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The Carriage of Goods by Sea Contract Under Omani Maritime Laws: A Critical Analysis of the Carrier's Obligations and Liabilities

PhD Research Project

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By

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Abstract

The aim of this thesis is to study Omani maritime laws with specific focus on the carrier's obligation and liabilities under the carriage of goods by sea. The study will also investigate the impact of these obligations and liabilities on the development of the Omani maritime industry.

Starting with the period when the Omani maritime law was first enacted, i.e. 1981, this study will explore the impact of the said enactment and the consequence of the lack of amendment for any provision of the said law, despite the numerous changes that have occurred in the area of maritime laws and policies around the world.

Although no comprehensive study has been done, a number of discussions have arisen in recent times concerning the need to reform the Omani maritime law of 1981 as it does not reflect modern practices. Some of the debates for the review of the maritime legal framework in Oman include questions around: (1) the battle between the carriers and cargo interests in minimising or maximising the obligations and liabilities of the carrier; (2) the container carriage system, which requires the door to door concept and the multimodal mode; (3) advances in technology, and the recognition of the electronic document of transport.

Other areas of contention include the growing disparity of the rules between what is obtained in the Omani statute and how possible it is to create some form of unification in legislation, especially international conventions, in order to eliminate barriers in ways that will enhance the Omani maritime industry.

Since 2008, for example, the international carriage of goods has been guided by the Rotterdam Rules, which were designed to reflect recent developments and

the use of technology in the maritime industry. Since the latest version of the convention reflects recent developments in the maritime industry, this thesis will analyse the provisions of the Rules and how their import into the Omani maritime rules will impact on the future development of the Omani maritime industry and the economy. This will include an analysis of how contracts by any parties for exchanges of goods by sea would be affected, the extent or lack of predictability and the confidence it will bring to the Omani maritime industry, be that to enhance trade and economy or how this will be carried out.

In reality, the approach is doctrinal and a critical comparative study will be supplemented by the qualitative method. There are four main areas analysed within this thesis. The first is the Omani legal system and the development of the Omani maritime industry, as well as developments internationally. The second is the contract and a carrier definition, in addition to the obligation of issuing a bill of lading. The third is the obligation of the carrier in Oman and internationally. Fourthly, there is the liability of the carrier, both in Oman and internationally. One further consideration in this thesis is the implication and impact of reviewing the Omani maritime law for ease of carriage and exchange, dispute resolution and the general maritime industry and economy.

Declaration

I hereby declare that this thesis has not been and will not be submitted in whole or in part to another University for the award of any other academic award.

Signature:

Ali Hamed Salim Al Hashmi

25th April 2021

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First and foremost, praise is due to Allah Almighty for his blessings and guidance in giving me the strength, courage, patience and perseverance to endure this long and challenging study journey.

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List of Abbreviations

CMI	Comite Maritime International
FIO	Free In and Out
FIOS	Free In, Out and Stow
GCC	Gulf Cooperation Council
ISM	International Shipping Management Code
ISPS	International Code for the Security of Ships and Port Facilities
KEC	Khazaen Economic City
NCSI	The National Centre for Statistics and Information
OCL	Oman Container Liner
OSC	Oman Shipping Company
SOLAS	The International Convention for the Safety of Life at Sea
UNCITRA	The United Nations Commission on International Trade Law
UNCTAD	The United Nations Conference on Trade and Development

Chapter 1: Introduction

1.1 Introduction

Maritime transport underpins international trade and economy, as shipping is the cheapest, most efficient and most secure method of transporting large goods around the world. Records show that more than 90% of goods transportation depends on the carriage of goods by sea. The maritime transport industry is, therefore, a significant aspect of international trade and economy. A review of maritime transport from 1968 to 2018 carried out by the United Nations Conference on Trade and Development (UNCTAD) found that, over these 50 years, around 90% of international trade and the transport of goods depended on the carriage of goods by sea. Transport of goods by sea has a significant impact on trade value because of its lower costs when compared with other transport methods.[1]

Additionally, there are several container designs nowadays suitable for carrying goods and protecting them from damage.[2] Edward Schmeltzer and Robert A Peavy, for instance, argue that the container has become a system of carriage for goods by sea which is designed to be compatible with modern technology, as it reduces costs as well as operation time while increasing capacity and expanding security.[3]

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[1] The United Nations, '50 Years of Review of Maritime Transport, 1968–2018: Reflecting on the Past, Exploring the Future 4–20 (Fifty Years)' (The United Nation Conference on Trade and Development [UNCTAD], DTL, January 2018)

[2] Ibid

[3] Edward Schmeltzer and Robert A Peavy, 'Prospects and Problems of the Container Revolution' (1970) 1 J Mar L & Com 203, 203–210

The carriage of goods by sea has occurred several times throughout history for different reasons, such as transatlantic trade, the Industrial Revolution, globalisation, technological development and the advent of containerised transportation (container revolution), which has brought a dramatic change to the shipping industry.[4] Container transportation has increased dramatically, as it continues to reduce transport costs by increasing a ship's capacity to carry goods, as well as improve the quality of control and supervision of the movement of goods. It also improves management by linking inland operations and maritime operations, in addition to the movement of exports and imports across the global market. These elements are reflected in the national economies of each country, clearly improving national and international trade and the economy in general.

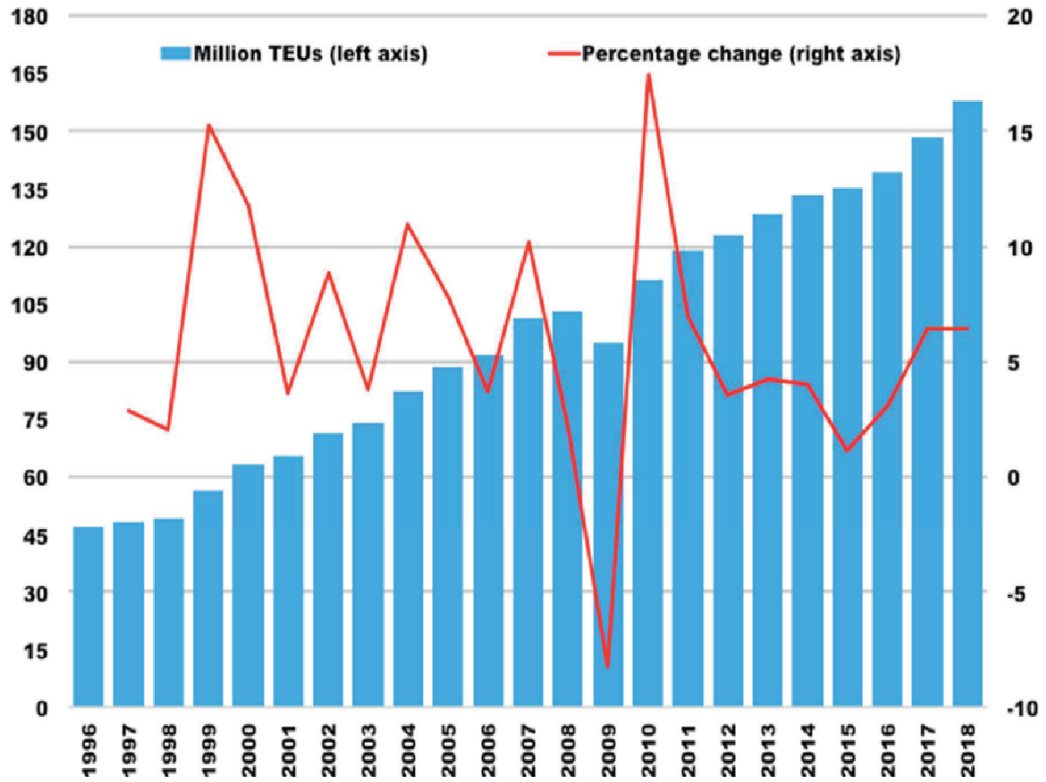
Technology also has a significant impact on the maritime industry, especially on liner container transport, by improving contracting system and observing the movement of goods. This improves the quality of transportation, logistic services and the speed of operation and transportation. Recent statistics on container services reveal that the amount of international maritime trade increased from 102 million metric tons in 1980 to about 1,834 million metric tons in 2017.

Despite the utility of containers in the carriage of goods by sea, proponents of the amendment of Omani law contend the need to review some of the provisions to cover aspects that relate to a number of contemporary innovations in the carriage of goods by sea industry, such as multimodal transport, the door-to-door scope of the application of e-commerce and the e-maritime industry.

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[4] Economic and Social Commission for Asia and the Pacific, 'Monograph Series on Managing Globalization, Regional Shipping and Port Development Strategies' (ST/ESCAP/2398) 1–5

Figure 1 The development of the international container trade 1996–2018 [5]



1.2 Historical Background of the International Laws and Omani Maritime Law Governing the Carriage of Goods by Sea

Historically, there were no codified laws governing the rules of carriage of goods by sea until the nineteenth century. Some of the earliest rules were the Harter Act 1893, the New Zealand Shipping and Seamen Act 1903 and the Australian Sea Carriage of Goods Act 1904.[6] The nature of the carriage of goods has mostly involved international transactions, with goods moving between two different countries and jurisdictions. This requires a unified legal regime to ensure all parties are aware of the contractual obligations and liabilities. Therefore, the

[5] UNCTAD, '50 Years' (n 1)

[6] Comite Maritime International (CMI), 'The Travaux Préparatoires of the Hague Rules and the Hague–Visby Rules', 9

movement to unify legislation and also create domestic laws in line with international conventions is seen as a solution to some of the legal challenges and contentions in the maritime industry. Many argue that the harmonisation of rules will ensure stability and predictability of contractual obligations and liabilities and also lessen the conflict of rules, thereby reducing the risk of litigation.[7]

The first attempt to unify the carriage of goods by sea was the Hague and Hague–Visby Rules (the international convention for the unification of certain rules of law relating to bills of lading), constituting the international law for the carriage of goods by sea. This piece of legislation developed in phases. The original version of the Hague Rules was drafted by the Comite Maritime International (CMI) Conference in 1921 and was adopted in Brussels in 1924.[8] In 1963, the CMI in Stockholm deliberately changed some provisions in the Hague rules. On 23 February 1968, a protocol was signed in the city of Visby after a conference, providing the Visby Rules with their name.[9] On 21 December 1979, a protocol was signed to amend the 1968 protocol in the limitation of the convention.[10] The Hague/Hague–Visby Rules adopted the Harter Act principles[11] in some articles. The main aim of the Hague/Hague–Visby rules was to establish a global framework governing the contracts of the carriage of goods by sea that would

[7] Paul Myburgh, 'Uniformity or Unilateralism in the Law of Carriage of Goods by Sea' (2000) 31 Victoria U Wellington L Rev 355, 356–358

[8] CMI (n 6) 32

[9] Ibid, 69–71

[10] Ibid, 75

[11] Ibid, 23; Stephen Zamora, 'International Carrier Liability for Damage or Loss to Cargo in International Transport' (1975) 23 The American Journal of Comparative Law 391, 405; Benjamin W Yancey, 'Carriage of Goods: Hague, Cogsa, Visby, and Hamburg' (1982–1983) 57 Tul L Rev 1238, 1242

balance the risk between the carrier's and the cargo's interests and protect the party with less bargaining power.[12]

The Hague and Hague–Visby Rules are a successful example of how the world made an effort to harmonise the rules governing the transit of goods by sea across borders.[13] Alexander Von Ziegler, however, criticised the Rules for being outdated. It has been almost 100 years since they were drafted, which is long before the recent developments in the maritime industry that include the use of technology.[14] Another critical aspect is that the carrier has considerable immunity, having fewer obligations and liabilities, and the carrier's liability for damage or loss is thinly covered.[15]

The second attempt was the Hamburg Rules, which were drafted in 1978 by UNCTAD and the United Nations Commission on International Trade Law (UNCITRAL).[16] Here, developing countries began to establish independent economies and felt disadvantaged by the Hague/Hague–Visby Rules, which they felt left many areas unregulated, with all the accompanying uncertainties, ambiguities and absence of rules to anticipate recent technological developments.[17] Additionally, there was the argument that the provisions of the Hague/Hague–Visby Rules were more friendly and favourable to the carrier, and

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[12] George A Zaphiriou, 'Unification and Harmonization of Law Relating to Global and Regional Trading' (1994) 14 N Ill U L Rev 407, 411

[13] Alexander Von Ziegler, 'The Liability of the Contracting Carrier' (2009) 44 Tex Int'l LJ 329–330

[14] Ibid

[15] Yvonne Baatz and others, *Maritime Law* (3rd edn, Routledge 2014) 121; Zamora (n 11) 405–408

[16] United Nations Commission on International Trade Law, 'Final Act of the United Nations Conference on the Carriage of Goods by Sea' (A/CONF.89/13) 147

[17] David C Frederick, 'Political Participation and Legal Reform in the International Maritime Rulemaking Process: From the Hague Rules to the Hamburg Rules' (1991) 22 J Mar L & Com 81, 98–99

the fact that developing countries were not involved in drafting them.[18] Another area of concern was the nautical fault exception of carrier liability, which has many gaps in addressing issues, such as shifting the burden of proof, deck cargo and liability for delay.[19]

The Hamburg Rules, therefore, came to fill some of these crucial gaps and significant differences in the allocation of risk between the carrier and the cargo's interests. The rules also extended and modernised existing international carriage of goods rules and updated and replaced many provisions in the Hague/Hague–Visby Rules. The Hamburg rules further increase the liability of the carrier to cover loss, damage to cargo and delay in delivery while abolishing the list of exonerations under article 4(2) of the Hague/Hague–Visby Rules.[20] These were radical changes to carrier liability and were seen to be more friendly and favourable to the shipper's interests.[21]

