



International Trade, Bills of Lading, Charterparties and Arbitration

Day 5

Carrier's Liability Limits & Time Limits

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Carrier's Liability Limits & Time Limits

Hague Rules - Liability Limit

- Hague Rules: Art. IV(5)
 - Neither the carrier nor the ship shall in any event be or become liable for any *loss or damage to or in connexion with goods* in an amount exceeding **100 pounds** sterling *per package or unit*, or the equivalent of that sum in other currency *unless the nature and value of such goods have been declared by the shipper* before shipment and inserted in the bill of lading.
- Hague Rules: Art. IX
 - The monetary units mentioned in this Convention are to be taken to be **gold value**

Carrier's Liability Limits & Time Limits

Hague Rules - Liability Limit

- *The Rosa S* (1988)
 - Art IV(5) read with Art X: gold value of 100 pounds in 1924
 - Gold value of the £100 in 1984 was £6,630.50
- *The Nadezhda Krupskaya* (Australia, 1989)
 - Gold value of the £100 in 1989 was AUD11,000
- *The Thomaseverett* (Singapore, 1992)
 - Followed *Rosa S*
- *Shun Cheong Steam Navigation Co Ltd v Wo Fong Trading Co* (1979, FC).
- *Sebor (Sarawak) Trading Sdn Bhd & Anor v Syarikat Cheap Hin Toy Manufacture Sdn Bhd* (2003, CA)
 - Court did not sufficiently refer to Art X nor manipulated gold value as per *The Rosa S*

Carrier's Liability Limits & Time Limits

Hague Rules - Liability Limit

- Sabah & Sarawak
 - Modified to RM850 (1960 Sarawak Regulation / 1961 Sabah Regulation)

Arun Kasi, 'The Dancing Liability-Limit in Hague Rules and Validity of RM850 Limit for East Malaysia', *Malaysian Law Journal (Lexis Nexis)*, Vol. 1, 2021, p. cxciv

Carrier's Liability Limits & Time Limits

Hague Rules - Liability Limit

- *The Aqasia* (2018): Liability Limit does not apply to bulk cargo
- *The River Gurara* (1997): Packages (as stated in the bill of lading) counted as packages inside container, and not the containers
 - *Sebor Sarawak Trading*, court treated containers as the package

Arun Kasi, 'Excluding Liability for Misdelivery and Non-Delivery under Bills of Lading: An Analysis under Laws of Malaysia, Singapore and England & Wales', *The Law Review (Sweet & Maxwell)*, 2020, p. 143; *Current Law Journal*, [2020] 1 LNS(A) lvi

Carrier's Liability Limits & Time Limits

Hague-Visby Rules - Liability Limit

- Hague-Visby Rules: Art. IV(5)
 - (a) *Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of **10,000 francs per package or unit or 30 francs per kilo of gross weight** of the *goods lost or damaged*, whichever is the **higher***
 - (c) Where a **container**, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

Carrier's Liability Limits & Time Limits

Hague-Visby Rules - Liability Limit

- Hague-Visby Rules: Art. IV(5)
 - Unlike Hague Rules, the Hague-Visby Rules limit applies also to bulk cargo
 - Packages inside container are counted where they are stated in the bill of lading
 - Even in absence of this, under the Hague Rules, the same must be the position
(The River Gurara)

Carrier's Liability Limits & Time Limits

Hague-Visby Rules - Liability Limit

- Art. IVbis:
 - Art. IV applies also to tort actions
 - Art. IV extends to servants and agents of carrier, but not to independent contractors

Carrier's Liability Limits & Time Limits

Hague-Visby Rules – Liability Limit

- Loss of Limitation: Art. IV(5)(e)
 - Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an **act or omission** of the carrier **done with intent to cause damage, or recklessly and with knowledge that damage would probably result.**

