HOW TO WIN AT MARINE CARGO CLAIMS: AN ENGLISH PERSPECTIVE THE HAGUE, HAGUE-BISBY AND HAMBURG RULES

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HOW TO WIN AT MARINE CARGO CLAIMS : AN ENGLISH PERSPECTIVE

THE HAGUE, HAGUE-VISBY AND HAMBURG RULES

Background

At English common law the parties to a contract of affreightment covered by a Bill of Lading or similar document had complete freedom to negotiate their own terms as had the parties to a charterparty. Abuse of the carriers' stronger bargaining position during the 19th century led to extremely onerous terms being placed in Bills of Lading.

The first attempt to redress the balance between the interests of ship and cargo came from the United States in the form of the **Harter Act** of 1893. It soon became clear to the major marine trading countries that a single Convention binding all contracting parties was preferable to a system of similar but not identical Acts. Accordingly, the Maritime Law Committee of the International Law Association met in 1921 to consider a uniform system of law among the maritime states.

This eventually lead to the International Convention for the Unification of Certain Rules Relating to Bills of Lading being signed in Brussels on 28th August 1924. This treaty became knows as the **Hague Rules** and these were enacted into English law by the Carriage of Goods by Sea Act ("COGSA") 1924. They are still operative in over 50 states.

For many years, the Hague Rules were accepted as providing a satisfactory balance between the interests of ship and cargo. However, with the passage of time and changes in the pattern of international trade (e.g. containerisation) it became apparent that the rules needed up-dating. Modifications to the Hague Rules were introduced by the Brussels Protocol in 1968 and the resultant **Hague-Visby Rules** are now operative in approximately 50 States. They were given legislative effect in the United Kingdom by the Carriage of Goods by Sea Act 1971 and superseded the Hague Rules in the United Kingdom on 23rd June 1977.

The Hague-Visby Rules were amended by a further Protocol of 21st December 1979 known as the SDR Protocol. This had the effect of expressing the monetary limits in terms of special drawing rights as opposed to the rather complicated gold francs formula in the original Hague-Visby Rules.

The modifications introduced by Hague-Visby Rules were regarded by many cargo trading countries as a temporary expedient and there was a growing demand for a thorough re-appraisal of carriers' liability designed to produce a comprehensive code covering all aspects of the Contract of Carriage. This movement culminated in the drafting of a new Convention which was adopted at an international conference sponsored by the United Nations in Hamburg in March 1978. This Convention, known as the **Hamburg Rules** became effective on 1st November 1992.

The United Kingdom has not adopted the Hamburg Rules to date, nor does it seem likely that it will in the foreseeable future.

The points covered in this paper have been considered from the point of view of English law. The paper compares and contrasts the provisions of the three sets of rules under the following headings:

I. Which regime applies? The relevance of proper law and jurisdiction.

II. Obligations of the carrier.

III. Exceptions clauses – Rights and Immunities.

IV. Time limits and limitation of liability.

I

WHICH REGIME APPLIES? THE RELEVANCE OF PROPER LAW AND JURISDICTION.

A. Types of Contract Covered

1. Hague Rules

a. Documentary cover

The Hague Rules apply to "contracts of carriage covered by a Bill of Lading or any similar document of title insofar as such document relates to the carriage of goods by sea". (Article 1(b)). This definition therefore does not include waybills or charterparties. It is also unusual for charterparties to contractually incorporate the Hague Rules.

b. Relevant Voyages

Under English law the Hague Rules have not applied by operation of law since June 23rd 1977. Before that, the operation of the Hague Rules was restricted by COGSA 1924 to bills of lading issued in respect of outward voyages from the United Kingdom (s.1).

The Rules themselves set no geographical limits on applicability but the provisions of COGSA 1924 demonstrate that it is necessary to consider the Hague Rules legislation of the particular country concerned when trying to establish if they apply. Under English law, the rules will not

apply *as a matter of law* even though the shipment was from a country which still applies the Rules. The Hague Rules may, however, apply as a matter of express contractual incorporation of the Rules themselves or of legislation giving effect to them.

In the absence of such contractual incorporation, the English courts will apply the Hague Rules only where the proper law of the bill of lading contract is a foreign law which itself would apply the Rules as a matter of law.