Despite these developments, scholars still argue that both the Hague/Hague–Visby Rules and the Hamburg Rules have failed to deliver international uniformity, as some countries apply the Hague/Hague–Visby Rules while others apply the Hamburg Rules, and some apply their own national law, e.g. Oman.[22]

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[18] Sinha Basnayake, 'Introduction: Origins of the 1978 Hamburg Rules' (1979) 27 Am J Comp L 353, 354; Frederick (n 17) 107; Robert Force, 'Comparison of the Hague, Hague–Visby, and Hamburg Rules: Much Ado About (?)' (1995–1996) 70 Tul L Rev 2051, 2052–2053

[19] Rand R Pixa, 'The Hamburg Rules Fault Concept and Common Carrier Liability Under U.S. Law' (1979) 19 Va J Int'l L 433, 439–443

[20] Robert Hallawell, 'Allocation of Risk Between Cargo Owner and Carrier' (1979) 27 The American Journal of Comparative Law 357, 358-367

[21] Pixa (n 19)

[22] Theodora Nikaki, 'The Carrier's Duties Under the Rotterdam Rules: Better the Devil You Know' (2010) 35 Tul Mar LJ 1, 1–2

A third attempt was made, in the form of the Rotterdam Rules, to fill the gap in the areas of recent technological developments, the containerised transport of goods and commercial developments in the maritime industry.[23] In 1996, UNCITRAL aimed to draft a law regulating the carriage of goods by sea to achieve greater uniformity and cover the current transaction practices involved in the carriage of goods by sea.[24]

The CMI drafted a proposal to UNCITRAL.[25] The detailed examination of this draft was delegated to the UNCITRAL working group, which consulted with traders and national associations, intergovernmental organisations and international non-governmental organisations invited by the working group.[26] After extensive scrutiny, a convention proposal was submitted and adopted in its final draft by UNCITRAL and the United Nations in December 2008 .[27] The main aim of this convention was to review, update and especially replace some provisions in the Hague/Hague–Visby Rules and the Hamburg Rules.[28] In ways that are more comprehensive, comprising 96 articles, the new convention provided more detailed coverage of the various aspects of the contract of carriage, with the goal of international harmonisation and achieving a more effective legal regime. The Rotterdam Rules also set out more advanced rules,

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[23] Ibid, 5

[24] United Nations, 'Possible Future Work on Transport Law (A/CN.9/497)' (United Nations Commission on International Trade Law, Thirty-Fourth Session, Item 10 of the Provisional Agenda, Vienna, 25 June–13 July 2001) 3

[25] United Nations, 'Report of the Working Group on Transport Law on the Work of its Ninth Session (A/CN.9/510)' (New York, 15–26 April 2002) 8

[26] United Nations, 'Report of Working Group III (Transport Law) on the Work of Its Twenty-First Session (A/CN.9/645)' (Vienna, 14–25 January 2008) 6–7

[27] United Nations, 'United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea' (UN Doc A/RES/63/122, adopted 11 December 2008)

[28] Michael F Sturley, 'Modernizing and Reforming U.S. Maritime Law: The Impact of the Rotterdam Rules in the United States' (2009) 44 Tex Int'l LJ 427, 427–430

such as a new structure for the carrier's period of obligation, a recognition of multimodal transport and electronic lading bills or transport documents, a unique structure for the carrier's liability and the burden of proof.

This is seen as a fulfilment of the previous attempt to adopt a multimodal regime. For example, on 24 May 1980, the General Assembly of the United Nations adopted the Geneva Convention,[29] but only 11 states have currently ratified this Convention, and it requires 30 ratifications to come into force as per Article 36.[30] In addition, most shipping countries did not support the Geneva Convention of 1980 because they were concerned that the application of this convention would have a negative impact in terms of higher transport costs.[31]

It is arguable that the carriage of goods by sea should be mainly supported by other laws regulating carriage by different modes linked to the sea. This is essential because most goods carried by sea are also subject to other modes, such as containers and alternative delivery modes. In essence, container services have more than one mode because the carrier has to ship the goods in the container and then the goods are transported by other means, such as road or train, to the port.

Hence, there is a need to examine the Rotterdam Rules, which provide some solutions for container transport requirements. This has led to the argument that the Rotterdam Rules are designed to fit contemporary contracts of carriage of

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[29] 'United Nations Convention on International Multimodal Transport of Goods (TD/MT/CONF/16)' (*UN* Doc, 24 May 1980) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-E-1&chapter=11&clang=_en> accessed 22 April 2021

[30] Ibid

[31] William Driscoll and Paul B Larsen, 'Convention on International Multimodal Transport of Goods' (1982–1983) 57 Tul L Rev 193, 246

goods by sea because they cover a door-to-door application as well as most of the problems and gaps in the two preceding sets of international rules.

Despite the presence of the Rotterdam Rules, which are seen by many as being the most comprehensive, Oman has chosen to take a different approach by adopting its own rules in the marine industry, i.e. in the form of the Omani Maritime Law Number 35/1981. This was a domestic commitment to develop legislation, since Oman was previously, i.e. before 1981, applying international practices and customs, as it does not have any regulations to govern the maritime industry or the carriage of goods by sea.

It was only in 1981 that Oman established the Omani Maritime Law. Omani Maritime Law Number 35/1981 contains every conceivable area concerning maritime rules and comprises a total of 392 articles. For example, the vessel, persons on the vessel, the regulation of marine works, mortgages for preparation, vessel utilisation, marine accidents and marine insurance are included. Hence, this thesis will also discuss vessel utilisation, since it is relevant for the carriage of goods by sea.[32]

The fieldwork shows that Omani legislators drafted two new samples of laws with which to regulate the carriage of goods by sea. The first one is the proposal of the multimodal transport law. Hanan al Rahbi, the former Director-General of Planning and Studies in the Ministry of Transport and Communications in Oman, proposed the multimodal transport law to solve the problem of container services and different modes of transport. Her view is as follows:

[32] Royal Decree 35/81, Omani Maritime Law issued on 15 April 1981

> The great majority of goods freighted anywhere in the world are subject to different modes of transportation as they make their way from the point of origin to end-users across the globe. Thus, while goods may be shipped in containers by sea, they are transported onward by road or rail from the port of discharge to markets inland. This 'multimodal' nature of transportation and logistics is not comprehensively covered by existing laws and regulations in the Sultanate of Oman.[33]

In fact, her proposal of a multimodal transport law was not approved by the Ministry of Transport and Communications.[34]

The second law is the new Omani Maritime Law drafted in 2009 by a special committee appointed by the Ministry of Transportation and Communication and the Ministry of Justice and Legal Affairs. The committee is diverse, consisting of people within the industry and those charged with the role of regulation, policy formulation and enforcement. It consists of people such as judges, legislators, academics, lawyers and executive representatives in maritime industry organisations in government as well as in the private sector. This project is in its final stages and is in the process of obtaining approval from the Council of Oman and the Council of Ministers. The draft contains every conceivable area concerning maritime rules, as with the Omani Maritime Law. In this thesis, only

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[33] 'New Oman multimodal transport law on anvil' (*Oman Observer*) <http://www.omanobserver.om> accessed 22 April 2021

[34] Interview with Taher Al Busaidi, Head of Maritime Legislation, Ministry of Transportation and Communication and Member of the New Proposed Law Committee (Oman, Muscat, 20 May 2019)

Section 1 of Chapter 2 of the proposed new Omani Maritime Law, concerning the carriage of goods by sea, will be discussed.[35]

The new Omani Maritime Law project has not adopted the Rotterdam Rules. Moreover, the fieldwork shows that Omani legislators lack knowledge about the Rotterdam Rules because when the new Omani Maritime Law project was drafted, the Rotterdam Rules had only just been promulgated. Also, the special committee was appointed by the Ministry of Transportation and Communications, and the Ministry of Justice and Legal Affairs were against the proposal of the multimodal transport law. Therefore, the proposal for multimodal transport law was not approved by the Ministry of Transportation and Communications.

The fieldwork shows that governmental efforts to modernise Omani maritime laws are feeble. Moreover, there is a significant lack of interest in maritime law because, since 2009, the new Omani Maritime Law project is still under study.

1.3 Research Focus

The thesis considers maritime law as it is applicable to the Sultanate of Oman. It focuses on the international carriage of goods by sea with particular interest in the existing Omani Maritime Law, the proposed new Omani Maritime Law and the contributions as well as the implications of the Hague/Hague–Visby Rules, the Hamburg Rules and the Rotterdam Rules on the Omani rules. The aim of the thesis is also to take a comparative look at the Hague/Hague–Visby Rules

[35] Interview with Ahmed Al Hosni, Head of Regulation at the Ministry of Justice and Legal Affairs and Member of the New Proposed Law Committee (Oman, Muscat, 20 May 2019); Interview with Ahmed Al Kalbani, Senior Consultant at the Ministry of Justice and Legal Affairs and a Member of the New Proposed Law Committee (Oman, Muscat, 20 May 2019)

alongside the Hamburg Rules, the Rotterdam Rules, Omani maritime law and the proposed new Omani Maritime Law.

The scope of the thesis will study what the consequences of the failure to adopt the Rotterdam Convention in the proposed new Omani Maritime Law are. What is the importance of adopting the Rotterdam Rules into the new law, its implications for the development of the maritime industry and how will it be given its drive to be a leader in technological innovation?

The analysis will shed light on legal developments in the carriage of goods by sea that affect the obligations and the liabilities of carriers due to cargo claims being raised against carriers in Oman. While a reconsideration of the balance between the carrier's and the cargo's interests is an essential part of the contracts of the carriage of goods by sea, a successful law is one that creates a balance of interests between all parties. Since the carrier is often a more powerful party in the contract than the shipper, the thesis will also focus on regulations for the carrier's obligations and liabilities in these conventions.

In practice, most cargo loss is claimed against the carrier. Hence, the thesis will pay a great deal of attention to the carrier's obligations and liabilities in ways that will review and possibly reform Omani rules. It is hoped that this will create a much needed balance between liabilities and rights for both the carrier's and the cargo's interests so as to reduce cargo claims, as well as to boost the maritime industry. Additionally, the adoption and ratification of the best convention for the contemporary practice of the carriage of goods by sea will be discussed and analysed in an attempt to recommend a regime that strikes a balance of interest between all parties in the contract. The aim is to make both parties aware of their

contractual obligations and liabilities by further exploring the extent to which Omani maritime law is shaped and affected by international conventions.

The thesis will also emphasise the opportunities and contingencies that both the regional laws (i.e. Omani Maritime Laws) and the international conventions have on Oman's trade and economic objectives relating to the maritime industry. Further, it will attempt to analyse the extent to which the efforts to harmonise and unify laws have impacted Oman's maritime industry and trade interests. In addition, the thesis will examine why Omani maritime law should develop in light of the international conventions on the carriage of goods by sea.

1.4 Research Aim and Questions

The aim of this study is to clarify maritime legislation in Oman concerning the carriage of goods by sea, in particular, the Omani Maritime Law drafted in 1981 and the proposal of the new Omani Maritime Law. Hence, the principal research question is one that should be able to deliver on the possible and desired legal reform by Oman, relating to the carriage of goods by sea and in line with international standards. Within this general framework, the main research question is:

How do Omani maritime laws compare to international conventions on the carriage of goods by sea and how harmonious are they with them, or should Oman reform its maritime laws and how?

Given this main question, the research aims to provide a detailed and comprehensive account of how these laws are applied to the maritime industry and how they are used in resolving disputes. In addition, the position of Oman's

laws regarding international issues of settlement will be considered, as the research explores various areas, gaps and ambiguous articles in Omani laws where there are likely to be unanticipated problems. In light of this, particular suggestions will be made for reform. The questions to be answered also include whether the proposed new Omani Maritime Law adequately addresses national and international concerns for the development of Omani maritime practice. This will lead to questions about:

a. Whether Omani legislators should revise the existing laws or adopt a sample of international conventions for the carriage of goods by sea.

b. To what extent the Rotterdam Rules are a big step forward and offer the best practice in regulating the carriage of goods by sea today, bearing in mind the latest version regulating the contract of carriage of goods by sea, which reflects recent advances and developments in the international maritime industry.

c. What the main areas of convergence and divergence are between Oman's Maritime Law, the proposed new Omani Maritime Law and other international maritime conventions.

1.5 Research Objectives

Given the research questions, the study aims to achieve the following research objectives. The research will use a form of comparative analysis as a way of exploring the similarities, dissimilarities, strengths and weaknesses between the different laws. It will also explore how the carrier obligations and liabilities have

developed since the first convention of the Hague/Hague–Visby Rules in 1924 to the Rotterdam Rules in 2008. The thesis will also analyse and highlight how the Rotterdam Rules compare to other international conventions, as well as consider why they are regarded as a unique draft which covers most areas in the maritime industry's development. Thus, by looking into the Omani Maritime Law drafted in 1981 and the proposal of the new Omani Maritime Law and international conventions, it should be possible in this thesis to propose suggestions and recommendations for areas that require reform.

Another objective of the thesis is to analyse and highlight the challenges and implications of these laws and of any review for the benefit of the overall interest of the Omani maritime industry. This includes the effect of Oman ratifying other international conventions of carriage by sea. Here, there will be an analysis of how the ratification of the Rotterdam Rules will impact Oman's maritime trade and, by relation, investment. In addition, the extent to which current Omani maritime laws enhanced or reduced Oman's opportunities in the international maritime industry will be examined.

