addresses the case where the carrier places the goods at the disposal of the consignee in accordance with the contract, the law, or the customary practice in the relevant trade at the port of discharge. The aforementioned article stipulates that by placing the goods at the disposal of the consignee, the transport is considered complete, and there by, the carrier's liability for the goods is terminated, once the carrier has placed the goods at the disposal of the consignee.

The Hamburg Rules, in Article 4, Paragraph B, Section 3, also addressed a situation where the Hamburg Rules considered the delivery of goods to a party designated by law (i.e., constructive

delivery) at the port of discharge as equivalent to delivery to the consignee, thereby terminating the carrier's liability. However, this approach is criticized for favoring the carrier at the expense of the shipper and the consignee, as it may terminate the carrier's liability before the consignee has had the opportunity to physically inspect the goods. For this reason, the Egyptian legislator opted to limit the provision to delivery to the party entitled to receive the goods, without expanding the scope of delivery to others (Qayed ,1992).

Although the maritime Trade Law did not adopt the Hamburg Rules' provision regarding placing goods at the consignee's disposal as equivalent to delivery, Article 226, Paragraph 1, addresses the consignee's refusal to accept the goods. In this case, if the goods are deposited in accordance with the provisions of this paragraph, this does not constitute termination of the maritime transport contract, as the contract is only terminated by the actual delivery of the goods to the party entitled to receive them (i.e., the consignee) (Al-Fishani ,2016).

Article 226, paragraph 1, states that "If the holder of the right to receive the goods does not appear, or appears but refuses to receive them or to pay the freight or other amounts arising from the transport, the carrier may request the judge of urgent matters to authorize the deposit of the goods with a trustee appointed by the judge. The carrier may also request authorization to sell all, or part of, the goods to recover the aforementioned amounts." Therefore, the text does not address the deposit as completing the delivery. Indeed, this text relates to two scenarios:

First scenario: The holder of the right to receive the goods (i.e. the Consignee) does not appear to receive them.

A distinction must be made between two cases. First, if the arrival date of the ship is specified and known to the consignee and stated in the bill of lading, the time frame of the maritime carrier's liability ends upon the date of deposit, which occurs after the condition of the goods and any damage or loss that may have occurred has been ascertained at that time. Nevertheless, the carrier remains liable to the holder of the right to the goods for any damage or loss that may occur after the deposit, as their liability continues until actual delivery is completed. However, such liability after the act of deposit is no longer governed by the provisions of liability stipulated in the Maritime Trade Law, which are based on an obligation to achieve a result. Rather, it falls under the general rules that are limited to the obligation to exercise the care of a reasonable person in preserving the goods, especially since there is no contractual relationship between the custodian, with whom the goods were deposited, and the owner entitled to receive them (Hamdi , 1995).

Secondly, if the ship's arrival date is unknown because the bill of lading does not specify it, the consignee must be notified. If the consignee's address is unknown, publication in newspapers is required. The reason for this notification is that the deposit authorization is based on an order upon application, and therefore is not issued against the owner entitled to the goods. In this case, the temporal scope of the maritime carrier's liability for the goods extends beyond the act of deposit, and its liability for the goods remains subject to the provisions of the Maritime Trade Law. Consequently, the carrier is bound to preserve them as an obligation to achieve such result (Amal , 2000).

The second scenario: The owner of the goods is present but refuses to accept them or to pay the freight or other charges due under the contract of carriage.

In this case, the temporal scope of the maritime carrier's liability for the goods ends upon their deposit. however, the carrier's liability does not cease entirely, as it remains responsible for them after deposit according to the general rules of liability. consequently, the carrier's obligation at this stage transforms from an obligation to achieve a result to an obligation to exercise the care of a reasonable person in preserving the goods (Hosni, 1990).

In all the aforementioned cases, the legislator has permitted the carrier to resort to depositing the goods while remaining liable for them. The nature of this liability varies between an obligation to exercise due care and an obligation to achieve a result, depending on the specific circumstances. This regulation takes into account practical considerations, as the consignee's failure to accept the goods or their refusal to do so may result in the ship remaining in port for a longer period , leading to costs , fees , and delays in subsequent voyages , as well as hindering the utilization of the goods' position

on board. Therefore, the legislator has allowed the carrier to deposit the goods after obtaining permission from "the judge of urgent matters".