2. Hague/Visby Rules

a. Documentary Cover

The position is the same as under the Hague Rules (at 1.a. above).

b. Relevant voyages

While the Hague/Visby Rules also apply to outward voyages Article X has extended the range of cover to "every bill of lading relating to the carriage of goods between ports in two different states if :

i) the bill of lading is issued in a contracting state; or

ii) the carriage is from a port in a contracting state; or

iii) the contract contained in or evidenced by the bill of lading provides that the rules or legislation of any state giving effect to them are to govern the contract".

The final paragraph of Article X reads:

"This article shall not prevent a Contracting State from applying the Rules of the Convention to bills of lading not included in the preceding paragraphs".

The U.K. has taken advantage of this and in section 1 of the 1971 Act the rules are applied to the following additional situations:-

i) where the port of shipment is a port in the U.K. whether or not the carriage is between different states within the meaning of article X (section 1(3)). This effectively means that even domestic sea carriage around the U.K. will be covered by the rules if a bill of lading is issued.

ii) Any voyage whether or not between ports in different states where the contract contained in or evidenced by the bill of lading expressly provides that the Rules should govern the contract section 1(6)(a) of the 1971 Act.

iii) Any voyage whether or not between the ports in different states where the contract is contained in, or evidenced by, a non-negotiable document marked as such which expressly provides that the Rules are to govern the contract *as if* the receipt were a bill of lading – section 1(6)(b).

Under English Law, once the Hague-Visby Rules have begun to apply by virtue of shipment in the U.K. they do so throughout the transit **(Mayhew Foods Limited – v – Overseas Containers Ltd**. (1984) 1 Lloyd's Rep. 317).

3. <u>Hamburg Rules</u>

a. <u>Documentary Cover</u>

The Rules apply to "any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another". This would include sea waybills, booking notes and any other non-negotiable documents. The Rules do not apply to charterparties or bills of lading issued pursuant to charterparties unless such a bill of lading "governs the relation between the carrier and the holder". (Article 2.3).

b. <u>Relevant voyages</u>

Similar to the voyages covered by Article X of the Hague-Visby Rules, but the Hamburg Rules also apply to inward voyages – ie voyages to a contracting state as well as from one.

B. <u>Period of Coverage</u>

1. <u>Hague and Hague-Visby Rules</u>

Both sets of Rules apply from the time of loading to the time of discharge – Article 1(e).

They therefore do not relate to incidents occurring before the cargo comes into contact or after the cargo leaves contact with the ship's equipment. <u>(Pyrene –v- Scindia Navigation Co. (1954) 1 Lloyd's Rep. 321)</u>. In that case, the carrier was loading the cargo, a fire tender, and was liable when he dropped it but was able to limit his liability under the Hague Rules. Had the fire tender been loaded by or on behalf of the shipper, then the carrier would not have been liable. The judge

found that the Article III(2) obligation to "properly" load meant that *if* he loaded then he had to do so properly. It did not actually impose an obligation to load.

The carrier may still be liable at common law, even after discharge where, for example, he negligently delivers the cargo to the wrong party (Sze Hai Tong Bank –v- Rambler Cycle Co. (1959) 2 Lloyd's Rep. 114). The indications from Rambler Cycle are that the court (in that case the Privy Council) will do its utmost to find that an exemption clause does not have the effect of enabling a shipowner to escape the consequences of delivering cargo other than against production of the bill of lading.

2. Hamburg Rules

The Rules are operative throughout "the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge" Article 4.1. The carrier will generally be responsible from when he takes over the goods at the loading port until he hands them over at the discharge port (Article 4(2)). Accordingly, responsibility under the Hamburg Rules may well arise before and/or after the time when responsibility under the Hague and Hague-Visby Rules would be applicable.

C. Cargoes Covered

1. Hague and Hague-Visby Rules

The Rules apply to all types of cargo except:

- live animals and
- cargo which is stated as being carried on deck and is so carried (Svenska Traktor –v- Maritime Agencies (1953) 2 Lloyd's Rep. 124).

Article VI of the Rules also permits a carrier and a shipper to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods in respect of shipments where the character or condition of the property to be carried or the circumstances terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement. This article specifies that it shall not apply to ordinary commercial shipments made in the ordinary course of trade and is therefore only likely to apply in very exceptional circumstances.