One of the obstacles complicating the development of the national and international maritime industry is the divergence of rules between legal systems. This gives rise to litigation and increases transaction costs for all parties. Therefore, the tendency to unify legislation through international conventions is one solution to eliminate this barrier and to develop the Omani maritime industry.

In addition, it is important to stress that the unique location of Oman, as well as the workable facilities of the country, may be influenced by the development of volume contracts for the carriage of goods. This remarkable transformation is

therefore reflected in the concepts of law and has led to the production of new laws to govern the global community, similar to the Hague/Hague–Visby rules, the Hamburg Rules and the Rotterdam Rules.

Hence, the questions arise as to whether Oman should further unify legislation through international conventions and how significant the effect would be on Oman's economy. Specifically, how are the interests of Oman protected and enhanced in the trend towards internationalisation? Although there is an overwhelming argument that if Oman ratified the new set of rules, it would enhance business and promote the mechanisms of conflict resolution between the rules of the different domestic laws, there is a need to look at this assertion in a deeper and more comprehensive manner. In addition, the aim of this thesis is to prove the unification of the new law through the Rotterdam Rules, as the latest version reflects recent developments in the maritime industry and was drafted to modernise and update the Hague/Hague–Visby Rules and the Hamburg Rules. In addition, the adoption of the Rotterdam Rules would simplify international exchanges of goods by sea because there would be a more predictable contractual relationship between the carriers' and cargo's interests.

1.6 Research Significance and Contributions

Oman has seen an enormous increase in trade and commerce with the rest of the world, and Oman's Vision 2040 aims to transform Oman into one of the top leaders in the maritime industry.[36] This has, over the years, generated a considerable volume of carriage of goods by sea.[37] However, in terms of the

[36] ASYAD, 'About ASYAD' (*ASYAD*) <https://asyad.com> accessed 22 April 2021

[37] National Center for Statistics & Information, 'Statistical Year 2020' (*NCSI*) <https://www.ncsi.gov.om/> accessed 22 April 2021

development of law to be in line with the maritime industry, the country is far behind. The Omani Maritime Law was drafted in 1981, and since then Omani legislators have not updated or amended the law, which is now around 40 years old. It can be seen that it is difficult for the Omani maritime industry, with advanced development and the ambition of Vision 2040, to operate without appropriate rules for the carriage of goods by sea. Hence, it is important for Omani legislators to make substantial changes in the rules for the carriage of goods by sea to align with recent advanced developments at both the national and international levels. In particular, the maritime industry has undergone a rapid change because of the existing container system, the multimodal carriage system and the use of advanced technology in maritime transactions.

However, it is also evident that the existing legal framework in Oman has its own disadvantages, especially for Omanis, who are often overwhelmed by the economic strength and influence of bigger and richer nations in the region. This is why it is important for scholars and researchers to have an analytical view of these issues and to understand the extent to which the absence of proper rules for the carriage of goods by sea affects countries like Oman; they should also provide a comprehensive study to develop these rules.

To the best of the researcher's knowledge, a thesis on this subject has never been written before. Nevertheless, two related books were written in Arabic, one of which is *Maritime Law According to Oman Maritime Law (1981/35)*. This book is mainly descriptive and an interpretation of the law in general, and it covers all the regulations of maritime law, such as contracts for the carriage of goods by sea, the carriage of people by sea, charter contracts, ship flags, marine insurance

and so on.[38] The second book is *The Liabilities of a Carrier Under Carriage of Goods by Sea*,[39] which is a comparative study of carrier liabilities in Omani maritime law, Moroccan maritime law and international conventions on the carriage of goods by sea. This book focuses only on the differences between these five legislations relating to carrier liabilities in the carriage of goods by sea.

Thus, this thesis is potentially the first study dealing with all aspects of carrier rules, including the obligations and liabilities of the carrier. In addition, the thesis is different from previous studies in terms of its theoretical framework because it is not merely a comparative study to show differences and similarities. This thesis will study the best way to reform Omani Maritime Law and the proposed new Omani Maritime Law and will assess and prove how the Rotterdam Rules are a good example and guide for the rules for the carriage of goods by sea. This will be done to revise Oman's maritime laws, since they regulate the carriage of goods by sea today, and the latest version (adopted in 2008) reflects recent advancements and developments in the international maritime industry.

There are, to date, no books or journals written in English about Omani maritime law that cover all aspects of the carrier's obligations and liabilities in detail. However, Section 9 in Chapter 3 in *The Maritime Laws of the Arabian Gulf Co-operation Council States* does describe in general terms the contracts of the carriage of goods by sea in the Arabian Gulf Co-operation Council States.[40] In

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[38] Adel Ali Al Miqdai, *Maritime Law According to Oman Maritime Law (1981/35)* (Almaktab Aljamiei Alhadith 2011)

[39] Bader Abdullah Rashid Al Rahbi, *The Liabilities of a Carrier under Carriage of Goods by Sea* (Gandoor Centre 2018)

[40] Richard Price and Andreas Haberbeck, *The Maritime Laws of the Arabian Gulf Cooperations Council States* (Graham & Trotman Ltd 1986)

addition, there is an article entitled 'The Responsibility of a Carrier of Goods by Sea Under the Laws of the Arabian Gulf States: The Exceptions and the Rule'.[41]

Hence, many important parts of this thesis will be the first critical comprehensive studying of Omani Maritime Law and the proposed new Omani Maritime Law for carriers' obligations and liabilities under the carriage of goods by sea. It will also be the first piece of research written in English and a starting point for further research for advanced educational practice, encouraging investment in Oman's maritime industry. Specifically, this study's contribution is to provide Omani legislators with a list of sample articles showing how the proposed new Omani Maritime Law should be changed. Additionally, this thesis puts forward a proposal for new article drafts in English in Appendix Three. This study provides an analytical overview on the significance of the ratification of the Rotterdam Rules in the new law and the effect of ratification (which will boost Oman's economy and maritime trade).

1.7 Research Methodology and Data Collection Methods

A research methodology is the approach utilised in a study to approach key research questions and conceptual themes, determining the objects that are worthy of analysis and the relationships which will be explored. The data collection methods are the means by which the research will collect primary and/or secondary data related to the study.[42]

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[41] Richard Price, 'The Responsibility of a Carrier of Goods by Sea Under the Laws of the Arabian Gulf States: The Exceptions and the Rule' (1987) 2 Arab Law Quarterly 29

[42] Tamara Hervey, Rob Cryer and Bal Sokhi-Bulley, 'Legal Research Methodologies in European Union & International Law: Research Notes (Part 1)' 3 JCER 161, 162

This thesis has adopted a doctrinal methodology. This kind of research involves analysing rules by exploring how the law has been developed, as well as predicting future development to reform the law. Doctrinal research also makes it possible to consider how the law has been applied and explains the gaps and areas of ambiguity in order to provide appropriate solutions for problems.[43] Here, doctrinal methodology is utilised to critically examine legal rules, as well as case law, to express relevant views.[44] This methodology has been criticised on the basis that it is an 'intellectually rigid, inflexible and inward-looking approach of understanding law and the operation of the legal system'. [45]

Despite the criticism, doctrinal methodology has been chosen as a suitable legal approach with which to reform the law. This was the choice of the author of this thesis having observed the working group of the Rotterdam Rules using the same approach, as well as the working group of the Hamburg Rules, which utilised the same approach. These examples are considered significant, given their key relevance and significance to the development of the maritime industry.

Doctrinal methodology will be utilised in this thesis to explore various forms of legislation in Oman, such as the Omani Maritime Law, the proposed new Omani Maritime Law and numerous international conventions on the laws of carriage of goods by sea. The thesis will apply a particular focus to the way in which these rules regulate the obligations and liabilities of the carrier of goods. This will involve an analysis of legal concepts relevant to the study and will combine primary

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[43] Vijay M Gawas, 'Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal System Towards the Research Development' (2017) 3 I J L 128, 128–130

[44] Terry Hutchinson, 'Doctrinal Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Method in Law* (2nd edn, Routledge 2017) 13

[45] Douglas W Vick, 'Interdisciplinary and the Discipline of Law' (2004) 31 JL & Soc'y 163, 164; Mike McConville and Wing Hong Chui, *Research Methods for Law* (EUP 2017) 4

sources, such as legal documents (laws, case studies and statutes), and secondary sources, such as textbooks, articles, commentaries, committee reports and legal history.[46]

As indicated above, the primary sources for this thesis include various forms of legislation from Omani maritime law as well as the new Omani Maritime Law proposal and, additionally, a number of international conventions. The thesis will also make reference to the Harter Act because of the Hague–Visby Rules adopted in some relevant articles of the Act. Further, the thesis will utilise numerous cases from Oman's Court in addition to other international cases that utilised the Hague/Hague–Visby rules or other similar common laws.

The secondary sources for the thesis are library-based, using materials found in UK libraries where the researcher is based, as well as some Omani libraries. In addition, particular sources will be utilised from online electronic databases, such as UNCTAD, UNCITRAL, CMI, Westlaw, Hein Online, Lloyd's Report, LexisNexis and others. These resources have been used to locate articles, legal case studies and various relevant pieces of legislation.

As Omani maritime legislation differs from some of the other legislation explored in this thesis, the research will utilise a comparative analysis approach as a way of exploring the similarities, dissimilarities, strengths and weaknesses between the different legal conventions and frameworks.

In this thesis, three themes relating to economic analysis will be used. The first explores how legal uncertainties and gaps increase legal costs, resulting in a

[46] Ibid

negative impact on trade and economic value. The second considers how the failure to recognise technology in the law has a negative impact on operational speed and product cost; this is because technology increases operational speed and reduces costs, and low product prices increase opportunities to compete in the carriage of goods by sea. The third theme concerns the relationship between the legal obligations of the carrier and the cost of insurance as well as the subsequent costs of the carriage of goods. In particular, the thesis will explore the following hypothesis:

The more the law raises the obligations and responsibilities of the carrier in favour of the shipper, the more the carrier increases the insurance and the higher the cost of insurance. This in turn increases the price of the product, which results in a negative impact on the economy and reduces competition in the carriage of goods by sea. However, if the law reduces the obligations and responsibilities of the carrier, this may prompt the shipper to insure his/her goods because he/she will feel that the law does not protect him/her. In turn, when the carrier insures his/her goods, the cost of the product increases, which then has a similar negative impact on the economy with a reduction of competition in this sector.[47] Thus, in order to boost Oman's opportunities to compete in the carriage of goods by sea, the law should be reformed in such a way that it strikes a balance between the parties, recognises the role of advancements in technology, maintains clarity in

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[47] United Nations, 'United Nations Conference on the Carriage of Goods by Sea: Official Records, Document of the Conference and Summary Records of the Plenary Meetings and the Meeting of the Main Committee, (A/CONF.89/14)' (Hamburg, 6–31 March 1978) 46-47; Michael F Sturley, 'Changing Liability Rules and Marine Insurance: Conflicting Empirical Arguments about Hague, Visby, and Hamburg in a Vacuum of Empirical Evidence' (1993) 24 J Mar L & Com 119, 120–149; Eun Sup Lee, 'Analysis of the Hamburg Rules on Marine Cargo Insurance and Liability Insurance' (1997) 4 ILSA J Int'l & Comp L 153, 154–158

rules and fills all the gaps relevant to the latest practices in the maritime industry in Oman. If Omani lawmakers are able to do this, they will increase Oman's opportunity to compete in the sector as well as attract foreign investors to Oman's maritime industry.

Qualitative data-collection methods will supplement the overarching doctrinal approach. This will involve semi-structured interviews with focal points within the industry, as well as with regulators, lawmakers or others involved in the process of policy formation in addition to those involved in enforcing relevant regulations. As Lisa Webley notes, in-depth qualitative methods have a unique capacity to explore the nuanced effects of policy shifts which can easily be lost through quantitative research aimed at producing generalisable findings. This is because the researcher is able to understand key informants' perceptions of law, legal meaning and the justice system as well as their relationships within it.[48]

This study has been motivated by a desire to contribute to an understanding of the opportunities and risks facing Oman's maritime sector, a subject on which there is minimal literature, and the literature there is is frequently produced by non-Omanis who fail to understand the local context. The use of qualitative research aims to fill this key gap in the literature by engaging local stakeholders in the production of knowledge for this topic of enquiry.

The qualitative research will be a useful instrument to engage key stakeholders, such as academics, professionals, judges and legislators, who can participate and add value to the research based on their knowledge and experience. Semi-

[48] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Cane P and Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010) 926, 947

structured tools were adapted to the unique stakeholders to ensure relevant data were captured. The researcher conducted 12 interviews with judges, legislators, academics, lawyers and executive representatives in maritime organisations in Oman, as well as particular stakeholders involved in the proposed new Omani Maritime Law.

Stakeholders were selected for specific reasons. For example, the stakeholders who participated in the proposed new Omani Maritime Law were interviewed to understand the new legal framework and to obtain their interpretations of these new developments in the sector. Judges, legislators, academics and lawyers were sampled to explore the existing law and interpretations based on their knowledge and experience. Finally, executive representatives of maritime organisations were sampled to explore problems in the sector and their suggestions for remedies, which may inform the recommendations for a reformation of the law, for example, by aligning with technological developments that affect the sector.

The purpose of the qualitative work was to interview 18 participants in decision-making positions, such as legislators, judges, lawyers and academies, on the rules and regulations of the carriage of goods by sea. The study seeks to engage them in the project to gain knowledge and experience on this subject. The study also aims to interview professionals at companies involved in practice with the carriage of goods by sea and with maritime cargo-services agencies.

