
The Carrier's Duties and Liability under the Carriage of Goods by Sea: Common Law, International Conventions and the 1972 Jordanian Maritime Trade Act Compared

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Abstract

This paper deals with the carrier's duties and liability under laws concerning the carriage of goods by sea. The common law, the Hague and the Hague-Visby Rules, the Hamburg Rules as well as the Rotterdam Rules will all be reviewed. These conventions will be analysed and compared alongside the Jordanian Maritime Trade Act 1972 (JMTA). Due to the predominance of English law on the matter, this will be utilised as a basis on which an analysis will take place by exploring relevant aspects of the common law. It is essential at this stage to reinforce that the main focus of the paper will be specifically looking at the carrier's duties and liability. Whilst conducting the comparative analysis, less importance will be allocated to the Hamburg Rules compared to the others, namely because the Hamburg Rules were not signed by numerous countries compared to the other conventions. Hence, it is seen as less significant and this can be clearly seen through Jurisprudence. This paper consists of four sections. Section one deals with the carrier's definition. Section two is allocated for the duties of carrier. Exclusion from liability is dealt with in Section three. Section four concludes the paper.

Key words: Maritime Law, Carrier's Duties and Liability, Carriage of Goods by Sea, the Hamburg Rules, the Rotterdam Rules, Jordan Maritime Trade Act 1972.

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Introduction

This paper aims to understand the carrier's duties and liability under laws concerning the carriage of goods by sea. Legislation in this regard has undergone significant changes over the years due to legislative reform. The common law, the Hague and the Hague-Visby Rules, the Hamburg Rules as well as the Rotterdam Rules will all be reviewed. These conventions will be analysed and compared alongside the Jordanian Maritime Trade Act 1972 (JMTA)⁽¹⁾. Due to the predominance of English law on the matter, this will be utilised as a basis on which an analysis will take place by exploring relevant aspects of the common law. The main focus of the paper will be specifically looking at the carrier's duties and liability and less focus will be given to the Hamburg Rules compared to the others, namely because the Hamburg Rules were not signed by numerous countries compared to the other conventions. Hence, it is seen as less significant and this can be clearly seen through Jurisprudence. Through understanding the effects of these changes, it is hoped that the reader can form his own opinion on whether or not the changes brought about by the various conventions should be kept/removed or altered. Ultimately, since the carrier's duties and liabilities are one of the most important aspects of the conventions, the reader will also be able to form a critical opinion of which parts of the convention are best suited to one's personal needs or the industry as a whole. This paper consists of four sections. Section one deals with the carrier's definition. Section two is allocated for the duties of carrier. Exclusion from liability is dealt with in section three. Section four concludes the paper.

(1) Jordanian Maritime Trade Act No 12 of the year 1972. Published on Official Gazette 1972-05-06 2357

Section One: The Carrier

1.1. Definition of the Carrier under the different conventions

The Hague Visby Rules Article 1 defines the carrier as ‘the owner or the charterer who enters into a contract of carriage with a shipper’. The Hamburg Rules in Article 1 stipulates that the “Carrier” means ‘any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.’ This covers the actual and contractual carrier. Under the Rotterdam Rules, this is defined as a person who enters into a contract of carriage with a shipper including a performing party and a maritime performing party⁽¹⁾.

The Rotterdam Rules are more simplistic in their definition. They define the term carrier as ‘any person who enters into a contract of carriage with the shipper.’ This is easier than the definition found under the Hamburg Rules, which divides the carrier into two; the actual carrier and a person acting in the carrier’s name. However, things get more complicated as it adds two more parties; the “performing party”⁽²⁾ and the “maritime performing party”⁽³⁾.

The definition of these terms is clearly explained in the convention. This brings the following question to mind; why would the convention mention these parties, or rather separate these from the definition of carrier? The only tangible reason, which comes to mind, is to place liability on those parties as well. However, they must be acting directly or indirectly under the directions of the carrier and performing his obligations. This is important to know when analysing the liabilities and obligations of the carrier. When we analyse the convention, we will see that if they are to carry out, or assist in the obligations of the carrier under his request, supervision or control, then they will be held liable for what they do.

Nevertheless, they are not to be considered as carriers for the purposes of the convention. The reason for this is that they are not found under the definition of ‘carrier’. This is not the case in the Hamburg Rules, which includes the parties under the definition of the carrier,

(1) Rotterdam Rules, See Article 1 Sub Section 5.

(2) Rotterdam Rules. See Article 1 Sub Section 6.

(3) Ibid.

which subsequently creates some confusion. Why would they feel the need to separate these parties and not just place them under the definition of the carrier? The only plausible reason that comes to mind is the protection this offers to both the carrier and the cargo owner.

To explore this point further, we must look at the Hague Visby Rules under which the carrier will be liable not only for his acts but also of those of his crew and servants. By separating these parties, the cargo owner can sue them in tort. Initially it was thought that this could also benefit the carrier in that the cargo owner will sue these parties rather than the carrier. However, when scrutinising the Rotterdam Rules closer, we see that they may be granting the shipper the right to sue both the parties and the carrier. This arises as a result of the carrier and parties being jointly and severally liable for loss or damage to the cargo.

Now if we look at the definition of a maritime carrier we see that the Rotterdam Rules defines it as a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area. It is felt that this perhaps needs to be revised as sometimes a small task such as storing of goods might take place just outside of the port area. In this situation, it would be irrational to claim that for such a small task the carrier is not a 'maritime performing party'. This may also raise questions as to what constitutes a 'port area'. For this reason, it is felt that the Rotterdam Rules should further define this area.

Unlike all the conventions mentioned above, which have clearly offered succinct definitions of the 'carrier', the (JMTA) fails to define either the carrier or the maritime carrier whatsoever. Rather, the Act directly commences listing of the carrier's responsibilities⁽¹⁾.

1.2. The carrier's period of responsibility in relevant conventions

When the Hague Rules were adopted in 1921, goods were normally received and delivered alongside the vessel. Eventually, in the case of liner trade, the carrier found it better to receive and deliver the goods within the ports warehouse. This was done to avoid delay. Therefore, the period of 'tackle-to-tackle' under the Hague and the Hague-Visby

(1) See, for the carriers liability, sections 211-218 of the JMTA.

Rules was no longer sufficient⁽¹⁾. This problem was temporarily resolved by the Hague Rules which extended the period of responsibility from when the carrier takes charge of the goods at the port of loading till the port of discharge.

However, with the introduction of containerisation, this period was no longer appropriate as containers could now be delivered from 'door to door'. This involves not only sea transport, but also land transport. The Rotterdam Rules cater for the whole contract period, which is from door to door.

This is a form of multimodal⁽²⁾ instrument, but not as understood in the traditional sense. Under the traditional sense, this involves transport of goods by at least two different modes of transportation and unlike the Rotterdam Rules, does not require one of the modes to be by sea⁽³⁾. It is felt that this is perhaps not the correct approach to take as the Rotterdam Rules should cover all modes of transportation even if one of the legs is not by sea.

The difficulty with applying the Rotterdam Rules as they stand is that if a situation arose where there is no sea leg, then one has to refer back to other conventions. A new convention should not need to be amended as soon as it is adopted which is one of the major flaws in the Rotterdam Rules. This is especially so since it goes against one of the main aims of the convention, which is to promote harmonisation. It does not only fail in achieving harmonisation but in fact, it could be argued that the situation is made worse, because now not only do we have to apply all the other conventions, but we have to do so alongside the particularly lengthy Rotterdam Rules. Therefore, we cannot say that the Rotterdam Rules will replace this patchy framework of rules, but add more to them.

This raises other problems such as uncertainty and increased application of legal fees. With regards to the concept of a maritime plus convention, equally it is felt that it should either concentrate on sea carriage or preferably a multimodal convention in the traditional sense.

(1) Hague Visby Rules. See Article 3 for carrier's responsibilities.

(2) For further information on multimodal transport and the carrier's period of responsibility, see Rotterdam Rules, Article 1.1.

(3) Ibid.

The Rotterdam Rules is also a unimodal⁽¹⁾ convention and if we look at the definition of contract in the Rotterdam Rules, we see that it includes carriage wholly and or partly by sea⁽²⁾. This feature of the Rotterdam Rules should be kept but expanded to include the regulation of other modes of transport. Also further uncertainty arises when we look closer into the meaning of 'by sea'. For instance, the question of whether or not the Rotterdam Rules apply if a leg is only through a river and not through a sea arises here.

Another relevant point to highlight within the Rotterdam Rules is where it states that the carrier's period of responsibility ends when the goods are delivered. This begs the question of what is meant by 'delivered'. For instance, is this referring to the point when the goods are placed outside the warehouse of the cargo owner, when the cargo owner takes the delivery physically or at some other point? One would expect to find a definition of 'delivered' within the rules; but this is not the case. It is suggested that this should be clearly defined to avoid future confusion and misinterpretation.

1.3. The carrier's period of responsibility under the JMTA

In comparison, the JMTA refers to the period of liability in a simpler way in Section 211. Here it states that the scope of carrier's responsibility is limited in terms of the timescale of the voyage as it is governed by the agreement between the shipper and the carrier. The carrier is liable from the time of shipping the goods, which includes loading the goods onto the ship until offloading at the arrival destination port. That is to say, this section does not cover the responsibility of the time where the carrier has received the goods to the time he actually loads the goods on board. Also, it does not cover the carrier's responsibility from the time of completion of loading the goods in the port of arrival until the time of handing over the goods to the recipient⁽³⁾.

(1) For more information on unimodal see Hoeks, Miah 2009, 'Multimodal Transport Law The law applicable to the multimodal contract for the carriage of goods.' P. 240.

(2) For definition of contract, see Rotterdam Rules, Article 1 Subsection 1.

(3) See for more details, Al-Qudah, F. Principles of Carrier's Liability: A comparative Study between the Jordanian Law and Hamburg Rules, Journal of Sharria and Law, Vol 26, no. 1, 1999, p. 225.

However, Jordan's court of Cassation has expanded the carrier's responsibility to cover the carrier's responsibility from the time of completion of loading the goods in the port of arrival until the time of handing over the goods to the recipient¹. This will be explored further in the paper. JMTA, like the Hague and the Hague-Visby Rules uses the unimodal approach² which it is felt to be acceptable now based on Jordan's current requirements when importing and exporting goods, but as the country's maritime needs further development, the JMTA should consider incorporating the multimodal approach.

Section Two: The duties of the carrier

2.1. Seaworthiness

2.1.1. Definition of Seaworthiness

It is not a simple task to define seaworthiness. This definition has changed over time as is evident from the following case law. In the case *Kopitoff v Wilson*, Field J defined it as a vessel 'fit to meet and undergo the perils of the sea and other incidental risks which of necessity she must be exposed in the course of the voyage'⁽³⁾.

According to Lord Scrutton, commenting on the case of *AEReed and Co Ltd v Page, Son and East*, seaworthiness comprises two elements:⁽⁴⁾

- (1) The vessel must be fit to take on the voyage; and
- (2) The ship must be fit to carry the cargo. That is for example; proper refrigerating chambers, machinery etc. This means that the ship must be cargo worthy. While in the case *McFadden v. Blue Star*

(1) See Jordan Court of Cassation ruling number 1317/92, Jordan Association Bar Journal Year 1993. P. 2081

(2) See JMTA. For further discussion on the scope of the carrier responsibility, see Daradkah, M, scope of the responsibility of the maritime carrier in each of the Jordanian Maritime Trade Act of 1972 and the Hamburg Rules of 1978. Al-Manar Journal, Vol 13 No.9, 2007, p. 109.

(3) *Kopitoff v Wilson* (1876) 1 QBD at p 380 per Field J.

(4) See case *AEReed and Co Ltd v Page, Son and East* [1927] 1 KB 743, CA. See the following link: <http://www.scribd.com/doc/3901543/Shipowners-Liability-the-UK-law->> (accessed 15th March 2016).

Line,⁽¹⁾ Channel J, citing Carver, defined seaworthiness as '... that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it'⁽²⁾.

