DEDICATION

I wish to dedicate this work to my lovely parents and my wife, who always offered me unconditional love, support and encouragement throughout my life.

APPROVAL SHEET

MAXIMUM LIABILITIES OF CAREER OF GOODS BY SEA

By

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DECLARATION

I, Muhammad Ismail, hereby, declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been fully acknowledged.

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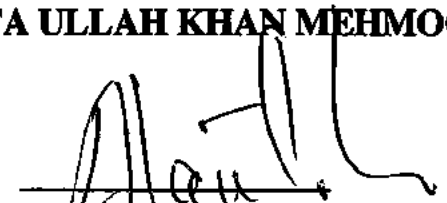
Signature: 

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LIST OF ACRONYMS

CIM	**Dispute Settlement Body**
UNCITRAL	**United Nations Commission On International Trade Law**
UNCTAD	**United Nation Conference On Trade and Conference**
CMR	**Convention Relative Au Contrat De**
HVR	**Hague Visby Rules**
RR	**The Rotterdam Rules, 2008**
SDR	**International Drawing Rights**
HR	**Hamburg Rules**
IMF	**International Monterey Fund**

ABSTRACT

The responsibility of the carrier in respect of the safety of the goods entrust to his care are explained in detail in the Hague-Visby Rules, Article III binds the carrier to apply 'due care' in making the ship sea worthy, properly equipped, supplied and manned and ensure all parts to be safe transportation and preservation of goods. In view of provisions of Article IV, the work of carrier to load and discharge the goods carefully, furthermore it his responsibility to handle, carry, stow and keep the good carried carefully. Uniform modern commercial code regarding the liabilities of carrier were hoped to be provided by the conventions on the carriage of goods by sea, particularly the Rotterdam Rules 2009, however the lack of uniformity and current status are unsatisfactory which resulted in vagueness and ambiguity of the rules regarding the maximization of carrier's liability in the court of laws.

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Thesis Statement

Uniform modern commercial code regarding the liabilities of carrier were hoped to be provided by the conventions on the carriage of goods by sea, particularly the Rotterdam Rules 2009, however the lack of uniformity and current status are unsatisfactory which resulted in vagueness and ambiguity of the rules regarding the maximization of carrier's liability in the court of laws.

Introduction

The responsibility of the carrier in respect of the safety of the goods entrust to his care are explained in detail in the Hague-Visby Rules[1], Article III binds the carrier to apply 'due care' in making the ship sea worthy, properly equipped, supplied and manned and ensure all parts to be safe transportation and preservation of goods. In view of provisions of Article IV, the work of carrier to load and discharge the goods carefully, furthermore it his responsibility to handle, carry, stow and keep the good carried carefully.

The principle underlying these provisions makes legally responsible the ship-owner for his negligence. This is clearly expressed by the words, in r.1, enjoining the ship-owner "to exercise due care, and in r.2 postulating that he should act properly and carefully". In carriage contract, the terms which lax carrier's liability against goods, is void ab-initio by virtue of Art III, r.8.[2] But freight receipt, not administered by the rules of Hague-Visby, exception might be possible where the general law so allows. [3]

The rules Hague-Visby elaborates the following maximum limits for the liabilities of carrier for losses or damages of the goods shipped:

a. "The ship or carrier shall not become or be legally responsible for any damages to unless the character or value of such goods have been stated by the shipper before shipment and added in the bill of lading, or in relation with the goods in a quantity above 666.67 units of account [4] per package or unit or 2 unit of account per kilograms of gross weigh of the goods damaged or lost, whichever is the more."[5]

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1 . The Rules are commented upon in detail in Bernerd Eder, Howdard Bennet, Steven Berry, David Foxton, and Christopher Smith, *Scrutton on Charter-parties and Bill of Lading*, (UK, 2011) 30.

2 . The *Saudi Prince* (No.2) [1988] 1 Lloyd's Rep. 1.

3 . *Browner International Transport Ltd v Monarch SS Company Ltd; The European Enterprises* [1989] 2 Lloyd's Rep. 185.

4 . The units of account are the special drawing rights (SDRs), of the IMF.

5 Art, IV(5).

In United Kingdom the value mentioned in Art regarding the SDRs (International Drawing Rights) is ascertained by conversion into pounds sterling on a daily basis, which is equivalent to hundred pounds. [6]

The Carriage of Goods Act of United Kingdom, limits the legal responsibilities of the carrier against any damage or loss to or in relation with "the goods to 666.67 units of account per package or unit or 2 unit of account per kilogram of gross weigh of the goods lost or damaged."[7]

Under the rules of Hague and Hague-Visby, the mandatory liability for the carrier also established for improving the negotiability task of the bill of lading. Documentary approach was followed by the Hague Visby's rules where the application of the convention would turn the issuing of a particular type of document. "Issuance of the slip of lading in the light of Hague and Hague-Visby regimes extend certain protections to the 3rd party 'bill of lading' holders, however not only as a negotiable document which ensures control over the disposition of the goods, but also protection in terms of carrier liability. The Hamburg regime follows the contractual approach, under which application of the Rules would depend on the parties concluding a particular type of contract, without regard to whether a particular document was issued. The Rotterdam Rules follows a hybrid approach but the application of the Rules is mainly contractual which is defined by the contract of carriage itself." [8]

To promulgate a uniform code which has been vague, is the valued goal of UNCTAD for the carriage of goods by sea, whereas ultimate objective of dissolve fragmentation in maritime law. This state of affairs articulated in the correspondence of three international convention principles, namely Hague, Hague-Visby and Hamburg Rules and in the propagation of national "hybrid" principles. on the other hand, these hybrid regime worsened the situation

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[6]. D M Day, *The Law of Internationl Trade* (London, Butterworhts, 1981), 31.

[7]. Payne and Ivamy, *Carriage of Goods by Sea* (London, Butterworths, 1985), 90-91.

[8]. Article 1(1) of the Rotterdam Rules defines "contract of carriage" as "a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage."

for applying inwards and outwards, therefore created a nightmare for legal practitioners and their clients in terms of conflict of laws issues.

Due to the urgency of the situation and promotion of reforms in the law of international sea carriage of goods, two international bodies, the CMI and UNCITRAL were established and they united forces this purpose.[9] The adoption of a convention instrument called the "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, also known as the Rotterdam Rules" is the final result and product of almost a decade of deliberations denoted in this field.

The failure of the world maritime powers to adopt the Hamburg Rules in their national legislation have further widened the lack of consistency in the law central to the carriage of goods by sea. To promulgate a uniform code which has been vague, is the valued goal of UNCTAD. Even with the denunciation of the maritime powers of the Hamburg Rules, yet it is stimulating to note that all the interested parties at the Hamburg conference agreed that the once successful Hague rules was outdated and the 1968 Visby amendment left several questions unanswered. [10]

"By the adoption of the Rules the issue is further complicated. Some nations legislated a local statute to which Hague/Visby Rules are attached as a schedule such as Australia and Canada, however, Australia and Canada have neither acceded to nor ratified the original Convention of 1924 while adopting the Hague Rules, thus cannot be considered as contracting states. whereas some states, such as France, ratify conventions and the ratification of which makes the convention law. Lastly states, in South America, never ratified or acceded to the 1924 Convention or the 1968 and 1979 Protocols or even the Hamburg Rules, nor did they adopt

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[9] . Michael F. Sturley, "The United Nations Commission on International Trade Law's Transport Law Project: An Interim View of a Work In Progress", *Texas International Law Journal*, 39 (2003), 65-69.

[10] Hague-Visby rules 1968.

corresponding national legislation. Though, in those countries, it is a general practice to integrate COGSA or Hague Rules or Hague/Visby Rules by reference into the bill of lading."[11]

Unlike other International Transport Laws, the rules on international carriage of goods by sea are, at this time, in a state of dis-uniformity. At present, there are about nine different regimes competing with each other, thus leaving many legal problems to the uncertainties of private international law.

This thesis compares the carrier's role under the Hague-Visby, Hamburg and Rotterdam Rules. It will first deal with the definition of the carrier, and the liability of the carrier. Then a comparative study of different International Conventions would be taken into discussion, the result of which the best principles among those conventions can be extracted and put forward for uniformity of the law regarding the maximum liabilities of carrier of goods by sea. Also the thesis will then examine why the Hamburg Rules and Rotterdam Rules have not been universally ratified by all the maritime nations.

Significances of Research

This research will provide import significances to the reader, especially to the students, researchers, lawyer and practitioners of International Commercial laws with special reference to the shipping laws or practitioners relating to the maritime laws. The significances of this research can as following:

1. Elaborate the bases of liability of the carrier of goods by sea.
2. Provides clear concept about the maximum liability of the carrier of goods by sea.
3. Provides authenticated cases and court rulings from different jurisdiction regarding the liabilities of carrier of good by sea.
4. Defines the terms relating toe shipment of goods from the case laws.

[11] Francesco Berlingieri, "Uniformity in Maritime Law and Implementation of International Conventions", *JMLC*, 18 (1987) 317; Tetley, "Canadian Interpretation and Construction of Maritime Conventions", *R.G.D*, 22 (1991), 109-128.

5. Analyze the international conventions relating to the liabilities of carrier.
6. Provides a uniform ruling regarding the liabilities of the carrier from the International Conventions.
7. Clarifies the extent of liabilities of the carrier of goods by sea through examining different International Conventions.
8. Explains the basic principles regarding the liabilities.
9. Compare the different legal system and extract the best principles and rulings for the liability of the carrier of goods by sea.

Literature Review

A review of the relevant literature may reveal what aspects in the area of proposed research have already been covered and whether what remains uncovered is a worthwhile subject of study. An important purpose of consulting the literature is to gain sufficient theoretical and factual background knowledge so that there should not be a duplication of effort. [12]

From the characteristic of good research is to review the literature related to that topic which the researcher is going to research.

No research on this topic has been conducted in this University before. This thesis will be the first on the mentioned topic.

In this research the primary and secondary sources have been reviewed. The primary sources include the statutes, international conventions, and rulings of the courts. Such as Hague Visby Rule 1979, Hamburg Rules 1978 and Rotterdam Rules 2009, the bill of Carriage of Goods by Sea Act 2010 in Pakistan, and Carriage of Goods by Sea Act 1992 in United Kingdom.

The secondary sources available in the research are books, articles, journals and conference prostrations. Some of which are:

[12] . Thomas J Sullivan, *Methods of Social Research* (Orlando Fl: Harcourt College Publishers, 2001), 36.

Schmittohoff Export Trade: The law and Practice of International Trade by Carole Murray, David Holloway and Daren Timson-Hunt [13], this book is a very famous book on International Trade Law. The aim on this book is to provide a convenient reference work on the law of international trade for students and practitioners alike. It maintains the same overall structure and has stood the test of time since it's first edition. Part Three of this book relates to the topic of thesis which is transportation of exports, in which Chapter 15 related to, specifically, the Carriage of Goods by Sea. What makes this thesis different is that I have added new laws relating the carriage of goods by sea which is not included in the above mentioned book.

Payne and Ivamy's, Carriage of Goods by Sea,[14] the authors have developed both the case law and statute law. The layout of the book has been modernized with a view to increasing readability, especially in the summaries of the cases cited. Chapter one, six , and seven of this book relate to the topic of the thesis. The difference of this book and the thesis is that it includes old laws and conventions and does not include the modern and new conventions related to carriage of goods by sea.

International Law for Business by Carolyn Hotchkiss[15], this book explains the Ocean Shipping, Chapter 9 of this book relates to the topic of the thesis which is the Transport and Insurance. Many cases have been examined related to the carriage or shipping of goods by sea from different angels. But still the book is old enough so the new rules of Rotterdam are not discussed yet. And also the liabilities of the carrier are not explained in that much details in view of all rules.

The Law of International Trade by D M Day[16]. This book is entitled to provide an introduction to the study of main areas of the law relating to the international sale transaction and study which is increasingly finding recognition as a subject in its own right. The book closely

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[13] . Carole Murray, David Holloway and Daren Timson-Hunt, *Schmittohoff Export Trade: The Law and Practice of International Trade* (London, Sweet & Maxwell, 2007), 281-352.

[14]. Payne and Ivamy, *Carriage of Goods by Sea* (London, Butterworths, 1985), 1-7, 82-91.

[15]. Carolyn Hotchkiss, *International Law for Business* (New York, McGraw-Hill Inc 1994), 183-194.

[16]. D M Day, *The Law of International Trade*, (London, Butterworths, 1981), 3.

related to the question of the carriage of the goods is that of their insurance. Since the goods have to be carried for long distances and possibly moved from one mode of transport to another. This book begins with the contract of carriage along with its types.

Multinationals and World Trade: Vertical Integration and the Division of Labour in World Industries by Mark Casson[17]. Chapter ten of this book relates to the shipping industry in which the author explained about the transportation of good via ship, and explained the history of shipping and organization of coastal and Mediterranean shipping, but it differs from the thesis from different angles. The thesis elaborates the maximum liability of the carrier of goods by sea. So the scope of the chapter of the book is related to the shipping and the management of the shipping and law relates to that but the scope of the thesis relates to the legal proceeding of the damaged goods or lost goods by the carrier.

British Shipping Laws by David M. Sassoon[18]. This book is with special reference to British law of shipment which includes how the shipping is done and what is the obligation of carrier and the duty of ship-owners whenever shipping the goods from one destination to others. The scope of the book is just limited to British law, but the thesis scope is comparatively wider because it includes the British, USA, Australia and Pakistani laws and cases relating to the shipment of goods.

Casebook on Commercial Law by E.R. Hardy Ivamy and Paul Latimer[19]. This book is a unique book on commercial cases which provide cases chosen to suit most commercial law courses being taught in universities and technical college, taking account of recent case law in so doing. Part V of this book relates to Carriage of Goods by Sea that includes cases from different slants of carriage of goods. But the thesis does not just rely on thesis but also international conventions.

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[17] . Mark Casson, *Multinationals and World Trade* (Australia, Allen & Unwin), 343-370.

[18] . David M. Sassoon and H. Orren Merren , *British Shipping Laws: C.I.F and F.O.B. Contracts* (London, Stevens & Sons, 1984), 33-142.

[19] . E. R. Hardy Ivamy and Paul Latimer, *Casebook on Commercial Law* (London, Butterworths, 1979), 198-260.

Casebook on Shipping Law by Syed Hasan Zafar [20]. This casebook is a unique book over the cases of shipment in Pakistan. The author of this casebook tried to collect different cases relating to the shipping laws of Pakistan. The thesis will be not focusing on just the law of Pakistan but it would be comparatively mention the cases from different jurisdictions.

Francesco Berlingieri's comparative Analysis of The Hague-Visby Rules, The Hamburg Rules and The Rotterdam Rules[21]. In this presentation the author explained just the comparative study of these three rules without explained or specifying the liabilities of the carrier in other national laws. The case laws are not touched by the author of this presentation regarding the liability of the carrier in different jurisdiction which would be in the thesis.

The Hague, the Hague-Visby, and the Hamburg Rules by Francis Reynolds [22] in this journal paper the author explained the comparative study of these three rules in detail.

Liability of the carrier under the Hague-Visby Rules for cargo damage caused by unseaworthiness of its container by N.J. Margetson [23]. This article was written as a reaction to the judgment of the Supreme court of Netherlands of 1 February 2008 (the NDS Provider)[24] in which the court stated that the container held or proved by carrier should be cargo-worthy and that therefore, by art III (1) c of the Hague-Visby Rules, carrier has to exercise 'due diligence' for the cargo-worthiness of such container. The article establishes that this is not a general view and that another point of view is that the provision in the contract of carriage will govern the liability regime regarding damage caused by fault containers. The author of this paper suggests that the latter point of view is more in line with the object of the Hague-Visby Rules.