2. Hamburg Rules

The definition of "goods" includes live animals but the carrier is not liable for losses resulting from any special risk inherent in this kind of carriage.

Under Article 9, deck cargo is permissible provided deck carriage is authorised by the shippers or it is a custom of the trade e.g. lumber. Unless the bill of lading expressly states that the shipper agrees to carriage of the cargo on deck, the onus lies on the carrier to prove that agreement was in existence. If the carrier ships cargo on deck contrary to agreement or the custom of the trade, he is liable "for loss of or damage to goods as well as for delay and delivery resulting solely from the carriage on deck".

Whilst thus permissible, the carrier will remain liable for loss or damage on the same basis as for cargo stowed below deck.

D. Identity of Carrier

1. Hague and Hague-Visby Rules

"Carrier" includes the owner or the charterer who entered into a contract of carriage with the shipper. "Identity of Carrier" or "Demise" clauses are in widespread use in bills of lading and specify that the contract is with the shipowner and/or demise charterer. It is important to note that many countries do not give effect to these clauses where, for example, the bill of lading is on the form of the charterer.

2. Hamburg Rules

"Carrier" is defined as including "any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper". The definition goes beyond encompassing the shipowner and any charterer; it includes any person who has negotiated a contract as a principal even where he does not carry the goods himself or does not intend to do so when he enters into a contract. This would therefore include freight forwarders, combined transport operators etc.

The Hamburg Rules also make a distinction between the "Carrier" and the "Actual Carrier". If the contracting carrier delegates performance of the contract, he nevertheless remains responsible for acts and omissions of the actual carrier. The liability of the contractual and actual carrier is joint and several and both are entitled to the available defences and limitations. The aggregate of amounts recoverable from both parties shall not exceed the limit of liability.

E. The Relevance of Proper Law and Jurisdiction

This is not the place to go into these convoluted areas in any great depth. An example will, however, help to highlight the potential significance of any choice as to "where to fight" and "under which law to fight".

An English court, applying English law will apply the Hague-Visby Rules if they are applicable in accordance with the criteria set out above. Thus, for example, an

English Court would apply the Rules to a shipment from Belgium to Chile. In other words, as a matter of English law, the rules would be applied by operation of law because the goods were carried from, and a bill of lading was issued in, a contracting state.

Were the same English court applying Chilean law as the proper law of the bill of lading contract, then it would apply Hamburg Rules since Chile is a Hamburg Rules country and those rules apply, as we have seen, inwards as well as outwards.

The proper law of the contract of carriage, or any proper law agreed upon after a claim arises, can be very important. It can be seen that cargo interests have to be on their toes when, for example, obtaining a letter of undertaking securing the claim. Such letters of undertaking frequently agree which country's law will be applicable to the claim and the wrong choice could deprive cargo interests in certain cases of the benefit of Hamburg Rules, which, as we shall see, are considerably more beneficial to cargo than are the Hague or Hague-Visby Rules.

II

THE OBLIGATIONS OF THE CARRIER

There is a fundamental difference between the approach adopted in the Hague and Hague-Visby Rules and that adopted in the Hamburg Rules in relation to the obligations and rights of carriers. The Hague and Hague-Visby Rules impose express and detailed obligations on the carrier whereas the Hamburg Rules introduce a liability regime of presumed fault or neglect.

Although the liabilities of a carrier are now codified in the various Rules, it is important to bear in mind that there are obligations also implied by common law and the Rules are not an all-enhancing code. Reference must therefore always be made to the common law where the Rules do not provide an answer (e.g. law of bailment).

1. Hague and Hague-Visby Rules

Article III Rule 1 provides:

"The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

a) make the ship seaworthy;

b) properly man, equip and supply the ship;

c) *make the holds, refrigerating and cool chambers and other parts of the ship in which goods are carried safe for their reception, carriage and preservation."*

a. Seaworthiness

The carrier's duty is to exercise due diligence before and at the beginning of the voyage to provide a seaworthy ship. "Seaworthiness" covers not only the physical condition of the vessel but also the adequacy and efficiency of crew, stores and equipment and the suitability of the vessel to carry the agreed cargo. (The Makedonia (1962) 1 Lloyd's Rep. 316).