This duty of seaworthiness under common law also includes cargo worthiness⁽³⁾, which will be explored further in the paper. One must also take into account that there cannot be a fixed rule as to what constitutes seaworthiness. This is because of the many variables involved. Sea worthiness must thus be looked at on a case-by-case basis. This was expressed by Viscount Sumner in the case *FC Bradley & Sons Ltd v Federal Steam Navigation CO Ltd*.⁽⁴⁾ Sumner says that in the law of carriage by sea, neither seaworthiness nor due diligence is absolute. Both are relative, among other things, to the state of knowledge and to the standards prevailing at the material time.

In the *Eurasian Dream*⁽⁵⁾ Cresswell held that when determining whether or not a ship is seaworthy we must take into consideration the technology available at that point in time and not the technological advances since. Hence, old ships will not necessarily need to live up to those advances, which new ships have, in order to be considered seaworthy. This would be an excessive burden on the ship owner.

2.1.2. The Carrier's obligation of seaworthiness under Common Law

Under common law, the carrier has an absolute obligation to provide a seaworthy vessel when the loading of cargo begins.⁽⁶⁾ It is not a continuing obligation. As the warranty of seaworthiness under common law started out as an absolute warranty, it could not be discarded by

(1) *McFadden v. Blue Star Line* [1905] 1 KB 697, 703

N.J. Margeston. The system of liability of articles III and IV of the Hague (Visby) Rules.

(2) Channel J. in *McFadden v Blue Star Line* [1905] 1KB697 at p.703.

(3) *EmpresaCubanaImportada de Alimentos 'Alimport' v Iasmos Shipping Co SA, The Good Friend* [1984] 2 Lloyd's Rep 586.

(4) *FC Bradley & Sons Ltd v Federal Steam Navigation CO Ltd* (1927) 24L1.L.Rep.446.

(5) *Pepera Traders Co Ltd V Hyundai Merchant Marine Co ltd* [2002] 1 Lloyd's Rep. 719.

(6) *MC fadden v Blue star Line* [1905] 1 KB 697, 703 and *Stanton v Richardson* (1877) LR 7 CP 421

show of due diligence. This was therefore an implied warranty; so it could only be excluded if it was expressly stated in the contract⁽¹⁾.

In the United States on the other hand, the carrier could not contract himself out of this warranty, as this was considered to be against public policy⁽²⁾. When the Harter Act was introduced in the USA, this no longer remained an absolute warranty. The carrier could then reduce his liability. The absolute warranty could be replaced by the carrier's duty to exercise due diligence in making the vessel seaworthy. The Harter Act paved the way for the Hague Rules in 1924, which radically changed the former absolute warranty obligation⁽³⁾.

2.1.3. Cargo worthiness

In the *Good Friend Case*,⁽⁴⁾ Staughton J held that the fact that the soya beans could not be unloaded due to pests on board means that it is unseaworthy. He said that the obligation of seaworthiness at common law includes cargo worthiness, and that is that the ship is fit to receive, carry and discharge the cargo at the port of destination. He continued to say that the ship would be unseaworthy even if no damage occurs. Cargo worthiness was also kept in the Hague and the Hague-Visby Rules⁽⁵⁾. There is no mention of cargo worthiness in the Hamburg Rules neither in the JMTA, whereas in the Rotterdam Rules this is mentioned⁽⁶⁾.

2.1.4. Seaworthiness under the Hague and Hague-Visby rules

(1) Indira Carr, *International Trade Law* (4th Ed Routledge – Cavendish Oxford 2010)) p. 235.

(2) *The Caledonia* 157 U.S. 124 (1895) (US Supr. Court) (Fuller CJ) where it was said: "The warranty.....ship is.....in fact seaworthy at that time, and does not depend on his knowledge or ignorance, his care or negligence." <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=157&invol=124>> accessed 19 July 2016. Also see George H.Chamlee, 'The Absolute Warranty of Seaworthiness: A History and Comparitive Study' (1973) 24 (2) *Mercer L.R.* 519, 524 <heinonline> accessed 19 July 2016.

(3) For Absolute Warranty See the Harter Act 1893, See Section 2.

(4) *EmpresaCubanaImportadora de Alimentos 'Alimport' v lasmos Shipping Co SA, The Good Friend* [1984] 2 *Lloyd's Rep* 586.

(5) See Hague and Hague-Visby Article 4, Rule 2 A-Q for more on cargo worthiness.

(6) For cargo worthiness, see Rotterdam Rules, Article 14 Subsection C.

Both will be dealt with under one title, as the Visby Rules, as both kept the same position as the Hague Rules with regards to this matter. The Hague Rules, without a doubt, offered some relief to the carriers when compared to the absolute warranty under common law⁽¹⁾. This is because the implied absolute liability was abrogated and replaced by the carriers obligation to exercise due diligence. This is reflected in the COGS Act⁽²⁾, which states; 'there shall not be implied in any contract for the carriage of goods by sea to which the rules apply by virtue of this Act any absolute undertaking by the carrier of the goods to provide a seaworthy ship.'

The Hague and the Hague-Visby Rules like the Harter Act try to prohibit the carrier from contracting out of the duty to exercise due diligence in providing a seaworthy vessel⁽³⁾. It is disagreeable that those who argue that since the absolute obligation was substituted with the duty of due diligence, then this means that the burden of the carrier was reduced. This is because previously the situation was more advantageous to the carrier as he could simply contract out of the obligation of providing a seaworthy vessel. This is made clear in Article III (8) Hague Rules.⁽⁴⁾ The Hague Rules under Article III (1) mention the areas in which the duty of seaworthiness is required.⁽⁵⁾ The problem with this is that some shippers may be willing to risk loss or damage to their cargo in order to get cheaper shipping costs by providing a vessel that might be unseaworthy. However, since this was the only way to protect the majority, this move was necessary.

(1) John F Wilson, *Carriage of Goods by Sea* (7th edition Longman, England 2010) p 101.

(2) COGS Act 1971 See Article X, Sub section 3.

(3) See Harter Act, Article 14 c.

(4) It says; "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 favor of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability".

(5) It says; "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".

This convention places a clear duty on the carrier to exercise due diligence to provide a seaworthy vessel before and after the beginning of the voyage.¹ This means from the beginning of loading to when the ship begins its voyage, and is referred to as from 'tackle to tackle'.⁽²⁾ In the *Muncaster* case³ this was interpreted as from the time of loading to the time when the ship weighs anchor. If the ship has more than one loading port, but the same discharge port, then the carrier must proceed to exercise the duty of seaworthiness until the last loading port. However, where the duties of loading and discharging are altered contractually, then, according to Carr⁽⁴⁾, the time of responsibility starts presumably from when the goods are in the charge of the carrier.

The JMTA is very basic in the way seaworthiness is articulated by simply requesting the carrier to submit the vessel for inspection prior to sailing to ensure seaworthiness⁽⁵⁾.

According to Tetley⁽⁶⁾ if the ship is in need of repair and these repairs can and are ordinarily undertaken at sea, this can be done and the carrier will be performing his obligation to provide a seaworthy vessel. Just like under common law, the carrier is obliged both to carry and care for the cargo.⁽⁷⁾ However, this is missing an important element as it does not state what will happen in the eventuality of loss or damage in the period from when it leaves port to when it's repaired. Another question left unanswered is until what point of the voyage can it be left unfixed? It is arguable that there is a little too much here open to debate. Alternatively, it would be easier to simplify the rule by stating that the vessel be seaworthy prior to leaving the port of discharge.

Both in the Hague and the Hague-Visby there was no change with regard to the duration of the obligation to provide a seaworthy vessel, nor was there a change in the meaning or definition of the obligation. This does not mean that the need for change was not felt. On the con-

(1) Hague Visby Rules, See Article III (1).

(2) *Maxine footwear Company Ltd v Canadian Government Merchant Marine Ltd*. [1957] S.C.R. 801.

(3) *River Stone Meat Co. PTY Ltd v Lancashire Shipping Co Ltd* [1961] Lloyd's Rep. 57.

(4) *Indira Carr*, op.cit, p.241.

(5) JMTA Section 116.

(6) Tetley. Op.cit, p. 894.

(7) Hague Rules. See Article II.

trary, an attempt at change was later made in the Hamburg Rules, but due to its lack of acceptance by the states, it was considered a failure. The Hamburg Rules had as its aim the extension of the obligation of the carrier. That is his obligation will persist throughout the time he is carrying the goods. It is important to note that Article III (1) of the Hague Rules is an overriding obligation. So for the carrier to rely on the exceptions under Article V (2) of the same rules, he must first prove that he exercised due diligence to make the vessel seaworthy. The JMTA is silent on the issue of repair.

2.1.5. Meaning of due diligence

According to Wilson⁽¹⁾ the standard imposed by this obligation has been interpreted by the courts as being similar to the duty of reasonable care at common law, but with the difference that it cannot be delegated.⁽²⁾ By this statement we do not mean that the work cannot be delegated but the responsibility to adhere to the duty will still be on the carrier irrespective of who carries out the work. Wilson quotes Tetley⁽³⁾ who says that 'the carrier may employ some other person to exercise due diligence, but, if the delegate is not diligent, then the carrier is responsible'⁽⁴⁾. In the Muncaster case, the carrier recruited a firm of reputable repairers to inspect the ship. When doing so one of the storm valves was left open, resulting in water coming in and damaging cargo. The cargo owner sued the carrier, who claimed that he was not responsible as he delegated his duty to a reputable firm. The court did not accept this reasoning as it stated that the ship owner's duty of due diligence in making the ship seaworthy is to be adhered to, irrelevant of who carries it out.

The obligation under Article III (1) is personally applied to the ship-owner.

Due diligence is interpreted on a case-by-case basis. What constitutes due diligence has been interpreted differently, by different courts,

(1) John F Wilson, *op.cit*, p,102.

(2) See Grain Growers Export CO. v Canada Steamship lines Ltd and the Muncaster case.

(3) Tetley *op.cit*, p.926.

(4) *Ibid*.

from different states. An important change brought about by the Hague Rules is that there must be a relation of cause and effect. In other words the damage must be a result of the lack of due diligence in making the vessel seaworthy that is, due to the failure of the carrier to exercise his obligation of due diligence. According to the Yamatogawa case,⁽¹⁾ if the damage cannot be attributed to the failure on the part of the carrier to exercise due diligence, then he cannot be held liable⁽²⁾.

Lord Wright asks the following question: 'Would the disaster not have happened if the ship had fulfilled the obligation of seaworthiness, even though the disaster could not have happened if there had not also been the specific peril or action?'⁽³⁾ This was not the case under the Harter Act. It is believed that this test of due diligence makes it very burdensome on the cargo owner as it is easy for the carrier to say that he exercised due diligence but equally difficult for the cargo owner to provide proof to the contrary.

It is felt that this is an unreasonable request for the carrier mainly for the reason that if a carrier genuinely commissions a repairer to undergo the repairs and as a result expects a standard of acceptable work for such payment. If the repairer then provides the substandard of work resulting in the vessel being unseaworthy – it is expected that he is fully accountable for ensuring the vessel is seaworthy. In other words, the carrier should expect that the firm or reputable repairers who claim to be experts in their field, to complete what is promised. It is also felt that the cargo owner should be able to seek redress from both.

As mentioned above, the obligation of due diligence is not absolute under the Hague-Visby Rules. This also means that a defect in the ship does not automatically render the ship unseaworthy.⁽⁴⁾ Through case law, we have developed the following test to see if the ship should be considered seaworthy or not. That is, we must ask the following question: would a prudent ship owner, had he known of the defect, have sent the ship to sea in that condition?

(1) Kuo International Oil Ltd v Daisy Shipping Co. Ltd [1990] 2Lloyd's Rep. 39.

(2) Smith Hogg & Co Ltd v Black Sea & Baltic General Insurance Co Ltd (1940) 67 Ll. L.

(3) Kuo International Oil Ltd v Daisy Shipping Co. Ltd [1990] 2Lloyd's Rep. 39.

(4) Mc Fadden v Blue Star line [1905] 1KB 697, 703.