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[20] . Syed Hasan Zafar, *Casebook on Shipping Law* (Karachi, Sind Offset Printers, 1980), 106-125,198-235, 318-332, 410-477.

[21] . This is a presentation paper delivered by the author at the General Assembly of the AMD, Marrakesh on 5-6 November 2009.

[22] . Francis Reynolds, "The Hague Rules, the Hague-Visby Rules, and the Hamburg Rules". *MLAANZ Journal*, 7 (1990), 1-34.

[23] . N.J. Margetson, *Liability of the Carrier under the Hague-Visby Rules for Cargo Damage Caused by Unseaworthiness of its Container.* (www.uncitral.org, under "Commission & working Groups documents, Working Group III/ 'Transport law' last accessed on 25-07-2015).

[24] . SCN 1 Feb 2008, nr, C06/082 HR, (RvdW 2008, 177 (The 'NDS Provider').

The Hamburg Rules: Did it Change the liability of the carrier? By Kweku Gyan Ainuson [25] in this thesis the student has just mentioned the Hamburg Rules without mentioning the other rules, especially Rotterdam Rules, but in my thesis all other rules are touched to give clear view of the liability of the carrier comparatively.

In this thesis I have reviewed the text of International Conventions that is related to Carriage of goods by sea, furthermore, with the special reference to the text of liability on those conventions. The Conventions which I have reviewed are: Hague-Visby Rules 1968, Hamburg Rules 1978, Rotterdam Rules 2009, and Conventions on Limitation of Liability for Maritime Claims, 1976. Along these conventions I have reviewed many national statutes of UK, USA, and Pakistan and Australian laws. Such as Carriage of Goods by Sea Act 1992 UK, Carriage of Goods by Sea Act 1991 Australia, Carriage of Goods by Sea Act 1936 USA, Bill of Carriage of Goods by Sea Act 2010 Pakistan.

Framing of issues

1. What are the grounds for which the carriers of goods by sea are held liable?
2. Whether the liability would be upon ship-owner?
3. What is the extent of liability of ship owner?
4. How the courts interpret the term "package"? Is a container a package? Is a huge and unpackaged machine a unit?
5. Can the carrier loss the right of limitation?
6. What is the gold value to be considered in order to convert 100 pounds sterling into currency which is mentioned in Huge-Visby Rules?
7. Can the liability be uniformed and harmonized?
8. How the liability of carrier of goods by sea can be determined by the court?

[25] . A thesis submitted to the Graduate Faculty of the University of Georgia. (Electronic Version approved by Maureen Grasso Dean of the Graduate School , the University of Georgia, 2006).

9. Will the Contract of shipment be prevailed or the International Conventions?
10. What are the observations of the courts regarding liabilities of carrier of goods by sea in Pakistan?

Research Methodology

This research is based on analytical and comparative methodologies. Both the primary and secondary sources are used to accomplish this research. In some chapter of the thesis the analytical method is used to explain the main ideas relating to the topic, beside the analytical method comparative methodology is also used. Such as the comparison of different conventions regarding the liability of carrier of goods by sea. Also the comparative study is used to compare between the national legal system of the other states such as USA, UK, Australia and Pakistan.

Chapter I

Carriage of Goods

1.1 Definition of Carriage and Carrier.

United Nation Convention on Contracts for the International Carriage of Goods wholly or partly by Sea also called as the Rotterdam Rules states that a 'Carrier' 'is a person that enters into an agreement, enforceable by law, of carriage with a shipper'[26].

Carriers can also be defined as transportation companies involved in the carriage of travellers by air, land, or sea but it is not what is meant here, what is meant is the transportation of goods via different routes. The International Trade dictionary defines 'carriers' a legal or individual entity that is in the business of transporting goods. Airlines, shipping lines, railroad and trucking companies are all example of carriers. The carrier may be actual carriers or common carriers or airfreight consolidator.

A 'carrier' can be a shipping line, trucking firm, airline, railway or also an individual or firm that undertakes to procure carriage by any of the above methods of transport including multimodals. Therefore, under this definition a freight forwarder can also act as a carrier. The globally accepted incoterms 1990 and 2000 has stemmed in expansion of the definition of term 'carrier'. In the older and more limited definition the, only shipping lines, railroads, trucking companies and airlines are known as carriers. However the significant increase in the multimodal transport and integrated logistics has placed freight forwarders in place of carriers. A freight forwarder is a legal entity, who is in business of transporting goods. The International Chamber of Commerce has established the following definition: Carrier means any person, who in a contract of carriage agrees to secure the performance or perform the transport by air, road, rail, sea, inland waterway or by combination of such modes or modalities. In the context of this definition when a buyer recommends a freight forwarder to receive the good such a in free carrier (Incoterm), the seller fulfills the obligation/duty to deliver the goods by delivering to that person.

[26] Art; 1(5), The Rotterdam Rules 2009.

A common carrier: A common career means any one whether individual, association of persons or corporation other than the state who transport the goods from one place to other whether on land or in waters for all without any discrimination. A common career should transport the goods from one place to other against some charges to be called common career. A person who deliver the goods without charges or offently is not considered as common career. Further, the common career should engaged in business of carrying goods as profession. If the career observes any discrimination in carrying the goods between the suppliers he may not be called common career with certain exception like he has been paid the freight of carrying of goods, he has accomodation on his conveyance and the particular goods are or consigner has not be blacklisted for transporting illegal goods. Apart from above mentioned conditions if a career according to his own will and wish reserve the right to refuse the offer of delivering goods cannot be a common career. It is pertinent to mention here that the Career Act 1865[27] only talk about common career while leaving passenger without definition[28]. The said act talk about private or contract career. A private career is one who transport goods from place to other occasionally. He may be engaged only with certain firms to deliver their goods between certain terminals. We may say that a private career deliver his own goods only[29]. He does not make an offer for general public for delivering the goods. At the same he can make a contract with any party on certain terms and conditions for the purpose of delivering the goods. This type of contract is called bailment[30] that is the reason this type of transaction are covered by the Common Career Act, 1865.

According the United States regulation a common carrier publishes stated rates for carriage and must accept any passenger of goods for transport so long as the published rate is paid and space is available. "Carrier" means the party actually performing or undertaking the performance of

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[27] http://www.iimm.org/ed/index.php?option=com_content&view=article&id=119&Itemid=107 (last accessed 22-06-2015).
[28] The Carriers Act 1865.
[29] *Ibid* 109
[30] Edward G. Hinkelman, Sibylla Putzi *Dictionary of International Trade: Handbook of the Global Trade Community.*

the contract of carriage. The term "Freight Forwarder" is meant to include also the "Freight Forwarder acting as carrier", unless any provision should keep the two cases apart. The term "Freight Forwarder acting as carrier" shall only pertain to the meaning specified is explained below[31];

Freight Forwarder acting as carrier" means the party assigned with the forwarding of the goods that also acts as performing carrier or openly undertakes responsibilities as performing carrier.

1.2 The Contract of Carriage.

In economics and commercial life of any country the importance of career for delivering the goods from place to other cannot be over looked because in any case goods which has been produced has to be delivered from place to other for the sake economic activity. As already defined the firms, individual or organizations who carried goods from place to another aginst some rent is called career. A contract of carriage, although generic to the contract bailment, they both of two are different. The contract of carrying on goods is a contract of bailment against some reward or Locatio Operis Faciend's[32]. The contract of bailment is defined by different statute other then carriage of gods by sea, air and land. A contract of affreightment, may be contained in a bill of lading but normally proceeds the bill of lading[33]. According to the Rotterdam Rules a 'Contact of Carriage' means a lawfully enforceable agreement where the carrier, in consideration of the payment of freight, undertake to deliver the goods from place to other. The contract shall provide for the carriage of goods by sea and may provide for other modes of transportations along with the sea route[34]. Only the seller and the carrier are privy to the contract of carriage against the consideration in the contract of carriage while the buyer relies

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[31] 'General Conditions of shipment contract' by Overseas Transport System.
[32] Mbiah. Kofi, "*Updating The Rules On International Carriage Of Goods By Sea: The Rotterdam Rules*" *http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Paper%20of%20Kofi%20Mbiah.pdf.*
[33] The Law Of International Trade And Carriage Of Goods, p-6
[34] Art;1(1) The Rotterdam Rules.

on the carrier to take care of and deliver his goods but there is no common law of privy between the buyer and carrier and no consideration provided by the buyer to the carrier[35].

The Hague/Visby and the Hamburg Rules declares the bill of lading an important document and basis for the contract give importance to the production of a bill of lading as a basis for the contract, however the Rotterdam Rules emphasis on the electronic record or transport document as alternative to bill of lading. "Rotterdam Rules take this approach so as to deal with the increased use of various types of bills of lading that has become a routine in a number of sea carriage dealings involving the use of transport documents i.e. straight bills of lading, seaway bills"[36] and negotiable and non-negotiable bills of lading. It is significant to point out that the Hague Rules only limited to the outbound cargoes. However, in Hague-Visby Rules this limitation is detached by defining the 'contract of carriage' given in the Rotterdam Rules.[37]

1.2.1 Carriage by Sea.

Regardless of the development in the other sectors of transportation, the carriage of goods by sea is still the most usual way for the transportation of goods overseas. And in the language of weightage, over 90% of goods are so carried through this mode. The significance of the contract of carriage in the international sale deal lies in the fact that during the transportation the goods that are the main subject of the 'contract of carriage' are to be in the charge of the carrier, his agents and the sub-contractors whereas neither the buyer nor the vendor has any physical control over them. The transportation through sea may last for quite a few weeks during that time the goods will be subject to the dangers innate in the sea transit. Therefore, it is very important to have knowledge about the liabilities that the carrier of the goods is under to vendor or buyer, or shipper and consignee as they are likely to be termed in relation to the contract of carriage by sea, and what contractual privileges they may have against the carrier.

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[35] *The Law Of International Trade And Carriage Of Goods*, p-11

[36] J.I. Mac William Co Inc. v Mediterranean Shipping CompanySA [2005] UK, HL 11

[37] Mbiah. Kofi *"Updating The Rules On International Carriage Of Goods By Sea: The Rotterdam Rules"* http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Paper%20of%20Kofi%20Mbiah.pdf. *(last accessed 25-06-2015)*

The vendor or shipper will not generally make the contract of carriage with the carrier directly. Whereas, he will almost certainly employ a forwarding agent to make all possible arrangements for carriage through sea. Correspondingly the carrier will normally employ a loading broker to get hold of cargoes for him. Though, in some cases the same firm may act as a forwarding agent for the shipper and as loading broker for carrier[38]. The loading broker or other agent of the carrier will sign and hand over to the shipper or his agent a document[39]. If the carrier is given the goods for shipment but not loaded, the carrier will sign a bill of lading for 'receiving of shipment'. And If the goods are loaded on to the ship-deck, it will be a 'shipped' bill of lading. This document has three functions, which is of great significance in international sale transaction. Firstly, evidence of the 'carriage contract' has been made, secondly a receipt for the goods and thirdly a document of the title to the goods. This last feature means that the owner ship or possession of the goods can be transformed from one party to another by indorsing or delivering the bill of lading. Thus, it can be used to deliver or sell the goods even they are at sea, or also used as security for a loan. Furthermore, under the Section I of the *Bill of Lading Act 1855*, with the transfer of bill of lading to the party, not only legal rights in the goods but also the rights and responsibilities under the contract of carriage will be transferred to him, which gives him all the rights of action against the carrier that the original shipper would have had. Normally bills of lading are dispensed in sets, each bill of lading in the set being numbered and each usually being valid, so that a carrier who hands over the cargo to a party showing any bill of lading from the set will be relieved from further responsibility. A shipper may charter a complete ship if the cargo is very large, either for a voyage or for a time period. In that case he is a charterer and his relationship with the ship owner will be ruled by the charter party.

[38] Heskell vs Continental Express Ltd (1950) 1 AII E.R 1033 at 1037.
[39] A bill of lading.

1.2.2 Carriage by Air and Road.

Carriage of goods by air may be set for a seller by a forwarding manager; however it is also common for a seller to deal directly with the air carrier. The document issued as a receipt for goods consigned in this kind of contract by air is the air consignment note or the airway bill, however, it is not a document of title like bill of lading. In United Kingdom the international carriage of goods by air is governed by the Air Act 1961 which applies the Warsaw Convention of 1929 and 1955.

Carriage by road or rail may be a supplementary stage of transportation or it may be the primary mode depending upon the route. In a contract, the seller might for-example make a 'carriage contract' for the goods by road or rail to the docks where he has to deliver the goods on a board ship and in such a situation there is no international factor in the carriage of goods by road or rail when he has to deliver it in the territory of the same country. On the other hand, the seller may make a contract to have the goods carried for the entire journey by road or rail, involving routes through international borders. The CMR convention of 1956 and CMI convention of 1970 govern international carriage of goods by road or rail[40]. The documents which are issued as a receipt for goods carried by the roads or rails are called 'consignment notes'. Similar to the air way-bill, and unlike the bill of lading[41], they are not title documents.

1.2.3 Combined transport.

This kind of transport is also known as Through Carriage, Intermodal or Multimodal Transport. This kind of arrangement is being used over times, where cargoes are to be carried in containers. All carriage involved in the transport of goods, by whatever mode or modes, from the vendor to buyer is undertaken by a 'combined transport operator' who arranges all the terms with the relevant carriers. The combined transport operator may be carrier himself or a forwarding agent.

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[40] The Acronym CMR (deals with Land Transport by Road) stands for Convention relative au contract de transport international des merchandises par route. There exists also an international convention relating to transport of goods by rail; it is known as CIM.

[41] the owner ship or possession of the goods can be transformed from one party to another by indorsing or delivering the bill of lading

The seller will make only one contract with the combined transport operator for the whole 'contract of carriage'. The document issued here, may or may not be a document of title, will be a combined transport document. However, this mode of transportation presents various legal problems because of its combined nature and the overlapping of domain.

1.3 Course of Business in the Carriage of Goods by Sea:

The general route of transportation in traditional sea transport may be explained by the following example. An exporter in United Kingdom is bound by his contract of sale with the overseas buyer to make arrangement for 'carriage' of the goods to be transported by sea to the destination. He has concluded a contract of carriage with the ship-owner[42], whereby the latter undertakes to carry goods in his ship from United Kingdom port of dispatch to the overseas port of destination. This type of contract is known as the contract of carriage by sea[43]. The remuneration paid to the ship owner is the freight, the ship owner is the carrier and the exporter, and as a party to the contract of carriage by sea, referred as the shipper. The exporter first has to decide whether the quantity of goods to be exported warrants the charter of a complete ship. In that case the terms of the 'carriage contract' are furnished in a document called the charter party. However, the intended goods form only part of the cargo of the ship and are carried in the ship together with goods belonging to other shippers. The terms of contract of carriage are document called a bill of lading, a receipt by the ship owner acknowledging that the goods have been delivered to him for the purpose of carriage[44] and reiterating the terms of contract, however this document is only issued when the contract of carriage is well on its way towards performance.

[42] Or with a person who, for time being, as against the ship owner has the right to enter into an agreement, 'enforceable by law', of carriage of goods of his ship, e.g, charterer.
[43] Or "contract of affreightment".
[44] Scrutton, Charterparties and Bills of Lading (20th edition, 1996), p-2,3.