The interviewees' views, opinions and experiences were expected to provide great insight into the study. Unfortunately, the outcome of the fieldwork was not as valuable as was hoped. The problem encountered was that many of those interviewed avoided participation or practical answers. Moreover, some answers were limited diplomatically – those who refused to participate or avoided answering virtually feared intelligence services or any legal liability. Also, the researcher found out some committee members had a lack of knowledge about the Hague/Hague–Visby Rules, the Hamburg Rules and the Rotterdam Rules.

The semi-structured interviews were approved by the University of Sussex Art, Humanities and Social Sciences Cluster-Based Research Ethics Committee.[49] Here, the researcher conducted 12 semi-structured interviews for the study.

1.8 Research Structure

The thesis consists of six chapters, as outlined below:

Chapter 1: This is an introduction and will provide an overview of the maritime industry in terms of commerce and economics as well as national and international considerations; this will be followed by the historical developments in the rules of the carriage of goods by sea and the study's questions and objectives. This chapter will also explain and justify the methods used for this research, since the study entails a doctrinal methodology and a critical comparative approach. In addition to interviews, it is important to provide detailed information about the reason for these approaches and to explain how the data were obtained and used. Moreover, the chapter highlights the problems, gaps,

[49] The approval number is (ER/AA843/1).

questions and objectives and provides further investigation so that the thesis can address these issues.

Chapter 2: This chapter will discuss the Omani legal system and the development of the Omani maritime industry. The chapter aims to explain the nature of political and legal developments in the context of the powers held and the role played by the different arms of government. The chapter will also explore the various sources of the Omani legal system as well as the nature and extent of developments and challenges; this will be in terms of both the drafting of domestic laws and the guiding principles and processes that led to the ratification of various international conventions. Additionally, the chapter will highlight the development of the Omani maritime industry and Oman's Vision 2040, relating to the carriage of goods by sea, in order to understand the present and future of Oman. This background information will justify why it is important to reform the law and ratify the Rotterdam Rules.

Chapter 3: This chapter is a general overview of the definitions and the obligations of issuing a bill of lading. The aim of this chapter is to conduct a comparative analysis of the definitions pertaining to contracts for the carriage of goods by sea, the definitions of a carrier, including the obligation of issuing the bill of lading and the recognition of electronic documents. Additionally, this chapter will analyse how the emergence of e-commerce has affected the maritime industry and how an electronic carriage-of-goods-by-sea document will solve the problems of modern practice. The aim is to show why it is important for Omani legislators to provide definitions for all the terms in the new law, i.e. to add clarity, certainty and predictability relating to the obligation of issuing the bill of

lading, since the Omani Maritime Law and the proposed new Omani Maritime Law have many gaps in these areas. This chapter also concludes that the details of the legal framework for electronic documents under the Rotterdam Rules would provide successful guidance to revise the Omani Maritime Law, the proposed new Omani Maritime Law and to boost the contemporary practice of carriage of goods by sea in Oman.

Chapter 4: This chapter outlines the obligations of a carrier. There are two reasons for addressing the carrier's obligations before discussing the carrier's liabilities. First, the carrier's liabilities are triggered when the carrier has breached one or all of his/her obligations Second, the nature of the carrier's liabilities are based on the carrier's obligations. It is necessary, therefore, to gain an accurate understanding of the nature of the carrier's obligations in order to understand and analyse the nature of the carrier's liabilities, as there is a link between the two.

Hence, this chapter will discuss and clarify the aspects of seaworthiness obligation, such as the concept of seaworthiness, the nature of the seaworthiness obligation, the period of seaworthiness obligation and so on. In addition, the chapter will discuss and clarify the duty to load, handle, stow, carry, keep, care for and discharge carried goods. It will also discuss and clarify the nature, the period and the particular matters relating to these obligations. Moreover, the study will discuss and clarify the nature, the period and the particular issues relating to the duty to deliver the goods to the shipper or consignee.

In this chapter, it is concluded that the details of the legal framework for the carrier's obligations under the Rotterdam Rules would provide successful guidance to revise the Omani Maritime Law and the proposed new Omani

Maritime Law. This is because the Rotterdam Rules have adopted advanced technology, and they have the obligation to strike a balance between the carrier's and the cargo's interests.

Chapter 5: This chapter sets out the liability of the carrier and will examine the basis of liability, i.e. liabilities based on non-fault, which is when the carrier is liable for loss, damage or delay until it is proved that the loss, damage or delay was caused by something listed in the exemption clause. In addition, the chapter will discuss liabilities based on fault-basis liability and also proved fault or presumed fault. With this in mind, the chapter will discuss and clarify the position of the burden of proof and the order of proof.

The period of liability in the three sets of international rules and the Omani Maritime Laws will also be examined. This section considers the period scope of the application in more detail because it is one of the aims of the thesis. This has a significant impact in cargo practice today, as it relates to the issues of the carrier's period of liability and the modes of multimodal transport. Here, the Omani Maritime Law and the new Omani Maritime project negatively affect the maritime industry in the absence of an adequate law to recognise other modes of transport and to regulate multimode transport for container services. The Rotterdam Rules provide a suitable solution for multimodal transport to cover the door-to-door period of liability and may involve such modes as road, air, train and sea.

This chapter will also consider the exception clause and consider how the Rotterdam Rules were restructured to produce a unique exception clause in order to balance the interests between the carrier and the shipper. With this in mind,

the chapter will discuss and clarify both the limitations of and the exclusions from the liabilities.

Chapter 6: This is the final chapter of the thesis and will present an overview of the study and the journey of the research, from the definitions through to the findings and recommendations.

Chapter 2: The Omani Legal System and the Development of the Omani Maritime Industry

2.1 Introduction

Since 1970, the legal system in Oman has experienced tremendous changes, and these developments in both the law and in legislative authority have brought about a paradigm shift. The current period has ushered in a new form of political and procedural co-operation as legislative and executive bodies have worked together to draft what is now a series of codes and legislation that guides the affairs of the state. This chapter aims to explain the nature of these political and legal developments in the context of the powers held and the roles played by different arms of the government.

The chapter will also explore the various sources of the Omani legal system as well as the nature and extent of certain developments and challenges. This will be in terms of both the drafting of domestic laws and the guiding principles and processes that lead to the ratification of various international conventions. In addition, the chapter will explore Omani capabilities and future plans to move towards developing the maritime industry in line with all aspects of international standards, including the infrastructure, advanced maritime technology, e-commerce and container transportation facilities. This has become known as the 2040 vision. The aim of this chapter is to identify what type of legal approach is required to service the Omani maritime industry. The chapter will be organised into two main sections, as follows:

- The Omani Legal System

- The Development of the Omani Maritime Industry

2.2 The Omani Legal System

2.2.1 The Omani Legislative Approach

Prior to 1970, the Omani legal system used Sharia (Islamic) law and customary laws to settle disputes in court. However, following Sultan Qaboos' takeover in 1970, Omani law took on a different shape. Sultan Qaboos instigated a comprehensive development strategy in all aspects of the country, including politics, education, the economy, security and the legal system, transforming Oman into a modern country. One example of this is in the field of legislation, in which the Sultan established new bodies to modify existing laws in Oman.[50]

This section will discuss the nature of Omani legislative and legal approaches in relation to the sources that were used to draft these new laws. Essentially, legislators in Oman adopted a mixed approach, this being a combination of Sharia law and the civil code.[51] In principle, Sharia law is a system of laws based on the Holy Quran and Sunnah, these being the two primary sources of Islamic jurisprudence.[52]

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[50] Leon G R Spoliansky, 'Modern Business Law in the Sultanate of Oman' (1979) 13 Int'l L 101, 102; Alastair Hirst, 'Contemporary Mercantile Jurisdiction in Oman' (1992) 7 Arab LQ 3; J H A McHugo, 'The Practice of Law by Foreign Lawyers in the Sultanate of Oman' (1985) 7 Mich YBI Legal Stud 89; JR Calvin Allen and W Lynn Rigsbee II, *Oman Under Qaboos: From Coup to Constitution, 1970–1996* (Routledge, 2014) xvii–xix

[51] Thomas W Hill Jr, 'Commercial Legal System of the Sultanate of Oman' (1983) 17 Int'l L 507, 508–509; Hirst (n 49) 6; PWC, 'Doing Business in Oman: A Tax and Legal Guide' (*PWC*) <https://www.pwc.de/de/internationale-maerkte/assets/doing-business-in-oman-2015.pdf> accessed 22 April 2021, 4

[52] M Cherif Bassiouni and Gamal M Badr, 'The Shari'ah: Sources, Interpretation, and Rule-Making' (2002) 1 UCLA J Islamic & Near E L 135,138–139; Maulana Muhammad Ali, *The Religion of Islam: A Comprehensive Discussion of the Sources, Principles and Practices of Islam* (S. Chand & Company Ltd 1973) 18–20

The first primary source is the Quran, which is considered by Muslims to be a revelation from God to the Prophet Mohammed.[53] The second primary source of Sharia law is the Sunnah, also called the Hadith. The Sunnah consists of statements and teachings as well as the physical deeds of the Prophet Mohammed or the acts he verbally or silently approved.[54]

In addition to these two primary sources, Shariah also has secondary sources, such as Ijma and Qiyas.[55] The simple definition of Ijma is the consensus of the Prophet's companions and Islamic scholars on particular issues,[56] whereas the Qiyas is a juridical analogy; in other words, a body of statements based on a number of cases which are based on yet another body of statements – one exceptional and the other conjunctive.[57] For example, in the Quran, there are no verses that deal explicitly with drugs, but Islamic scholars have a consensus that drugs, particularly those that lead to abuse and addiction, are prohibited. This position on drugs was reached through a juridical analogy with wine, which is considered to be an intoxicant which is harmful to the body, as its harm was thought to outweigh its benefits. Hence, based on this analogy, Islamic scholars made the decision to forbid the use of drugs.[58]

Although all Islamic schools of thought unanimously concur that the Holy Quran and the Sunnah are sources of Islamic law, they disagree on the recognition of

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[53] Ibid

[54] Ibid, 58

[55] Bassiouni and Badr (n 52) 140

[56] Ali (n 52) 106–107; Abdullah bin Hamid Ali, 'Scholarly Consensus Ijma Between Use, and Misuse' (2010) 12 J Islamic Law and Culture 92, 94–96

[57] Ali (n 51) 104; Muḥammad al-Mukhtār Sallāmī, *Al-Qiyas (Analogy) and Its Modern Applications* (Islamic Research and Training Institute 1999) 17

[58] Penal Reform International, *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?* (2015) 9

Qiyas and Ijma as also being sources of Islamic law.[59] In context, Qiyas is similar to the case law precedent in the common law system, i.e. the doctrine which states that the judge will apply previous precedents to cases and that such previous precedents should be taken from relevant cases with similar circumstances and should have similar effects.[60] This idea of a precedent is common in Omani court practices. Articles 3 and 4 of the Judiciary Authority Law 1999/90, which established the Technical Office Under the Supreme Court, drew upon legal principles laid down by the judgements of the Supreme Court to serve as precedents.[61] Throughout the development of the current Omani legal system, legislators have had the authority to explore the Sharia approach when drafting numerous legislations, including but not limited to the Islamic Bank Law 2012/69[62] and the Islamic Insurance Law 2016/11.[63]

There are three main schools of Islamic thought in Oman: Ibadi, Sunni and Shia.[64] Although there are many similarities between these schools with respect to Islamic law, there are a few differences which are mainly derived from the differences in the understanding of certain verses in the Quran and the Hadith, these being called Fiqh. Al Fiqh means the understanding of Islamic jurisprudence, and each school has its own methods for analysing these verses of the Quran and the Hadith.[65]

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[59] Bassiouni and Badr (n 52) 138

[60] Nicola Gennaioli and Andrei Shleifer, 'The Evolution of Common Law' (2007) 115 J of Political Economy 43, 44–47

[61] Royal Decree 1999/90, the Judiciary Authority Law issued on 21 November 1999

[62] Royal Decree 2012/69, Amendment to Some Provisions of Banking Law issued on 6 December 2012

[63] Royal Decree 2016/11, Islamic Insurance Law issued on 6 March 2016

[64] Hirst (n 50) 8

[65] Penal Reform International (n 58) 10

Legislators have also used the French Civil Code when drafting some Omani laws and regulations in commercial and public law. In this approach, a law is written based on principal legislation, particularly codification, constitutions and statutes enacted by countries and customs.[66] One of the primary reasons for resorting to this approach is the fact that it exists and is recognised in Islamic thought, since Islamic jurisprudence uses this method. This approach to jurisprudential rules was historically included in the work of Abu al-Hasan al-Karkhi (340 AH, corresponding to AD 951) called 'Usool al-Karkhi'.[67] This explains why many Muslim majority countries, such as Egypt and Turkey, use French Civil Code.[68] Hence, Omani legislators, like their counterparts in other Muslim countries, used the approach of the French Civil Code to draft certain laws, including Commercial Law 1990/55, Commercial Registration Law 1974/3, Commercial Companies Law 2019/18, Banking Law 2000/114 and Insurance Companies Law 1979/12.

