



LAW OF

INTERNATIONAL CONTRACT II

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1. You as a buyer order 50 tons of cotton from India, which are shipped with MV Paradise of Paradise Lines under a Bill of Lading. The Ship will be making a stop in Liberia, before going on to Antwerp to unload your cotton. Shortly before stopping in Liberia, a revolution breaks out in Liberia; the cargo including your cotton is seized by the rebels. Can you claim your loss of cargo from Paradise Lines and if so, on what grounds? What factors will affect the outcome of the this legal dispute? What would you argue if you were the legal advisor of Paradise Lines?

Answer

A Bill of Lading is an instrument issued by an ocean carrier to a shipper with whom the carrier has entered into a contract for the carriage of goods. However, the buyer has no ground to claim the loss from Paradise Lines, because there are several exemptions for carriers from liability of damages under the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading agreement. It includes riots and civil commotions issues which are happening as a revolution in Liberia. Therefore, Paradise Lines can argue with this ground.

2. Your 50 tons are loaded in Bombay, FOB MV Paradise. It is a very stormy day and the cargo swings on the hoisting boom of the ship. Some of the cotton cargo shifts and breaks off the boom and lands on the ship deck. Because the deck is just painted the cotton becomes "painted" and hence useless. The Indian seller argues he does not have the risk, since the cargo has passed the ship's rail before crashing on the deck and being painted afterwards. How will your legal department react on this point of view?

Answer

The legal department should look at the shipment and transshipment contract. If they sign a shipment contract, buyer cannot blame seller of this risk. It's stated clearly below.

The Passing of Risk

Shipment Contract, when a contract requires the seller to deliver the goods to a carrier for shipment and does not require the seller to deliver them to a particular place, the risk of losses passes when the goods are handed over to the first carrier.

Transshipment Contract, if a contract requires the seller to deliver the goods to a carrier at a named place, the risk of loss passes to the buyer when the goods are handed over to the carrier at that place

This regulation also stated in **Incoterms 1990 – Free on Board**

Bear all risks of loss of or damage to the goods from time they have passed the ship's rail at the named port of shipment. Should he fail to give notice in accordance with B.7., or should the vessel named by him fail to arrive on time, or be unable to take the goods, or close for cargo earlier than the stipulated time, bear all risks of loss or damage to the goods from the agreed date or the expiry date of the period stipulated for delivery provide, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

If the buyers already agreed to deliver the products to certain place (e.g. Buyer's warehouse) the risk should be on seller, but if there is no contract stated about the delivery processes, the risk will go to the buyers.

3. A truck transports goods from Paris, France to Milan, Italy. It contains 20 tons of computer parts. Upon arrival the cargo appears to be stolen from the trailer. The value of the cargo is 400.000 Euro. Can the shipper, Compex Ltd. In London, U.K., claim full compensation of the damage from the trucking company? If not, what would be the maximum?

It is indeed that carriers are liable for loss, damage, or delay up of the goods. However, there is liability limit set by the convention. For this particular case, the

liability limit for trucking carriers is 8.33 Special Drawing Rights (SDR) per kg. For the train carriers is 17 SDR per kg.

4. Tropical fruit is shipped by refrigerator ship from Nigeria to Rotterdam. On high sea a tremendous storm takes place. Enormous waves distort the deck covers and water pours into the ship. The water finally comes in contact with the cargo in the refrigerators; the fruit cannot be saved. It arrives totally rotten. The carrier claims immunity, since this incident was totally unforeseen. How will the owner of the fruit react?

In this case, we have to understand if the carrier's duties under a Bill of Lading or not. If the contract under Bill of Lading, the carrier should be responsible for the lost, except if the carrier already properly and carefully loading, handling, carrying, keeping, and caring for the goods carried. Because if carrier already done their responsibility, they can't be blame for this lost because of **Carrier's Immunities**. Both the Hague and Hague-Visby Rules exempt carriers from liability from damages that arise from any:

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of ship.

- (d) Act of god

Carrier's Duties under a Bill of Lading

A carrier transporting goods under a bill of lading is required by the Hague and Hague-Visby Rules to exercise "due diligence" in

- Making the ship seaworthy.
- Properly manning, equipping, and supplying the ship.
- Making 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.

- Properly and carefully loading, handling, stowing, carrying, keeping, caring for, and discharging the goods carried.

If the carrier didn't prepare the ship properly that cause the water can enter to the deck and break the refrigerator, the buyer can claim the risk to the seller.

5. A 20 foot regular sea container is loaded with 25 pallets in Shanghai. On each pallet 100 boxes with each 10 empty recordable DVD's are stacked, wrapped in plastic. The containers are loaded on a ship under a Bill of Lading. The ship is supposed to bring the container to Boston, USA. When leaving the port of Shanghai, a fire breaks out on the ship; the DVD's melt away, and are totally useless. The carrier, U.S. Cargo Inc., argues the shipper has a maximum claim of 100 pounds. The shipper, an American company called Media Inc., reacts by stating it should be least 250.000 US \$. On which regulations are both arguments based?

First of all, the carrier is under exemption if the fire was not caused by the actual fault or privity of the carrier. If the exemption above is not fulfilled, then there is another ground which both parties can settle. By the Hague Rules of 1921, carrier's liability is limited to UK £100 per package or UK £100 per unit when shipped in "customary freight units".