2.1.6. Seaworthiness under the Hamburg rules

Under the Hamburg Rules¹ the duty of seaworthiness and due diligence are omitted. The liability of the carrier under the Hamburg rules are found in Article VI(1) which replaced articles III and IV in the Hague and the Hague Visby Rules. Article VI (1) stipulates:

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

The obligation on the carrier was extended to include not only the time before and at the beginning of the voyage but to cover the whole period in which the carrier is in possession of the cargo. That is, the obligation is from port to port. The carrier has the burden to prove due diligence. The carrier was no longer provided with a list of exclusions for liability. The carrier may not claim that he was not negligent in looking at the work of the person he employed or that he did not have the expertise to check such work.

As we can see this obligation makes it more burdensome on the carrier. First of all his period of responsibility is extended from tackle to tackle, port to port. With regards to the fact that he does not have a list of defences to pull out of his hat, his position is riskier. However, this may also have the adverse effect as he can simply argue that he, his master and crew exercised reasonable care. Also the fact that he will still be responsible for a reputable firm of repairers, it is felt that this is a shortcoming in both the Hague Visby Rules and the Hamburg Rules. It is felt that there should be a provision in these rules regulating the liability of such repairers. The fact that there is not any means that the carrier will have to sue the repairers in tort or under contract, but not through a remedy given under the convention. If this was to be implemented then the carrier will not be in such a burdensome situation.

It is felt that the convention should make the liability of such repairers higher than the actual loss incurred by the carrier as a direct

(1) These rules came into force in 1992.

result of their bad repairs. The reason for this is that the repairers are recruited for specific tasks and therefore the carrier would expect that they as experts are at least specialised in their field. Equally the carrier should hold some responsibility for the bad repairs as this further protects the cargo owner. However, if this provision is to be kept then it is necessary to have in its place another one regulating the liability of these repairers to the carrier.

2.1.7. Seaworthiness under the Rotterdam Rules

As stated earlier the Rotterdam Rules extends the period of liability of the carrier and that of application of the rules to 'door to door'. Another change brought about by the Rotterdam Rules is the period of the obligation. The carrier is now bound to exercise due diligence to keep the vessel seaworthy both at the beginning of the voyage and throughout the whole voyage⁽¹⁾. Here again the two obligations imposed under the Hague and the Hague-Visby were reintroduced; these being, the obligations of seaworthiness and due diligence⁽²⁾. For this reason, jurisprudence under the Hague and Hague Visby are still relevant in their application to the Rotterdam Rules. Obviously, we have to keep in mind that the Hague and Hague Visby Rules apply from 'tackle to tackle' while the Rotterdam have been extended to door to door⁽³⁾.

During the discussions of the Hague Rules the question was raised as to whether or not to make the obligation of seaworthiness a continuous obligation throughout the whole voyage.⁽⁴⁾ Historically, this was considered unfair on the carrier, as he could not anticipate the conditions ahead of him on the high seas. Today, due to huge technological advances this is no longer the case. The carrier can now make more rational decisions and has better control over his vessel. For this reason it is no longer considered unfair to impose this continuous obligation on the carrier, and hence, a justified addition to the Rotterdam Rules. The

(1) Rotterdam Rules. See Section 12.1.

(2) Hague and Hague Visby. See Article 3 Subsection a, b and c.

(3) See discussion above.

(4) Sofia Bengtsson, 'The carriage of Goods by Sea Convention: A comparative study of seaworthiness and the list of exclusions' (LLM thesis Lund University 2010) p 76. (Accessed on 19th July 2016: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1713339&fileId=1713340>)

three obligations previously listed in the Hague and the Hague-Visby Rules under Article III and subsequently removed in the Hamburg rules have been introduced into the Rotterdam Rules under Article 14⁽¹⁾.

2.1.8. Other conventions affecting the obligation of seaworthiness.

There are other conventions, which brought about changes in the obligation of seaworthiness. However, although they are important they will only be briefly mentioned as they do not fall in the scope of this paper. One such convention is the International Convention on Safety of Life at Sea (SOLAS). This brought about important amendments such as the International Safety Management Code (ISM) and the International Ship and Port Facility Security Code (ISPS). One must not forget that there are also commissions which change and influence the concept of seaworthiness, the most important being the CMI (Comité Maritime International) and the UNCITRAL (United Nations Commission on International Trade Law).

2.1.9. Seaworthiness under the JMTA⁽²⁾

Under the JMTA – the concept of seaworthiness has been dealt with by providing 3 main prerequisites prior to the onset of the voyage. By ensuring the vessel is appropriately prepared as 'seaworthy'; properly supplied with necessary equipment, seamen and provision; and that the condition of the ship is satisfactory to ensure its safe voyage via clean holds, refrigeration facilities and cooling areas wherever goods will be stored during the voyage⁽³⁾.

2.1.10. Further analysis of the doctrine of seaworthiness

Under the Hague-Visby Rules the carrier must exercise due diligence before and at the beginning of the voyage⁽⁴⁾. So the duty of sea-

(1) Article 14 Rotterdam Rules. The Rotterdam Rules United Nations convention for the international Carriage of Goods Wholly or partly by Sea 2008 .See generally for more information on this topic 'The Rotterdam Rules in a Nutshell'http://eprints.soton.ac.uk/170957/1/the_rotterdam_rules_in_a_nutshell.pdf Accessed 13.3.2016.

(2) JMTA. See Article 15.

(3) JMTA See Article 212.

(4) Hague and Hague Visby Rules, See Article 2, Subsection a, c & c.

worthiness is limited from tackle to tackle. The Rotterdam Rules refer to the duty “to make and keep the ship seaworthy”. However, although continuous obligation is acceptable to some degree, it is equally felt that it places excessive burden on the carrier and inevitably leads to increased reoccurring charges such as insurance costs. Hence, it is felt that the obligation should be less constrained when at sea in comparison to the period before it sets sail. One must also keep in mind that this will not really be of great effect as it is no more burdensome than the ISM Code⁽¹⁾. For this reason, it is more logical to suggest that if most carriers have already adapted to the ISM code, which is already fairly burdensome, they will not find it so difficult to adapt to the Rotterdam Rules. This then begs the question; why should the process be any less firm than the ISM Code? Clearly, it should be the same if not more rigorous.

The carrier’s obligation to make the ship seaworthy is clearly stated in the Hague-Visby Rules but not in the Hamburg Rules. The reasoning is that the legislator believed that it was enough to say that the carrier is liable for loss, damage or delay, ‘unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequence’⁽²⁾.

However, it could be argued that a lawyer would not be any clearer on what constitutes seaworthiness from this definition. One can only imagine the interpretation from a lay perspective or even by the carrier. This clearly leaves room for interpretation and raises further unnecessary questions. One such question is why a carrier remains liable when he seeks to commission a reputable repairer to fix the ship and the outcome is substandard? If this was asked under the Hague-Visby Rules,

(1)The International Safety Management (ISM) Code 2002 is an international standard for the safe operation of ships and for pollution prevention. Section IX of the International Convention for the Safety of Life at Sea (SOLAS) requires compliance with the ISM Code. See Article 3.1. Can be accessed at: http://www.imo.org/blast/mainframe.asp?topic_id=287

(2) See Carr, I and Stone, P. (2014) International Trade Law (5th Edition). P. 296. (accessed Ebook March 2016) See:https://books.google.com.qa/books?id=0IE3AgAAQBAJ&printsec=frontcover&hl=ar&source=gbs_ge_summary_r&cad=0#v=onep.&q&f=false.

it would be clearer as through jurisprudence this would constitute an unseaworthy vessel⁽¹⁾.

Under the Hamburg Rules, the actual word “unseaworthy” is not used. It could therefore be argued that the carrier, his servants or agents all took reasonable measures to avoid that occurrence. This leads to two emerging and significant factors. The first being the Court’s interpretation of what is meant by “all measures that reasonably be required to avoid the occurrence and its consequence”. The latter being the carrier’s ability to prove that he took reasonable care. As a result, it is felt that the duty to provide a seaworthy vessel has been extended to go beyond that of due diligence through case law.

The Hague-Visby Rules do not mention seaworthiness of the containers. In which case this is not because they are badly drafted but simply out-dated. The Rotterdam Rules takes this into consideration and now the obligation also includes that of providing a seaworthy container. If containerisation is considered to be part of seaworthiness then the duty cannot be delegated, yet if it forms part of cargo worthiness then it can. It is clear that it does in fact form part of seaworthiness in the Rotterdam Rules but not in the Hague Visby Rules⁽²⁾. This should be clarified in the Hague Visby Rules so as not to lead to uncertainty.

With regards to the continuous duty of seaworthiness, it has been demonstrated that it is clearly indicated. Nevertheless, due to this continuous obligation, it is felt that it should be taken into consideration under the duty of “delay” and deviation. This is because if the carrier is expected to maintain the vessels seaworthiness during the voyage, then there should be an acknowledgement that, inevitably, there may be a possibility that a repair is indicated. This may involve reducing speed, stopping or even diverting to the nearest port. This in turn leads to another criticism, if we are going to make the obligation continuous then this may override something even more important such as speed in carriage.

We need a general exception to the rule. This should state that continuous obligation is obligatory unless the carrier believes that the

(1) See Muncaster case p.15.

(2) Rotterdam Rules. See Article 14(c).

unseaworthiness is not a higher enough risk to warrant the delay. It is also proposed that in the case of any doubt to the circumstances, that an international office is formulated, which the vessel captain can contact to liaise, seek advice and approval on such matters before taking a decision. Although this could potentially remove ultimate burden from the carrier, it is felt that such an exclusion from liability as stated under Article 17, which states that he will be excluded from liability if it is necessary to make the ship seaworthy⁽¹⁾. This however, should only be allowed if:

The ship became unseaworthy once the ship began its voyage. The reason why it became unseaworthy is not due to lack of due diligence on the part of the carrier, his master, crew or servants. Such unseaworthiness was not reasonably foreseeable⁽²⁾.

The containers may not belong to the carrier, and in most cases are not. In such instances is he still responsible for checking that they are seaworthy? The Rotterdam Rules state that the carrier is responsible and so it is in his best interest to check these containers⁽³⁾. However, realistically speaking this is an impractical task; which is unfair on the carrier.

Another scenario, which can be perceived to be more unfair on the carrier, is when the shipper provides the containers and not the carrier. In this case, it is felt that the responsibility should fall upon the shipper. The situation may become even more complicated when we take into consideration when the damage or loss to containerised cargo did not occur as a result of the container per se, but due to the way they were packed. Here again we must look at who actually packed the container. It would be unfair to hold a carrier liable for damage or loss of goods, not as a result of an unseaworthy vessel, but bad stowage.

It is true that the Rotterdam Rules solves these problems by simply saying that the carrier is liable for an unseaworthy container, however this is not a correct approach as in many situations this is unfair on the carrier. As a result, it is suggested that the convention regulates this matter in more details. It should be able to answer questions including

(1) Rotterdam Rules, See Article 17.

(2) See Muncaster Case above.

(3) Rotterdam Rules, See Article 14 (a,b,c).

whether the container owner be held liable and if not whether or not the carrier could sue the container owner. Perhaps it would be possible for the consignee to be given a right or redress against the container owner. In addition, it is felt that the Rotterdam Rules should cater for a situation where the loss/damage can be apportioned between the carrier and cargo interest based on their level of fault.

With regard to the burden of proof it is easy for the carrier to argue that he, his crew and servants exercised due diligence, it is felt that the due diligence test is insufficient. The Rotterdam Rules should change the duty to provide a seaworthy vessel into a warranty. This will make the burden stricter on the carrier. It is pointless to place an obligation on the carrier, which is so easily discharged. The obligation under the Hamburg rules is harder to discharge and for this reason it is more appropriate.

When taking into consideration the JMTA and all of the above issues in relation to ensuring a seaworthy vessel, cargo worthiness and container never mind any of the more complex matters, it is clearly difficult to provide any comparison. This is due to the fact that the JMTA is very basic in its approach and this stems from it originating from the Hague Rules of 1924. As a result, the JMTA has remained as outdated as the Hague Rules in these matters. The prerequisites stated in the JMTA being too general could allow for misinterpretation especially when compared to the other conventions such as the Hamburg and the Rotterdam Rules, which are very specific on every aspect and yet still can be open to interpretation.