The test of seaworthiness has been defined as follows:

"*If the defect existed, the question to be put is: "Would a prudent owner have required that it should be made good before sending his ship to sea had he known of it? If he would, the ship was not seaworthy*…" (McFadden –v- Blue Star (1905) 1 K.B. at 706).

Whilst the vessel must be seaworthy before and at the beginning of the voyage (Maxine Footwear –v- Canadian Government (1959) 2 Lloyd's Rep. 105), a ship may be seaworthy when she sails although she could not safely perform her voyage in the precise state in which she sails. For example, hatches may be off in the ordinary course of a voyage or a porthole may be open on leaving the loading port but in such a position that it can and will in the ordinary course of events be closed after sailing.

It is no excuse to the carrier to maintain that he delegated responsibility for making the vessel seaworthy to another party (e.g. a shipowner will not escape liability where he appointed a reputable ship repairer and the cause of unseaworthiness was the fault of the repairer ("MUNCASTER CASTLE" (1961) 1 Lloyd's Rep. 57).

The mere fact a vessel was in class and all certificates were in order is not conclusive evidence that the carrier exercised due diligence since the class surveyor may have been negligent in issuing the certificate ("ASSUNZIONE" (1956) 2 Lloyd's Rep. 468).

The initial burden of proof lies on the cargo owner to show that the vessel was unseaworthy and the unseaworthiness caused the damage to his cargo and the burden then shifts to the carrier to prove that he exercised due diligence before and at the beginning

of the voyage (The "HELLENIC DOLPHIN" (1978) 2 Lloyd's Rep. 336).

The test concerning causation is not whether unseaworthiness was the dominant cause but whether it was *a* cause of the loss. It is immaterial that other causes contributed to the loss (Smith Hogg – v- Black Sea and Baltic General Insurance (1940) A.C. 997).

Some examples of cases where vessels have been found unseaworthy and the carrier has been unable to show he exercised due diligence are as follows:

i) engine breakdown due to engineers' failure to carry out, or properly carry out, engine manufacturer's recommendations regarding the bolts which secured the counterweights on the crankshaft of the ship's engine ("ANTIGONI (1991) 1 Lloyd's Rep. 209).

ii) vessel took on a severe list because cargo shifted due to lack of proper equipment to secure cargo. ("WALTRAUD" (1991) 1 Lloyd's Rep. 11 389)

iii) corrosion of shell plating ("TORENIA" (1983) 2 Lloyd's Rep. 210).

It is worth emphasising that all the obligations set out in Article III Rule 1 must be fulfilled before and at the beginning of the contractual voyage. The carrier who exercises due diligence before the vessel sails will not be liable for defects rendering the vessel unseaworthy which come into being after the vessel has commenced her voyage ("CHYEBASSA" (1966) 2 Lloyd's Rep. 193).

b & c **Properly man, equip and supply plus "cargoworthiness"**

Most of the decided cases surround the carrier's duty to make the vessel seaworthy since this embraces a whole category of different aspects. However, there are cases dealing with the carrier's obligations under Article III Rule 1(b) and (c) as follows:

i) the shipowner must satisfy himself that the crew is reasonably fit to occupy the posts to which they are appointed ("MAKEDONIA" (1962) 1 Lloyd's Rep. 316). It is not sufficient that a crew member held an appropriate certificate of competency ("FARRANDOC" (1967) 2 Lloyd's Rep. 276).

ii) the duty extends to ensuring that up-to-date charts are available ("THE MARION") (1983) 2 Lloyd's Rep. 156).

iii) the ship need not on sail with sufficient bunkers for the entire voyage *provided* there are, on sailing, proper plans in place to bunker en route.

iv) with regard to the obligation under (c), residues of previous cargoes and rust scale must be removed from all parts of the hold to prevent cargo contamination.

Article III Rule 2

Under the Hague and Hague-Visby Rules, the carrier is also obliged to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods. This obligation is subject to the exceptions set out below in Article IV(2).

2. Hamburg Rules

The test is based exclusively on fault and the carrier is liable without exception for all loss of and damage to cargo that results from his own fault or the fault of his servants or agents.

Article 5 provides as follows:

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

III

RIGHTS AND IMMUNITIES – EXCEPTION CLAUSES

1. Hague and Hague-Visby Rules

Article IV Rule 2 lists seventeen excepted causes for which the carrier will not be responsible. These exceptions will not avail the carrier if the loss was caused by

unseaworthiness or other breach of Article III(1) unless he can discharge the burden of proving the exercise of due diligence.