Carrier's Liability Limits & Time Limits

Hague-Visby Rules (SDR) - Liability Limit

- Hague-Visby Rules (as amended by SDR Protocol): Art. IV(5)(a)
 - *Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 **units of account per package or unit** or 2 **units of account** per kilogramme of **gross weight** of the *goods lost or damaged*, whichever is the higher.*
 - Units of account = SDR unit (Art. IV(5)(d))
 - 1 SDR = USD1.40 (approximately)
 - Exchange rate published daily by IMF

Carrier's Liability Limits & Time Limits

Tonnage Limitation

Hague / Hague-Visby Rules Limit v Tonnage Limitation

- Tonnage limitation is not affected by the Hague / Hague-Visby Rules limitation (Art. VIII)
 - *The Benarty* (1985)
 - Carrier has a right to prefer Indonesia as the jurisdiction to enjoy more favourable tonnage limitation, without taking advantage of non-applicability of Hague-Visby Rules there.

Carrier's Liability Limits & Time Limits

Tonnage Limitation

Tonnage Limitation

- Malaysian Merchant Shipping Ordinance 1952, s 360 read together with 16th Schedule (LLMC 1976 as amended by 1996 Protocol)
 - Convention on Limitation of Liability for Maritime Claims 1976
 - Limitation by Gross Tonnage of the Ship
- 1960 Sarawak Regulations, Part III. (Limitation Convention 1957)
 - International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957
 - Limitation by Net Tonnage of the Ship (with some modifications)
- 1961 Sabah Regulations, reg 3 (Limitation Convention 1957)
 - incorporates by reference the 1960 Sarawak Regulations

Carrier's Liability Limits & Time Limits

Tonnage Limitation

LLMC 1976, as amended by 1996 Protocol – Art 6, para 1 (SDR)

The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

Carrier's Liability Limits & Time Limits

Tonnage Limitation

LLMC 1976, as amended by 1996 Protocol – Art 6, para 1 (SDR) (cont.)

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

Carrier's Liability Limits & Time Limits

Tonnage Limitation

Limitation Convention 1957 (Art 3)

- (1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:
 - (a) where the occurrence has only given rise to property claims an aggregate amount of 1,000 francs for each ton of the ship's tonnage;
 - (b) where the occurrence has only given rise to personal claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage;
 - (c) where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.
- (5) For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this Article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.
- (6) The franc mentioned in this Article shall be deemed to refer to a unit consisting of sixty five and a half milligrams of gold of millesimal fineness nine hundred. ...

Carrier's Liability Limits & Time Limits

Time Limit

Same under Hague / Hague-Visby Rules

- One year from the date of delivery or the date when the goods should have been delivered (Art. III(6))
- Applies only when the loss happened during the period of responsibility under the Rules (i.e. from the beginning of loading to end of discharge).
 - Hence, where the goods are misdelivered after discharge, the carrier is (likely) not entitled to the one-year limitation - *Peninsular v Rambler Cycle* (1964)
 - Same thing (likely) applies to liability limitation

Arun Kasi, 'Excluding Liability for Misdelivery and Non-Delivery under Bills of Lading: An Analysis under Laws of Malaysia, Singapore and England & Wales', *The Law Review (Sweet & Maxwell)*, 2020, p. 143; *Current Law Journal*, [2020] 1 LNS(A) lvi