To sum up, in light of the above discussion, the JMTA has been silent on a number of key issues including due diligence, duty of delay; where liability begins and ends such as is referred in other conventions ('tackle to tackle') and continuous obligation which is in no way comparable to the ISM Code. These are only a few examples, which the JMTA omits to address. Due to these omissions, the JMTA is then open to further unnecessary questions and interpretations and indeed lacks in providing any solutions. In essence, all the arguments and criticisms applied to the other conventions in the above section also apply to the JMTA and illustrate how it needs a major overall to ensure it meets the expectations and needs of current maritime clients.

The effects of such omissions should not be underestimated. One could argue that due to the vagueness of the requirements stated above in the JMTA, this could potentially deter prospective ship owners to invest in Jordan ports as the JMTA does not match up to their expectations and would not protect their interests sufficiently. This could deter from future investments in the Maritime industry.

2.2. The Obligation not to deviate

2.2.1. Definition of deviation:

VidyaVenugopal,⁽¹⁾ in her article, quotes Scrutton who defines deviation as follows: 'In the absence of express stipulations to the contrary, the owner of a vessel implicitly undertakes to proceed by a usual and reasonable route without unjustifiable departure from that route and without unreasonable delay'. Deviation may also take place by the mere slowing down of the vessel⁽²⁾.

There is an implied obligation on the part of the carrier that he will not deviate from the contractual voyage. According to Girvin the origins of the doctrine comes from Marine Insurance⁽³⁾. The position used to be that if the ship deviates from the insured contractual route then it would not be covered by insurance. However, this is no longer the position⁽⁴⁾.

Deviation has been defined as 'an intentional and unreasonable change in the geographic route of the voyage as contracted'⁽⁵⁾. So from this element we can see that there are three important factors; the intentional element, unreasonable change in route, the geographic route. The route to be followed is clear if it is expressly stipulated in the contract of affreightment. However, if this is not the case we have to see what the geographical route is. This may either be the customary

(1)Vida Venugopal 'Deviation and delay during voyage' National University of Legal Studies, Cochin. (Written on 4/12/2007). <<http://shippinglawtimes.blogspot.com/2007/12/deviation-and-delay-during-voyage.html>> accessed 30thJanuary 2016.

(2)Taylor v. G.N.Ry. (1866) L.R.1.C.P.

(3) Stephen Girvin, Carriage of goods by sea, (2nd Ed. OUP Oxford 2011) p.105.

(4) John F. Wilson, op.cit, p. 102.

(5) Ibid.

geographical route or the direct geographical route; that is from port of loading to port of discharge⁽¹⁾.

The carrier may bring evidence to show that the route that he has taken was the customary route or that it is a route which is followed by a particular shipping line.⁽²⁾ In the case of *Reardon Smith Line v Black Sea and Baltic General Insurance*⁽³⁾ the vessel departed from the direct geographic route to go to Constanza in order to purchase fuel at a much cheaper rate. It was shown that many other vessels that passed on a similar course would take the same route in order to buy the cheaper fuel. The court held that this did not amount to deviation.⁽⁴⁾

As we said before the deviation must be deliberate. So if the ship has to change course due to bad weather or due to a faulty compass, that is not intentional, therefore it will not constitute deviation. In the case of *Verappa Chetty v Ventre*⁽⁵⁾ the master of the vessel went off course due to his own unskillfulness and ignorance. He did not realise he was off course until it was too late and he hit a sand bank. According to the court, to constitute a deviation it must be voluntary⁽⁶⁾. In this case, it was not and therefore it did not constitute an unjustifiable deviation. Therefore, negligence in navigation does not amount to deviation. This is clearly stated in the Hague and Hague-Visby rules.⁽⁷⁾

It is important to note that the carrier may want to take his time in sailing. One example is to sail at a speed which is optimal for fuel economy, as fuel costs are very high. On the other hand, the carrier has an inter-

(1) See *Davis V Garratt* (1830) 6 Bing 716.

(2) See *Achille Lauro Fu Gioacchino & Co v Total societá italiana per Azioni* [1969] 2 Lloyd's Rep 65 (CA) 67 – 8 (Lord Denning MR).

(3) *Reardon Smith Line v Black sea and Baltic General Insurance* [1939] AC 562 Lord porter held: "it is the duty of a ship, at any rate when sailing from an ocean voyage from one port to another, to take the usual route between those two ports. If no evidence be given, that route is presumed to be the direct geographical route but it may be modified in many cases, for navigational or other reasons, and evidence may always be given to show what the usual route is, unless a specific route be prescribed by the charter party or bill of lading.

(4) *Rio Tinto Co v Seed shipping Co* (1926) 24 LILR 316

(5) [1868] 1 KY 174

(6) *Ibid.*

(7) Hague and Hague Visby rules Article IV (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."

est in getting the goods to the port of discharge as soon as possible.⁽¹⁾ Many courts have been ready to treat delay as deviation.⁽²⁾ The effect of deviation is that the innocent party in such an event may repudiate the contract. On the other hand, once the innocent party knows of such breach and continues unconditionally this may amount to a tacit waiver. The effect of deviation is very different from that of seaworthiness. In the case of *Tait v Levi* the Court stated that if a shipmaster is incompetent to the extent that a reasonable ship owner would not employ him; then the ship is unseaworthy.⁽³⁾ The effect of unseaworthiness is the right to a claim for damages, while deviation is much harsher on the carrier as it gives the other party the right to repudiate the contract.

To see the real effects of deviation we must ask the following questions:

Has a deviation occurred? What was the proper route? Did the vessel depart from that route? Was the departure voluntary? Was the deviation permitted under the law governing the contract of affreightment? Such as common law, statute, COGSA (Carriage of Goods by Sea Act), Charter party, Bill of lading.

2.2.2. Justifiable deviation

2.2.2.1. Deviation under the Common Law

Deviation at common law is justified if it is done to save life; to avoid danger to the ship and cargo.

Whereas, deviation under statute⁽⁴⁾ is justified if it is done to save life or property for any reasonable deviation⁽⁵⁾.

(1) See *Scaramnga & Co v Stamp* (1880) 5 CPD 295 (CA), 299 (Cockburn CJ also see *Brandt v Liverpool, Brazil & River Plate Steam Navigation Co Ltd* [1924] 1 KB 575 (CA), 597 (Scrutton LJ 601 (Atkin LJ).

(2) The Law of International Trade and Carriage (Section 9) <<http://www.nadr.co.uk/articles/published/shipping/009SECTIONNINETRADE1.pdf>> (accessed 9th February 2016).

(3) *Tait v Levi* 14 East 481.

(4) Art IV (3) C.O.G.S.A. 1971.

(5) COGSA 1971 allows 'Any reasonable deviation this is stated in Article IV (4) however, such definition is not given. This must thus be sourced from case law. In *Stag Line Ltd v Foscolo Mango* [1932] A.C. 328 the House of Lords where faced with a case where a ship deviated to land engineers after they finished a testing job on board the ship. The courts held that this was not a reasonable deviation.

In the case of *Scaramanga v Stamp*⁽¹⁾ the ship went round to help another ship in distress, it first helped take the crew to safety but then stayed on to attempt to salvage the vessel. The court held that the act would not have amounted to deviation had the ship simply helped the crew (saving life is justifiable) but if it stays around in order to get salvage (saving property) and in turn creating delay and placing itself and its cargo in danger, then this could amount to deviation. In the case of *Kish v Taylor*⁽²⁾ The ship had to deviate in order to save the cargo. The cause of such danger was due to the overloading of the ship. It is true that the ship owner overloaded the ship and so he caused such danger, but this does not mean that he cannot deviate. In this case the court held that the ship might be considered unseaworthy but not that there was an unjustifiable deviation.

2.2.2.2. Deviation under the Hague and Hague-Visby Rules

If we look at the Hague and Hague-Visby Rules we realise that they do not provide us with a positive definition of deviation. The only mention of it is in Article IV (4)⁽³⁾ where it appears only to be telling us what does not constitute deviation. In other words, according to Tetley it does not define what an actual justifiable deviation is.⁽⁴⁾ Al-Khabban argues that the purpose of the Hague Rules is to distinguish an intentional deviation in the case where the master set an improper course for the ship.⁽⁵⁾ Under article IV (4) the carrier will not be responsible for negligence of the master. According to Baughen, Article IV (4) of The Hague and Visby Rules both provide a liberty for the carrier to make reasonable deviations. He further states that reasonable deviation is to be interpreted wider under the Hague/Visby Rules than under common

(1) *Scaramanga v Stamp* (1880) 4 C.P.D.

(2) *Kish v Taylor* [19121] A.C. 604.

(3) Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed 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.

(4) Tetley, *op.cit.*, p.349.

(5) Riyadh Al-Kabban, (1988) 'The effect of deviation occurring in the course of a maritime voyage on the liability of the carrier under the Hague/Visby rules and Hamburg rules, in relation to certain countries'. (PhD thesis, University of Glasgow 1988). Accessed July 21st 2016: <http://theses.gla.ac.uk/2758/1/1988alkabbanphd.pdf>

law, as when deciding what is reasonable under The Hague/ Visby Rules, one can also take into consideration the interest of the ship owner as well as that of the cargo owner.⁽¹⁾

2.2.2.3. Deviation under the Hamburg Rules

The Hamburg Rules, as the Hague and the Hague-Visby Rules, do not define deviation. For a definition we have to look at the historical definition derived through jurisprudence. It is interesting to note that the rules do not contain a specific provision for deviation, but deviation is inferred from the principle of liability of the carrier found under Article IV (6).⁽²⁾

The Hamburg Rules has widened the concept of deviation as it does not go into detail with the intentional aspect on the part of the carrier to deviate. Nor does it restrict deviation to the departure from the geographical route. Instead, it looks at it from the point of view of loss or damage to cargo as a result of an alteration or modification of the carrier's obligation to stow the cargo under deck⁽³⁾.

2.2.2.4. Deviation under the Rotterdam Rules

Again like the Hamburg Rules but unlike the Hague-Visby Rules, the Rotterdam Rules do not provide a definition of Justifiable Deviation. However, in Article 24, they state that if according to the applicable law a deviation or a departure from the route amounts to a breach of contract by the carrier, 'he can nevertheless rely on the exemptions and limitations of liability set forth in the convention, therefore preventing the overall displacement of the regime in case of deviation, as it hap-

(1) Simon Baughen, *Shipping Law* (4th ed. Routledge Cavensish NY 2009) p. 189.

(2) Hamburg Rules Article IV (6) "The carrier is not liable, except in general average; where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea."

(3) Generally, on this issue see Hendrikse, M.L.; Margetson, NH &Margetson NJ (2008) *Aspects of Maritime Law – Claims under Bills of Lading*. P. 275. Accessible from: https://books.google.com.qa/books?id=q3Bhy7B3ve8C&pg=PA275&lpg=PA275&dq=hamburg+rules+deviation+stowing+cargo&source=bl&ots=rR2rutHIAR&sig=C1NKFCPx5-FYnhpQLBt8jinRnc&hl=en&sa=X&redir_esc=y#v=onep. &q=hamburg%20rules%20deviation%20stowing%20cargo&f=false.

pens in some jurisdictions.⁽¹⁾ So it is up to the national law to determine whether or not a deviation constitutes a breach of the contract of carriage 'but it prevented that, if so, the whole regime becomes inapplicable. Therefore it cannot be understood as a right of deviation granted to the carrier.'⁽²⁾

Therefore, Article 24 goes against the whole scope of the convention; that is to bring a uniform set of laws. Without a uniform set of laws, the carrier is required to be familiar with the national laws of the various countries he operates in. Even though modern technology gives carriers access to national laws and interpretation therefore by the courts and other legal authorities, the lack of a clear definition of justifiable deviation can lead to some confusion, conflict and unnecessary expenditure. This not only affects the carrier but can also impact on the cargo owner as he might not be familiar with the national laws in the port of discharge. For that reason, The Rotterdam Rules should be enhanced to include at least the basic definitions of 'justifiable deviation'.

Another problem with deviation unlike unseaworthiness is that it gives the right to the cargo owner to repudiate the contract. So if we take a scenario where a vessel has a damaged hull, the carrier has two choices, he may either deviate to repair the vessel or keep going. He may even simply need to delay and have to deviate to the nearest shipyard to fix the problem but this could put him at risk with the possibility of the contract being repudiated. Equally, if he keeps going he risks loss or damage to his cargo vessel or life. It is true that the Rotterdam Rules allows deviation to save life and property at sea, however, there is a problem with this.