Clearly, the French Civil Code legal regime is not derived from Sharia; it is simply a legislation that meets the demands of modernisation and current economic activities. For example, Banking Law 2000/114 does not prohibit the acceptance of interest (Riba) paid on loans, which is forbidden in Islam.[69] Moreover, Omani law permits the selling of alcohol in places such as bars and hotels but prohibits

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[66] Jean Louis Bergel, 'Principal Features and Methods of Codification' (1987) 48 La L Rev 1073, 1074–1075

[67] Munir Ahmad Mughal, *Al-'Usul (Islamic Legal Maxims) Imam Karkhi* (Kazi Publications 1999) 1

[68] Thomas W Hill Jr, 'Commercial Legal System of the Sultanate of Oman' (1983) 17 Int'l L 507, 508

[69] Dusica Boskovic, Sanja Mandic and Sonja Andjelkovic, 'Basic Concepts in Islamic Banking' (2015) 5 Int'l J Econ & L 35, 38

this act in other public places;[70] yet, the selling and drinking of alcohol is prohibited in Sharia law.[71]

It is also worth noting that a combination of Sharia law and the Civil Code was used when drafting Omani Banking Law 2000/114. This combination is seen in different parts of Oman's legislation. For instance, Chapter Four of Omani Banking Law 2000/114 regulates modern commercial banking, and its rules conflict with Islamic principles. Here, for example, Banking Law 2000/114 does not prohibit the acceptance of interest (Riba) paid on loans, though it is forbidden in Islam.[72] However, Chapter Six of Omani Banking Law 2000/114 regulates Islamic banking, and all the rules are based on Islamic principles.

Therefore, it is clear that the current legislation in Oman has tried to create a hybrid approach in order to strike a balance between the politics and economics of the country and the preservation of its culture and customs.

Also, Oman has tried to take ideas from Civil Law, based upon models such as Egypt. In fact, the Sharia approach does not apply for any roles in commercial aspects, such as the rules for the international carriage of goods by sea, which are governed almost solely by legislation based upon international rules. For example, the Omani Maritime Law is a hybrid law adapted from the Hague–Visby Rules and the Hamburg Rules, discussed in the following chapters. Here, Omani legislators have confirmed that the approach used to draft laws in Oman is a combination of Sharia law and civil

[70] Royal Decree Criminal Law 2018/7 issued on 11 January 2018, Articles 285 and 286
[71] Laurence Michalak and Karen Trocki, 'Alcohol and Islam: An Overview' (2006) 33 Contemp Drug Probs 523, 523–525
[72] Boskovic, Mandic and Andjelkovic (n 69) 38

codes, taking into consideration the political and economic circumstances of Oman.[73]

2.2.2 Omani Legislation Sources

Article 2 of the Basic Law of the State 2021/6 recognises Sharia as the first source of legislation in Oman. However, this does not preclude or prevent the use of other sources, such as constitutions, statutes, customs and international rules. The second key source is the constitution, which covers all aspects of governing principles and guiding policies of the state. The Basic Law defines the general principles of the state and the governance system; it also provides the principles of politics, economics, society, culture and security. Moreover, the Basic Law defines public rights and duties, the principles of the Head of State, the Council of Ministers, the Specialised Council and other financial affairs. Furthermore, the Basic Law defines the general rules of Majlis Oman (Council of Oman), which consists of two councils: Majlis Dawla (State Council) and Majlis Al Shura (Consultation Council). In addition, the Basic Law defines the general principles and rules of the judiciary authorities.[74] The third source comes from international laws, conventions and treaties. Article 93 of the Basic Law of the State 2021/6 states that regional charters and treaties are generally recognised.

Another aspect of modern legislation in Oman is the practice of the Ministry of Justice and Legal Affairs, which focuses on the adoption of laws from different countries which are suitable for Omani culture, politics and economics.[75] Hence,

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[73] Al Hosni (n 35); Al Kalbani (n 35)
[74] Royal Decree 2021/6, The Basic Law of State, issued on 11 January 2021
[75] Ministry of Legal Affairs, *Guidance Book for Ministry of Legal Affairs Scope (2012)*, 23

some laws in Oman were, in fact, influenced by international laws and the laws of other countries. A clear example of this is the rule for the carriage of goods by sea, which will be explained in Chapters Three, Four and Five, as the Omani Maritime Law adopted some articles from the Hague, the Hague–Visby Rules, the Hamburg Rules and common law. The fourth source relates to the customs of the people; Article 16 of the Basic Law of the State 2021/6 states that the customs of the Omani people should be preserved as a national heritage and a source of legislation.

2.2.3 Types of Legislation in Oman

There are two types of law in Oman: private law and public law. Public law concerns those laws that protect and regulate public affairs and the principles of society. These include Criminal Law 2018/7, Criminal Procedures Laws 1999/97 and Administrative Law 1999/ 91. Private law, however, regulates the affairs of individuals. This can be seen with commercial transactions covered under Commercial Law 1990/55, Civil and Commercial Procedures Law 2002/29 and Civil Transaction Law 2013/29, which deal with other aspects of relationships between individuals.

Omani laws can also be categorised according to their type, i.e., whether they constitute primary or secondary legislation. In the context of Oman, primary legislation is composed of Royal Decrees (Marsum Sultani), laws (Qanoon), Royal Orders (Awamir Sultaniyh) and international treaties and conventions that Oman has ratified. Secondary legislation comprises ministerial statutes, ministerial decisions, judicial principles and customs. As regards the topic of this

thesis, the primary legislation used when settling disputes for the carriage of goods by sea contracts is Maritime Law 35/1981, this being called Qanoon Al Bahri. This law primarily deals with the carriage of goods by sea and is supplemented by other laws covering issues relating to the carriage of goods by sea, such as Commercial Law 1990/55, Civil and Commercial Procedures Laws 2002/29, Commercial Arbitration Law 1997/47, Commercial Agency Law 1977/26 and Insurance Companies Law 1979/12. There is also secondary legislation in the form of ministerial statutes and ministerial decisions for the carriage of goods by sea.

2.2.4 Legislative Bodies

There are many bodies involved in the legislation process, including the Ministry of Justice and Legal Affairs and Majlis Oman (Council of Oman). The former was established on 5 January 1994, pursuant to Royal Decree 2/1994. Prior to the establishment of this ministry, its authority and jurisdictions were exercised by the Legislative Bureau in the Finance Affairs Council, which was established in 1975. In 1976, the bureau became a department within the Ministry of Royal Court Affairs and, in 1979, its name was changed to the Legislative Bureau and Official Gazette.[76] The main role of the Ministry of Justice and Legal Affairs is to draft and develop laws and regulations in Oman. Its other roles are as follows:

1. Co-operating with all government entities and ministries in developing laws and regulations;

[76] Ministry of Legal Affairs (n 75) 9–10

2. Preparing or reviewing laws, regulations and drafts of Royal Decrees as well as ministerial and governmental statutes;

3. Preparing and reviewing international treaties and conventions which Oman intends to ratify;

4. Issuing the official interpretation of laws, regulations, Royal Decrees and ministerial or governmental statutes;

5. Rendering legal opinions;

6. Reviewing contracts that impose an obligation on the government of half a million Omani Riyals or more;

7. Representing the government in international or regional organisations or in conferences relating to legal affairs;

8. Safeguarding the interests of the government in disputes relating to governmental contracts;

9. Studying and discussing all matters raised by the Sultan of Oman.[77]

Due to the far-reaching role of the Ministry of Justice and Legal Affairs, it is considered a key component in the legal system and law reform of Oman.

The other body, Majlis Oman (the Council of Oman) was established in 1997 by Royal Decree 1997/86 as a bicameral parliament, pursuant to Article 58 of the Basic Law. It comprises the Majlis Al Shura (Consultation Council), which is the lower house of the Council of Oman, and Majlis Al Dawla (State Council), which

[77] Royal Decree 1994/14, Ministry of Legal Affairs Jurisdictions issued on 11 January 1994

serves as the upper house. The president of the Council of Oman is the Sultan. The functions of both councils are defined in Basic Law 2021/6, specifically Article 72.[78] Primarily, the role and jurisdiction of the two councils is to assist the government in making laws and formulating policies. They have also been granted the duty of studying and discussing all national matters raised by the Sultan of Oman. Here, the Council of Oman often proposes draft laws and refers them to the government for review. The government then enforces certain processes. In addition, the Council of Oman has the power to review, amend and approve laws and regulations. The final decisions made by the Council of Oman are carried out based on a majority vote.[79]

Consultation is a principle firmly rooted in Islamic culture; it is a key component of the governance system as stated in the Holy Quran Surah Al Shura, Ayat 38. The Ibadi school, which governed Oman in the past, were at the forefront of promoting the concept of consultation. The principle laid down through the Ibadi legacy is that the Head of State is elected by a council of high-ranking scholars, dignitaries and wise people, and the process of this council should be decided upon through consultation.[80]

The current Consultation Council was legislated for and established in 1991 by Royal Decree 1991/94 and consists of selected council members from each province (Wilayat).[81] Consultation Council membership became an elected

[78] Royal Decree 1996/101, The Basic Law of State, issued on 6 November 1996; Royal Decree 2021/6, The Basic Law of State, issued on 11 January 2021

[79] Royal Decree 2021/7, the Council of Oman Law, issued on 11 January 2021

[80] Nikolaus A Siegfried, 'Legislation and Legitimation in Oman: The Basic Law' (2000) 7 Islamic Law and Society 339, 362–364; Jeremy Jones and Nicholas Ridout, *A History of Modern Oman* (Cambridge University Press 2015) 9

[81] Royal Decree 1991/94, the Consultation Council Law, issued on 12 November 1991

position with a term of four years. Here, the framework suggests that a province (Wilayat) with a population of 30,000 people or less should be represented by one member, while a province (Wilayat) with a population of more than 30,000 people should be represented by two members. Leading the Council chambers are the chairman of the Consultation Council and two deputies, who are elected from the council members; the decisions of the Council are made based on a majority vote.[82]

A recent development with regard to the mechanisms of the Council was the promulgation of Royal Decree 2021/7, which expanded the Council's jurisdiction to include the power to question and investigate ministers or heads of government authorities as well as the power to study and discuss all matters raised by the people or government. In terms of legislative powers, the Council must approve all laws, and it also has the power to amend all the laws referred to the Council by the executive government within a maximum period of three months from the date of the referral.[83] Additionally, all economic and social conventions are referred to this Council, pursuant to Article 54 of the Council of Oman Law.

Majlis Al Dawla (the State Council) was established in 1997 by Royal Decree 1997/86.[84] All the members of this council are appointed by the Sultan. The State Council is the upper house of the Council of Oman. The principle is that the composition of this council must not exceed the total number of members in the Consultation Council. Members are chosen from selected categories of people, including people who have previously been ministers, deputy ministers,

[82] The Council of Oman Law (n 79)
[83] Ibid
[84] Royal Decree 1997/86, the Council of Oman Law, issued on 16 December 1997

ambassadors, senior judges, senior officers, academic professors and leading businessmen. In addition to this are individuals who have carried out outstanding services for the country or who have certain competences and experience in the sciences, culture or the arts. The chairman of the State Council is appointed by the Sultan, whereas the two deputy chairmen are elected from the State Council's members and have a term limit of four years. Here, the decisions of the State Council are made based on a majority vote. The primary role of this council is to assist the government in developing national strategic policies.[85]

2.3 The Government System in Oman

The first executive authority is the Council of Ministers (Majlis Al Wuzara); the Sultan is the Prime Minister and appoints members to the Council of Ministers. The Sultan also doubles as the Chairman of the Council of Ministers and the Head of State. There is also a Deputy Prime Minister, who is appointed by the Sultan based on the requirements set out by the Basic Law of the State 2021/6. The Council of Ministers is the main executive authority responsible for supervising governmental affairs and all administrative bodies in the country, and it has multiple substantial roles. These roles include assisting the Sultan in drafting and implementing the general strategies and policies of the state, following up on the performances of all the government units and supervising the implementation of policies, laws, projects and so on. In addition, the Council of Ministers proposes the plan and budget for the country, submitting its proposals and recommendations to the Sultan on all manner of economic, political, social and administrative governmental affairs.[86] It is worth noting that the Ministry of

[85] The Council of Oman Law (n 79)
[86] The Basic Law of State (n 78)

Justice and Legal Affairs is part of the Council of Ministers and, as such, the Council is a stakeholder in proposing laws. It is a central feature of the Omani system of government that other legislative bodies must secure approval from the Council of Ministers before embarking on the study of any international treaty or convention that Oman intends to join.[87] Hence, the system in Oman provides a limited separation of power between executive and legislative authorities.

The second authority is the judicial authority. Prior to 1999, the judiciary system in Oman comprised three bodies: the Commercial, Criminal and Sharia Courts.[88] However, since 2000, the judiciary system in Oman has taken on a different structure, as there are now Ordinary Courts for all cases apart from administrative cases.[89]

The Administrative Court was established in 1999 by Royal Decree 1999/91, while the Public Prosecution Authority was established in 1999 by Royal Decree 1999/92. Royal Decrees 2012/9 and 2012/10 united all judiciary authoritative bodies under the Supreme Council of the Judiciary and have separated the judiciary authorities from the executive authorities. Prior to 2012, the executive authority influenced the judiciary authority in certain respects. The Ordinary Courts previously came under the Minister of Justice, this being part of the Council of Ministers,[90] while the Administrative Court was under the Ministry of the Royal Court, also part of the Council of Ministers,[91] and the Public Prosecution

[87] Ministry of Legal Affairs (n 75) 40
[88] The Judiciary Authority Law (n 61)
[89] Ibid
[90] Ibid
[91] Royal Decree 1999/91, the Administrative Court Law, issued on 21 November 1999

Authority came under the Inspector General of Police and Customs.[92] However, the promulgation of Article 59-17 of the Basic Law of the State 1996/101 emphasises that the dignity, integrity and impartiality of the judiciary must be guaranteed.