These exceptions fall into various different categories, the majority of which involve no fault on the part of the carrier e.g. perils of the sea, Act of God, insufficiency of packing.

There are two exceptions which do involve some "fault" on the part of the carrier:

Article IV(2):

a. Negligence in the navigation or management of the ship (Article IV Rule 2(a)). This exception would embrace an event such as negligent running aground but it would not cover grounding resulting from defective steering gear, absence of proper charts or a failure to maintain the ship properly.

   The carrier will also be liable if the damage to the cargo resulted from a failure to take reasonable care of the cargo. In the case of Goose Millard – v- Canadian Government Merchant Marine (1928) 1 KB 717, it was held that failure to use hatch covers and tarpaulins to protect the cargo was not negligence in the management of the ship but a failure to care for the cargo. The carriers were thus liable.

b. Fire unless caused by the actual fault or privity of the carrier (Article IV Rules 2(b)).

   The burden lies on the cargo interests to establish actual fault or privity on behalf of the carrier and this is often a difficult burden to discharge.

It is important to remember that the above two exceptions, as with all the Article IV, Rule 2 exceptions, will *not* avail the carrier if he fails to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage and such seaworthiness is causative of the loss.

Of the other exceptions in Article IV Rule 2, the one on which the carrier most often seeks to place reliance is that of:

c. perils, dangers and accidents of the sea or other navigable waters.

In the "TILIA GORTHON" (1985) 1 Lloyd's Rep. 552, it was held that a force 10 storm in the North Atlantic in winter did not amount to a peril of the sea. The approach the English Courts have tended to adopt is to consider whether the weather conditions encountered by the vessel were something exceptional and out of the ordinary and such that they could not have been anticipated on the voyage in question at the particular time of year.

Disturbingly, from the point of view of cargo interests, the Australian Courts seem to show a more "carrier-favourable" approach.

In a recent case, The "BUNGA SEROJA" (1994) 1 Lloyd's Rep. 455 which came before the Australia Supreme Court of New South Wales Admiralty Division, the vessel experienced heavy weather when crossing the Great Australian Bight. Her cargo was damaged and questions arose as to whether the carriers could rely on the perils of the seas exception in Article IV Rule 2 (c) of the Hague Rules. The Court held that, under Australian law, the mere fact that the damage to cargo was occasioned by a storm which was expectable did not of itself exclude a finding that the damage was occasioned by perils of the seas.

The Court found that, when the vessel sailed from her loading port, she was fit in all respects for the voyage and the Court was satisfied that the cargo damage was occasioned by perils of the seas in that the pounding of the ship by reason of the heavy weather caused the cargo of coils within the container to be dislodged (the packing was found to be customary and acceptable) and thereby sustain damage.

This decision was upheld by the New South Wales Court of Appeal in July 1996.

The other exceptions contained in Article IV Rule 2 are as follows:

d. Act of God

e. Act of war

f. Act of public enemies

g. Arrest or restraint of princes, rulers or people, or seizure under legal process

h. Quarantine restrictions

i. Act or omission of the shipper or owners of the goods, his agent or representatives

j. Strikes or lock outs or stoppage or restraint of labour from whatever cause, whether partial or general

k. Riots or civil commotion

l. Saving or attempting to save life or property at sea

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

n. Insufficiency of packing

o. Insufficiency or inadequacy of marks

p. Latent defects not discoverable by due diligence

q. Any other cause arising without the actual fault or privity of the carrier or without the fault or neglect of the agents or servants of the carrier….

There is also a provision in Article IV in relation to deviation. Rule 4 provides as follows:

> "Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage and the carrier shall not be liable for any loss or damage resulting therefrom."

Otherwise, in the absence of express stipulations to the contrary, the vessel is under an implied obligation to perform the voyage by the usual direct route without deviation. Often, bills of lading contain a liberty clause permitting some deviation from the contractual route. The effect of these must be construed in light of the commercial adventure.

On becoming aware of a deviation, the remedy of cargo interests is either to accept the deviation as a repudiation of the contract of carriage and take immediate delivery of their goods or to waive the repudiation and claim damages. In practice, where there is a deviation, there is often a negotiated settlement between ship and cargo interests as it is not always practical for cargo interests to take immediate delivery of their cargo.