Generally, the shipper instructs a forwarder to procure freight space for the cargo. The shipper likewise employs an agent, a loading broker to obtain cargoes for his ships. Justice Devlin explained those duties of agents as follows[45]:

> "The forwarding agent's normal duties are to determine the date and place of sailing, obtain a space allocation if that is required and prepare the bill of lading. Different shipping lines have their own forms of bill of lading which can be obtained from stationers in the city, and it is the duty of forwarding agent to put in necessary particulars and send the draft to the loading broker. His duties also comprise of arranging goods to be brought together with, making the custom entry and paying any dues on the cargo. After shipment he collects the complicated bills and sends it to the shipper. All the regular shipping lines operating from United Kingdom appear to the date of sailing in shipping paper or elsewhere, generally prepare and circulate to his customer a sailing card. It is his business to supervise the arrangement for loading, though the actual stowage is decided by the cargo superintendent who is in the direct service of the ship-owner. It is the broker's business also to sign the bill of lading and issue it to the shipper or his agent in change for the freight[46]. His remuneration is by way of commission on freight. And that is doubtless and inducement to him to carry out his primary function, at any rate when shipping is plentiful, of securing enough cargo to fill the ship.
>
> The loading broker and the forwarding agent thus appear to discharge well defined and separate functions, but in practice the same firm is often both the loading broker and the forwarding agent, though the two set of dealing may be kept to separate compartments off the business. The firm generally acts as loading broker only for one line and does all the line's business, so that it is free in respect of other business to act as it will.

Meanwhile, the owner of the ship via his loading broker recommend the shipper or his agent of the name of the ship that is to carry the consignment, the destination where the goods should be sent for being loaded and the time when the ship is ready to receive the goods. All this procedure is often done by a printed notice called the sailing card, which contain a reference to the closing

[45] *Heskel vs Continental Express Ltd* (1950) 1 AII E.R. 1033 at 1037.
[46] The commission of the loading broker is paid by the ship owner, whereas that of the forwarder is paid by the shipper.

date, i.e, the last date when goods will be received by the ship for loading. The closing date is generally of few days in advance of the actual sailing date in order to give the ship an opportunity to get ready for voyage. If the goods are not sent to the agreed destination in good time, i.e if they arrive after the closing date, the ship owner is allowed to shut them out even if the ship has not sailed.[47]

When the goods are sent to the docks, the shipper sends shipping instruction to the ship owner which briefly states the particulars of the intended shipment, and shipping note to the superintendent of the docks which advices him of the arrival of the goods and state their particulars in the name of the ship for which they are anticipated[48]. The place and mode of delivery of the goods to the ship owner are subject to agreement of the parties are fixed by customs of the port. In the absence of some special agreement or custom the shipper, under common law, has to deliver the goods together with the ship or within contact of her tackle at his own expenditure. At the time of delivery of the goods to owner of the ship, the shipper collect a document called the 'mate's receipt'[49], unless contrary rules or agreement. For example, in the port of London the shipper collects a mate's receipt only when water born. Goods delivered together with the ship where goods are sent to the docks by land, are stored in a shed of the port of London, authority which issue a dock receipt. However, the mate receipt is issued afterward when the goods are positioned on the board ship. Whereas, in some overseas ports mate's receipt are notified/issued for all cargoes either received by water or land[50].

The mate's receipt is a document of some importance when the goods are at the docks for loading on board ship, they are checked by tally clerks, who takes down a 'records or tally of their dates of loading, identification marks, individual package, numbers, their weight and

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[47] Murray, David and Timson-Hunt, Schmitthoff The Law and Practice of International Trade, (Eleventh Edition, 2007), p-285.
[48] *Ibid*, p-285.
[49] *Ibid*, p-285.
[50] *Ibid*, p-285

measurement, and any fault or observation about the state in which the goods are received'[51]. Nonetheless, the tally clerks note any harm to package such as by lack of protection, old cases, ambiguous marking or any other reason. When the loading is done the ship officers who is in charge of loading operation sign the mate's receipt, based on the notes of the tally clerks embodies any observations and criterion in respect of the condition of the goods received. Where the mate receipt is fit, it is said to be claused[52], if it does not include undesirable observations, it is clean receipt then the mate's receipt are latter included in the bill of lading, it make that document a claused or clean bill respectively. The matter of the mate receipt consists of two consequences:

(a) The mate receipt is an acknowledgement by the ship owner that he has received the goods in the state declared within, and the goods are in his possession is at his peril. At times it include a statement to the concern that: "these goods are received subject to the conditions included in the bill of lading to be issued for the same"[53] however it has been understood[54] that where no such clause is explicitly inserted, the goods are held by the ship owner, in question to the conditions and exception of his usual bill of lading.

(b) Mate's receipt of the goods is the prima facie proof of its ownership. The ship owner may safely taken for granted, except he has facts of the opposite, that the possessor of the receipt or the person named therein[55] is the owner of the goods and the person permitted to obtain the bill of lading in place of the mate's receipt. However, 'mate's receipt' is not the document of title; it does not pass custody of the goods and for that reason it is of less worth then the bill of lading[56]. As a result, the ship owner is within his

[51] Haris and Sons Ltd vs China Mutual Steam Navigation Co Ltd (1959) 2 Llyod's Rep. 500 at 501.
[52] Cremer vs General Carriers SA (1973) 2 Llyod's Rep 366. (the qualification on the mate's receipt were not transferred to the bill of lading which was issued clean).
[53] De Clermont and Donner vs General Steam Navigation (1891) 7 T.L.R 187.
[54] De Clermont and Donner vs General Navigation Co (1891) 7 T.L.R. 187.
[55] The majority of receipts do not name a person.
[56] However, by customs a mate's receipt may be a document of title but the addition of a word non-negotiable would destroy its character as a document of title.

rights if he issues a bill of lading exclusive of insisting on the return of the mate's receipt[57].

The documentation of lading which the tally clerk tales through loading operation are handed over to the shipowner's clerk, who match up them with the draft bill of lading sent by the shipper to the ship owner's office. The Shipping companies which run regular shipping service publish their printed form of bill of lading, revised from time to time and are obtainable from stationers. The shipper or his agent generally completes a set of two or three original bills of lading in respect of consignment, and when the details on the bills agree with the tally notes taken throughout loading, the bills are signed by the loading broker or agent of the ship owner and then the completed and signed bills are passed over to the shipper[58]. However a bill is not always clean; when it is disputed then impediments might arise because; where payment is arranged under a letter of credit, the advising bank most possibly reject the shipper finance when he shows a claused, in place of clean bill of lading. These impediments, and the proper and improper means of solving them, will be well thought-out later.

The details of bill of lading are enlisted on the ship's manifest. The manifest must contain full specifics of marks, numbers, quantity, contents, shipper, and consignee, with the particulars required by the consular authorities of the State where the goods are being forwarded. The ship's manifest is to be produced to naval, port, customs, or consular authorities; as it contains details of the complete cargo of the ship.

Bills of lading, generally, are issued in a set of two or more original parts, all of the same tenor and date. If one of them is 'accomplished', i.e. the goods are delivered against it, the others stand null and void. Except when payment is arranged under a letter of credit, the various part of set are forwarded to the consignee by successive, rather registered, air mails to acquire their speedy and secure arrival. It is of immense significance that at least one part of the set ought to be in the

[57] Nippon Yusen Kiasha vs Ramjiben Serowgee (1938) A.C 439.
[58] In practice, sometimes the bill of lading is handed to shipper, only, when the ship leaves the port.

consignee's hands ahead of or at the time of onset of the goods, for that reason the ship owner is not bound to hand over the goods, up to the time, a bill of lading is delivered to him. At time's one part of the bill collectively with other papers forming the shipping credentials is send off in a ship carrying goods by the letter in ship's bag. The Senior Naval Officer reins the ship's bag in UK at the port of departure. The exporter sends the paper in the ship's bag in unsealed cover addressed to the overseas buyer or his representative or a referee in case of need. Something not linked to the cargo and remittance must not be incorporated, and the mail is enclosed by a cover letter marked to the master, asking him to convey the mail to the addressee. On arrival, the master delivers the letter to the addressee who if has not received a part of the bill of lading earlier, provides the bill of lading to the ship owner's representative or agent- known as the ship agent[59]- at the port of delivery. The ship's agent will then issue a delivery order which the possessor presents to the ship's officer in charge of unloading.

If the exporter sells under a letter of credit collectively with the other mandatory credentials, he normally hands all parts of the bill to the advising or designated bank, and the bank then forwards the credentials by air mail to the issuing bank. Where various parts of a 'bill of lading' are with different persons, the shipowner or the master (acting as the shipowner's agent) may hand over the cargo to first person presenting a bill, provided that he has no notice of any other claim to the goods or knowledge of any other state of affairs which may raise sound doubt that the applicant is not entitled to the goods[60]. When he has such knowledge, he must deliver at his peril to the rightful owner or must interplead. Normally, the bill of lading contains exhaustive provisions about the methods of delivery and the termination of the ship owner's responsibility.

1.4 Contract of Shipment.

Article 2 of the Uniform Commercial Code describes contract of shipment as "a contract in which the buyer and seller could contract to assign risk of loss between buyer and vendor when

[59] Staughton. J. On arrival of the ship, the ship's agent deals with the port, immigration and custom formalities and arranges its proper discharge. In law he is normally the agent of the ship owner but if the ship is on a time charter, he generally the agent of the charter.

[60] Scrutton, Charterparties and Bills of Lading (20th edition, 1996), p-292.

goods are missing or damaged previous to the buyer obtains them from the vendor and neither buyer nor vendor is to blame for the loss". In a shipment contract, the buyer bears the risk of loss for the goods before even actually receiving them. In this contract, the seller's only duty is to acquire the goods from a common carrier and make proper delivery measures for the goods to get to the vendor. However, under the contract of shipment, if any loss crop up the buyer has to bear the risk of loss and is accountable for the costs. A shipment contract could be recognized with language stating it is free on board and the city where the vendor is located[61].

If there is articulate provision as to shipment in an English contract, 'shipment' signify loading of goods against a ship and proof that by the custom of a particular trade it denotes loading into railway cars in the interior of the country is inadmissible, as such construction would be contradictory with the articulate stipulations of contract. Therefore, in a case Robinson and Co vs Rosser, where a contract was made in England through the American vendors, who were brokers for the sale of US timber, "shipment to be made not afterward the end of November next," and the English buyers denied to carry out the contract for that reason the goods had not been shipped by the particular date, it was fruitlessly contended by the custom of trade in America "shipment" destined loading on railroad cars or loading on cars at the saw mills from where the timber comes[62]. In English contract 'shipment' indicates putting on board ship, unless the sense is varied by the other stipulations of contract. The question surfaced in Mowbray, Robinson and Co vs Rosser (1922) where the contract contained a final date for 'shipment'. The goods were laden on to railway trucks before final date but not loaded on to the ship until after it. The buyers were held to be entitled to reject the goods; the appeal court did not accept that the earlier loading to trucks was 'shipment' within the meaning of the said contract[63]. This is not, of course to say that parties might not make a contract which pointed out, explicitly or by

[61] https://www.law.cornell.edu/wex/shipment_contract.
[62] https://www.law.cornell.edu/wex/shipment_contract.
[63] https://www.law.cornell.edu/wex/shipment_contract.

inference, the shipment was to have some meaning other than that of loading on to a ship nevertheless the word by itself will presumably be given the limited meaning.

Unless the contract states or implies the contrary, the vendor may, perform his obligation not by shipping goods but by procuring and tender in credentials for goods already shipped. In both cases, the goods must be of contract description[64].

1.4.2 History of Shipping.

The shipping industry transports a high proportion of goods entering into international trade, particularly in place where road, rail and air tend to be least competitive for low-value intermediate products over long distances[65]. The shipping industry makes use of some very sophisticated contractual arrangements, which evolved over time through a slow process of trial and error. The fundamental factors governing allocation of resources within shipping industry have changed little during recorded history. In developing new contractual relations, therefore, each generation of shipping entrepreneurs has built upon the customs of the past. The importance of customs is reflected in the fact that precedents for modern mercantile commercial practices can be traced back through three millennia[66].

Shipping was in fact one of the first activities to be organized on a capitalist basis. The capitalist system allows functional specialization to be achieved through voluntary contractual arrangements. The most important function in the shipping industry include: ownership of the vessel; construction and repair of the vessel; protection of the vessel against pirates and enemy nation; organization of the voyage, including ire of the vessel, fuelling, provisioning and recruitment of the crew; navigation of the vessel; loading and unloading of the cargo; provision of credit and provision of insurance[67].

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[64] https://www.law.cornell.edu/wex/shipment_contract.
[65] Casson, Mark. "Multinationals and World Trade", Allen and Unwin, London, 1986, p -343.
[66] Ibid, p-346.
[67] Ibid, p-346.

Before the rise of modern factory system, merchant ships were amongst the largest privately owned producer goods. The expense of their construction, and the durability, encourage the development of financial markets in which men of wealth provided mortgage finance secured on the vessel, and the owners of the vessel chartered it to the merchants for particular voyages. Voyages were time consuming and so the merchants themselves required considerable working capital. Profitability was uncertain, both the cause of fluctuations in commodity prices and risks piracy and ship wreck. The need to agglomerate capital and to spread risks encourage the development partnerships and later, joint stock organization. Further development of the principle enabled owners and operator to lay off the more calculable risks with specialist under writers.

History records occasional advances in ship design which have temporarily turned merchant ship breading into a high technology industry of its time. For centuries there have been two main types of merchant ship: the fast stream line ship (gallery, clipper etc) for carrying high value perishable cargo, and the slower and larger vessel for low-value bulky products. The design of the first type is typically derived from fighting ships and design improvements have often spun off from naval research. It appears that the differentiation of the larger vessels from the stream line ship was itself an innovation in which commercial requirements dictated new techniques of hull construction. Ship navigation is another activity that has often been at the frontier of knowledge- from the early days of astronomy, through the development of trigonometrical instruments to modern radar and electronics. The most recent advances have been concerned with ship board automation and container handling[68].

The early organization of shipping in the Mediterranean anticipates, in a practical way, the economic philosophy of mercantilism. State regulation of foreign trade was seen as a major instrument for promoting national prosperity[69]. While regulation meant restriction in the case of

[68] Ibid, p-347.
[69] Ibid, p-347.

some industries, however, strategic considerations such as reducing import dependence and increasing naval capability often meant encouragement in the case of shipping. In Athens, for example, the state provided port facilities, quick access to the court for the settlement of the mercantile disputes and privileges for resident alien merchants.

By the thirteen and fourteenth centuries state regulation of shipping had become very sophisticated. In the spice trade, the regular convoys of galleys sailed from Venice to the Levant on timetables laid down by the state. Many of the vessels were state owned and licenses for their operation on specific voyages were sold competitively to consortia of merchants (lane, 1963). In the 15th century the Florentines organized for coastal trade from Pisa along similar line. The state set a detailed tariff for the consignment of different commodities over different legs of the coastal voyage. It also segmented the market by, for example, prohibiting ship sailing to Flanders from calling on the coast of Catalonia, so as reserve this trade or the Catalonian galleys (mallet, 1967)[70].

The growth in demand for shipping led to the development of mass production techniques in ship building. In Vince the market for new shipping was largely internalized by the state. The state was major customer for shipping and ordered the ships from the Arsenal. This combination of integration and bulk buying was almost certainly instrumental in promoting mass production. By the end of the 15th century, technical management of the Arsenal had largely supplanted guild customs, so far as organization of work was concerned.