In this regard, the Court of Cassation ruled that "it is established that the carrier is not relieved of his obligation to preserve the goods until their actual delivery if the consignee does not appear to receive the goods after they have been unloaded from the ship or refuses to receive them, so he may deposit them with a trustee appointed by the judge of urgent matters, as stated in Article 226 of the Maritime Trade Law.(1)" The Court of Cassation, also, ruled that "the carrier is not relieved of his obligation to preserve them until their actual delivery if the consignee does not appear to receive the goods after they have been unloaded from the ship or refuses to receive them, so he may deposit them with a trustee appointed by the judge of urgent matters, as stated in Article 226 of the Maritime Trade Law.(2)"

Section Two: The Time Frame of the Maritime Carrier's Liability for Goods under the Hamburg Rules of 1978.

Article 4 (entitled "Period of Liability") of the Hamburg Rules states that: "1. The carrier's liability for goods, under this Rules, shall include the period during which the goods are in the carrier's custody at the port of loading, during transit, and at the port of discharge".

2. For the purposes of paragraph 1 of this Article, goods shall be deemed to be in the carrier's custody:

(a) from the moment the carrier receives the goods from:

(i) the shipper or a person acting on its behalf, or

(ii) an authority or other third party to whom the laws or regulations in force at the port of loading require the goods to be delivered for the purpose of shipment.

(b) until the carrier delivers the goods by:

(i) delivering them to the consignee, or

(ii) placing them at the disposal of the consignee in accordance with contract, law, or custom in the trade of the port of discharge, in cases where the consignee does not take delivery of the goods from the carrier, or

(iii) delivering them to an authority or other third party to whom the laws or regulations in force at the port of discharge require the goods to be delivered.

3. In paragraphs 1 and 2 of this Article, term "carrier" and "consignee" includes their respective employees and agents, ensuring that liability extends to acts performed on their behalf.

It is evident from the text of Article 4 of the Hamburg Rules that it did not limit its temporal scope to the port-to-port voyage phase only, unlike what was stipulated in the Brussels Rules. This resulted in many important operations falling outside the scope of the Brussels Rules. Under these circumstances, the injured party had to resort to the general rules of liability, which made it difficult to prove fault on the part of the carrier (Al-Rasheed, 2017).

It is clear from the text of Article 4 that the temporal scope of its own provisions is linked to the goods being in the carrier's custody. While the Convention does not define this term, it is necessarily connected to the carrier's responsibility for supervising and controlling the goods (bariri, 1999). In other words, as some legal scholars have stated, actual supervision is a crucial element in taking goods into custody (hosni, 1990).

However, the carrier's liability period under the Hamburg Rules covers the period during which the goods are in its own custody, provided this occurs within the geographical boundaries of the port of loading and the port of discharge. If the carrier receives the goods outside the port of loading, or if the goods are delivered to the consignee outside the port of discharge, the provisions of the Convention do not apply to any damage to the goods at that location. Consequently, there is no basis for applying its provisions regarding the presumption of fault, as the claimant must prove the

¹) Appeal No. 12983 of Judicial Year 75, session dated 10 June 2008, Vol. 59, p. 677, Ruling No. 118.

²) Egyptian Court of Cassation, Appeal No. 164 of Judicial Year 70, judgment dated 23 April 2015.

carrier's fault leading to the damage (Berlingieri , 2014) (Qayed ,1992) (Hamdi , 1995) (Kamal Hamdi ,1998) (Ghannam ,2012).

According to the principles of freedom of contract, for transactions that fall outside the timeframe of the maritime carrier's liability defined for the application of the Convention's provisions, the parties may agree on conditions for exemption from liability, or for limitation of liability to a lesser extent than the legal limitation of the maritime carrier's liability for goods specified in their own agreement (kamal Hamdi ,1998). Additionally, this very agreement cannot be subject to different items, during the period in which the provisions of the agreement are in force, in terms of temporal scope of the agreement, i.e., from when the carrier receives the goods at the port of shipment until he delivers them to the person entitled to receive them at the port of discharge.