The convention stipulates "save or attempt to save" which infers that the danger must be actual. In the example above there is no imminent and actual danger but probability of one. So the carrier is not protected in the case where he needs to deviate to repair the vessel and as a consequent he is incentivised not to deviate regardless of the risk of loss or damage to his cargo, the vessel and/or avoid placing his crew at risk.

(1)The Rotterdam Rules A Latin-American Response to the Declaration of Montevideo <http://www.ahbl.ca/files/publications/The_Rotterdam_Rules.pdf> (accessed 10th February 2016) p.13.

(2) Ibid.

This is even more evident if we look at the effects of deviation compared to seaworthiness. Whilst unseaworthiness leads to liability for damages or loss, deviation gives a right to repudiate the whole contract. There are too many conflicts in this provision, which was not the case in the Hague Rules as the duty of seaworthiness was not continuous as it is under the Rotterdam Rules. It appears that those responsible of drafting the Rotterdam Rules had not considered the consequences of extending this duty. Hence, it is believed that the duty of seaworthiness should be extended, for the reasons already stated earlier. Equally, it would be wrong to extend without changing or adding to the carrier's defences. Under Article 17, sub article (n)⁽¹⁾ we find defences to save property at sea.

It has already been stated that this is not good enough, and it is evident from the wording that this infers a threat must be real and actual and not merely potential. It is proposed that there should be another sub article stating clearly that delay or deviation are allowed in order to make the ship seaworthy, but only in such cases where the threat creates a serious enough risk in the carrier's assessment that loss or damage to property or life may arise. It is then up to the Court to interpret what constitutes a serious enough risk after taking into consideration of the circumstances at the time.

2.2.2.5. Deviation under the JMTA⁽²⁾

Deviation dealt with under Section 213 is inferred where it provides a list of several exclusions⁽³⁾ where the carrier is not liable for any loss, damage or the deterioration of the goods. One such exclusion includes where deviation occurs whilst attempting to save life or rescue property at sea or in the course of such operations or attempts⁽⁴⁾. The Act further elaborates by specifying that the shipper is responsible to prove that the carrier or his crewmen were at fault.

(1) Rotterdam Rules. See Article 17 (n).

(2) JMTA, See Article 15.

(3) JMTA See Article 213.

(4) JMTA See Subsection 6.

2.2.2.6. Further analysis of deviation

The common law justifies deviation if done to save life, avoid danger to ship and cargo unlike the statute, which only justifies if to save life and property.

The Hague and Hague-Visby Rules provide no positive definition of deviation and only focus on what does not constitute as deviation. The Hague and Visby Rules both provide a liberty for the carrier to make reasonable deviations; therefore, the discretion is left with the carrier to determine when a deviation is made. As mentioned above, reasonable deviation is to be interpreted wider under the Hague/Visby Rules than under common law, as when deciding what is reasonable under the Hague/ Visby Rules, one can also take into consideration the interest of the ship owner as well as that of the cargo owner.

The Hamburg Rules are silent on the issue but via the principle of liability of the carrier, deviation is inferred. By providing a wider concept of deviation this results in the concept of deviation focusing on the loss or damage of cargo as a result of the carrier's obligation being altered. It neither goes into detail with the intentions of the carrier nor does it restrict deviation from a geographical aspect but instead focuses on the possible damage to cargo as a result of the alteration.

The Rotterdam Rule, like the Hamburg Rules provides no clear definition of Justifiable deviation but adds clarity by referring to the mentioned exemptions and limitations of liability. However, this leads to referral to the National Law and in doing so leads to the non-compliance with the aim of providing a uniform set of laws as was ultimately advocated in the onset.

The JMTA does not define deviation neither justifiable deviation, but similar to one aspect of the Rotterdam Rules, they provide a list of exclusions of the carrier's liability. The JMTA, in general, refers to the basic elements of the common law in that it promotes deviation where the carrier deviates for the purpose of saving life or preventing damage to cargo.

2.3. The Obligation of reasonable dispatch

2.3.1. Reasonable dispatch under Common Law

Many times, the obligation of reasonable dispatch is expressed. One such case defining it was that of *Kriti Rex*⁽¹⁾ with the words ‘shall proceed with all convenient speed’. However, in those cases, which do not contain such expressive words, the obligation is implied.⁽²⁾ This is an implied obligation at common law, unlike these days where this is usually expressed in time and voyage charter parties. Lord Sumner in *Suzuki & Co Ltd v Benyon & Co Ltd*⁽³⁾ described utmost dispatch as a merchant’s clause giving him the objective of saving time. This means that the basic concept of time is money. As seen through case law, the effect of delay is in its essence, the same as deviation, and therefore should have the same effect.⁽⁴⁾ The primary remedy of the claimant will be in damages and he will only be allowed to repudiate the contract if this frustrates the object of the contract.⁽⁵⁾ So, if no time is specified in the contract then there is an implied obligation to perform the obligation within a reasonable time.

2.3.2. Reasonable dispatch under the Hague and the Hague-Visby Rules.

The Hague and the Hague-Visby Rules do not contain any rules with regards to delay.⁽⁶⁾ However, this does not mean that they do not offer protection to the cargo owner. Article 3(2) of the Hague and the Hague-Visby Rules offers a general duty of care in handling the cargo.

(1) *The Kriti Rex* [1996] 2 Lloyd’s Rep 171 at p.191.

(2) *Louis Dreyfus & Co. v Lauro*, (1938) 60 Ll.L.Rep. 94...“The main difficulty in the way of [council for the owners’] submissions is that the implied obligation to proceed with reasonable dispatch arises from the nature of the contract and is necessary in order to give it commercial efficacy. Its existence is by now so well established that it can be regarded as an ordinary incident of any contract of carriage by sea which exists unless the parties have expressly or by implication provided otherwise”.

(3) *Suzuki & Co Ltd v Beynon & Co Ltd* (1926) 24 Ll.L.Rep. 49

(4) Lord Kenyon in *Smith v Surridge* [1804] Eng R 63; 4 Esp. 25.

(5) Stephen Girvin, *op.cit*, p. 450.

(6) *Riyadh Al-Kabban*, *op.cit*, p.107.

This is especially the case with perishable goods such as food⁽¹⁾.

2.3.3. Reasonable dispatch under the Hamburg Rules

The Hamburg Rules, unlike the Hague-Visby Rules, does offer a thorough explanation of what constitutes delay. In Article 5, the Hamburg Rules clearly states that the carrier is liable for loss or damage to the goods as well as delay in delivery if the goods were in his charge unless he and his servants took all reasonable measures to prevent any damage. From Article 6 to Article 11 onwards all aspects of delay are covered including defining delay, classification of lost items following length of delay, exemptions to liability when delay occurs, limits to liability as well as covering specific items such as deck cargo etc.

2.3.4. Reasonable dispatch under the Rotterdam Rules

The Rotterdam Rules, like The Hamburg Rules regulates delay and the amount to be apportioned for delay. Article 21 of the Rotterdam Rules states that delay in delivery occurs when the goods are not delivered to the place of destination stipulated in the contract of carriage within the time agreed⁽²⁾. This is insufficient as it does not cater for those cases where no time is agreed upon. However, this is mentioned within the Hamburg Rules. One questions whether or not omitting this from the Rotterdam Rules was done so intentionally? If it was, it was definitely the wrong approach as it places us in a situation of uncertainty. Here we ask ourselves, does this mean that there will be no liability in the case where delay is not specified in the contract? If this is so, it would be totally inappropriate as speed is one of the most important factors in shipping. How can you possibly place such option in the carrier's hands? This is especially the case where the market for the goods offers time limited opportunities (e.g. Christmas) or the goods are of a perishable nature. The concept of what constitutes delay in cases where no stipulations have been expressed is well developed through case law⁽³⁾. It is felt that this should not have been removed. Also, the question of what should happen in a situa-

(1) Ibid.

(2) Rotterdam Rules, see Article 21.

(3) Smith v Surridgeop. cit,p 25.

tion where the time is agreed verbally but not actually stipulated in the 'contract of carriage'. From the wording of the Rotterdam Rules one would understand that this does not count as agreed upon, therefore the carrier is not liable⁽¹⁾.

Liability for delay is not regulated under the Hague Rules, neither is it regulated under the Hague-Visby Rules. Under the Hamburg Rules this is limited in Article 6 (b) which stipulates:

'The liability of the carrier for delay in delivery according to the provisions of Article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed...'

2.3.5. Reasonable dispatch under the JMTA

The JMTA does not specifically define reasonable dispatch neither does it specifically define delay, however, as mentioned in section 2.2.2.5. under deviation, it infers that deviation which inevitably causes delay is acceptable under certain exemptions⁽²⁾.

2.3.6 Further analysis of reasonable dispatch

Within the common law, reasonable dispatch is not specifically mentioned, however, this obligation is presumed as implied from the wording.

The Hague and the Hague-Visby Rules do not contain any specific rules on reasonable dispatch either, however, via a general duty of care in handling the cargo – protection applies.

The Hamburg does offer a more thorough explanation of reasonable dispatch as does the Rotterdam Rules. Both clearly illustrate regulation of this concept.

Finally, the JMTA does not specifically define reasonable dispatch neither does it define delay, however, it does infer to it via deviation under certain exemptions as discussed in Section 2.2.2.5.

(1) Rotterdam Rules. See Section 17.

(2) JMTA, Article 213, subsection 1-6.

2.4. Extra duties of the carrier

2.4.1. Extra duties of the carrier under the relevant conventions and the JMTA

In the Hague-Visby Rules and the Hamburg Rules, unlike in the Rotterdam Rules, we do not find a provision regulating the rights and obligations of the consignee and carrier with regards to the delivery of the goods once they have arrived at the port of discharge. So how does this affect the carriers' duty? This makes it much clearer than before because delivery is now regulated under the Rotterdam Rules. Under the Hague-Visby Rules and the Hamburg Rules the applicable law would be that of the *lex fori*⁽¹⁾. This creates many problems such as uncertainty, increased legal costs and waste of time. The carrier cannot be expected to know the laws of each port of discharge. Under the Rotterdam Rules this is regulated under Articles 43-47 creating certainty and for this reason the approach taken by the Rotterdam Rules is considered the most appropriate.

Article 1(c) of the Hague Rules provides a definition of 'goods'⁽²⁾ where deck cargo is not included, allowing the carrier to claim exemption from liability. However, if the carrier carries goods on deck without an agreement between the parties then the carriage will be subject to the rules⁽³⁾. Rotterdam Rules cater for deck cargo⁽⁴⁾. Both under the Hague Rules and under the Hague Visby Rules the carrier will not be responsible for deck cargo unless the bill of lading states that it can be carried on deck⁽⁵⁾. If it is not, he may still rely on package limitations. If stated in the bill of lading, then deck cargo will not be regulated by the above mentioned rules. Under The Hamburg Rules, however, the situation is different as in this case the carrier will be liable if goods are carried on deck, if this is not agreed upon with the shipper, or if this does

(1) The *lex fori*, or law of the jurisdiction in which relief is pursued, governs all procedural matters as distinguished from substantive rights.

(2) "...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".

(3) *Ibid*.

(4) Rotterdam Rules, See Article 25.

(5) Hague & Hague Visby Rules. See Article 3, Subsection 6.

not accord with the 'usage of a particular trade or as required by statutory rules or regulations'. This adds another element. It is considered that this creates a situation where the carrier and the cargo owner will be arguing and trying to prove that this does or does not follow custom or tradition. It is felt that this last part is unnecessary and if the carrier would like to carry on deck he should simply request prior approval of the shipper. For this reason, it is felt that the Hague-Visby Rules better tackle this situation.

With regards to the Rotterdam Rules Article 25, this paper agrees with sub article (1)(a) and (b), however, this would work better by adding the following provisions stating 'unless the shipper expressly stipulates that he does not want the cargo to be placed on deck'. This is more appropriate as the shipper may not want to place the cargo on deck, and he should be allowed that option. This extra article will also take into consideration the benefit of the carrier as now the carrier does not need to show that he was allowed to carry cargo on deck and that it was expressly authorised by the shipper⁽¹⁾. Now the situation is reversed, for him to be held liable the shipper must expressly refuse it. The JMTA does not specify such extra duties of the carrier.