There is also a Supreme Council of Judiciary consisting of eight members. The Sultan is the President of the Supreme Council of Judiciary, and the President of the Supreme Court is the Vice President. Other members include the President of the Administrative Court, the General Prosecutor, the oldest Vice President of the Supreme Court, the Head of the Sharia Court in the Supreme Court, the Vice President of the Administrative Court and the oldest President in the Court of Appeal. The main role of this council is to study and amend the general policies of the judicial system; they also have the power to propose laws or regulations relevant to the workings of the judiciary.[93]

The primary courts or lower courts are at the base of the hierarchy of the Omani judiciary, followed by the Appeal Courts, and at the top of the hierarchy is the Supreme Court.[94] However, the Administrative Court has two levels of judgement which are similar to those of the Primary and Appeal Courts.[95] The courts that have authority to settle disputes relating to the carriage of goods by sea are the Ordinary Courts.

The third authority is the legislative authority (the Council of Oman). As previously mentioned, the legislative and executive authorities often have

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[92] Royal Decree 1999/92, the Public Prosecution Law, issued on 21 November 1999
[93] Royal Decree 2012/9, the Supreme Council of Judiciary, issued on 29 February 2012
[94] The Judiciary Authority Law (n 61)
[95] The Administrative Court Law (n 91)

overlapping powers of legislation, and the process and role of legislation is shared between the Council of Oman and the Council of Ministers.

2.4 The Stages of the Regulation of Laws and the Ratification of Conventions in Oman

The legislation and ratification of a convention is a process that goes through several stages from its initial draft until its publication in the Official Gazette. First, this section will outline the process and then it will discuss in detail the principles and rules of the ratification of international conventions in Oman.

The first stage is the preparation stage, which involves examining the law or convention to be ratified. Typically, the preparation of the first draft of legislation, or the studying of a convention, is prepared by a ministry or government sector which is responsible for and interested in the drafting of legislation or the examining of a convention. In this thesis, this body will be referred to as the competent authority. This is expected to summarise the problems and issues that need resolving and to define the circumstances surrounding the solution. It is also expected to define the aims and objectives of the law, the application of previous legislation and the relevant international laws and conventions.

The first proposal is submitted by the competent authority to the Ministry of Justice and Legal Affairs, which is able to amend the legislation. In practice, such exercises are carried out by a committee consisting of several bodies and institutions, such as legislators, academics, lawyers, judges and researchers. This committee is supervised by the competent authority and the Ministry of Justice and Legal Affairs in co-ordination with all the relevant governmental

bodies.[96] The competent authority must obtain approval from the Council of Ministers before studying the convention.[97] In accordance with the above, the competent authority for the carriage of goods by sea is the Ministry of Transport and Communications.[98]

According to fieldwork data, the Ministry of Transport and Communications sends the draft of the proposed new Omani Maritime Law to the Ministry of Justice and Legal Affairs so that the law can be studied in co-operation with the committee, the latter being appointed by both ministers. The Ministry of Transport and Communications does not discuss the ratification of any conventions on the carriage of goods by sea, as its current focus is to amend the current law and to regulate other gaps in the law with regard to the carriage of goods by sea and the maritime industry.[99]

Moreover, the Ministry of Justice and Legal Affairs has not received any requests for ratification from a competent authority despite the fact that its scope is to look at conventions following the competent authority's request and the approval of the Council of Ministers. Here, the Omani legislator follows the principle of gradation in the legislation; before any convention is studied, the Omani legislators should first examine whether or not Oman is capable and willing to commit to the convention.[100]

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[96] Ministry of Legal Affairs (n 75) 12–18
[97] Ibid, 40
[98] Royal Decree 1993/24, Ministry of Transportation and Communication, issued on 2 May 1993, Article 9
[99] Al Busaidi (n 34); Al Hosni (n 35); Al Kalbani (n 35)
[100] Al Hosni (n 35); Al Kalbani (n 35)

The second stage is the review stage. The role of reviewing draft laws, Royal Decrees, regulations and decisions falls under the jurisdiction of the Ministry of Justice and Legal Affairs. This ministry reviews and submits final drafts for approval from other legislative bodies, such as the Council of Oman and the Council of Ministers. At this point, the competent authority or relevant body must be asked to amend or explain anything that is potentially problematic or that might conflict with other legislation. The scope of the reviewing stage includes setting out proposed provisions in a proper legal format with accurate terms. This is often a technical process, since certain rules and principles which define legal instruments are necessary for the legislation to be passed. This process concludes with the removal or amendment of any conflicting legislation, which is carried out by alerting the relevant bodies for any research or reviews that may be required in order to deal with conflicts or ambiguities.[101]

In terms of reviewing international conventions, the Ministry reviews the copies of the convention in Arabic and English if the convention has been prepared in both languages. It also reviews the extent to which the provisions of the convention conflict with the provisions of the Basic Law of the State 2021/6, any other applicable Omani legislations and any international conventions under which Oman has an obligation. In addition, the Ministry reviews the wording of the convention to ensure accuracy and to avoid confusion in the interpretation of the convention. International conventions for the carriage of goods by sea often go unedited. Hence, the scope of their review will cover the extent to which the provisions of the convention conflict with the provisions of the Basic Law of the

[101] Ministry of Legal Affairs (n 75) 15–24

State 2021/6, other applicable legislation and any international conventions under which Oman has an obligation.[102] In addition, the Ministry of Justice and Legal Affairs will review all internal procedures and rules that must be fulfilled by the convention before it enters into force in Oman.[103] Fieldwork data have shown that the proposed new Omani Maritime Law has passed this stage, and the Ministry of Justice and Legal Affairs has sent the final document to the Ministry of Transport and Communications in order to obtain ratification from other legislative bodies.[104]

The third stage concerns obtaining approval from all the legislative bodies; the Ministry of Justice and Legal Affairs refers the final draft to the Council of Ministers for approval before it is passed to the Council of Oman. As previously stated, there are two houses in the Council of Oman.

Thus, the draft is first referred to the Consultation Council, which must approve or amend the proposed law within a maximum period of three months from the date of the referral. Following this, the draft is referred to the State Council, which is required to approve the draft or make any amendments within 45 days of this date.[105] In instances of conflict between the Consultation Council and the State Council, the two have to meet and discuss their differences, and their decision must be based on a majority vote. After the final draft has been approved by all the councils, it is passed to the Sultan, who issues the legislation by His Majesty, the Sultan's Decree.[106]

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[102] Ibid, 40–53
[103] Ibid, 40
[104] Al Hosni (n 35); Al Kalbani (n 35)
[105] Ministry of Legal Affairs (n 75) 18
[106] The Council of Oman Law (n 79)

The approval process for the ratification of an international convention varies slightly from other legislative processes. As in the previous description, the first approval should come from the Council of Ministers. However, the political opinion of the Ministry of Foreign Affairs should also be sought on the subject of the convention in accordance with Decision 2010/2 by the Council of Ministers on 12 January 2010. Having reviewed the content, the Ministry of Justice and Legal Affairs will pass the proposal onto the Council of Ministers for ratification.[107] At this point, it will be referred to the Consultation Council (providing the convention is economically or socially in concordance with Article 54 of the Basic Law of the State (2021/6) for review. (Here, the Basic Law of the State 2021/6 does not give any authority to the State Council to approve the ratification of the convention). Following this, the General Secretariat of the Council of Ministers will address the competent authority. They will then co-ordinate with the Ministry of Foreign Affairs with regard to the procedures for signing the convention after all the approvals have been obtained, as per the consent of the General Secretariat of the Council of Ministers.[108]

The fieldwork data show that the proposed new Omani Maritime Law has already been discussed with the Council of Ministers, and the Ministry of Justice and Legal Affairs, in co-operation with the Ministry of Transport and Communications, will send the final draft to the other legislative bodies to obtain ratification. It will then be forwarded to be signed and issued by His Majesty as the Sultan's Decree.[109]

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[107] Ministry of Legal Affairs (n 75) 39–46
[108] Ibid 16–17
[109] Al Busaidi (n 34)

The fourth stage is the issuing and publishing stage. When the proposed law or convention has been approved by the Council of Oman and the Council of Ministers, and after it has been issued by His Majesty the Sultan, the Ministry of Legal Affairs publishes all the passed legislation in the Official Gazette. This ministry also publishes the ministerial statutes and other legal documents within its jurisdiction. As a general principle, all pending laws take effect from the date of their publication in the Official Gazette, unless otherwise specified. With regard to the publication of international conventions, the Ministry of Foreign Affairs will process the issuing of a Royal Decree to ratify the convention and publish the convention in the Official Gazette in co-ordination with the Ministry of Justice and Legal Affairs.[110]

2.5 The Development of the Omani Maritime Industry

From a historical perspective, Oman has a very rich maritime history. It was once a leading country in the Indian Ocean, taking part in maritime trade between Asia, Africa and the Arabian Gulf. Omani ships transported goods from the Arabian Gulf to Africa, India, China and many more countries.[111] Ahmed bin Majid was a famous Omani exporter on the Indian Ocean and captain of a merchant ship.[112] From a commercial perspective, the National Centre for Statistics and Information (NCSI) in Oman reviewed merchandise exports and imports between 1995 and 2019, and Figure 2.1 shows a significant increase in the volume of both exports and imports.[113]

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[110] Ministry of Legal Affairs (n 75) 42
[111] Jones and Ridout (n 80) 11–12
[112] Ibid, 24
[113] NCSI (n 37)

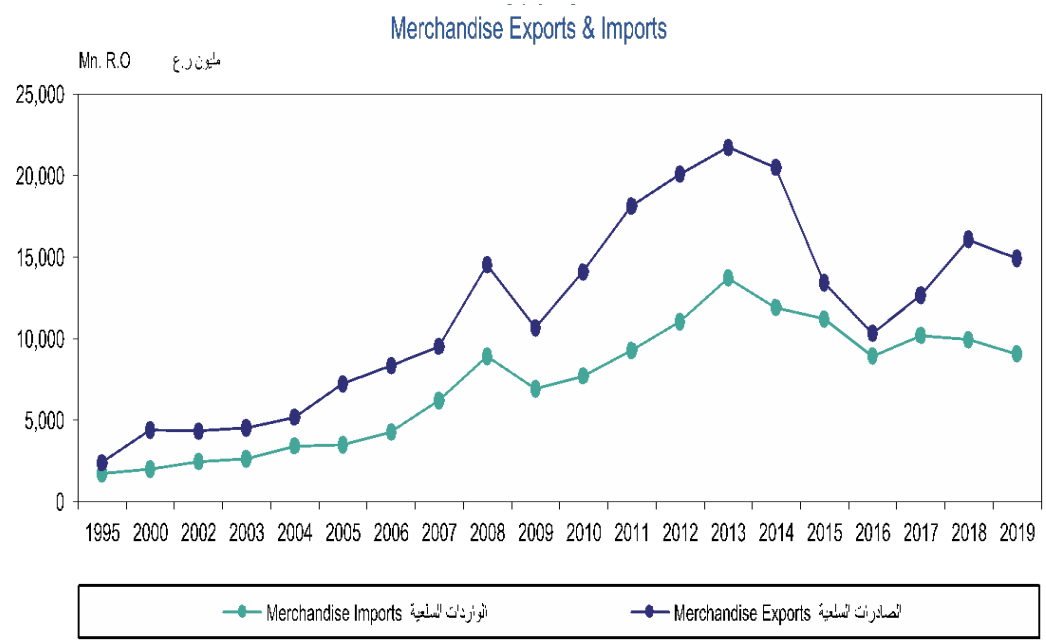
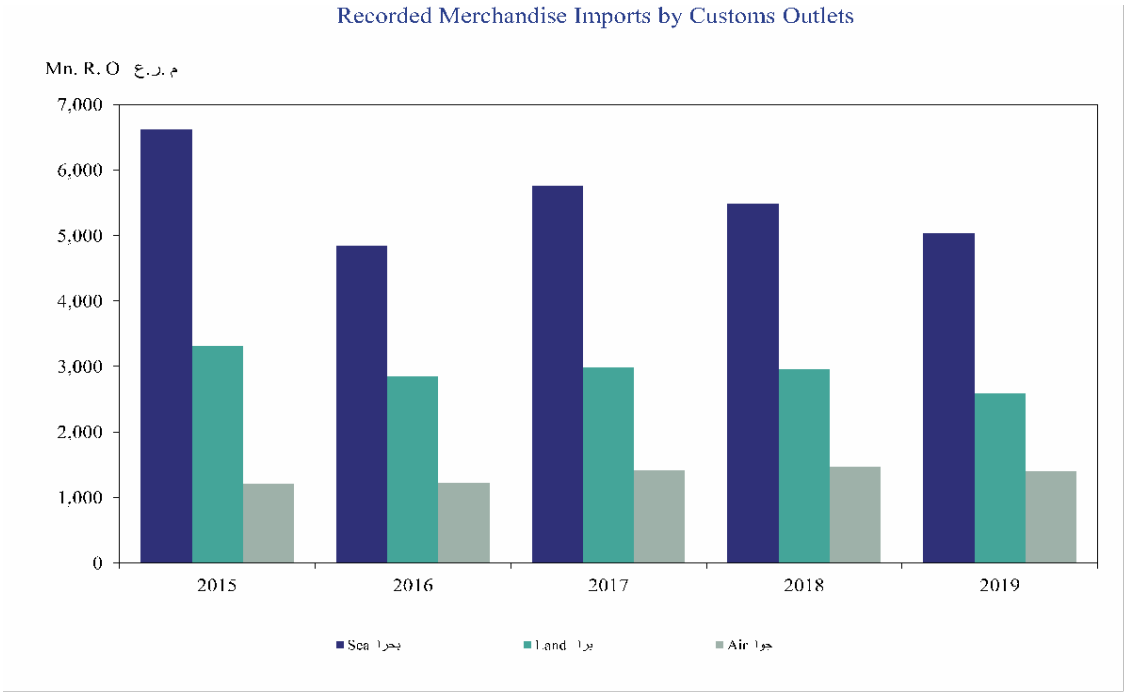