In the Baltic sea and its surrounding, the hanseatic league organized trade so that shippers indifferent port could acts as agent for one another cargoes (Dollinger, 1970)[71]. The shipper need not accompany his goods but could devolve responsibility for security to the master of the vessel. This allowed the shipper to remain in port and specialized in commercial business, on his own behalf and on behalf of others. A somewhat similar form of international organization

[70] Ibid, p-347.
[71] Ibid, p-347.

emerged in the medieval wool trade between the British Isles and Continent of Europe, where merchants formed guilds which operated warehouses abroad, sometime in special enclaves exempted from host jurisdiction. Britan finally repealed the navigation laws in 1850 so that British Freight could be carried under any flag. Because of its colonial links with Africa and Australia, its closed cultural ties with North America and its high quality of entrepreneurship, British shipping was in a very strong competitive position. Expatriate Britons controlled coastal fleets in various parts of the world which fed traffic into the main oceanic roots: Jones in West Africa, for example, Makinze and Mackinnon in India and Swire in China[72].

Towards the end of 19th Century British dominance decreased. German lines operating out of Hamburg and Bremen challenged British lines on the North- Atlantic and Europe-Africa route. (Aldcroft, 1968)[73]. Some of the German lines used state subsidies to offer cheap rail transport to and from ports on through bills of lading.

[72] Ibid, p-348.
[73] Ibid, p-348.

Chapter II

Maximum Liabilities of Carrier of Goods by Sea.

The rules of Hague-Visby provides in Article IV[74], the following maximum limits for the liability of carrier meant for damage to or loss of the goods shipped:

(a) The value and nature of such goods have been clearly stated/declared by the shipper before shipment and added it to bill of lading, neither the ship nor the carrier shall, in any event, become or be liable for any damage or loss to or in relation with the goods in an amount in excess to 666.67 units of account prepackage or unit or 2 units of account per kg of gross weight of the goods lost or damaged, the one which is the higher.

(b) Total amount recoverable shall be calculated with reference to the value of such goods at the place and time, where the goods are discharged from the ship in lieu of the terms of contract or should have been so discharged. The 'goods value' shall be fixed in accordance to the exchange price or current market price of the commodity, with reference to the normal value of goods of the same quality and kind.

(c) Where a container 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 judged at the number of packages or units for the resolve of this paragraph in relation to these packages or units. Except when such article of transport shall be considered the package unit.[75]

(d) The unit of account stated in the said article is a special drawing right as defined by International Monetary Fund (IMF). The amount mentioned in the paragraph (a) shall be transformed into the national currency on the basis of value of the currency be determined by the law of court apprehended of the case.

(e) The benefit of the limitation of liability shall neither be given to carrier nor the ship providing for in this paragraph when proved that the loss resulted from an omission or act of the carrier done

[74]. The Hague-Visby Rules, 1968.
[75]. ibid.

with intention of causing damage, or irresponsibly and with the knowledge that it would probably result in loss or damage.[76]

(f) The sub-paragraph (a) of this article shall be prima facie evidence, when added in the bill of lading but shall not be conclusive or binding on the carrier[77].

In United Kingdom the value of SDRs publicized in the sub-paragraph of Art IV (5)(a)[78] is determined but transfiguration into pounds and sterling on daily basis[79].

The maximum limits provided by the rules for the carrier's responsibility are not of an absolute character. They may be increased by the shipped goods by the shipper prior to the shipment, and addition of the assertion in the bill of lading. However, the agreement cannot be the maximum limits for the liability of the carrier, be reduced below the limits provided in rules stated in Art 4 (5) (a) of the Hague Visby. Where declared value of the goods is embodied in the bill, the shipper may, in case of damage or loss due to other expected perils, claim damages in excess of the maximum limits. The measure of damages is the loss actually suffered by the shipper, and it is open to carrier to prove that that loss is smaller than the worth of goods identified in the bill.

2.1 Obligation of Carrier.

The fourth chapter of "United Nations Convention on Contracts for International Carriage of Goods wholly or partly by Sea – 2008" elaborates the responsibilities and obligations of Carrier. Article 11 of the aforesaid Convention deals with delivery and carriage of goods which expounds that the carrier in accord with the footings of contract will take the goods to the target-place and hand it over to the consignee[80].

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[76] . ibid.

[77] . ibid.

[78] The Hague-Visby Rules 1968.

[79] The conversion value of an SDR on a particular day can be ascertained from a bank or by reference to the financial press. If necessary, a certificate obtained by the treasury or on its behalf, that shall be a conclusive evidence of the equivalent sterling value on a particular day, Section 1A(2) of the Act.

[80] *United Nations Convention on Contracts for International Carriage of Goods wholly or partly by Sea* (The Rotterdam Rules) - 2009

The foremost responsibilities of the carrier under International Conventions of Carriage of Goods are:"Taking the goods into his custody, Preserving the goods while transportation through voyage; and Transporting the goods to their last stop by a appropriate means of transport & deliver t it to the person having the bill of lading."[81]

Hence, the carrier shall by suitable means, whatever, carefully receive, load, handle, stow, carry, keep, care for, unload and deliver goods[82]. The carrier must also carry the goods to the destination of delivery and hand it over to the consignee, with in specified time, in the form in which he received them.

Generally, the carrier is not a specialist in nature and peculiarities of cargo. Therefore, it is the duty of the shipper to notify, give proper guidelines and properly pack the goods; otherwise the carrier will not be blamable. However, when the carrier is a specialist in the transportation of specific cargoes, there the carrier must generally have knowledge and skill essential for that precise trade. Most of the international transport laws and conventions allows the parties to a carriage of goods to decide for themselves whether the carrier or shipper/consignee shall execute the loading, stowage and discharge operations. And however, when the carrier performs these operations himself, generally, he will be answerable even if agreed that the shipper or consignee shall discharge or load.

Under the canopy of carriage of goods act the carrier has to provide suitable means of transport and shall not be comforted of the responsibility which rest in him simply because of fault in the vehicle which is used in carriage of goods known as absolute responsibility of the carrier that as stated in CMR Convention Article (17)(3)[83]. Whereas, Article (III)(1) of HVR provides that "The carrier shall be bound prior to and at the beginning of the voyage to exercise 'due care' to: "(i) Make the ship seaworthy; (ii) Properly man, equip and supply the ship; (iii) Make the holds,

[81] . Article III(2), The Hague-Visby Rules, 1968.
[82] ibid.
[83] Convention on the Contract for the International Carriage of Goods by Road.

refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation duty of care upon carrier." Interestingly, Rotterdam Rules impose a unceasing duty to exercise 'due diligence' in order to ensure the seaworthy of the ship by virtue of Article (14) of Rotterdam Rules[84].

Accordingly, when a carriage vehicle becomes malfunctioning during transport the carrier, without delay, is required to fix the defect as set out in Article (17) of CMR. However, only under Hague-Visby Rules the carrier's compulsion is to exercise 'due care' to make the ship seaworthy, limited to the period prior to and at the beginning of the voyage as per Article (III)(1). Furthermore, the carrier under Hague-Visby Rules need exercise due care in order to avoid not only occurrence, but also its consequences. Unlike Rotterdam Rules that imposes a continuous compulsion to exercise 'due diligence' to ensure the seaworthy of ship by virtue of Article (14). Moreover, the carrier must show[85], that the loss caused was due to unavoidable certain circumstances, e.g a hidden defect, and the consequences, which he was unable to prevent, or his agents or servicemen took all those measures that could reasonably be required to avoid the occurrence and its consequences; otherwise his responsibility will be limitless.

At the same time as the carrier uses employees, agents or even sub-contractors to execute any condition under the terms of 'carriage contract' on his behalf, he is responsible for any breach of his duties resulted by their omission or acts. Though, some conventions bound the carrier's responsibility for omissions or acts of the carrier's agents when they act within the boundaries of their service as per Articles (3) CMR[86], (18) RR[87] and (IV.2) (q) HVR[88].

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[84] Art 14, The Rotterdam Rules 2009.

[85] *CARRIER'S RESPONSIBILITY UNDER INTERNATIONAL CONVENTIONS - See more at: http://www.tamimi.com/en/magazine/law-update/section-5/march-4/carriers-responsibilit-undere-international-conventions.html#sthash.n7kuEY0y.dpuf*

[86] The Acronym CMR (deals with Land Transport by Road) stands for Convention relative au contract de transport international des marchandises par route. There exists also an international convention relating to transport of goods by rail; it is known as CIM.

[87] The Rotterdam Rules 2009.

[88] The Hague-Visby Rules (deals with Sea Transport).

2.2 Period of Responsibility of Carrier.

Provisions of Article 12 of the Rotterdam Rules 2009; give details of the time frame of responsibility of carrier. The Rotterdam Rules, article 12(1) deems carrier's responsibility to begin when he receives the goods until 'goods are delivered'[89]. The period for responsibility of the carrier under the umbrella of rules for international carriage of goods encompasses, time of the taking of the goods till the delivery as per Articles IV (1) of the rules of Hague-Visby, twelve of the Rotterdam Rules, and article 17 (1) of CMR. Such responsibility is obligatory, and in other words, any phrase or article or section lessening the carrier's responsibility is void[90]. The imperative exemption can be found in the Hague-Visby Rules 1968 under Article I (e) which provides that, "the carriage of goods covers a time period, from the time when the goods are land and discharge from the ship"[91]. This points out the compulsory liability rules as set out in Article III (8) of Hague-Visby Rules, only, apply to "tackle-to-tackle" period, in other words from the beginning of loading until the discharge of goods. Hence, in Hague-Visby Rules, the carriers can validly exempt himself of legal responsibility for the period prior to (loading) and after (discharge) of goods by integrating a 'Period of Responsibility Clause' into the 'carriage contract' of goods. The Scandinavian countries that are parties to Hague-Visby, have stretched the carrier's period of compulsory responsibility, from taking over of the goods until delivery. However, this is not measured a violation of mandatory law, because it only increases carrier's responsibility that is not barred by Article III (8) of the Hague-Visby Rules[92]. It can be established or recognized that under International Carriage Contract, the crucial responsibility of

[89] The Rotterdam Rules, Art 12 (1).
[90] Art III (8), The HVR, states 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 duties and obligation 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.
[91] Art 1(e), The Hague-Visby Rule.
[92] http://www.tamimi.com/en/magazine/law-update/section-5/march-4/carriers-responsibilit-undere-international-conventions.html#sthash.n7kuEY0y.dpuf (last accessed 22-07-2015)

the carrier is delivery of goods to the destination assigned to; if not he will be liable of the breach of contract of carriage[93].

The time frame for carrier's responsibility under the umbrella of rules of Hague/Visby is generally been identified as "tackle to tackle" i.e. starts from the time when the goods are laden till the goods are discharged from the ship at the point agreed in contract. The responsibility period of carrier is expanded under The Hamburg Rules to "port to port", from the taking possession of the goods until the time he has discharged the goods at the port of discharge[94]. However this is being further extended by the Rotterdam Rules, upon bargain by the parties, to cover "door-to-door" carriage transactions where the carrier has to take the goods to place agreed in the contract and give it over to the consignee[95].

2.3 Basis of Liability

The affair of the liability of the carrier is the core of most international transport conventions This is so because it signifies to a very huge extent the peril allocation and the balance of rights and responsibilities connecting the major players – the shipper and the carrier. The provisions on the basis of liability of the carrier are contained in chapter 5, article 17 of UNCITRAL whereas Article 5, the basis carrier's liability, of Hamburg rules illustrates that the destruction of goods, or loss arising out of loss is responsibility of the carrier, likewise from delay in delivery, when he was in charge the goods[96]. In view of Article 5(2) of the Hamburg Rules which illustrates that it is said to be 'delay in delivery', when specified goods in the contract are not delivered to its agreed destination within the specified time, where the time frame is not specified in the contract/agreement then within time reasonable for such delivery. The goods would be considered lost if they are not delivered at the destination within sixty days after the expiry of the

[93] http://www.tamimi.com/en/magazine/law-update/section-5/march-4/carriers-responsibilit-undere-international-conventions.html#sthash.n7kuEY0y.dpuf (last accessed on 22-07-2015)
[94] Art IV (2), The Hamburg Rules.
[95] Art 11, The Rotterdam Rule.
[96] Art 5(1), The Hamburg Rules 1978.

due time[97]. In case of livestock the carrier is not responsible for any such loss, damage or delay springing out of some special risk innate in it if he has followed all the special instruction given to him[98] and there would not be any liability on him caused for any loss, damage or delay while safeguarding life[99].

Exceptions to Liability.

According to provisions of Rotterdam Rules, "the carrier's responsibility in relation to seaworthiness is not only limited to 'before and at the beginning' but shall continue throughout the voyage"[100]. It is pertinent to mention that some exculpatory clauses such as the amplification of the fire exception and the removal of Nautical Fault Rule and alteration in language regarding to some of exculpatory clauses in the Hague- Visby Rules have been upheld in the Rotterdam Rules. Art. 14 (1) provides, "a general rule on carrier's liability. However, it is seen indispensable to supplement this general rule with a list of exceptions/perils/events ("excepted perils") in Art. 14 (2), the content and wording of the listed "excepted perils" deserves careful consideration"[101]. The Hague-Visby Rules contain a significant list of exceptions in Art. IV (2) (a),(q)[102]. The nautical fault and fire exceptions, are the two of the exceptions enclosed in Art IV (2) (a) and (b), and exist with the carrier in cases of negligence on the part of the carrier's people[103]. The other exceptions present in (Art.IV,2(c)-(q)) are subject to the carrier's performance of his responsibilities and reflect conditions where negligence of carrier is not usually involved (such as omissions or acts of the shipper or events trivial to the carrier's control, fault in the goods or inherent vice). Art. 14 (2) lists a number "excepted perils" which are subject to some textual alteration, parallel to Art. IV (2)(c) and (q) of the Hague-Visby Rules[104].

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[97] Ibid, Art 5(3).
[98] Ibid, Art 5(5).
[99] Ibid, Art 5(6).
[100] Art 14, The Rotterdam Rules, 2009.
[101] Mbiah Kofi, *UPDATING THE RULES ON INTERNATIONAL CARRIAGE OF GOODS BY SEA: THE ROTTERDAM RULES*, p 8.
[102] Art IV, The Hague-Visby Rules.
[103] Ibid, Art IV.
[104] Ibid, Art IV.

2.4 General Rules on Liability of Carrier and Burden of Proof.

The general rules on responsibilities of the carrier in respect of the safety of the goods entrusted to his care are put in plain words in detail in the Hague-Visby Rules[105], Article III of this rules elaborates that ; "it is responsibility of the carrier to exercise 'due-diligence' in making the ship sea worthy, properly equipped, supplied and manned and make all necessary parts fit and safe for the transportation, reception and preservation of goods"[106]. According to Article 4 the duty of the carrier is to load and discharge the goods carefully, furthermore it his responsibility to handle, carry, stow and keep the good carried carefully.

The core principle in these provisions is that the ship-owner is merely liable if he is negligent. This is clearly expressed by the words, in sub-article (1), asking the ship-owner "to exercise due diligence"[107], and in sub-article (2) postulating that he had to act "properly and carefully"[108]. The liabilities of the ship owner in this act are lighter than those at the common law, however this is leveled by the provision that he cannot contract out of the Rules. Specifically, under the absolute obligation, it is the responsibility of the to check for a seaworthy ship, i.e. the ship must be fit in all respect to load, carry and discharge the cargo safely, and further have the regard for ordinary perils faced on the voyage.

Under the, 1971 act of Carriage of Goods by Sea, the carrier is only responsible if he fails to discover the lack of seaworthiness of his ship upon reasonable examination. According to Justice Wright, "Under the old rule, the only relevant question was whether the ship was seaworthy or unseaworthy. That the rule was no doubt adapted to more simple days when ships were not very complicated wooden structures but in modern times, when ships are complicated steel structures full of complex machinery, the old unqualified rule imposed too serious responsibilities on

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[105] . The Rules are commented upon in detail in Bernerd Eder, Howdard Bennet, Steven Berry, David Foxton, and Christopher Smith, *Scrutton on Charter-parties and Bill of Lading*, (UK, Sweet & Maxwell Ltd, 2011)

[106] . Article III, The Hague-Visby Rules 1968.