Section Three: Exclusions from liability

3.1. Exclusions from liability under the Common Law and the Conventions

On most occasions, within a contract of affreightment we find clauses which exempt or limit the parties from liability in certain cases. If such clauses are not found in the contract, then the carrier may rely on the common law exceptions. These are: Act of God, Queen's enemies, Inherent Vice. The contractual exceptions on the other hand are Perils of the Sea, Collision, Restraint of the princes, Strikes or lockouts, Defective packaging. The Hague-Visby Rules Article IV is similar to the traditional ones and therefore, this paper will deal with the three sections, which do not appear in the other conventions.

(1) Ibid.

1- 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.

According to Wilson⁽¹⁾ in its basic form, this exception may not be used if the loss or damage occurred due to the negligence of the carrier. Wilson draws the similarity between this exception and the one under the Harter Act 1924 Section (3). Under the Harter Act the carrier was under a duty to provide a seaworthy vessel, and if the carrier adheres to this duty then he will not be liable for damage or loss resulting from faults or errors in navigation or in the management of the vessel. In both the Hamburg Rules and the Rotterdam Rules the carrier is always liable for loss, damage or delay caused by the fault of the carrier, his servants or agents. The only difference is when this is concerned with the liability regime for live animals where the Hamburg Rules⁽²⁾ provide specific rules for the carrier to follow, unlike in the Rotterdam Rules⁽³⁾. The JMTA specifically mentions the exemptions but does not distinguish between deliberate negligence and intentional⁽⁴⁾.

Article 211 of the JMTA has also referred to deck cargo in the carriage of goods as well as livestock from the scope of the carriers. The justification for this is that livestock and deck cargo can potentially perish and require specialised due attention during the voyage. Within the JMTA, further elaboration of this point is given whereby the carrier is exempted from responsibility under maritime law due to special conditions being indicated as per special agreement between the carrier and the shipper as long as it does not violate any public order.

2- Fire, unless caused by the actual fault or privity of the carrier.

It is generally accepted that the carrier will not be held liable for damages or loss to cargo through fire, even if it was due to the negligence of his crew. However in order to use such exception he must not be personally at fault, and as mentioned above he must exercise due diligence in providing a seaworthy vessel. If he fails to do so he may not rely on this exception. The fire exception is more advantageous to

(1) John F Wilson, op.cit, p. 273.

(2) The Hamburg Rules, Article (5)1

(3) The Rotterdam Rules, Article 11

(4) See Section 2.2.2.5. where Article 213 addresses this aspect.

the carrier in the Hague Rules compared to common law as it covers a longer period of time. That is from tackle to tackle. So even if a fire breaks out during loading it may be invoked⁽¹⁾.

It is interesting to note that under section 186 of the UK Merchant Shipping Act, the carrier can invoke this exception even if he failed to exercise due diligence in providing a seaworthy ship. This gives more of an advantage to the carrier; however, this only applies to UK ships⁽²⁾. The courts have interpreted the specific meaning of fire, by stating that there must be an actual flame and not merely heating⁽³⁾. It is felt that this fire exception should be accepted very restrictively even though by so doing, it is appreciated that the brunt of the increased costs of safety and training of crew will fall to the carrier. With the JMTA, it is inferred in Article 213 (1) that the carrier is not liable as long as the fault results from the crew etc.

3-The catch-all exception

Article IV (2) (q) and article 1V (2) (q) of the Hague Rules state that ‘neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from: ‘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’.

Carr and Stone state that “in the opinion of commentators this provision cannot be given an ejusdem generis interpretation since the list of exceptions provided in Article IV(2) does not form a single genus. It is therefore to be regarded as referring to circumstances not covered by Article IV (2) (a)-(p)⁽⁴⁾”.

For the carrier to invoke this exception the cause of such damage or loss must not have occurred as a result of his fault or negligence nor that of his servants or agents. This was clarified in the case of

(1) John F Wilson, ,op.cit, p. 277.

(2) Indira Carr, op.cit, p 249.

(3) Tempus shipping Co v Louis Dreyfus [1930] 1 KB 699.

(4) Carr and Stone, op.cit p 253.

Leesh River Tea Co v British India SN Co⁽¹⁾ where cargo was damaged as a result of the theft of a storm valve by the stevedores. The court agreed that the theft was not the carrier's fault, but it still had to see whether or not the stevedores were under his employment when the theft occurred. The court held that the theft did not occur when the stevedores were under the carrier's employment. As it was not part of the discharging operation, the carrier could avail himself of responsibility under the article⁽²⁾.

This situation has been improved in the Rotterdam Rules as now stevedores are also liable for their own actions and jointly and severally liable with the carrier if acting under the charge or order of the carrier⁽³⁾. It is felt that this is a necessary provision. It is also felt that this provision allows adequate defence for the carrier and it is equally important not to allow excessive exemptions in place which in turn would allow the carrier to easily escape liability altogether. For this reason the last defence is seen as unnecessary. The JMTA is silent on this issue.

3.2. Bars to the exception

a. Negligence

According to Willes' the exception in the bill of lading only exempts the ship-owner from the absolute liability of a common carrier, and not from the consequence of the want of reasonable skill, diligence and care⁽⁴⁾. Once the carrier establishes that the cause for the loss or damage falls into one of the exceptions, the burden of proof shifts onto the cargo owner to prove that the damage or loss occurred due to the negligence of the carrier.

1) Leesh River Tea Co v British India SN Co [1966] 2 Lloyd's Rep 193.

(2) Sellers LJ stated the following; "in the present case the act of the thief ought I to think to be regarded as he act of a stranger. The thief in interfering with the ship and making her, as a consequence, unseaworthy, was performing no duty for the ship owner at all, neither negligently nor deliberately nor dishonestly. He was not in fact their servant and no question therefore strictly arises of his acting outside the scope of his employment. The appellants were only liable for his acts when he, as a servant of the stevedores, was acting on behalf of the appellants in the fulfillment of the work for which the stevedores had been engaged."

(3) Ibid.

(4) Natara v Handerson (1872) LR 7 QB 225 p 235.

b. Unseaworthiness

As mentioned earlier, the carrier will not be able to rely on an exception, if the cause of the damage or loss was due to failure on his part to provide a seaworthy vessel.

c. Fundamental breach

The carrier cannot rely on the defences if there is a fundamental breach of contract on his part especially if he knowingly is aware of potential damage as a result of his. In other words, he is not entitled to benefit from any limitations due to him being in breach of his contractual obligations⁽¹⁾.

3.3. Removed exemptions in the Rotterdam Rules

The 'error in navigation' exemption found in the Hague-Visby Rules has been removed from the Rotterdam Rules. This defence was frequently used by the carrier to exempt himself from liability. This drastically weakened the position of the carrier. It is felt that this was the correct action as taking technological advancement into consideration, where communication and current information is more frequently used and readily accessible. This allows the crew to keep updated on directions weather forecasts more accurately than ever before. Other exemptions which have been removed, are acts of public enemies which has been reformulated and modernised in article 17(3) (9) (c) and the 'catch all' exemption which was rarely successfully used in the Hague-Visby Rules⁽²⁾.

3.4. Altered exemption under the Rotterdam Rules

'War, hostilities, armed conflict, piracy, terrorism, riots, and civil com-

(1) DuyguDamar, 'Wilful Misconduct in International Transport Law'. https://books.google.com.qa/books?id=tFcHoBhjBbIC&pg=PA130&lpg=PA130&dq=reasoning+for+The+carrier+cannot+rely+on+the+defences+if+there+is+a+fundamental+breach+of+contract+on+his+part&source=bl&ots=bzICOW9eb1&sig=AlIXVHZ1vcwicfuGceuwBZlyDCY&hl=en&sa=X&redir_esc=y#v=onepage&q=reasoning%20for%20The%20carrier%20cannot%20rely%20on%20the%20defences%20if%20there%20is%20a%20fundamental%20breach%20of%20contract%20on%20his%20part&f=false (Accessed 19th July 2016)

(2) Stephen Girvin, op.cit, p. 490.

motions' have been substituted by the words 'armed conflict, piracy, terrorism'⁽¹⁾. The Hague-Visby exemptions of 'quarantine' have been substituted for 'quarantine restrictions, interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18'. 'Restraint of the princes' has been replaced by 'interferences by or impediments created by governments, public authorities, rulers, or people'. Under the Rotterdam Rules we find the exemption for 'strikes, lockouts, stoppages, or restraints of labour' which omits the words 'from whatever cause, whether partial or general' found in the Hague-Visby Rules. 'Fire, unless caused by the actual want or privity of the carrier' as found in the Hague-Visby Rules was replaced by 'fire on the ship'⁽²⁾.

The exemption for 'act or omission of the shipper of the goods, his agent or representative' under the Hague-Visby Rules has been expanded in the Rotterdam Rules. The exemption under the Rotterdam Rules are for 'act or omission of the shipper, the documentary shipper, the controlling party or any other person for who's acts the shipper or the documentary shipper is liable...'⁽³⁾.

Article IV (2)(n) & (o) of the Hague Rules have been incorporated into Article (3) Rotterdam Rules under the exemption for 'insufficiency or defective condition or packaging or marking not performed by or on behalf of the carrier'. There are also the exemptions for 'saving or attempting to save life at sea' and the exemption for 'reasonable measures to save or attempt to save property at sea'⁽⁴⁾.

3.5. Analysis of defences of the carrier

With regards to the list of defences, which the carrier may raise, a list is provided for both in the Hague-Visby Rules and in the Rotterdam Rules. This is not the case in the Hamburg Rules, which it is felt raises an element of uncertainty. The intention might have been to give a wider discretion to the courts to allow for more defences, however, the

(1) Rotterdam Rules, Article 17, Section 3 (a,b& c).

(2) Hague Visby. See Article IV r2.(b).

(3) Rotterdam Rules, Article 17, Section 3 (a,b& c).

(4) See discussion above.

outcome could equally have the opposite effect. Within the Rotterdam Rules the list of defences was extended, inferring that a wider choice of defences could be accessed⁽¹⁾.

Two defences were removed from the Hague-Visby Rules as mentioned earlier, but more were added. The defences under the Rotterdam Rules have been expanded to include hostilities, armed conflict, terrorism, piracy and measure to avoid or attempt to avoid damage to the environment. With regards to the last defence, it is felt that having a provision for protecting the environment is long overdue. Over the years other codes have been regulating heavily on the environmental agenda and it is clear that sea traffic attributes to a significant amount of transport pollution.

However, despite the attempt by the Rotterdam Rules to support the environment, it could be improved drastically compared to other codes. Despite this fact, this defence should definitely be promoted in order to incentivise carriers to take all measures to protect the environment. So, if a situation arose where an oil leak arose and the carrier had to decide between repairing the vessel or to continue with the journey to avoid delay – the former should be the first choice and thus supported by the conventions.

The ‘navigational error’ defence was removed from the Rotterdam Rules, which it is felt was the right decision and an unnecessary defence for the carrier to use, due to technological advances. To further elaborate on this a scenario will be offered. How can a carrier claim that he did not know of a new underwater obstruction, such as a recently sunk vessel? He cannot argue that this did not show up on his maps of a few months ago. Through technological advancements, especially in communication, he may be notified immediately. Also with today’s GPS systems he may receive updates on the go. Leaving such a defence to the carrier would be unfair to the cargo owner.

The effect of removing this defence now means that the cargo owner may bring a claim against the carrier in the case that the vessel is grounded or involved in a collision, irrespective of seaworthiness. With regards to the fire defence, although it was kept in the Rotterdam

(1) Rotterdam Rules. See Article 17 (n).

Rules it is now limited in the sense that it must not be caused by the master, crew or the carrier's employees⁽¹⁾. This makes more sense as it encourages the crew to be more cautious.