Figure 2 The development of merchandise exports and imports between 1995 and 2019[114]

Furthermore, the NCSI indicated that the transport of goods by sea has had a significant impact on Oman's trade value, as around 56% of goods transportation relies on carriage by sea.[115]



[114] Ibid
[115] Ibid

Figure 3 The development of the carriage of goods imported by sea, air and land between 2015 and 2019[116]

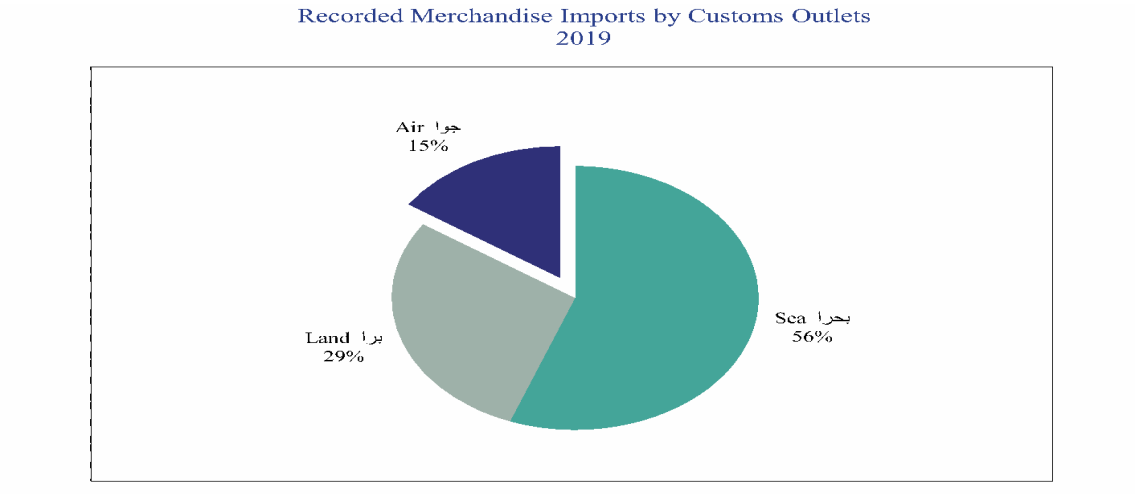


Figure 4 The total percentage of goods imported by sea, air and land in 2019[117]

In addition to the considerable volume of goods being imported and exported, Oman is located strategically better than other Arabian Gulf countries when its position is considered from a geopolitical perspective. It has four main sea borders: the Arabian Gulf, the Oman Sea, the Arabian Sea and the Indian Ocean. The location of the Omani ports shows the significance of Oman's location, which links two continents: Asia and Africa. Furthermore, all the ports are far away from the Strait of Hormuz, which avoids political problems affecting maritime operations, as well as additional costs.[118] Oman also has political stability, security and good relationships with other countries.[119]

[116] Ibid
[117] Ibid
[118] Sohar Port, 'The Port of Dugm' (*Port of Duqm*) <https://www.portofduqm.om> accessed 22 April 2021
[119] Linda Pappas Funsch, *Oman Reborn: Balancing Tradition and Modernization* (Springer 2015) 164

Bearing the above factors in mind, Oman has already built excellent services in the maritime sector and has invested heavily in developing its maritime industry in line with international standards. This has been carried out in terms of infrastructure, advanced maritime technology, e-commerce and container services in all ports. This development has led to a significant growth in the volume of goods being transported by sea due to the substantial influx of transportation in Omani ports. The latter have been designed for several functions, such as container services, bulk cargo, general goods and so on. This section will therefore focus on Oman's ports and facilities by examining their importance and size, as well as highlighting the multimodal transport system which follows Oman's 2040 vision.

Oman has many ports, including Salalah, Duqm, Sur, Qalhat, Sultan, Minal Al Fahal, Sohar, Shinas and Khasab.[120] This section will highlight some of the main ports relating to the scope of this thesis. Some of the aforementioned ports specialise in oil and gas, which is out of the scope of this thesis and cannot be discussed due to the word limitation. This thesis, therefore, focuses specifically on bill of lading contracts and similar transport documents, which will all be discussed in Chapter Three.

2.5.1 Sohar Port and the Special Economic Zone of Sohar

The Sohar Port and Free Zone is a deep-sea port which is capable of handling the largest ships in the world. It is also adjacent to the free zone in the Middle

[120] Marafi, 'Our Ports' (*Marafi*) <https://marafi.om> accessed 22 April 2021; Sohar Port and Free Zone, 'About Sohar Port and Free Zone' (*Sohar Port and Free Zone*) <http://www.soharportandfreezone.com> accessed 22 April 2021; Port of Duqa, 'The Port of Dugm' (*Port of Duqm*) <https://www.portofduqm.om> accessed 22 April 2021; Port of Salalah, '2030 Vision' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

East, as Sohar is midway between Dubai and Muscat, its location being a great distance from the Strait of Hormuz. It is the largest international port in Oman, with over 450 hectares of land. Current investments in this port exceed $26 billion. Sohar is one of the world's fastest growing ports and free-zone developments, located as it is at the centre of global trade routes between Asia and Europe. The Sohar Free Zone is a joint venture (50/50) between Oman and Rotterdam Port.[121]

Sohar Port provides direct connectivity to all Gulf Co-operation Council (GCC) countries as well as links to airports, road networks and future railways. Recent statistics show that over 3,434 vessels were loaded in Sohar Port in 2018, and every week the port handles goods weighing over one million metric tons. The port also offers a one-stop-shop system, which is an online service that provides fast operations to reduce loading and unloading times and to minimise costs. The port also has other services, such as cargo handling, stevedoring services and marine services to receive or deliver goods to a consigner.[122] These services have a significant impact on the carriage-of-goods' sea contracts, which will be discussed in Chapter Four.[123] Sohar Port also provides a wide variety of shipping services, such as containers, dry bulk, break bulk, liquid bulk and general cargo.[124]

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[121]Sohar Port and Free Zone, 'About Sohar Port and Free Zone' (*Sohar Port and Free Zone*) <http://www.soharportandfreezone.com> accessed 22 April 2021

[122] Ibid

[123] See Section 4.3.4

[124] Ibid

2.5.2 The Duqm Port and the Special Economic Zone of Duqm

The Duqm Port and the Special Economic Zone of Duqm are strategically located outside the Strait of Hormuz in order to reduce costs and maintain the safety and stability of Omani maritime trade. These areas were established as a pillar project of Vision 2020 in order to diversify the economy. Duqm will be developed with a port and an industrial zone to create a multimodal logistical hub that will link to other networks, such as roads, airports and railway systems. It will also provide warehousing, distribution and re-export opportunities with the aim of becoming a hub for heavy, medium and light industries. A regional rail network linking Duqm to other ports, industrial areas and free zones in Sohar and Salalah with wider GCC coverage is currently under construction. Duqm port will be the Middle East's second-largest dry dock for repair and maintenance services. It is one of the world's fastest growing ports and free-zone developments, and it lies at the centre of global trade routes between Asia, Africa and Europe.

The Duqm Port Company is a joint venture (50/50) between the Oman government and the Antwerp Port (the second largest port in Europe), and it has over 300 shipping lines to more than 800 destinations across the world. The Port of Duqm is very attractive for shipping companies and investors because of its central location in the middle of the Indian Ocean and its open route to shipping lines between Asia, Africa and Europe.[125] As an example of its significance, the UK has invested £23.8 million in a UK logistics hub in Duqm Port.[126] Furthermore,

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[125] Port of Duqa, 'The Port of Dugm' (*Port of Duqm*) <https://www.portofduqm.om> accessed 22 April 2021

[126] Jonathan Beale, 'Defence Secretary Denies Plan to Mothball British Army Tanks (*BBC*) <https://www.bbc.co.uk> accessed 22 April 2021

many shipping companies have invested in handle container services in Oman, including CGM, HMM, Hapag Llyod, Maersk, MSC and CMA.[127]

Duqm Port offers cargo handling and online services, which enable faster operations at the port. It also provides a diverse range of services, such as stevedoring, stuffing and destuffing containers and the management of reefer containers. The Port of Duqm has an excellent strategic plan to become the main hub for handling containers in the region. It has also established a unique service to speed up the operations of the container system, which links seaports in Oman and the UAE. This service is the Oman Express Service, which is run by the Oman Shipping Company (OSC), and it operates container services with other ports. Currently, Duqm Port runs import and export containers on a regular basis.[128]

2.5.3 The Port of Salalah and the Salalah Free Zone

The port of Salalah is strategically located in Dhofar in the major East–West shipping traffic lane. It is excellently located, as it is linked to global ports. As a leading global transhipment hub, the port of Salalah has played a significant role in diversifying the Omani economy. This port was designed to be one of the largest container-port operators in the world. It is also the largest international port in Oman with over 2.4km of container berth quays, which will increase the volume of container growth. Its current investments exceed $800 million. Recent statistics demonstrate the growth of container services, these having increased

[127] Port of Duqa, 'Port Terminals' (*Port of Duqm*) <https://www.portofduqm.om> accessed 22 April 2021
[128] Port of Duqm, 'Port Terminals' (*Port of Duqm*) <https://www.portofduqm.om> accessed 22 April 2021

by 665% between 1999 and 2013.[129] The vision for the Port of Salalah is to improve the Salalah hub and establish a network system link with a global supply chain and railway connections by 2030 in order to offer a greater logistics hub in the Arabian Gulf countries. Additionally, its 2030 vision has been designed to reduce time and costs.[130]

Statistics on the Port of Salalah show that more than 3,200 vessels use the port, which is directly connected to more than 50 international ports,[131] and the port handled the biggest container vessel owned by MSC Isabella on 8 May 2020.[132] It has also developed an electronic maritime industry and joined Tradelens, this being a blockchain system for the maritime industry with digital platforms designed by Maersk and IBM.[133] Here, the Salalah Free Zone was established with 184,819 hectares of land in order to boost the port and to attract foreign investors to diversify the economy. The Salalah Free Zone is a location with cost-competitive market reach and access in a country that has a business-orientated environment.[134] It also offers smart business systems through online services.[135]

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[129]Port of Salalah, 'Overview' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

[130] Port of Salalah, '2030 Vision' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

[131] Port of Salalah, 'Overview' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

[132] Port of Salalah, 'Our Business' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

[133] Port of Salalah, 'Our Business' (*Salalah Port*) <http://www.salalahport.com> accessed 22 April 2021

[134] Salalah Free Zone, 'Overview' (*SFZCO*) <https://www.sfzco.com> accessed 22 April 2021

[135] Salalah Free Zone, 'Online Services' (*SFZCO*) <https://www.sfzco.com > accessed 22 April 2021

2.5.4 Other Developments in the Maritime Industry

ASYAD is an umbrella system which monitors transportation and logistics in Oman. It has created a new integrated logistics system to enhance transportation and logistics, as it plans to be one of the top 10 logistics hubs globally by 2040. A joint-venture entity comprising 16 companies, ASYAD's aim is to improve its logistical performance and efficiency in order to compete with global trade. ASYAD is also composed of other entities related to the carriage of goods by sea, such as Sohar Port, Sohar Free Zone, Duqm Port, Duqm Free Zone, Salalah Port, Salalah Free Zone, OSC and Khazaen Economic City (KEC).[136]

An integrated economic city, KEC is being developed on over 51.6 million square metres of land in the Barka Sultanate of Oman. Khazaen is strategically located between Sohar Port, Muscat Airport and Muscat City. Khazaen is a dry port and has a newly integrated logistics system which has been created to enhance transportation and logistics. It uses world-class infrastructure and outstanding facilities, these being unprecedented in Oman.[137]

The biggest shipping company under the ASYAD group is OSC, which owns a fleet to transport goods across the world[138] and, today, OSC has a fleet of 50 modern vessels. It also has Oman Container Liner (OCL), which provides wider liner operations to the rest of the world and, in particular, connects Omani ports with countries in the Arabian Gulf.[139]

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[136] ASYAD, 'About ASYAD' (*ASYAD*) <https://asyad.om> accessed 22 April 2021

[137] Khazaen Economic City, 'City of the Future' (*Khazaen*) <http://khazaen.om> accessed 22 April 2021

[138] Oman Shipping Company, 'About OSC' (*Oman Shipping Company*) <https://www.omanship.co.om> accessed 22 April 2021

[139] Oman Shipping Company, 'Container' (*Oman Shipping Company*) <https://www.omanship.co.om> accessed 22 April 2021

A further aspect worthy of mention is the BYAN system, which is a one-stop-shop electronic system established by the Royal Oman Police Director of General Customs for customs clearance purposes. This system enables customs procedures to be carried out before the arrival of a vessel at the port. The aim of the BYAN system is to save time, minimise costs and provide a safe and healthy environment for the carriage of goods by sea.[140]