[107] Ibid, Article III (1).

[108] Ibid, Article III (2).

carriers by sea. He is liable for all such duties as appertain to a practical and careful carrier acting as the servant and agents in his employment[109].

According to Art III (1) (a) and in common law seaworthiness[110] indicates the meaning of cargo worthiness. A vessel is unseaworthy if previous to loading it is contaminated with insects and for this reason the discharge of cargo is forbidden by the authorities at the port of destination. The provisions of Art III (1) are superseding; therefore where the shipper, in contradiction to Art IV (6) does not inform the ship owner of the dangerous nature of goods shipped[111], the ship owner cannot claim protection from the shipper.

The responsibility of the carrier for his negligent acts or omission of his servants not merely exist in the cases listed in Art III (1) but also in those pointed out in Art III (2). Therefore, carriers were held responsible to owners of cargo of maize for damage caused by bad stowage. Carriers were held accountable for damage occurred during the loading operation by the carelessness of their servants; for destruction of goods negligently occurred due to fire afterward they were laden ahead of the ship sailed. Whether the master firmly follows the order of the shipper's agent at the time of storing, the shipper might be clogged by the conduct by declaring that the packing was defective.

The carrier is bound, practically, to play some part in the loading operation but the scope and area is settled on by the contract of the parties, furthermore be determined by on the customs, practices of the port and nature of the cargo. The obligation of the carrier is to discharge with due care and proper attention the goods carried[112], but this usually ends at the time when the goods are supplied. Conversely, when the goods were released into a lighter, the ship owner remains to be answerable if the goods laden into the lighter are damaged by other cargoes packed without due care and attention. According to Art III (2) the terms on the ground of which the contract of carriage is to be carried out and have no geographical repercussion, they do not

[109] W Angliss & Co Proprietary v Peninsular and Orientaal Steam Navigation Co (1927)
[110] Article III (1) (a), The Hague-Visby Rule, 1968.
[111] Ibid, Art IV (6)
[112] Ibid, Article III (2).

quash a clause according to which the carrier is permitted to release the goods to any auxiliary safe and suitable port. Here the cost surfaced on carriage to the agreed port is on the shipper. Any countenance in a contract of carriage which seeks to reduce or lessen the carrier's responsibility in respect of goods is null and void by virtue.

- EXCEPTED PERILS

In Art IV[113] a "long list of matters in respect of loss or damage arise from which the carrier is not accountable. This article in Art IV (1) and (2) provides it as:

1. "The carrier or the ship shall not be liable for damage or loss caused from unseaworthiness untill resulted by lack of due diligence by carrier to ensure the ship seaworthy and also to ensure the ship is properly manned, equipped and supplied, and that the refrigerating and cooling chambers along with all other parts of the ship in that are used for reception, carriage and preservation of goods in agreement with the provision of paragraph 1 of the Article III. Whenever, such damage or loss has resulted out of unseaworthiness the burden of proof that the carrier has exercised 'due diligence' is on the carrier or the person claiming immunity under this article"[114].
2. "The carrier or the ship shall not be responsible for the loss springing out of— (i) Act, neglect, default of mariner, master, pilot or the servant/agent of the carrier in the navigation or the supervision of the ship, or Fire, unless caused by negligence or privity of the carrier, or Perils, dangers and accident of the sea or other navigable waters, or Act of GOD, war, enemies of the public, or Arrest or restraint of the princes, rulers or other people, or seizure under legal process, or Quarantine restrictions, or Omission or act of the shipper or owner of the goods, his agents or representative, or Strikes, riots, disturbances, tensions, restraint or stoppage of labor from whether partial or general cause, or Safeguarding of life or property at sea, (xiii) Wastage in bulk or weight or any other loss springing from inherent defect, quality or vice of the goods, (xiii) Insufficiency of Packing, marks, (xiv) Latent defect not discoverable by due diligence, (xv) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect

[113] Ibid, Article IV.
[114] . ibid.

of the agents or servants of the carrier, though burden of proof shall be on the person having claim for the exception of the liability"[115].

THE BURDEN OF PROOF:

Art IV (1) elaborates that, "the liability of proof is on the owner of cargo to institute that the unseaworthiness that caused damage or loss to the cargo and furthermore that the ship was unseaworthy"[116]. The burden then shifts to the carrier to prove due diligence in respect of ship seaworthiness. However, if the ship is unseaworthy causing damage or loss to goods, effect of Art III (1) is that the ship-owner is deprived of reliance on Art IV (2) exceptions but might still limit his responsibility.

It is for the ship owner to establish that the loss or damage comes with in Art IV (2) about exemption and for the cargo-owner to prove negligence, except in cases within Art IV (2)(a) or (b)[117] which provides for negligence or fault and (q) where the burden is on the ship owner to disprove negligence. Among the grounds on which the ship owner will normally try to rely, is inbuilt defect of the cargo (Art IV, r.2 (m))[118].

The burden of proof creates difficulties in cases of short delivery, i.e if a lesser magnitude of a cargo is unloaded than laden in accordance to a clean bill of lading. This is not an uncommon affair in transportation of the oil in greater part. In such a matter the obligation of proving the dearth falls on the cargo owner who will customarily be the claimant, however he does not need to prove the shortage causes, which in any incident may be hypothetical.

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[115] . ibid.

[116] Ibid, Art IV (1).

[117](a)Act, neglect, default of master, mariner, pilot or the servant of the carrier in the navigation or the management of the ship. (b)Fire, unless caused by actual fault or privity of the carrier.

[118](m)Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.

2.5 Maximum Limits of Ship Owner's Liability.

There are comparatively speaking no obligations on the shipper regarding to the rules of Hague/Visby apart of the fact, that he ship dangerous goods. The Hamburg Rules also make provision of some obligations of the shipper. "Under the rules of Hamburg, Shipper is not to ship dangerous goods unless he informed the carrier about the nature of the goods. These Rules also entail the shipper to indemnify the carrier from losses occasioned by the carriage of such goods. Additionally the shipper is expected to guarantee the accuracy"[119] of information to be provided to the carrier in respect of labels and marks on the goods.[120] "By far the most elaborated provisions on the compulsions of the shipper are found in the Rotterdam Rules. This serves to provide clarity with respect to obligations which the shipper is expected to undertake. A good number of these obligations represent a codification of practice. The three main areas where the shipper is expected to carry the obligation related to the provision of 'information' to the carrier include: information to enable the carrier handle and carry the goods"[121] ; information to enable compliance with laws, regulations and requirements of Authorities as they apply during the carriage[122] and for the assembling the details of the contract.[123] The Rotterdam Rules make special provisions regarding the carriage of dangerous goods.[124] "When the shipper does not provide accurate information/details for the contract particulars or the dangerous nature of the goods, in such a case he is strictly accountable to carrier for any damage or loss caused by him[125]. The shipper is also answerable for the omissions or acts of his servants or agents as well as subcontractors but not to the party acting on the carrier's behalf, that the shipper has commended the performance of its requirements. Certainly the requirements of the shipper seem laborious, in view of the fact, that the shipper cannot limit his legal responsibility. However, it

[119] Article 17 (1), The Hamburg Rules, 1978.
[120] Ibid, Article 17 (1).
[121] Article 29(1)(a), The Rotterdam Rules, 2009.
[122] Ibid, Article 29(b)
[123] Ibid, Article 31
[124] Ibid, Article 32
[125] Ibid, Art 32 (1).

must be stated that in all the predecessor conventions there is no limit of liability for the shipper. This may be due to the fact that the arduous requirements coupled with strict liability have public good implications. The detailed provisions of the obligations of the shipper in the Rotterdam Rules serve to bring clarity on the issues and requirements regarding the shipper's obligations and are not indeed detrimental to the interest of the shipper. The Rotterdam Rules also seem to have clarified the position taken by common law judges with respect to the dangerous character of goods".[126]

The rules of Hague-Visby provide in Article IV (5) the following maximum limits for the carrier's liability for the loss or damage caused to the goods shipped[127]:

(a) "Unless the value and character of such goods have been stated by the shipper before shipment and added in the bill of lading, the ship or carrier shall not in, any event, become or be legally responsible for any damage or loss to or in relation to the goods in an amount over and above 666.67 units of account prepackage or unit or 2 units of account per kg of gross weight of the goods damaged or lost, the one which is the higher."[128]

(b) "Total amount recoverable shall be calculated with reference to the value of such goods at the place and time, where the goods are discharged from the ship in lieu of the terms of contract or should have been so discharged. The 'goods value' shall be fixed in accordance to the exchange price or current market price of the commodity, with reference to the normal value of goods of the same quality and kind."[129]

(c) "Where a container 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 judged at the number of packages or units for the resolve of this paragraph in relation to these packages or units. Except when such article of transport shall be considered the package unit."[130]

(d) "The unit of account stated in the said article is a special drawing right as defined by International Monetary Fund (IMF). The amount mentioned in the paragraph (a) shall be transformed into the

[126] Ibid, Art 32.
[127] Article IV (5), The Hague-Visby Rules , 1968.
[128] Ibid.
[129] Ibid
[130] Ibid

national currency on the basis of value of the currency be determined by the law of court apprehended of the case."[131]

(e) "The benefit of the limitation of liability shall neither be given to carrier nor the ship providing for in this paragraph when proved that the loss resulted from an omission or act of the carrier done with intention of causing damage, or irresponsibly and with the knowledge that it would probably result in loss or damage."[132]

(f) "The sub-paragraph (a) of this article shall be prima facie evidence, when added in the bill of lading but shall not be conclusive or binding on the carrier.

In United Kingdom the value of SDRs listed in the sub-paragraph (a) of Art IV (5) is resolute but alteration into pounds and sterling on daily basis"[133].

The maximum limits provided by the rules for the carrier's liability are not of an absolute character. They may be increased by the shipped goods by the shipper before shipment, and insertion of the statement in the bill of lading. Though, the maximum limits for the legal responsibility of the carrier cannot, by agreement, be reduced below the limits provided in sub section (5) (a) of Art IV[134]. Where declared value of the goods is embodied in the bill, the shipper may, in case of damage or loss due to other expected perils, claim damages in excess of the maximum limits. The measure of damages is the loss actually suffered by the shipper, and it is open to carrier to prove that that loss is smaller than the value of goods stated in the bill.

2.6 Limitation of Liability

Lord Denning in his final word, The Bramely Moore, states: "I agree that there is not much justice in this tenet, however limitation of responsibility is not a matter of justice. It is a tenet of public policy which has its origin in his history and its justification in convenience"[135].

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[131] Ibid

[132] Ibid

[133] The conversion value of an SDR on a particular day can be ascertained from a bank or by reference to the financial press. If necessary, a certificate by or on behalf of the treasury can be obtained which shall be a conclusive evidence of the equivalent sterling value on a particular day, s.1A(2) of the Act.

[134] The Hague-Visby Rules 1968.

[135] http://www.duhaime.org/LegalDictionary/F/FlotillaPrinciple.aspx (Last accessed on 23-07-2015)

"The Hague Visby Rules provide for a limit of liability of the carrier to the tune of 666.67 units of account while the Hamburg Rules provides for 835 units of account per package or 2 kilos of gross weight of the goods whichever is higher. The rules of Rotterdam provides for 875 units of account per package or 3 units of account per kilogram of the gross weight of the goods, that are the subject of dispute, the one which is higher. Thus the Rotterdam Rules limits represent an improvement on limits when compared with The Hague-Visby and Hamburg Rules. Whether an exclusion clause has been effectively incorporated into the contract so as to form part of it is in each case a matter of construction"[136]. Although the ship owner may be accountable for the loss of or damage to the goods, as legal responsibility may be limited by the context of contract or statute. The limitation is not applicable if the value and character of the goods are stated to the carrier on the shipment and added to the bill of lading. Such a statement is on the surface evidence of nature and value and is not binding on the carrier. In the past the limitation has posed problems when goods have been consolidated. Let suppose a container containing 1,000 boxes has been lost overboard, the question of whether each box or the container was the package or unit is clearly important. The limitation will not apply if it is established that the damage[137] caused by an omission or act of carrier that is done recklessly or with intention of causing damage and knowledge that loss would probably arise out of such omission or act.

Additional statutory limitation on a carrier's liability is levied by the Section 503, Merchant Shipping Act 1884, that modified limits on 'combined liability' for damage to goods, 1,000 gold francs against each ton of ship goods weight.

[136] In McCutcheon Vs David Machrayne: It was held that the plea by the carriers that they were exempted from liability by their condition of carriage failed, because, as a matter of construction, the condition had not been effectively incorporated into the contract.

[137] Art IV (5)(e) mentions only 'damage', not 'loss or damage'. The French version similarly has 'dommage' instead of usual 'perte ou dommage'. The potential importance of the omission is amply demonstrated by Fothergill vs Monarch Airlines (1979).

2.6.1 By the Context of Contract:

In case of charter parties and those of bill of lading; the Carriage of Goods by Sea Act 1971 is not applicable[138], a ship owner is quite free to exclude his legal responsibility for damage or loss in any way that he thinks fit. But in some cases he cannot rely on a limitation clause e.g where the loss was due to unseaworthiness and liability for the loss by unseaworthiness was not exempted. Where the carriage of goods by sea act 1971 is applicable to the ship owner cannot limit his responsibility to a amount less than 666.67 units of account per unit or 2 units of account per kilogram of gross weight of the goods damaged or lost, whichever is the higher in a clause purporting to do so will be void. Thus, in the Morviken[139];

> The owner of the asphalt road finishing machine shift it at Leith, Scotland, on the Dutch vessel 'Haico Holwerda' for carriage to Amsterdam and thence to Bonaire and the apply and that all action should be brought before the court of Amsterdam. At, Amsterdam the machine was transshipped on the Norwegian vessel 'Morviken' for carriage Bonaire whilst being discharged at Bonaire it was dropped on the quay and was damaged to the extent of 22,000 pound. The owner of machine claimed damage but the Dutch carriage applied for the action to be stayed in view of clause 2. The Dutch law where the original Hague rules, that enabled a carrier to limit his responsibility to 250 pound, applied whereas under Article IV, (5)(a) of the Hague-Visby rules as set out in carriage of the Goods by sea act 1971 the sum would be far higher. It was held, by the house of Lord, that the action would not be stayed for the clause was void under Article III (8) because it lessened the liability of the carrier.

Again, a clause limiting a claim to the invoice value of the goods has been held to be of no effect. Thus, in Nabob Foods Ltd vs Cape Carso (Owners)[140];

> A cargo of pepper was shipped from Liverpool to Vancouver. The bill of lading stated that for the purpose of adjusting claims for which the ship owner was labeled, the value of the goods was to be deemed the invoice value plus freight and insurance if paid, irrespective of whether any

[138] Ivamy, E R Hardy, *Carriage of Goods by Sea*, 12th edition (London, Buttrworths) 1985, p189
[139] Ibid, p 189.
[140] Ibid, p189.

value was greater or less. Held, by the Exchequer Court of Canada, that the provision was repugnant to the Hague Rules[141] Art III (8) and therefore void.

Further, a clause limiting the liability of the carrier of a number of cartoons of chicken portion to US$2/kilo of the gross weight of the goods spoiled or lost was void[142], and could not be dependent on the carrier. The general rule is that the shipowner is authorized to limit his responsibility, for any person not a party to contract party or bill of lading has any right under it. Thus, in Scruttons Ltd Vs Midland Silicones Ltd[143];

> Ship owner issued to the shipper a bill of lading regarding drums containing chemicals, containing term of which they were entitled to limit their liability if the goods were damaged by their negligence. The drum was damaged during its discharge by the stevedores. The shipper sued the stevedores that demanded to be permitted to limit their liability in accordance with the terms of bill of lading. Held, that they were not entitled to do so, because they were not parties to the bill of lading, and so were liable to pay in full for the damage which has been caused.