It should be mentioned that there is a minor addition to this article in the Hague-Visby Rules in that Article 4 BIS (2) provides that a servant or agent can avail himself of defences and limits of liability under the Convention.

2. Hamburg Rules

The long list of exceptions set out in Article IV Rule 2 of the Hague and Hague-Visby Rules is not to be found in the Hamburg Rules. Where there is a loss of, or damage to, cargo, the approach under the Hamburg Rules is to *presume* fault on behalf of the carrier although an exception is made in the case of damage caused by fire.

Article 5.3 provides that a carrier is only liable for loss caused by fire if the cargo owner proves either that the fire arose from fault or neglect on the part of the carrier, his servants or agents or from their fault or neglect in not taking all reasonable measures to put it out.

SURRENDER OF RIGHTS AND LIABILITIES

1. Hague and Hague-Visby Rules

Article III Rule 8 provides that any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage or lessening such liability otherwise than as provided in the Convention shall be "null and void and of no effect". Accordingly, a carrier cannot contract out of the provisions of the Convention if they are compulsorily applicable.

However, a carrier can increase his responsibility (Article V).

Article VII preserves the right of the carrier and shipper to enter into any agreement reservation or exception as to the responsibility and liability of the carrier prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea. Article VI to which reference has been made above covers the situation in relation to "particular goods" i.e. shipments that are not "ordinary commercial shipments".

2. Hamburg Rules

Article 23 reflects the same approach as in Article III(8) i.e. that the carrier cannot insert any stipulation in a contract of carriage that derogates directly or indirectly from the provisions of the Convention. He can increase his responsibilities and obligations under the Convention.

IV

TIME LIMITS AND LIMITATION

A. Time Limits

1. Hague and Hague-Visby Rules

Article III Rule 6:

"the carrier and the ship shall be discharged from all liability [whatsoever in respect of the goods] unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

NB The words in square brackets are those in the Hague-Visby Rules. In the Hague Rules the words used are the rather narrower "in respect of loss or damage".

The carrier is "discharged from all liability" ("THE ARIES" (1977) 1 Lloyd's Rep. 334, and The "CAPTAIN GREGOS" (1990) 1 Lloyd's Rep. 310) – respectively decisions on the Hague and on the Hague-Visby Rules.

The Hague-Visby Rules specifically recognise that this period of time may be extended if the parties so agree after the cause of action has arisen. Moreover Rule 6(b) of the Hague-Visby Rules provide that any resultant claim for an indemnity by the carrier may be brought within the normal limitation period of the State where proceedings are brought subject to a minimum of three months from the date the original claim was settled or proceedings were served in relation to that claim.

The time bar imposed by the Hague and Hague-Visby Rules does not prevent a cargo owner defending a claim brought by a shipowner for general average contributions (Goulandris –v- Goldman (1958) 1 Q.B. 74).

2. Hamburg Rules

The limitation period is *two* years.

B. Package Limit

1. Hague Rules

These provide for a package limitation of one hundred pounds sterling (£100) to apply unless the nature and value of the goods has been declared by the shipper before shipment and inserted in the bill of lading (Article IV(5)).

If Article IX is incorporated in the relevant Hague Rules legislation, the monetary units mentioned in the Hague Rules are taken to be "gold value" e.g. COGSA 1924 under English Law. It was established in the case of The ROSA S (1988) 2 Lloyd's Rep. 574 that the limit was one hundred pounds sterling (£100) gold value which meant 732.238 grams of fine gold which, at the time the case was decided, amounted to £6,630. Accordingly, under English Law, the Hague Rules package limit can now result in a substantial recovery.

2. Hague-Visby Rules

The limit is specified to be 10,000 poincaré gold francs per package or unit or 30 such francs per kilo of gross weight of goods lost or damaged whichever is the higher. Various countries, including the U.K. have replaced poincaré gold francs by 666.67 special drawing rights per package or unit or 2 SDR per kilo of gross

weight. The current SDR value is shown in "Lloyds List", various daily papers and on the Internet.

3. **Hamburg Rules**

The limits of liability (Article 6) are 835 SDR per package or 2.5 SDR per kilo, whichever is the higher.

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