Carrier's Liability Limits & Time Limits

Shipper's Liability for Dangerous Cargo

Common Law

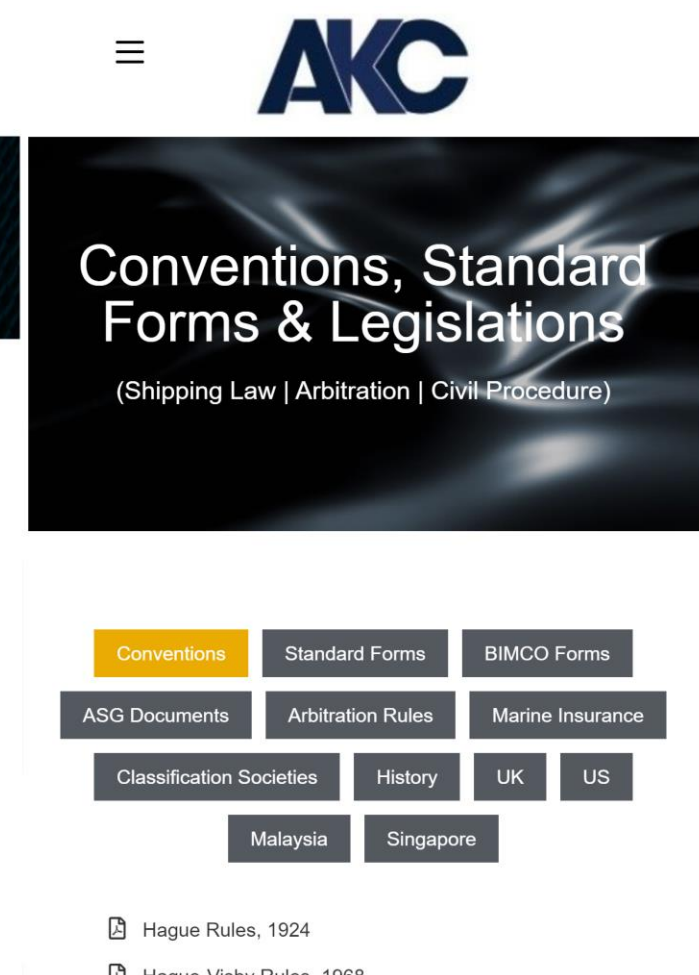
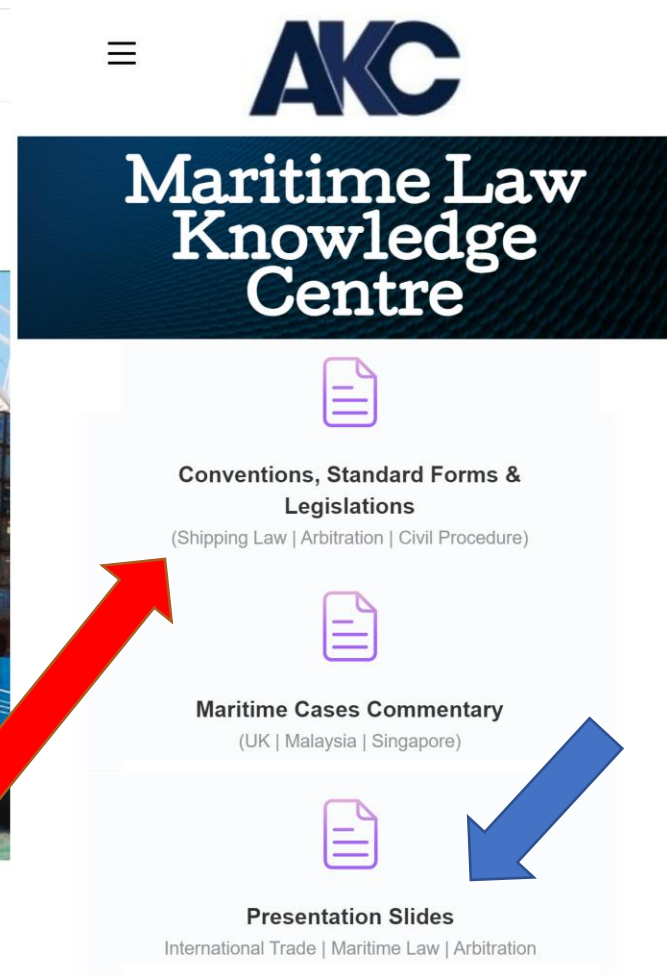
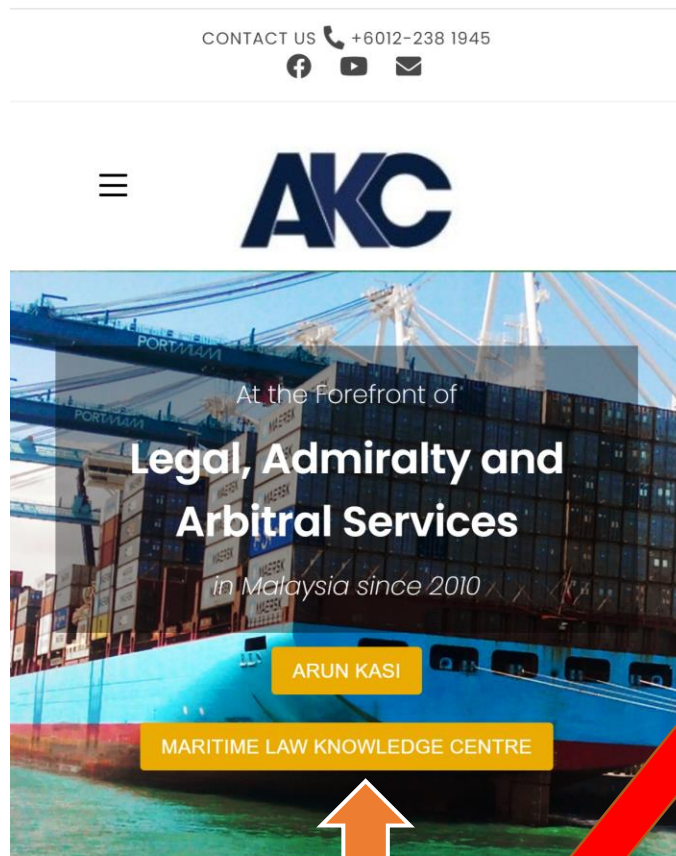
- Absolute Duty on Shipper
- To notify the Shipowner of any Dangerous Characteristics of the Cargo