Removing the defence of "negligent navigation" will naturally affect the extent of the carrier's liability, and this will also impact on the amount which the P&I clubs will have to pay. A point to add here is that if the carrier manages to use one of the defences listed above it may be the case that it exempts him from part of the liability. This means that the courts will have the task of apportioning liability accordingly. This is very time consuming and it is not a simple task. It is felt that the Rotterdam Rules should provide a clear guideline on how to calculate damages and how to apportion them between different parties. This argument is especially significant when we take into consideration that the Rotterdam Rules split the liability between three different parties as mentioned earlier. If a future convention adopts the same approach (lack of regulation) as the Rotterdam Rules (apportionment of liability between different parties), this will lead to many problems, if it does not manage to regulate such apportionment.

3.6. Changes brought about in the limitations of liability

Limitations of liability were increased under the three conventions. Under the Hague Rules this was set as 100 pounds "per package or unit"⁽²⁾. This was later increased in the Hague-Visby Rules to 2 SDR's per kg or 666.67 SDR's per package, whichever is higher⁽³⁾. In the Hamburg Rules the amount was further increased to 2.5 SDR's per kg or 835 SDR's "per package or unit" whichever is higher⁽⁴⁾. The Rotterdam Rules increased to 3 SDR's per kg or 875 SDR's per package, whichever unit is higher⁽⁵⁾.

The maximum limit of the carriers' liability is too low in the Hague-Visby Rules. This has been significantly increased in the Rotterdam Rules. However, while some countries argue that this is now too high,

(1) See Rotterdam Rules. Article 14(a) and (b).

(2) The Hague Rules. See Article 4. Subsection 5.

(3) Hague-Visby Rules, See Article 4 subsection 5.

(4) Hamburg Rules, See Article 6 subsection 1.

(5) Rotterdam Rules. See Article 49.

others argue that it is too low. So the Rotterdam Rules attempted to reach a compromise. Whether or not this amount is correct is debatable. When the Hague Rules were drafted, the Pound was pegged to gold which was why it was so limited in the Hague Rules. According to the Hague Rules the carrier will not be held liable for any loss or damage exceeding 100 pounds sterling per package or unit. However, what is meant by package or unit? This is not defined. This is especially confusing when today goods are containerised. So in the case of containers, does this refer to individual packages or units stored in the container, or does it refer to the whole container? Therefore, there is a need for further clarification on this within the convention.

Under the JMTA, Article 214 touches on the issue of the liability of the carrier for the loss or damage generally by stating that the carrier's liability is not "in any event to exceed an amount to be determined by regulations to be enacted after the publication of this law. From Article 258- 272 the JMTA further discusses all types of calculations of amounts to be paid depending on specific marine loss cases⁽¹⁾.

3.7. Burden of proof under the relevant conventions and the JMTA

The Hague-Visby Rules do not explicitly identify who has the onus of proving unseaworthiness. Under common law it falls on those who allege it. While in the Hague-Visby Rules the carriers' duty of care is listed, in the Hamburg Rules we find a more general approach, "all measures that could reasonably be required to avoid the event causing loss and its consequences". This leaves much more discretion in the hands of the courts and inevitably results in more uncertainty and higher burden of proof. This general approach found under the Hamburg Rules has been removed in the Rotterdam Rules. For the reasons mentioned earlier, the approach found in the Hamburg is the preferred one.

At first the burden of proof seems to be more onerous on the carrier, however if we analyse further and apply it to a realistic scenario, the cargo-owner should be better protected. First of all, under The Rotterdam Rules the cargo owner must show that the loss, damage or delay

(1) See generally Articles 214 as well as Articles 258- 272.

took place during the period of the carrier's responsibility⁽¹⁾. However, there is room for criticism here as it is felt that the convention here is going against two important things which it is trying to regulate. The first is 'door to door' and the second is 'containerisation'⁽²⁾.

In the case where a container is delivered to the consignee's door, as is increasingly happening, the consignee does not see the goods until after opening the container. This would nearly always happen after delivery. In that case, it is difficult to prove then that the damage happened during the carrier's period of responsibility. For this reason it is felt that the burden on the cargo owner must be to prove that the goods were found lost or damaged within 24 hours from delivery. Another advantage, which the carrier has, is that he has some forty defences which he may raise to exempt himself from liability. It is felt that there are currently excessive defences in place which unduly allow the carrier to escape liability easily.

As far as Section 211 of the JMTA is concerned, the scope of carrier's responsibility is limited in terms of the timescale of the voyage as it is governed by the agreement between the shipper and the carrier. The carrier is liable from the time of shipping the goods which includes loading the goods onto the ship until offloading at the arrival destination port. That is to say, this section does not cover the responsibility of the time where the carrier has received the goods prior to the time he actually loads the goods on board. Also, it does not cover the carrier's responsibility from the time of completion of load-

(1) Rotterdam Rules. See Article 17, Section 1.

(2) See Rotterdam Rules Article 14, c. for containerization and Article 5 for door-to-door.

Containerisation is a fairly newer way of transporting goods and allows a significant increase in the volume of container transport but this has not altogether had an impact on changes to the outdated conventions. As well as an increase in volume, this modern use of container transport enables goods to be moved quicker, more inexpensively and more efficiently from their place of manufacture to their final destination and via multimodal transport allows goods to be transported from door to door under a single contract of carriage. However, the period of the carrier's responsibility under the current international legal regimes governing the carriage of goods by sea cannot accommodate such movements: it is limited to port-to-port coverage in the case of the Hamburg Rules, and to tackle-to-tackle carriage in the case of the Hague and Hague-Visby Rules.

ing the goods in the port of arrival until the time of handing over the goods to the recipient⁽¹⁾.

However, Jordan Court of Cassation has expanded the carrier's responsibility to cover the carrier's responsibility from the time of completion of loading the goods in the port of arrival until the time of handing over the goods to the recipient. The court reached this conclusion upon the general understanding of the sections 211, 213 and 216 of the JMTA, where it can be inferred that the carrier's responsibility in the carriage of goods by sea contract begins from loading the goods until offloading the goods as well as handing the goods over to the recipient. That is to say carriage of goods contract ends upon delivery to the recipient⁽²⁾. Other key factors identified in the JMTA which are relevant to this article, will now be summarised.

Article 213 as mentioned earlier provides 6 key exclusions omitting the carrier from liability when fault is assigned directly to the crew navigating the ship⁽³⁾; where latent defects in the ship appear⁽⁴⁾; where damage or loss of the goods is clearly attributed to any hindrance in labour on-board including strikes, lockouts, and force majeure⁽⁵⁾. Subsection 5 refers to any apparent vice or poor packaging leading to damage of the goods⁽⁶⁾ and the last subsection relates to deviation of the voyage where the intention was to save life or the property and includes the 'period of time' whilst such attempts are made⁽⁷⁾. The onus is on the shipper to prove that the damage is directly due to the fault of the carrier.

Article 214 describes how the amount will be determined for the carrier to pay if he is found liable and this is described as a predetermined cost per unit or package set by regulatory system. The only exception to this is where the shipper has reported the amount to be higher prior to loading the ship via the Bill of lading. In cases where a dispute of

(1) See Al-Qudah, *op.cit.*, p. 225.

(2) See Jordan Court of cassation ruling number 1317/92, Jordan Association Bar Journal Year 1993. P. 2081

(3) JMTA Section 213 Subsection 1.

(4) *Ibid* Subsection 2.

(5) *Ibid* Subsection 3.

(6) *Ibid* Subsection 5.

(7) *Ibid* Subsection 6.

such is raised by the carrier, he must clearly declare any reservations along with the reasons in writing which will subsequently move the onus of proof to the shipper or the consignee. If the carrier understates the amount, this will be considered void and will then be reconsidered via the regulations in conjunction with the fluctuating foreign currencies appropriately.

Section 215 clearly dismisses any attempt to incorporate any condition in the bill of lading issued either in Jordan or abroad which releases the carrier's responsibility. Should the carrier try to claim as a beneficiary of the insurance - this will be regarded as a release condition⁽¹⁾. Section 216 clearly excludes the carrier from liability where it is found that the shipper has deliberately falsified the value of the goods to be shipped⁽²⁾.

Section 217 also excludes the carrier from liability where he unknowingly takes goods onto the voyage which are later deemed as dangerous/ flammable and can decide whether to subsequently land, destroy or render the goods as innocuous as long as a report is submitted justifying his reasons for doing so. The shipper will be fully liable for the damages and expenses from the shipment. However, if the carrier knowingly loaded the dangerous goods onto the ship and consented to this; he will not be able to destroy the goods unless they become a danger to the ship and cargo in which he can do so without liability⁽³⁾.

The last relevant section is Section 218 describes 'the time period' where consignee is able to claim for loss or damage of the goods as the time where the delivery is made at the port of discharge. This should be communicated in a written notice at that time, otherwise he will be deemed to have accepted the goods as specified in the bill of lading.

The only exception here is where there is latent loss or damage manifesting, in which case he should submit a notice of reservation within three days after the delivery period (excluding holidays). The carrier can and should request an inspection of the goods to confirm their condition at the time of delivery to protect himself⁽⁴⁾. This section

(1) Section 215 subsection A.

(2) See Section 216.

(3) Section 217.

(4) Section 218 subsection A.

ends by disallowing any conditions which say the contrary to that which is practiced in the Jordanian courts¹.

Section Four: Conclusion

Having analysed the above-mentioned conventions it would be fair to state that the Rotterdam Rules best regulate the duties and liabilities of a modern carrier since in my opinion it has less residual issues than its predecessors. However, I am also of the opinion that with regards to enhancing regulation of the carrier's duties and liabilities, this is best achieved through an improved version of the Rotterdam Rules. I base this on the fact that the Hague Visby and the Hamburg Rules are outdated to the point that they do not incorporate the basic foundations required by modern sea transport. Amending them would only create an unstable and patchy framework of regulations. The Rotterdam Rules on the other hand, caters for a more technologically advanced and evolved carriage by sea. It achieves this through regulating areas such as containerization, extended period of responsibility, electronic carriage, technological advances effecting navigation and seaworthiness and lastly, but by no means least, it tries to regulate different modes of carriage. This last point is critical for a number of reasons. Two of which stand out namely: 1) improved harmonization through unification and 2) extended duty of the carrier.

When comparing the JMTA with the Hamburg, the Hague Visby and the Rotterdam Rules, it is clear that it lags far behind in terms of clarification of several major aspects indicated for understanding the basics of the carrier's responsibility. These include omission of clarification of seaworthiness, deviation, the period of the carrier's liability and agreeing on various timescales. Where the JMTA does work well is putting the burden of proof upon the cargo owner to prove the goods are damaged at the time of delivery or if latent damage is noted the cargo owner has 3 days from the delivery to file a report to the carrier.

Having said this, there appears to be a contradiction in the JMTA by allowing the carrier to be exempt from the responsibility by reason of latent defects identified in the ship. In other words, this collides with his liability to ensure a seaworthy vessel.

(1) Section 218 subsection B.

Recommendations:

Recommendations for both JMTA and Conventions:

- I propose that the Rotterdam Rules should be handed back to the UNCINTRAL working group for further amendment. It is anticipated that any findings would not only benefit the Rotterdam Rules but the other conventions and the JMTA too. With specific reference to the points amplified on in this paper – the main points are to:
- Take into consideration a key element of the UN Convention International Multimodal Transport of Goods (1972), specifically its multi-modal characteristics and further enhance to incorporate unimodal.
- Place the burden on the cargo owner to prove that the goods were found missing or damaged within 24 hours from delivery.
- Responsibility for the seaworthiness of containers should fall on the Shipper and not on the Carrier. As a result, it is suggested that the Rotterdam convention regulates this matter more in detail. It should be able to answer questions including whether the container owner be held liable and if not whether or not the carrier could sue the container owner. Perhaps it would be possible for the consignee to be given a right or redress against the container owner. In addition, it is felt that the Rotterdam Rules should cater for a situation where the loss/damage can be apportioned between the carrier and cargo interest based on their level of fault.
- To elaborate on certain terms to avoid confusion and misinterpretation such as the responsibilities of the carrier ending upon the goods being 'delivered' as mentioned in the Rotterdam Rules. The term 'delivered' here could be clarified more as, presently, this could lead to confusion. For instance, is this referring to the point when the goods are placed outside the warehouse of the cargo owner, when the cargo owner takes the delivery physically or at some other point? One would expect to find a definition of 'delivered' within the Rules; but this is not the case.
- Clarify the liability of the carrier for the 'performing party' and the 'maritime performing party'.
- Regulate delay in delivery in those cases where no delivery time is agreed on.