But if the carrier contracts as an agent for a third party, eg a steverdores, the third party can enforce the terms of bill of lading against shipper when[144];

(a) the bill of lading which limit liability, makes it clear that the intention is to 'protect' the stevedore by the provisions;

(b) the clearly bill of lading states that the carrier, is also contracting as an agent on behalf of the third party, in addition to contracting for these provisions on his behalf, and that those provisions should apply to third party;

(c) the carrier authority from the third party to do that

(d) Any complications about the consideration moving from the third party would be overcome.

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[141] "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 dutues and obligation 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 favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability."

[142] Ibid, p 190.

[143] Ibid, p 190.

[144] Ibid, p 190, 191.

Thus, in New Zealand shipping Co Ltd vs A M Satterthwaite & Co Ltd[145];

> Held by the Judicial Committee of the Privy Council, stevedores were entitled to limit their liability under the clause of bill of lading. A unilateral bargain was brought into by the bill of lading which became a full contract when the stevedores discharged the goods. The discharge of goods for the benefit of shipper was the consideration for agreement by the shipper that the stevedores should have the benefit of limitation provision in bill of lading. To give the stevedores the benefit of the limitation provision was to give effect to clear intention of a commercial document.

2.6.2 By Statutes.

The ship owner is permitted to limit his liability under;

(a) The Merchant shipping Act 1894.

(b) The Carriage of Goods Act by Sea 1971.

The related provisions of Merchant shipping Act 1894 are supplanted by Merchant Shipping Act 1979[146].

(1) UNDER THE MERCHANT SHPPING ACT 1894

The owner of the ship whether a foreigner or British is entitled to limit his liability under section 503 of the said act where any loss or damage to any goods, commodities, or other things whatever on board the vessel is caused if the damage or loss happened without his 'fault or actual privity'. And the maximum sum for which he can be made liable is 66.67. The owner can only limit his liability in case of loss of life or personal injury caused, and the maximum amount payable will be 206.67 special drawing rights per ton[147]. Where there is claim for both loss of life, personal injury as well as for goods and damage to the former claims fall upon 140 special drawing rights per ton. If this fund is insufficient, they rank 'pari passu' with the latte r claims

[145] Ibid, p191.
[146] Ibid p 198-199.
[147] Merchant shipping act 1894, section 503.

against 66.67 special rights per on in respect of the balance unpaid out of the 206 special drawing per ton. Although, the main business of the ship owner may be that of brewers, in their capacity as ship owners they must be judged by the standard of conduct of the ordinary ship owner in management and control of vessels[148].

Thus, in the lady Gwendolen case; (1965)[149];

> A company whose principal business was that of brewers also engaged in acting as ship owners for the carriage of stout from Dublin to Liverpool in a vessel which they owned. A collision occurred due to their failure to impress upon the master urgency of the use of radar in fog. Held, they could not limit their liability because they had failed to show that the collision had occurred without their actual fault or privity. A company, whose shipping activities were merely ancillary to as its main business, could be in no better position than those whose main business was that of shipping.

Lord Justice Willmer in his finding specified that any company which embarks on the business of shipping must accept the duty to ensure efficient management of its ship if it is to enjoy the very considerable benefits conferred by the statutory right to limitation[150].

The owner can also limit his liability where loss or damage to property other than goods on board caused by his vessel as a consequence of an omission/act of, any, person in navigation or management of the ship'[151]. However, the matter is outside the scope of this work. The right to limit liability in connection with the ship is also extended to charterers and any person interested in or in possession of the vessel, and in particular to manager or operator of her[152]. The provision of Merchant Shipping acts which limit the amount of the liability of the ship owners apply in relation to crowns ship with necessary changes[153]. It should be observed that the burden of proof lies on owner of the ship in order to prove that he is within the terms of the section

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[148] Ivamy, E R Hardy, *Carriage of Goods by Sea*, 12th edition (London, Buttrworths) 1985, p 193
[149] Ibid, p 193.
[150] Ibid p-346.
[151] Section 503, Merchant shipping act 1894.
[152] Section 3(1), Merchant Shipping Act 1958.
[153] Section 5, Crowns Proceeding Act 1947.

upon which he relies: it is, consequently, for him to prove absence of privity or fault[154]. The fault or privity of the ship owner's servants is not sufficient to deprive the ship owner of his right to limit his liability.

Where the ship owner is a company, the fault or privity must of that person who is rally directing the mind and will of the company, the very ego and the center of the company, in order to render the company unable to limit hits liability[155]. Therefore, where the assistant managing director of the company was responsible for operation which it owned, he was held to be the alter ego of the company and the problem of radar installed in them merited his personal attention. Hence, he failed in his obligation; the company could not limit its liability in respect of collision, for this had not occurred 'without its actual fault or privity'. A ship owner is entitled to a decree of limitation of liability even though there is only one claim made or apprehended as a result of the occurrence of the damage[156].

One other point to be noticed is that the provision of section 503 of the Merchant Shipping Act 1894, are expressly kept alive by the carriage of Goods by Sea Act 1971, hence not excluded from operation in cases to which the 1971 Act applies.

(2) UNDER THE CARRIAGE OF GOODS BY SEA ACT 1971

In cases to which Act of 1971 applies, "unless the value and character of the goods have been stated by the shipper prior to the shipment and added in the bill of lading[157], the carrier or the ship shall not in any case become or be legally responsible for any damage or loss to or in relation with the goods in amount surpassing 666.67 units of account per unit or 2 units of account/kg of the gross weight of the goods spoiled or lost, the one which is greater"[158]. Actual addition of the value in the bill of lading is must when the shipper wants to acquire more than

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[154] Ivamy, E R Hardy, *Carriage of Goods by Sea*, 12th edition, (Lodon, Buttrworths), 1985, p194.
[155] Ibid, p 194.
[156] Ibid, p 194.
[157] Ibid, p 195.
[158] The sums mentioned are to be converted into the national currency on the basis of the value of that currency on the date of judgment.

the maximum sum per unit laid down in the Act. The fact that carrier knows the value is immaterial.

Thus, in Anticosti Shipping Co vs Viateur St Amand[159]:

> The Canadian Supreme Court held that the knowledge of carrier was immaterial and the shipper had to make declaration of its value under Article IV, r 5 if he wishes to avoid the limitation provision.

When the bill of lading has no space in which the shipper can insert the declared value of the cargo, the ship owner is not permitted to bind his legal responsibility.

Hence, in General Electric Co vs Lady Sophie;

> A quantity of component part for gas turbine power plant was shipped on the mv 'Lady Sophie' for delivery in Saudi Arabia under bill of lading in which there was no space for the shipper to insert the declared worth of cargo. The vessel come across heavy sea of Rotterdam, and the parts were lost and damaged. The carrier sought to limit their liability under Article IV, r 5 to US $ 500 per unit. The District Court New York held that they were not entitled to do so[160].

The announcement made by the shipper, if encoded in the bill of lading is clear evidence, though not binding or concluding on the carrier.

Where a container or similar article for transportation is used to consolidate goods, the amount package or unit, in the bill of lading as a package in that article for transport are deemed to be number of packages or units in calculating the amount beyond which the carriet or ship is not responsible. When number of units is not given in the bill of the lading, the article of transport is considered to be the unit or package and the amount is calculated accordingly. The word 'package' has held to have 6 cartons and 40 television turners strapped to pallet boards, a 42 feet cruiser carried in a frame, and a parcel comprising 22 tin ingots. However, where the ship owners chose to clarify an uncrated yacht as 'unpacked', it could not be regarded as 'package' and so could not limit their liability.

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[159] Ivamy, E R Hardy, *Carriage of Goods by Sea*, 12th edition, (London, Buttrworths) 1985, p195.
[160] Judgement of District Judge Werker, Ibid, p-174.

The total amount, in reference the good's value, recoverable is fixed at the very moment and place at which the goods, in accordance with the terms of contract, were discharged from the ship[161]. In the light of exchange price for commodity, the value is fixed, where no such price or current market price is stated, by reference to the common value of the same quality and form of the goods[162]. A higher maximum can be fixed between the shipper and carrier by agreement enforceable by law however; the carrier has no power [163]lessen the maximum laid down by the Act. When an action against a servants or agents of the carrier is taken, they are permitted to the same limits of legal responsibilities and defenses, which the carrier is eligible to demand under the Act. Although, the aggregate of the amounts, yet can in no case exceed the limit stated in this Act, which are due to the carrier, his servants or agents.

(3) *THE SHIPPING MERCHANT ACT 1979*

The Merchant Shipping Act 1894 as from a date to be appointed is repealed and replaced by Merchant Shipping Act 1979, section 17, and the ship owner will then be eligible to limit his liability under that section.

A ship owner can limit his liability for[164]:

(i) Claims in respect of damage or loss to property happened on board or in direct relation with operation of ship and consequential loss resulting from it; and

(ii) Claims related to loss from delay in the cargo[165].

"A ship owner is not eligible to limit his liability when satisfied that loss resulted is because of his personal omission or act, intentionally done to root such loss or irresponsibly and knowingly that such a loss would arise out of it"[166].

The liability limit in relation to the claims in respect of delay or damages to the cargo is;

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[161] Art IV, (5)(b), The Hague-Visby Rules.
[162] Ibid Art IV, (5)(b).
[163] Ibid, Art IV, (5)(g).
[164] Ivamy, E R Hardy, *Carriage of Goods by Sea*, 12th edition, London, Buttrworths, 1985, p198.
[165] Schedule 4,Part I, Art 2, para (i),Merchant Shipping Act 1979.
[166] Ibid, Schedule 4, Part I, Art 4.

(i) 167,000 units of account against a ship with weight not exceeding 500 tons; and

(ii) Against a ship which weighs in excess of 500 ton the following amount in addition[167]

(a) From 501 to 30,000 tons, 167 unit of account against each ton;

(b) From 30,001 to 70,000 tons, 125 units against each ton; and

(c) In excess of 70,000 tons, 83 units of account against each ton.

The fund has to be divided amongst the claimants in fraction to their conventional claims against the fund[168].

2.7 Immunities of Carrier.

The Carriage of Goods by Sea Act 1971 sets out a list of 'excepted perils'[169], and if loss or damage is caused by them, the ship owner will not be responsible on condition that he has fulfilled the duties under this Act. He is permitted to increase his liabilities, but cannot add to the list of 'excepted perils'[170].

"The defences provided for in the Act that applies in any action against the carrier in relation to damage or loss to the goods whether the action is recognized in tort or agreements enforceable by law. When action against carrier's servant or agent or servant or agent that is not an independent contractor, such agent or servant is eligible to acquire same defenses for himself, that the carrier is entitled under this Act".[171]

In the light of rules of the Hague-Visby the carrier will not be legally responsible for damage to the cargo sprung out of the events stated below. It should be recalled that these immunities will not avail the carrier if he has not exercised due care to ensure ship's sea worthiness and damage or loss was happened because of the unseasworthiness.

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[167] Ibid, Schedule 4, Part I, art 6(i), Part II, para 5(i).
[168] Ibid, Schedule 4, Part I, Art 2.
[169] Art IV, (2), The Hague-Visby Rules 1968.
[170] Ibid, Art V.
[171] Ibid, Art IV, (2).

(a) *Act, default, or neglect* of the, pilot, mariners, master or the servicemen of the carriers in the navigation or management of the ship[172]. Although few difficulties have arisen concerning 'navigation' or what is to be understood by 'management of the ship'. Therefore, it does not include care of the cargo that is a separate duty. Since in a sense the care of the cargo is an essential factor of management of cargo vessel, it is hardly surprising that cases have arisen where distinction has caused difficulties. In case Gosse Millerd Ltd vs Canadian Government Merchant Marine Ltd, the ship suffered damages and the repairer had to be given access to holds. Temporary covers were used to protect the cargo after removing the hatch covers. Conversely, one of these was not replaced and water entered through and caused damage to tinplates. It was held that the failure to correctly replace the cover was negligence in the care of cargo and not management of ship. The carrier was therefore not protected by immunity.

(b) *Fire*, unless caused by the tangible fault or privity of the carrier[173]. This immunity is also granted the carrier by reason of the Merchant Shipping Act 1894, section 502 (I) that only applies to British ships and goods on board them.

(c) *Perils*, accidents or dangers of the sea or other maritime waters[174]. These are dangers to which sea transit is mainly inclined to, stranding, storms, accident and seawater harm. It needs to be shown that the lost or damage was because of something extra than the ordinary action of wind and waves. There must be an element of fortunity about the event and it must not be some occurrence which in ordinary course of events should have been for seen guarded against. The carrier may be protected by this immunity even though the peril of the sea was not the instant reason for the damage or loss. In Canda Rice Mills vs Union Marine (1941) case, the ventilators were closed during a storm to prevent sea water entering cargo spaces. The cargo was damaged by overheating through

[172] Ibid, Art IV (2)(a).
[173] Ibid, Art IV (2)(b).
[174] Ibid, Art IV (2)(c).

the consequent lack of ventilation. This loss was held to have been caused by a peril of the sea.

(d) *Act of God*[175]. This heading covers any incident or accident directly of some natural causes, exclusively without human intervention, which cannot be avoided by reasonable foresight. Supreme Court of Canada in a case Nugent vs Smith 1875 states where loss of cargo could have been guarded against by the crew and the exercise of reasonable care and precautions. Damage caused by lightning, a storm, even against a gale may be within this exception. But an accident arising out of navigation in fog would not be in exception as partly due human intervention as navigation in fog could be humanly avoided.

(e) *Act of war*[176]. This is any direct hostile act because of war. War probably includes civil war but does not necessarily involve an official declaration of war in the context of the aforesaid heading.

(f) *Public enemies*[177]. The nature of public enemy's is uncertain, though most experts put pirates under this heading.

(g) *Arrest or Restraint of princes*[178], Besides the cases falling under other exception, the restraint by rulers include any act done, even, in time of peace by the sovereign power of the state where the ship may happen to be, such as embargoes, import bans, quarantine restrictions and the like. In case Ciampa vs British India Steam Navigation Co the limits of the scope of this immunity are shown, where a ship sailed from Mombasa, a port where plague was endemic, to Naples, where lemons were loaded for London. The ship called at Maarseilles, where authorities ordered it to be fumigated because it had called at Mombasa. This process damaged the lemons. The carrier pleaded that the damage was reason of the restraint of the princes but Justice Rowlatt held that the carriers knew that

[175] Ibid, Art IV (2)(d)
[176] Ibid, Art IV (2)(e).
[177] Ibid, Art IV (2)(f).
[178] Ibid, Art IV (2)(g).

fumigation at Marseilles would be inevitable in the circumstances and the exception could not avail them since they had in effect deliberately subjected the cargo to the treatment by taking it on board at the Naples knowing that the ship had called at Mombasa and heading towards Marseilles.

(h) *Quarantine restrictions*[179]. In view of the preceding immunity there appears to be no reason for the appearance of this as a separate immunity as far as English law is concerned.

(i) *Strikes, lockouts, stoppages or restraints* of labour from whatever cause whether partial or general[180].

(j) *Riots or commotion*[181]. A civil commotion has been said to be an immediate stage between a riots and a civil war.

(k) *Omission or acts* of owner or shipper of the goods, his agent or servicemen[182].

(l) *Insufficiency or inadequacy* of marks[183].

(m) *Latent defects* not discoverable by due diligence[184].

'Saving or attempting to save' life or property at sea[185]. However, this immunity clearly overlaps article IV(4) of the Hague-Visby Rules, 1968.