Hague / Hague-Visby Rules, Art. IV(6)

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

International Trade, Maritime Law and Arbitration Web Reference

arunkasico.com -> [Maritime Law Knowledge Centre](#) -> [Conventions ...](#)



Carriage of Goods by Sea

Further Reading

[Arun Kasi, *The Law of Carriage of Goods by Sea*, Singapore, Springer, 2021](#)

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

PART I: INTRODUCTION AND INTERNATIONAL TRADE

1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

4. Obligations of Carrier under Rules: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & Hague-Visby Rules: Carriers' Liability and Time Limitations
11. Shippers' Obligation for Dangerous Cargo

PART III: CHARTERPARTIES

12. Charterparty: Introduction
13. Voyage Charter: Freight and Lien
14. Voyage Charter: Laytime and Demurrage
15. Time Charter: Orders and Indemnity
16. Time Charter: Withdrawal, Off-Hire and Redelivery
17. Time Charter: Apportionment of Cargo-Claims Liability

Carriage of Goods by Sea

Further Reading

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

Availability

Malaysia

- Kinokuniya

UK

- Wildy
- Foyles
- Waterstone
- Blackwells
- John Smith's
- Browns Books

USA

- Barnes & Noble
- Books A Million
- Walmart
- The Last Bookstore
- Schuler Books
- Bookscouter
- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
- Kinokuniya

Canada

- Indigo

New Zealand

- Mightyape

Australia

- Dymocks
- Booktopia
- Kinokuniya

Germany

- Hugendubel
- Weltbild
- Thalia
- Langer Blomqvist
- Buchkatalog
- Umbreit
- Stephanus Buchhandlung

France

- Galignani

Brussels

- Standard Boekhandel
- Club

Sweden

- Adlibris
- AkademiBokHandeln
- Bokus

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- Books.com.tw

Thailand

- Kinokuniya

S. Korea

- Aladin

India

- Books Wagon