- Reduce the requirement for the shipper and carrier to be conversant with the laws of each port of discharge.
- The shipper should have the option to stipulate that he does not want to place the cargo on deck.
- Expand the provision catering for protection of the environment.
- It is felt that this obligation of reasonable dispatch should be better regulated in the conventions, as it is believed that a definition of reasonable dispatch should be given and this definition must not indicate that the obligation is totally firm. This is recommended for two reasons. Firstly, the carrier may want to save fuel and to do so he must travel at a certain speed. If the shipper really requires certain speed then he should agree on a delivery date in the contract of carriage. Another reason, which is also indirectly linked to saving fuel, is the fact that if the boat is cruising at a certain speed then it will not be emitting as much toxic emissions as it would at higher speeds (not necessarily full throttle). This is an ever more important consideration as can be seen through codes such as the ISM and the Rotterdam Rules, which for the first time take into account such environmental protections as a defense of the carrier. However, this defense, under the Rotterdam Rules, is there to exempt the carrier from liability in case of a risk of environmental damage on a larger scale than mere pollution.
- As the carrier is still responsible for any reputable firm of repairers who are commissioned to make the ship seaworthy, with both the Hague Visby Rules and the Hamburg Rules, it is felt that there should be a provision in these rules regulating the liability of such repairers which is currently non-existent. The fact that there is not any means that the carrier will have to sue the repairers in tort or under contract, but not through a remedy given under the convention. If this was to be implemented then, the carrier will not be in such a burdensome situation.

Recommendations for JMTA

- Enhance definitions, such as justifiable Deviation, Reasonable Dispatch, Package or Unit, Delivery to the JMTA etc.
- Allow delay or deviation in order to render the ship seaworthy (JMTA).

- To expand on the actual measures to be taken to ensure the vessel is seaworthy by clarifying whether this is a continuous process and when and how this should take place (JMTA).
- The JMTA currently uses the unimodal approach which meets the current needs of Jordan, however, as the country's maritime needs further development, the JMTA should consider incorporating the multimodal approach.

REFERENCES

BOOKS:

- Baughen, S. Shipping Law (4th ed. Routledge Cavensish NY 2009).
- Carr, I. International Trade Law (4th Ed Routledge – Cavendish Oxford 2010).
- Carr, I & Stone, P. (2014) International Trade Law (5th Edition). (Accessed Ebook March 2016) See: https://books.google.com.qa/books?id=0IE3AgAAQBAJ&printsec=frontcover&hl=ar&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false
- Craig H. A; Farwell, R.F & Smith, R. A. (2005).Farwell's rules of the nautical road (8th ed. Naval institute press).
- Girvin, S. Carriage of goods by sea, (2nd Ed. OUP Oxford 2010).
- Hoeks, M. 'Multimodal Transport Law: The law applicable to the multimodal contract for the carriage of goods.' (2009)
- Margeston, N.J. The system of liability of articles III and IV of the Hague (Visby) Rules., (2008 1st Ed Paris Legal Publishers, Netherlands).
- Wilson. J.F, Carriage of Goods by Sea (7th edition Pearson, England 2010).

E-Theses:

- Al-Kabban, R. 'The effect of deviation occurring in the course of a maritime voyage on the liability of the carrier under the Hague/Visby Rules and Hamburg Rules, in relation to certain countries'. (PhD thesis, University of Glasgow 1988).Accessed July 21st 2016:

<http://theses.gla.ac.uk/2758/1/1988alkabbanphd.pdf>

Bengtsson, S. 'The carriage of Goods by Sea Convention: A comparative study of seaworthiness and the list of exclusions'(LLM thesis Lund University 2010) p 76. (Accessed on 19th July 2016:

<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1713339&fileId=1713340>)

ARTICLES:

- Al-Qudah, F. Principles of Carrier's Liability: A comparative Study Between the Jordanian Law and Hamburg Rules, *Journal of Sharria and Law*, Vol 26, no. 1, 1999.
- Daradkah, M, Scope of the responsibility of the maritime carrier in each of the Jordanian Maritime Trade Act of 1972 and the Hamburg Rules of 1978. *Al-Manar Journal*, Vol 13 No.9, 2007.
- Hendrikse, M.L; Margetson, NH & Margetson NJ (2008) Aspects of Maritime Law – Claims under Bills of Lading. Accessible from: https://books.google.com.qa/books?id=q3Bhy7B3ve8C&pg=PA275&lpg=PA275&dq=hamburg+rules+deviation+stowing+cargo&source=bl&ots=rR2rutHIAR&sig=C1NKFCPx5-yFYnhpqLBt8jinRNc&hl=en&sa=X&redir_esc=y#v=onepage&q=hamburg%20rules%20deviation%20stowing%20cargo&f=false
- Venugopal, V. 'Deviation and delay during voyage' *National University of Legal Studies, Cochin*. (Written on 4/12/2007). < [http://shippinglawtimes.blogspot.com /2007/12/deviation-and-delay-during-voyage.html](http://shippinglawtimes.blogspot.com/2007/12/deviation-and-delay-during-voyage.html) > accessed 30th January 2016
- Wanigasekera, A. 'Comparison of Hague-Visby and The Hamburg Rules'. <[http://www.juliusandcreasy.com/inpages/ publications/pdf/ comparison_of_hague_and_hamburg-AW.pdf](http://www.juliusandcreasy.com/inpages/publications/pdf/comparison_of_hague_and_hamburg-AW.pdf)> accessed 10 November 2011.
- Zorlu, R. 'The main features of the Hamburg Rules and The Hague-Visby Rules', <http://www.akellawfirm.com/yayinlar/THE_MAIN_FEATURES_OF_THE_HAMBURG_RULES_AND_THE_HAGUE-VISBY_RULES.pdf> p. 3. accessed 15th December 2011

ELECTRONIC RESOURCES

- Comité Maritime International website, <[http://comitemaritime.org/History/ 0,273,1332,00.html](http://comitemaritime.org/History/0,273,1332,00.html)> accessed 10TH March 2016. <[http://www.scribd.com/doc/3901543/Shipowners-Liability-the-UK-law->](http://www.scribd.com/doc/3901543/Shipowners-Liability-the-UK-law-)
- Chamlee, G.H. 'The Absolute Warranty of Seaworthiness: A History and Comparative Study' (1973) 24 (2).
- Damar, D. 'Wilful Misconduct in International Transport Law'.https://books.google.com.qa/books?id=tFcHoBhjBbIC&pg=PA130&lpg=PA130&dq=reasoning+for+The+carrier+cannot+rely+on+the+defences+if+there+is+a+fundamental+breach+of+contract+on+his+part&source=bl&ots=bzICOW9eb1&sig=AlIXVHZ1vcwicfuGceuwBZlyDCY&hl=en&sa=X&redir_esc=y#v=onepage&q=reasoning%20for%20The%20carrier%20cannot%20rely%20on%20the%20defences%20if%20there%20is%20a%20fundamental%20breach%20of%20contract%20on%20his%20part&f=false (Accessed 19th July 2016)
- The Law of International Trade and Carriage (Section 9) <<http://www.nadr.co.uk/articles/published/shipping/009SECTIONNINETRADE1.pdf>> (accessed 9th February 2016)
- The Rotterdam Rules. A Latin-American Response to the Declaration of Montevideo<http://www.ahbl.ca/files/publications/The_Rotterdam_Rules.pdf> (accessed 10th November 2011).
- The United States Signs the Rotterdam Rules: Changes in Cargo Liability < http://www.lanepowell.com/wp-content/uploads/2009/09/LMN_PDF3.pdf > accessed 13th February 2016 <http://www.scribd.com/doc/3901543/Shipowners-Liability-the-UK-law-> > (accessed 15th March 2016).
- Wanigasekera, A. 'Comparison of Hague-Visby and The Hamburg Rules'. <http://www.juliusandcreasy.com/inpages/publications/pdf/comparison_of_hague_and_hamburg-AW.pdf > (accessed 10 March 2016. https://en.wikipedia.org/wiki/Hamburg_Rules#Ratifications Accessed on 13th March 2016.

LEGISLATIONS AND CONVENTIONS

- International Management Code for the Safe Operation of Ships and for Pollution Prevention Rotterdam Rules UN Convention on the carriage of goods by Sea:

<https://www.amsa.gov.au/vessels/ship-safety/international-management-code/>

- English Carriage of goods by Sea Act 1971:

http://www.legislation.gov.uk/ukpga/1971/19/pdfs/ukpga_19710019_en.

- The Hague Rules:

https://www.google.com/?gws_rd=ssl#q=The+Hague+Rules

- The Hague Visby Rules:

https://www.google.com/?gws_rd=ssl#q=The+Hague+Rules

- The Harter Act 1893:

<http://everything2.com/title/The+Harter+Act+of+1893>

- The Jordanian Maritime Trade Act no. 15 of the year 1972

<http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwejor.htm>

- UN Convention on International Transport of Goods (1972):

http://www.unece.org/fileadmin/DAM/trans/conventn/ccc_1972e.pdf

JUDICIAL JOURNALS

Jordan Association Bar Journal Year 1993

CASE LAW

Achille Lauro Fu Gioacchino & Co v Total societaitaliana per Azioni [1969] 2 Lloyd's Rep

AEReed and Co Ltd v Page, Son and East [1927] 1 KB 743, CA

Appellants; v. Canadian Government Merchant Marine Ltd. Respondents, [1959] A.C

Bank of Australasia and Others, v Pikford [1915] 1 KB 39

Brazil & River Plate Steam Navigation Co Ltd [1924] 1 KB
Cf Spence vs Chadwick (1847) 10 QB
Channel J. in McFadden v Blue Star Line [1905] 1 KB 697
Davis V Garratt (1830) 6 Bing 716
Dimitros Ralhas (1922) 13 Lloyd's Rep 363
Empresa Cubana Importada de Alimentos 'Alimport' v lasmos Shipping Co SA, The Good Friend [1984] 2 Lloyd's Rep
FC Bradley & Sons Ltd v Federal Steam Navigation CO Ltd (1927) 24L1.L.Rep
Grain Growers Export CO. v Canada Steamship lines Ltd
Kish v Taylor [19121] A.C.
Kopitoff v Wilson (1876) 1 QBD.
Kuo International Oil Ltd v Daisy Shipping Co. Ltd [1990] 2 Llyod's Rep
Leduc v Ward [1888] 20 Q.B.D.
Leesh River Tea Co v British India SN Co [1966] 2 Lloyd's Rep 193
Lord Kenyon in Smith v Surrudge [1804] EngR
Maxine footwear Company Ltd v Canadian Government Merchant Marine Ltd. [1957] S.C.R
Maxine Footwear Co ltd v Canadian Merchant Marine [1995] 2Lloyd's Rep
MC fadden v Blue star Line [1905] 1 KB
Natara v Handerson (1872) LR 7 QB
Pepera Traders Co Ltd V Hyundai Merchant Marine Co ltd [2002] 1 Lloyd's Rep
Reardon Smith Line v Black sea and Baltic General Insurance [1939] AC
Rio Tinto Co v Seed shipping Co (1926) 24 LILR
River Stone Meat Co. PTY Ltd v Lancashire Shipping Co Ltd [1961] Lloyd's Rep

Scaramnga& Co v Stamp (1880) 5 CPD
Siordet v Hall (1828) 4 Bing 607
Smith Hogg & Co Ltd v Black Sea & Baltic General Insurance Co Ltd
(1940) 67 Ll. L
Stag Line Ltd v Foscolo Mango [1932] A.C.
Stanton v Richardson (1877) LR 7 CP
Suzuki & Co Ltd v Beynon & Co Ltd(1926) 24 Ll.L.Rep. 49
Taylor v. G.N.Ry. (1866) L.R.1.C.P.
Tempus shipping Co v Louis Dreyfus [1930] 1 KB 699
The bungaseroja[1999] 1 Lloyd's Rep 512
The Kriti Rex [1996] 2 Lloyd's Rep 171
The Teutonia (1872) LR 4 CP
VerappaChetty v Ventre [1868] 1 Ky

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