Conclusion

There is no need to separate the handling of the cargo from the sea worthiness of ship, and because the exception of fault in management or navigation is erased, there is no need to further elaborate the care of the vessel and that of the cargo[186]. These two new conditions, the removal of fault in management and navigation plus the due diligence, together will be helpful in expanding the scope of carrier's liability. Almost in all statues, rules, principles and convention, it is the carrier's responsibility to check the

[179] Ibid, Art IV (2)(h).
[180] Ibid, Art IV (2)(j).
[181] Ibid, Art IV (2)(k).
[182] Ibid, Art IV (2)(i).
[183] Ibid, Art IV (2)(o).
[184] Ibid, Art IV (2)(p).
[185] Ibid, Art IV (4).
[186] http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1713339&fileOId=1713340.

seaworthiness of ship, look out for the cargo and to manage the other parts of the ship which are to be used for goods transport. With the changing circumstances and technology, it is the need of time to bring changes in the carrier's liability having rational approach without exceptions that relieve him of his faults that are within his sheer control. However, some elements or states oppose to the idea of change and uniformity in the law or rules relating to carrier's liability just because of the fear that these changes and uniformity of rules will have negative impact on their interests. Many conventions on the carriage of goods were yearned, specially the Rotterdam Rules 2009, to provide a uniform modern commercial code in relation to the liability of carrier but then again the deficiency of uniformity and current status is unsatisfactory which resulted in vagueness and ambiguity of the rules regarding the maximization of carrier's liability in the court of laws. So bringing up the uniformity in all the international sphere through changes in the rules is the best option with the international players for smooth running of international trade because the importance of rules to be reasonable for all is far better than best for some.

Chapter III

International Conventions and Statutes Relating to the Liability of Carrier of Goods by Sea.

3.1 Hague-Visby Rules (The Hague Rules as Amended by Brussels Protocol) 1968.

In the September of 1921 a meeting was held relating rules of bill of lading, by International Law Association, in Hague whose sole purpose was to ensure adaption such rules, so that the rights and legal responsibility of cargo and ship owners respectively might be subject to rules of general application. Previously those rights and liabilities had been differently defined in different countries, with consequent embarrassment to overseas trade.

These rules agreed upon thereafter were known as 'Hague Rules', which were later on reviewed and embodied in the articles of an International Convention and signed at Brussels in August 1924. In the same month Act of Parliament was passed Act related to carriage by of the good that furnished statutory force to the rules so far as that country is concerned. The International Convention which was signed at Brussels in 1924 was amended in February 1968 protocol and the new rules of 'Hague-Visby' were adopted. The United Kingdom was signatory to this Protocol, and Act of 1971 related to carriage of goods was passed in order to give effect to it. The carrier is bound by this protocol to exercise due care prior to and at the commencement of journey. The carrier has to exercise due care and ensure ship's sea worthiness[187], appropriately manned[188], equipped and supplied, furthermore his obligation is to check the chambers and other places of ship where goods are to be stored[189].The carrier shall appropriately; store, keep, care,

[187] Article III(1) (i), The Hague-Visby Rules, 1968.
[188] Ibid, Art III(1)(ii).
[189] Ibid, Art III(1)(iii).

handle, load and discharge the goods carried[190].The shipper shall be issued a bill of lading on his demand by the carrier or agents of carrier after reception of the goods[191]. However, proved otherwise it shall not be acceptable when the bill of lading is passed to a third party in good faith[192].

3.2 The United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) 1978.

A conference of United Nations in the month of March 1978 was held in Hamburg on the carriage of goods by sea was held and passed a convention; the rules enclosed in it are recognized by the 'Hamburg Rules'. It came into force succeeding the instilling of the 20[th]instrument of ratification. Afterward, its entry into force the signatory to this convention shall apply its principles.

The duty of the carrier[193] for the goods covers the period when he becomes the in charge of the goods[194]till he discharges it on the destined port[195]. The carrier is legally responsible for loss springing out of "the damage to the goods or from delay in delivery time where such occurrence that caused the loss, damage or delay happened while the goods were in the custody of the carrier unless he proves that his servicemen or agent or he took all measures that could have been reasonably taken to evade the occurrence and consequences"[196]. The person in who rest the right to claim the loss of goods, may, treat them lost if not delivered within two consecutive months or 60 days after expiry time for delivery[197].

The carrier is legally responsible; for damage or loss of goods or delay in delivery happened because of fire, when the claimant provides the fault or negligence of the carrier, his serviceman

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[190] Ibid, Art III(2).
[191] Ibid, Art III (3).
[192] Ibid, Art III(4).
[193] Article I(1) of The Hamburg Rules 1978 defines carrier as any person by whom or in whose name a contract of carriage of goods by sea has been concluded with the shipper.
[194] Article 4(2), The Hamburg Rules 1978.
[195] Article 4(1), The Hamburg Rules1978.
[196] Ibid, Art 4(1).
[197] Ibid, Art 5(3).

or agent; or for such loss, damage or delay in delivery where the claimant is proves that the carrier, his agent or serviceman failed in taking steps that reasonably were required to put out the fire and avoid such loss[198].

The carrier is not legally responsible, with relation to carriage of live animal, for loss, damage or delay springing from any special risks intrinsic in that carriage[199]. The carrier is authorized to carry goods on deck when such carriage is in agreement with, contract entered into with the shipper or the usage of the particular trade or what is obligatory by statutory principles or guidelines[200]. Where the shipper and carrier have agreed through and agreement that goods may or shall be carried on deck, the carrier needs to add it in the bill of lading, an announcement to that effect. Where such declaration is not added, carrier has to prove that such an agreement for carriage on deck is there[201]. The carrier is in authority, in relation to the carriage, for the omissions or acts of the actual carrier, and his servants or agents acting on his behalf[202]. The responsibility of carrier also applies to the obligation of the actual carrier for the carriage executed by him[203].The actual carrier, his servicemen, agents shall not surpass the limits of liability given in this Convention and in the Hamburg Rules[204]

3.3 United Nations Convention on Contract for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) 2009.

The carrier is liable for damage or loss to the goods, delay in delivery time, where the claimant proves beyond doubt that such loss, damage, or delay, or the event or circumstance that resulted,

198 Ibid, Art 5(4).
199 Ibid, Art 5(5).
200 Ibid, Article 9(1)
201 Ibid Art 9 (2) But the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who had acquired the bill of lading in good faith.
202 Ibid, Art 10(1)
203 Ibid, Art 10(2)
204 Ibid, Art 10(5).

happened during the time of the carrier's responsibility[205]. The carrier is relieved of all or some part of its legal responsibility, when proved that the reason of loss, damage, or delay is not its fault or of any person stated in article eighteen[206]. The carrier is liable only for that part of loss, damage or delay that occurred due to his fault[207]. The carrier is legally responsible for breach of his responsibilities, under the Rotterdam Rule[208], caused by omissions or acts of any performing party[209], the master or crew[210], servicemen of the carrier or a acting party[211] or any other person that performs or undertakes the carrier's obligations under 'carriage contract', to the level that the person acts, directly or indirectly, at request of the carrier or under his direction or control[212]. In the light of the above mentioned convention the 'maritime performing party' is subject to the obligations and legal responsibility imposed and is entitled to the carrier's defenses and limits of liability[213], if the maritime performing party receives or has to deliver or perform activities related to goods for carriage in a Contracting State[214] and the occurrence that caused that loss, damage or delay happened during the period between the arrival and departure from the port of loading and discharge respectively,[215] or when the party were in charge of the goods[216] or at any other time while performing activities incorporated in 'carriage contract'[217]. Where the carrier agrees to assume obligations or higher liability in addition to the responsibilities or liabilities under this Convention, a performing party is not bound by this agreement unless it expressly agreed[218]. In the light of this Convention, a 'maritime performing party' is legally responsible for not performing its obligations happened by omissions or acts of any person to which has been

[205] Article 17(1), The Rotterdam Rules 2009.
[206] Article 18 of The Rotterdam Rules.
[207] Ibid, Art 17(6)
[208] The Rotterdam Rules.
[209] Ibid, Art 18(a).
[210] Ibid, Art 18(b).
[211] Ibid, Art 18(c).
[212] Ibid, Art 18(d).
[213] Ibid, Art 19.
[214] Ibid, Art 19(a)
[215] Ibid, Art 19(a)(i)
[216] Ibid, Art 19(a)(ii)
[217] Ibid, Art 19(a)(iii)
[218] Ibid, Art 19(2)

entrusted with the performance of the carrier's obligations in lieu of the contract of carriage[219]. When the carrier and maritime performing parties are legally responsible for the damage, loss, or delay in delivery time of the goods, there arise joint liabilities however only as stated under the umbrella this Convention[220], but this collective liability shall not exceed the overall limits of legal responsibility[221]. Delay is said to be occurred when the goods are not delivered within the mentioned time at specified destination as agreed in contract and the compensation for such loss will be calculated according to the value of those goods at the place and time of delivery[222]. The value of the goods is fixed[223] and in case of loss of or damage the compensation will not be beyond its value except when the shipper and carrier have agreed to calculate it otherwise[224]. In absence of proof to the contrary the carrier is presumed "to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage of such goods, within seven working days at the place of delivery after the delivery of the goods, was handed over to the carrier".[225] However, under the said convention in case of failure of notice claim of compensation against loss of or damage to the goods shall not affect the allocation of the burden of proof and right for such claim. In the case of any actual or established damage or loss, the disputing parties shall facilitate each other in checking and provide entree to the records and documents pertinent to the carriage of the goods[226].

3.4 Comparative Study of Huge-Visby Rules, Hamburg and Rotterdam Rules Relating to the Liabilities of Carrier of Goods by Sea.

Though the Hague/Visby rules had 12 articles, these are increased in the Hamburg up to 34 articles; however in the Rotterdam the number of articles increased to 96, a motivated attempt to familiarize innovation and uniformity.The Hague- Visby Rules scope of application was limited

[219] Ibid, Art 19(3)
[220] Ibid, Art 20(1).
[221] Ibid, Art 20(2).
[222] Ibid, Art 22(1)
[223] Ibid, Art 22(2)
[224] Ibid, Art 22(3)
[225] Ibid, Art 23(1)
[226] Ibid, Art 23(6).

but this was improved by the induction of the Hamburg Rules to guarantee that the application of the Rules do not remain limited to outbound cargoes and contracts evinced by a bill of lading. The Hamburg Rules broaden the prospect to which the Rules are applicable and molds the tackle to tackle responsibilities to port-to port, and are also relevant when the bill of lading or other document related to contract is released in a contracting state. Thus, the Hamburg Rules scope is wider in application as compared to The Hague- Visby Rules.

The UNCITRAL stretchesits scope by inducting the place of receipt and delivery and discharge of goods, port for goods, and that of packing. These Rules gives details about receipt place anddelivery of goods with keeping in view the "multimodal" doctrines and "maritime plus" convention. Contracts of a multimodal nature come under this convention but with a sea-leg therefore it's given the name of "International Carriage of Goods Wholly or Partly by Sea"[227].The method followed by UNCITRAL[228] is faulty with upended 'burden of proof', despite this upended burden of proof two concrete changes are need in these rules, the first one is toremoveor eliminate of the nautical fault, exception to principles of Hague Visbyand the second related to requirement of due care in transportation and seaworthiness

Under the rules of Hague/Visby the carrier, his agents or workers are relieved from obligation where the loss or damage does not spring out of negligence in ship supervision[229], but excluded in Rotterdam Rules.

The rules of Hague/Visby put legal responsibility upon "prior to and at the beginning of the voyage[230]» for the seaworthiness of his vesselhowever, it is not the same in the Rotterdam Rules where the carrier shall be legally responsible throughout the journey in relation to ship's seaworthiness and not only prior to and start of journey. Though, it is worth pointing out that,

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[227] Mbiah, Kofi. *UPDATING THE RULES ON INTERNATIONAL CARRIAGE OF GOODS BY SEA: THE ROTTERDAM RULES"* p- 6,7.
[228] The Rotterdam Rules, 2009.
[229] Mbiah, Kofi. *UPDATING THE RULES ON INTERNATIONAL CARRIAGE OF GOODS BY SEA: THE ROTTERDAM RULES"* p -8
[230] Maxine Footwear Company Ltd v Canadian Government Merchant Marine Ltd [1957] SCR 801

with necessary changes, other clauses of Hague-Visby[231] have been taken as it is in the UNCITRAL i.e."the strengthening of the fire exception and the deletion of the Nautical Fault Rule and changes in language"[232].

The make a point that the Rotterdam Rules were reached at after far-reaching discussions with "major shareholders and has largely symbolized modernity and codification of practice is welcome"[233].

Now it is judiciary's turn; "to make the judicial interpretation within the spirit of the rules, so that the overall objective of achieving international uniformity[234], commercial convenience and confidence as well as predictability and a reduction in transaction cost could be realized as the legislative bargain"[235] is concluded in the shape of Rotterdam Rules.

3.5 Convention on Limitation of Liability for Maritime Claims 1976.

Convention on Maritime Claims 1976 article one talks about the person having the right to limit liability. Additionally, this convention clearly highlights the claims subject to limitation, related to "personal injury, loss of life or damage to property[236], loss due to delay in delivery or infringement of rights"[237]. Claims which are excepted from limitation are claims for salvage, oil pollution damage, and against the ship owner of nuclear ship for a nuclear damage[238]. The limits of legal responsibility for claims in exception to the one mentioned in Article 7, arising discrete time, shall be calculated as follows:

(a) with respect to claims for loss of life or injury,

(i) "2 million Units of Account for a ship with a weight in tonnage not exceeding 2,000 tons"[239],

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[231]Mbiah, Kofi. *UPDATING THE RULES ON INTERNATIONAL CARRIAGE OF GOODS BY SEA: THE ROTTERDAM RULES"* p-8
[232] Ibid, p 9.
[233] Ibid, p 15.
[234] Ibid, p 15.
[235] Ibid, p 15.
[236] Article 2 (1)(a), Convention on Maritime Claims 1976.
[237] Ibid, Article 2(1)(b)(c).
[238] Ibid, Art 3.
[239] Art 7, Convention Maritime Claims, 1976

(ii) "for a ship with weight in surplus 2000 tons, following amount in addition to aforesaid amount" (i): "from 2,001 to 30,000 tons, 800 unit for each ton; from 30,001 to 70,000 tons, 600 unit for each ton; and when in excess of 70,000 tons, 400 unit for each ton"[240],

(b) with respect of any other claims,

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

(ii) for a ship with a weight in tonnage in excess of 2000 tons, the following amount in addition to that mentioned in sub section (i): "from 2,001 to 30,000 tons, 400 units for each ton; from 30,001 to 70,000 tons, 300 unit for each ton; and for weight in excess of 70,000 tons, 200 Units for each ton"[241].

Whenever the amount calculated in the light with Art 6 (1-a) of the convention of maritime claims (1976), is deficient to pay the claims, then the amount calculated in the light of paragraph 1-b "shall be offered for payment of the due balance of claims under Art 6 (1-a) of the convention, which will rank ratably with claims pointed out in Art 6 (1-b) of the convention"[242]. But without discrimination to the right of claims for personal injury or life loss in accordance to Article 6 (2), a State Party in its local law can offer that claims for damage to harbor works, basins, waterways for navigation shall have such priority over claims provided in Article 6 (1-b) of the convention[243]. The limits of liability for any salvor shall be considered;"according to a tonnage[244] of 1,500 tons, in respect of which he is providing salvage services"[245].