Goods remain in the custody of the carrier from the moment of receipt from the shipper at the port of loading, whether directly, through the shipper's agents, or via a legally mandated entity. This custody continues throughout the transit period until delivery to the rightful owner at the port of discharge or their representative. Delivery may also be accomplished by placing the goods at the disposal of the consignee in accordance with the contract or custom, or by delivering them to a legally required recipient, such as port authorities, customs warehouses, or other competent authorities (Hamid, 1995).

Some argue that the receipt and delivery of goods, as stipulated in the Hamburg Rules may, in certain cases, release the carrier from liability even without actual delivery of the goods to the consignee. This occurs when the carrier places the goods at the consignee's disposal without actually delivering them (Hamid, 1995) (qayed ,1992) (g Hannam ,2012).

It is evident from the time frame of the maritime carrier's liability for goods in the Hamburg Rules that it aligns with the time frame of the maritime carrier's liability under Maritime Trade Law.

CONCLUSION

The study has examined the scope of the maritime carrier's temporal liability for goods in both the Hamburg Rules and the Egyptian Maritime Trade Law, highlighting the differences between them, in terms of defining the beginning and end of this liability. It was found that both limit the carrier's liability to the period extending from receipt of the goods at the port of loading until their delivery at the port of discharge, considering this stage to be "the core of the maritime transport process ".

The paper, also, has clarified some of the conditions commonly included in bills of lading related to the loading and unloading phases, and their validity in light of the governing legal rules. It concluded that conditions that exempt the carrier from liability or reduce it in a way that harms the shipper or consignee are invalid, especially concerning damages that may befall the goods during the period under the carrier's liability. However, it is permissible to agree on charging the shipper or consignee some expenses without violating mandatory rules.

The analysis, also, has demonstrated that the legislator sought to achieve a degree of balance between the interests of the contracting parties by securing a minimum level of protection for the shipper and preventing the abuse of the carrier's stronger bargaining position. conversely, in some cases, liability may be regulated by agreement of the parties outside the legally defined time frame, in accordance with the general rules of liability.

In light of this, it is clear that the legal framework for the maritime carrier's liability is based on a precise definition of its own time frame, along with the establishment of mandatory rules to ensure the protection of the parties involved and to achieve stability and fairness in maritime transport transactions.

Research paper's Findings

- 1- The temporal - scope of the maritime carrier's liability extends from the moment the goods are received at the port of loading until their delivery at the port of discharge. This period governed by the specific provisions of the Maritime Trade Law and the Hamburg Rules.
- 2- This liability does not extend to the pre-loading or post-loading stages, as these stages are subject to the general rules of liability.

3- Conditions that exempt the carrier from liability, or reduce it during the maritime transport period, are invalid because they violate mandatory rules and protect the shipper, who is the weaker party.

4- It is permissible to agree on regulating liability outside the timeframe of maritime transport, including charging the shipper or consignee some expenses, provided that such arrangements do not conflict with the general rules.

5- The carrier remains responsible for the goods in cases of custodianship. Nevertheless, the nature of this responsibility shifts from an obligation to achieve a result to an obligation to exercise due diligence, in accordance with general rules.

6. Actual delivery to the party legally entitled to receive the goods is the basis for the termination of the obligation in the contract of carriage, and no other form of delivery is valid except within narrow limits prescribed by law.

7. The legislator has been keen to achieve a balance between the interests of the contracting parties by ensuring a minimum level of protection for the shipper while preventing the carrier from arbitrarily imposing conditions.

Recommendations:

The study suggests that:

- The legal texts relating to the commencement and termination of the maritime carrier's liability need to be clarified more precisely to prevent discrepancies in interpretation and application.
- The importance of actual delivery of the goods to the rightful owner should be emphasized, and constructive delivery should be limited to the narrowest possible scope.
- Protection for the shipper and consignee should be strengthened by strictly invalidating any conditions that exempt the carrier from or reduce its liability during the period of maritime transport.
- More precise regulations should be established for cases of custodianship of goods, with an explicit statement of their legal effects, particularly regarding the continuity of the carrier's liability.
- Achieving a greater balance between the interests of the parties to the transport contract, in a way that does not allow the exploitation of the stronger position of the carrier while preserving a fair commercial equilibrium.

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