3.6 Application of National Statutes Relating to the Liabilities of Carrier of Goods by Sea

3.6.1 Introduction

[240] Ibid, Art 7.
[241] Ibid, Art 7.
[242] Ibid, Art 6 (2).
[243] Ibid, Art 6 (3).
[244] For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.
[245] Ibid, Art 6(4).

In order to empower uniformity inside the legal rules of international carriage of goods, numerous international conventions were established and approved by the international community. Though, some nations simply did not adopt any of these conventions, as a substitute their national legislation is functional to regulate any disagreement that arise out of an international carriage of goods under their jurisdictions. As nations nonetheless are hesitantin applying foreign transportation law other than their own, in exception where the package of limitation is greater[246]. Mostly the liabilities of carrier of goods by sea are the same in the following mentioned states with some minute differences. Seaworthiness, handling of cargo is all the same in most of the countries. The National Statutes related to the carrier's liability has evolved with the passage of time after research and arousal of new problems.

3.6.2 USA

Section 03 of the Carriage of the Goods Act by Sea, 1936 United States elaborates the legal responsibilities of carrier. The carrier will be deemed responsible for seaworthiness of ship[247], for handling cargo[248] and checking contents of bill. It shall be deemed that the shipper hasguaranteed the correctness of the carriage to the carrier at time the of shipment regarding to number, marks, quantity, and weight, and shall guarantee the carrier against all damages or loss, and costs springing out of inaccuracies in those particulars[249] however, carrier's right to such insurance in no way limits his responsibility and liability to any person other than the shipper under the carriage contract. Notice in writing for the loss or damage be given to the carrier or his agent at the port of discharge prior to or at the time of passing of goods to the person entitled to delivery under the carriage contract, or when on the surface there is no damage or loss, within three days but such notice regarding the goods shall not be given the goods shall be subject to joint

[246] http://www.euro-marine.eu/hague-VisbyRules.html#page_9
[247] Article 3(1)(a), United States Carriage of Goods Act by Sea 1936.
[248] Article 3(1)(b), United States Carriage of Goods Act by Sea 1936.
[249] Art; 3(5), United States Carriage of Goods Act, 1936.

inspection at the time of their reception[250]. The ship and carrier shall be relieved of all forms of liabilities in case of loss by any event lest suit is instituted after or at the date of delivery of the goods, as soon as possible, with in the time frame of one year. In the event of any damage, carrier and receiver shall facilitate each other in checking of the goods. According to Article 3(7) of United States Carriage Act for goods, 1936 bill of lading is given to the shipper by the carrier, or his agent, after the loading of goods, on shipper's demands.Any clause, covenant or agreement relaxing the legal responsibility of the ship or carrier for damage or loss caused to goods because of her/his negligence or similar clause shall be void ab initio[251].

3.6.3 UK

The Carriage of Goods Act of United Kingdom, article three talks about the liability of the person under shipping documents. Under this act the person with whom rights are vested under shipping documents:takes or asks for the delivery from the carrier of the goods to which those document are related[252];or claim is brought against the carrier in relation to goods in lieu of carriage contract[253]; oris a person who, at a time before those rights were vested in him, took or demanded delivery from the carrier of any of those goods[254], such person shall (by virtue of taking or demanding delivery or making the claim or, in a case falling within the scope of Art; 3(1)(c)) become subject to the same obligations under that contract as if he had been a party to that contract. Article III of the Carriage of Goods Act of 1971, highlights the legal responsibility of carrier. Article III(1) binds carrier to ensure seaworthiness of ship, appropriately equip, supplied and manned and to ensure the fitness of all other parts. It is the carrier's responsibility to carefully and properly load, keep, handle, pack, stow, care for and discharge the goods[255]. It is responsibility of the carrier, or his agent to issue shipper a 'bill of lading' on his demand as he

[250] Art; 3(6), United States Carriage of Goods Act, 1936.
[251] Art; 3(8), United States Carriage of Goods Act, 1936
[252] Article 3(1)(a), Carriage of Goods Act by Sea, 1992.
[253] Article 3(1)(b), Carriage of Goods Act by Sea, 1992.
[254] Article 3(1)(c), Carriage of Goods Act by Sea, 1992.
[255] Art; III(2), Carriage of Goods Act, 1971

receives the goods[256], and for the displaying of 'leading marks' indispensable for identifying of goods[257], as long as leading marks on the goods are clearly seen when uncovered, or on coverings of the goods in which they are packed, in such a manner that could be easily until the conclusion of journey[258]: the quantity packages, or weight[259], the ostensible condition and order of goods[260] as the case may be: as long as no carrier, or his agent, has legal responsibility to show in the bill of lading, the quantity, 'leading marks', or weight which he reasonably thinks as are incorrect to represent actual goods received, or lack practical resources of inspecting. According to Article III(4) of Carriage of Goods Act, 1971 of UK explains that the bill of lading is on the surface an evidence of the reception of goods in agreement with article 3 of the act. It shall be deemed that the shipper has guaranteed the correctness of the carriage to the carrier at time the of shipment regarding to number, marks, quantity, and weight, and shall guarantee the carrier against all damages or loss, and costs springing out of inaccuracies in those particulars[261]however, carrier's right to such security does not limits his legal responsibility towards any person other than the shipper under the carriage contract. The notice to carrier or his agent for damage or loss be given at port of discharge prior to orat the time of delivering the goods to the authorized person under the agreement enforceable by law, and when the damage or loss of the goods is not obvious, then three days but in exception to the reception of goods later to joint survey or checkup[262]. Whereas in relation of section 6*bis* of this act the ship and carrier shall be relieved of all forms of liabilities in case of damage or loss in any event lest suit is instituted after or at the time of delivery of goods, as soon as possible, within the time frame of one year.[263], but this period may increase on the agreement of both the parties, however, both the receiver and carrier need to

[256] Art; III(3), Carriage of Goods Act, 1971.
[257] Art; III(3)(a), Carriage of Goods Act, 1971.
[258] Art; III(3)(a), Carriage of Goods Act, 1971.
[259] Art; III(3)(b), Carriage of Goods Act, 1971.
[260] Art; III(3)(c), Carriage of Goods Act, 1971.
[261] Art; III(5), Carriage of Goods Act, 1971.
[262] Art; III(6),Carriage of Goods Act, 1971.
[263] Art; III(6), Carriage of Goods Act, 1971.

facilitate each other for the examination of the goods damaged or loss caused[264].Even after the expiry of limitation period action for insurance might be brought against third person provided if brought within the time frame given by Court of Law. Any clause, covenant or agreement relaxing the legal responsibility of the ship or carrier for damages to goods because of her/his negligence or similar clause shall be void ab initio[265].

3.6.4 Australia

Article three of Carriage of Goods Act of 1991 highlights the liability of carrier. According to this act binds the carrier prior to and start of the journey to apply due care to ensure the seaworthiness of the ship[266], appropriately manned, equipped and supplied the ship and further ensure that all remaining parts used for transportation and preservation of goods are fit and safe[267]. It is the carrier's legal responsibility to carefully and properly load, pack, store, keep, handle, and discharge the goods[268].On shipper's demand it is responsibility of the carrier, or his agent to issue a 'bill of lading' as he receives the goods[269], and for the displaying of 'leading marks' indispensable for identifying of goods[270], as long as leading marks on the goods are clearly seen when uncovered, or on coverings of the goods in which they are packed, in such a manner that could be easily until the conclusion of journey[271]:The quantity packages, or weight[272], the ostensible condition and order of goods[273] as the case may be: so long as that no carrier, or his agent, shall be has legal responsibility to show in the bill of lading, quantity, 'leading marks', number or weight which he reasonably thinks as not accurate to represent actual goods received, or had no reasonable resources of inspecting. Article 3 sub sections 4 of Australia's Carriage of

[264] Art; 3(6), Carriage of Goods Act, 1991.
[265] Art; 3(8), Carriage of Goods Act, 1991.
[266] Article 3(1)(a), Carriage of Goods Act by Sea 1991.
[267] Article 3(1)(c,b), Carriage of Goods Act by Sea 1991.
[268] Article 3(2), Carriage of Goods Act by Sea 1991.
[269]Article 3(2), Carriage of Goods Act by Sea 1991..
[270] Art; III(3)(a), Carriage of Goods Act, 1991.
[271] Art; 3(3)(a), Carriage of Goods Act, 1991.
[272] Art; III(3)(b), Carriage of Goods Act, 1991.
[273] Art; III(3)(c), Carriage of Goods Act, 1991.

Goods Act, 1991 elaborates explains that the bill of lading is on the surface an evidence of the reception of goods in agreement with article 3 of the act. It shall be deemed that the shipper has guaranteed the correctness of the carriage to the carrier at time the of shipment regarding to number, marks, quantity, and weight, and shall guarantee the carrier against all damages or loss, and costs springing out of inaccuracies in those particulars[274]however, carrier's right to such security does not limits his legal responsibility towards any person other than the shipper under the carriage contract. The notice to carrier or his agent for damage or loss be given at port of discharge prior to orat the time of delivering the goods to the authorized person under agreement enforceable by law, and where the damage or loss of the goods is not obvious, then three days but in exception to the reception of goods are after joint survey or checkup.[275]

Whereas in relation to section 6*bis* of this act the ship and carrier shall be relieved of all forms of liabilities in case of loss or damage by any event unless suit is instituted after delivery of the goods or delivery date, as soon as possible, within the time frame of one year[276],but this period may increase on the agreement of both the parties, however, both the receiver and carrier need to facilitate each other for the examination of the goods damaged or loss caused[277].Even after the expiry of limitation period action for insurance might be brought against third person provided if brought within the time frame given by Court of Law[278]. Any clause, covenant or agreement relaxing the legal responsibility of the ship or carrier for damage or loss caused to goods because of her/his negligence or similar clause shall be void ab initio.[279].

3.6.5 Pakistan

Article III of Pakistan Carriage Of Goods Act highlights the responsibility of carrier for carriage of goods by sea. This said act provides that the carrier shall be bound to exercise due care prior

[274] Art; 3(3)(c), Carriage of Goods Act, 1991.
[275] Art; 3(6), Carriage of Goods Act, 1991.
[276] Art; 3(6), Carriage of Goods Act, 1991.
[277] Art; 3(6), Carriage of Goods Act, 1991.
[278] Art; 3(*6 bis*), Carriage of Goods Act, 1991.
[279] Art; 3(8), Carriage of Goods Act, 1991.

to and at the beginning of the expedition. He has to ensure the seaworthiness of ship[280] and that the ship appropriately manned, equipped, and supplied[281] and has to ensure that all remaining parts of the ship used for transportation, preservation and reception of goods are safe and fit for carriage[282]. It is the carrier's responsibility to carefully and properly load, keep, handle, pack, stow, care for and discharge the goods[283].It is responsibility of the carrier, or his agent to issue shipper a 'bill of lading' on his demand as he receives the goods[284],and for the displaying of 'leading marks' indispensable for identifying of goods[285],so long as leading marks on the goods are clearly seen when uncovered, or on coverings of the goods in which they are packed, in such a manner that could be easily until the conclusion of journey[286]:The quantitypackages, or weight[287], the ostensible condition and order of goods[288],as the case may be: as long as no carrier, or his agent, has legal responsibility to show in the bill of lading, quantity, 'leading marks', weight or number which he reasonably thinks as incorrect to represent actual goods received, or had no practical way of checking.[289]. According to Article III(4) of The Carriage of Goods Act, 1925 elaborates explains that the bill of lading is on the surface an evidence of the reception of goods in agreement with article 3 of the act. It shall be deemed that the shipper has guaranteed the correctness of the carriage to the carrier at time the of shipment regarding to number, marks, quantity, and weight, and shall guarantee the carrier against all damages or loss, and costs springing out of inaccuracies in those particulars.[290]However, carrier's right to such security does not limit his legal responsibility towards any person other than the shipper under the carriage contract. The notice to carrier or his agent for damage or loss be given at port of discharge prior to orat the delivery time of the goods to authorized person to under agreement enforceable by

[280] Art; III(1)(a), The Carriage of Goods Act, 1925.
[281] Art; III(1)(b), The Carriage of Goods Act, 1925.
[282] Art; III(1)(c), The Carriage of Goods Act, 1925.
[283] Art; III(2), The Carriage of Goods Act, 1925.
[284] Art; III(3), The Carriage of Goods Act, 1925.
[285] Art; III(3)(a), The Carriage of Goods Act, 1925.
[286] Art; III(3)(a), The Carriage of Goods Act, 1925.
[287] Art; III(3)(b), Carriage of Goods Act, 1925.
[288] Art; III(3)(b), The Carriage of Goods Act, 1925.
[289] Art; III(3)(c), The Carriage of Goods Act, 1925.
[290] Art; III(5), The Carriage of Goods Act, 1925.

law, and where the damage or loss of the goods is not obvious, then three days but in exception to the reception of goods are after joint survey or checkup[291].The ship and carrier shall be relieved of all forms of liabilities in case of loss or damage by any event unless suit is instituted after delivery of the goods or delivery date, as soon as possible, within the time frame of one year. In the event of any damage, carrier and receiver shall facilitate each other in checking of the goods. According to Article III(7) of The Carriage of Goods Act, 1925 the bill of lading shall be issued by the carrier, or his agent to the shipper after the loading of goods, on shipper's demands. Any clause, covenant or agreement relaxing the legal responsibility of the ship or carrier for damage or loss caused to goods because of her/his negligence or similar clause shall be void ab initio[292].

[291] Art; III(6), The Carriage of Goods Act, 1925.
[292] Art; III(8), The Carriage of Goods Act, 1925

Conclusion and Recommendations

The above thesis represents a snapshot of the carrier's liability under different conventions, principles and national statutes coupled with comparative study of rules of Hague-Visby, Hamburg and Rotterdam. Predominantly, the major tenacity is the modernization of the principles which is the need of time such as in the field of carrier's liability. By means of the new responsibility, the distinction to understand the commencing of the voyage needs not to be done. There is no need to separate the handling of the cargo from the sea worthiness of ship, and because the exception of fault in management or navigation is erased, there is no need to further elaborate the care of the vessel and that of the cargo[293]. These two new conditions, the removal of fault in management and navigation plus the due diligence, together will be helpful in expanding the scope of carrier's liability. Almost in all statues, rules, principles and convention, it is the carrier's responsibility to check the seaworthiness of ship, look out for the cargo and to manage the other parts of the ship which are to be used for goods transport. With the changing circumstances and technology, it is the need of time to bring changes in the carrier's liability having rational approach without exceptions that relieve him of his faults that are within his sheer control. However, some elements or states oppose to the idea of change and uniformity in the law or rules relating to carrier's liability just because of the fear that these changes and uniformity of rules will have negative impact on their interests. Many conventions on the carriage of goods were yearned, specially the Rotterdam Rules 2009, to provide a uniform modern commercial code in relation to the liability of carrier but then again the deficiency of uniformity and current status is unsatisfactory which resulted in vagueness and ambiguity of the rules regarding the maximization of carrier's liability in the court of laws. So bringing up the uniformity in all the international sphere through changes in the rules is the best option with the international players for smooth running of international trade because the importance of rules to be reasonable for all is far better than best for some.

[293]http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1713339&fileOId=1713340.

After studying the above international conventions comparatively along with national statutes of different countries my conclusion and recommendations are as followings:

1. Uniform and harmonized liabilities of the carrier is required;
2. National legal statute of the member countries of these international conventions shall be uniformed in accordance with the provisions of the international conventions;
3. Rotterdam Rules shall overrule the other conventions related to the liabilities of the carrier of goods by sea;
4. Procedures shall be adopted in the International Conventions and national legislation for determination of the liabilities;
5. It is the need of time to bring changes in the carrier's liability having rational approach without exceptions that relieve him of his faults that are within his sheer control; and
6. principles of international conventions shall be modernized.

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