The fieldwork data show that there was one complication with regard to the BYAN system and its goals: the Royal Oman Police Director of General Customs required a paper transport document or a bill of lading in order to release the goods from the airport. This situation occurred because of the absence of a legal framework with which to regulate an electronic bill of lading or transport document. This issue has created problems and delays in the unloading, discharging and delivering of goods in instances when the paper document was not received before the arrival of the vessel.[141]

Particular points from the fieldwork data should also be pointed out, these being related to the development of the maritime industry in Oman. Some comments revealed that there is considerable regional competition to be the dominant shipping hub in the GCC. Presently, Fujairah and Jebel Ali are the major shipping hubs. However, Oman is heavily investing in shipping infrastructure projects. What we will see over the next 10 years is huge investment in ports and

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[140] Royal Oman Police, 'Bayan System Components' (*Director of General Customs*) <https://www.customs.gov.om> accessed 22 April 2021

[141] Interview with Asila Al Wahaibi, Sohar Shipping & Trading Agency LLC (Oman, Muscat, 21 May 2019)

infrastructure in the region, and Jebel Ali's dominance will then be reduced. This will come about because of several factors, including:

- Strategic location. Oman has a major advantage, as its ports are more strategically located than most countries in the GCC area;
- Access to bunkers;
- Efficiency of ports and container movements;
- Safety and stability;
- The amendment of local laws to make them more user-friendly for ship owners and other changes to the law, such as tax incentives, which would make doing business in Oman more attractive;
- Oman is becoming a signatory to international conventions;
- The ease of lifting bunkers;
- The lowering of port costs.[142]

2.6 Conclusion

Oman has adopted a mixed approach, which attempts to strike a balance between the politics and the economics of the country on the one hand and the need to preserve the people's culture, customs and religious values on the other. This has meant that Omani laws are hybrid in nature, as they are a mixture of both Sharia law and the Civil Code. Sharia is the primary basis and source for legislation in Oman. Other sources include constitutions, the customs of the

[142] Interview with Legal Staff of Oman Shipping Company (Oman, Muscat, 15 May 2019)

Omani people and international rules. The Ministry of Justice and Legal Affairs is the main body in the legal chain in Oman, providing support for other legislative bodies within the Council of Oman, be that the Majlis Al Shura (Consultation Council), the Majlis Al Dawla (State Council) or the executive authority. This arrangement has led to a system with limited separation of power between the executive authority and the legislative authority. It has also distributed the role of the legislation process between the Council of Oman and the Council of Ministers.

The Omani government has facilitated the fast growth of the carriage of goods by sea in Oman, and its continued efforts could lead to the achievement of Oman's 2040 vision to be one of the top 10 logistics hubs in the world, which would help to diversify Oman's economy. The Omani maritime industry also has an excellent location, infrastructure and facilities. In fact, all the main ports are designed to operate within a network system that links the sea to other modes of transport, such as the ASYAD and KEC approaches, the OCL and Oman Express Services. These operations all require multimodal transportation with a sea component.

Furthermore, all the ports have been designed with vast areas of free zones, which is likely to attract foreign investment. This will increase import and export operations and be reflected in the volume of goods. In addition, all the ports have adopted e-commerce and other technologies, which will have a significant impact on the maritime industry, as they will increase the speed of operations, enhance security, minimise costs and attract foreign investment and foreign shipping to Omani ports. Hence, the fast growth in the carriage of goods by sea and foreign investment will boost the economy and increase the gross domestic product of the maritime industry.

It can be concluded, however, that legal reform is necessary, since the lack of a legal framework for electronic documents has created problems in certain operations, thereby causing delays. Based on Oman's 2040 vision, the carriage of goods by sea requires further regulation of the sea component of the multimodal transportation system. Clearly, the Omani Maritime Law has particular gaps, which means that Oman is falling behind on its 2040 vision. These gaps in the law are some of the obstacles that need to be overcome in order to achieve the Omani government's ambitions.

Chapter 3: General Overview of the Definitions and Obligations of Issuing a Bill of Lading

3.1 Introduction

This chapter aims to conduct a comparative analysis of the definitions for the contract of the carriage of goods by sea, the carrier, the carrier's obligation to issue the bill of lading (or transport document), the transport document application and the recognition of electronic documents. Here, the diversity of the rules has shaped the broad range of definitions and the transport document application. Further to this, particular factors have profoundly impacted on the development of the rules; examples of these are technological development and the growth of containerised transportation.[143]

Three sets of international rules, Omani Maritime Law and the proposed new Omani Maritime Law, use two different approaches to shape the definition of the carriage-of-goods contract, namely the pure maritime approach and the maritime plus approach. Other factors have also shaped the diverse number of contract definitions, such as the period of carrier liability and the recognition of the multimodal mode of transport from the point of view of the sea leg.[144]

In terms of issuing the bill of lading (or transport document) and the transport document application, the three sets of international rules, Omani Maritime Law and the new Oman Maritime Law project use three different approaches:

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[143] Jose Angelo Estrella Faria, 'Uniform Law for International Transport at UNCITRAL: New Times, News Players, and New Rules' (2009) 44 Tex Int'l L J 277, 303-304.
[144] UN, (A/CN.9/510) (n 25) 9-12.

documentary, contractual and trade to define the application.[145] While the chapter goes into greater depth to discuss the impacts of the various approaches used to draft the transport document application, there will also be an attempt to analyse how a door to door application, a multimodal mode of transport and the emergence of e-commerce have affected the maritime industry. Furthermore, the chapter will discuss how an electronic carriage of goods by sea transport document can resolve the problem of contemporary practices and boost the economy and GDP revenue from the maritime industry.

Here, it is necessary to give a general overview of the definitions under the contract since the definitions of any contract are based on the essential roles, obligations and liabilities of the parties. It is also essential to discuss the definitions as these show the fundamental aspects of the contract, clarifying their purpose and the meaning of the words. As already indicated, the definition of the contract is linked to several aspects of the thesis' scope, such as the period of carrier liability and the recognition of the multimodal mode of transport with the sea leg.

Moreover, it is also necessary to discuss the definitions of the carrier because it is vital to establish who the potential defendant is in a claim for cargo loss, damage or delay from the point of view of the cargo interests. In cases where the carrier is not clearly defined and the carrier's role is not described, confusion may arise if legal action is initiated in terms of who is starting the action and

[145] United Nation, United Nations Commission on International Trade Law, Report of Working Group III (Transport Law) on the work of its fourteenth session (A/CN.9/572) (Vienna, 29 November–10 December 2004) 22-23; Thomas J. Schoenbaum, 'An Evaluation of the Rotterdam Rules from the US' (2011) 17 J. Int'l Mar. L 1, 6.

against whom.[146] Additionally, the absence of criteria by which to define the carrier is likely to challenge the court in its ability to identify the carrier in the bill of lading.[147]

It is important to discuss the transport document application in this thesis for four main reasons. The first is relevant to the initial obligation of a carrier, namely issuing a bill of lading (or transport document). Articles 3(3) of the Hague–Visby Rules hold that the carrier must issue a bill of lading or transport document upon the shipper's request. This provision of articles 3(3) of the Hague/the Hague–Visby Rules is also reflected in article 14(1) of the Hamburg Rules, article 35 of the Rotterdam Rules, article 261 of Omani Maritime Law and article 181 of the proposed new Omani Maritime Law. Secondly, the debate concerning the transport document application is relevant to the discussion about recognition for the electronic transport document, e-commerce, and the multimodal mode of transport. The third reason to discuss the transport document application is that the discourse about negotiable and non-negotiable facets of the transport document is relevant to the discussion of the delivery obligation, as will be discussed in Chapter Four.[148] The fourth reason is that the discussion of clean and non-clean transport documents are relevant to the debate concerning the burden of proof and the order of proof subject, as will be discussed in Chapter Five.[149]

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[146] William Tetley, *Marine Cargo Claims* (4 edn, Thomson Carswell 2008), 445; John F Wilson, *Carriage of Goods by Sea* (7th Pearson Education 2010), 244-246; Paul Todd, *Principles of the Carriage of Goods by Sea* (Routledge, 2016) 294-295.
[147] Stefano Zunarelli, 'The Carrier and the Maritime Performing Party in the Rotterdam Rules' (2009) 14 Unif L Rev 1011, 1012.
[148] See Section 4.4.5.
[149] See Section 5.2.

It is worth mentioning that the carrier's obligation to issue the bill of lading (or transport document) is discussed in this chapter instead of Chapter Four with regard to the obligation of the carrier. This is because the obligation of issuing the bill of lading (or transport document) is linked to many subjects, as mentioned above. In particular, the issue of electronic transport and e-commerce will be discussed in this chapter.

This comparative analysis will focus on how the three sets of international rules, Omani Maritime Law and the proposed new Omani Maritime Law, differ from one another and whether the Rotterdam Rules are a big step forward in successfully regulating the carriage of goods by sea practice today. The latest version regulating the carriage of goods by sea contract was adopted in 2008 as the best practice of law. It can also serve to guide the review of the Omani Maritime Law, the proposed new Omani Maritime Law, and to better regulate the contemporary carriage of goods by sea practice in Oman. Hence, two central aspects will be discussed in this chapter, as follows;

- a general overview of the definitions will be put forward

- the Obligation of Issuing a Bill of Lading will be examined.

3.2 General Overview of the Definitions

In general, there are three separate definitions of the concept of the contract of carriage of goods by sea in the three international maritime laws. Considered as the most extensive and comprehensive of all the definitions, the Rotterdam Rules have introduced an additional concept (door to door and the multimodal

concept).[150] Hence, this section will define each concept and will use critical comparative analysis to explain how the period of carrier liability and the multimodal approach has a significant effect in each definition.

3.2.1 The Definitions of the Contract under the Hague/Hague–Visby Rules

The Hague/ the Hague- Visby Rules do not define the contract in detail and do not define the basic terms in the carriage of goods by sea contract, as will now be demonstrated.

Article 1 divides the definition of the two scopes into two different sections (the contract of carriage and the carriage of goods). Article 1(b) defines the transport document cover according to the contract of carriage. It is worth noting that Article 1(b) used a documentary approach to define the transport document and to describe the main objective of the convention, this being to govern the bill of lading and similar documents. However, the wording of Article 1(b) is unclear, especially the words 'similar document', which has led to a rise in many cases about which documents are within the scope of article 1(b).[151] For example, in the UK a court discussed the application of the straight bill of lading in the case of *J I MacWilliam Co Inc v Mediterranean Shipping Co SA('The Rafaela S')*. Lord Langley J decided in the first sentence that the straight bill of lading is outside the scope of article 1(b) and upheld the arbitration award.[152] However, the House of Lords concluded that the straight bill of lading falls within the scope of article 1(b) of the Hague/the Hague-Visby Rules[153] and affirmed the appeal court's

[150] UN,(A/CN.9/510) (n 25) 9-12.
[151] Tetley) (n 146)16-18; Wilson (n 146)174–177.
[152] *J I MacWilliam Co Inc v Mediterranean Shipping Co SA('The Rafaela S')* [2002] EWHC 593 (Comm).
[153] *J I MacWilliam Co Inc v Mediterranean Shipping Co SA('The Rafaela S')* [2005] UKHL 11.

decision.[154] Nevertheless, despite the decision of the House of Lords in the UK, Anthony Diamond considers the issue of the straight bill of lading to still be controversial.[155] Another case in *Harland & Wolff v Burns & Laird Lines* renders the letter acknowledging receipt of goods as not being within the meaning of article 1(b) in a similar document.[156] Moreover, there is a specific discussion about article 1(b) where Tomlinson, J. did apply the Hague/the Hague- Visby Rules in the case of *Parsons Corp v CV Scheepvaartonderneming 'The Happy Ranger'* because the contract was not covered within article 1(b). [157] Notwithstanding this, the appellate court applied the Hague/the Hague-Visby Rules and considered the straight bill of lading to be within the meaning of the bill of lading and similar documents.[158] Further, the *Travaux Préparatoires* of this convention has raised several questions during the draft of article 1(b) concerning the uncertainty of the term 'similar document'.[159] This will be discussed in greater detail in section 3.3 of this chapter.

In terms of the period of carrier liability, the wording of Article 1(e) of the Hague/Hague–Visby Rules used a purely maritime approach. It defines the period of a carrier as 'tackle to tackle', envisaging the period of a carrier liability covering the goods from when they are hooked into the vessel at the port of loading until they are unloaded from the vessel.[160] The case of *Captain v Far*

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[154] *J I MacWilliam Co Inc v Mediterranean Shipping Co SA('The Rafaela S')* [2003] EWCA Civ 556.
[155] Anthony Diamond, 'The next sea carriage Convention?' (2008) 2 Lloyds Maritime and Commercial Law Quarterly135, 163.
[156] *Harland & Wolff v Burns & Laird Lines* 1931 S.C. 722.
[157] *Parsons Corp v CV Scheepvaartonderneming 'The Happy Ranger'* [2001] 2 Lloyd's Rep 530.
[158] *Parsons Corp v CV Scheepvaartonderneming 'The Happy Ranger'* [2002] EWCA Civ 694.
[159] CMI (n 6) 114.
[160] John O'Honnold, 'Ocean Carriers and Cargo: Clarity and Fairness – Hague or Hamburg' (1993) 24 Journal of Maritime Law and Commerce 75, 81; Wilson (n 146) 181; Stephen Girvin, *Carriage of Goods by Sea* (Oxford University Press, 2007), 215–217.

Eastern Steamship Co applies the Hague/Hague–Visby Rules to cover the liability from 'tackle to tackle' and to exclude liability when the goods are in the dock at Singapore for loading into a second vessel.[161] However, *The Happy Ranger,*[162] and the *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd.*[163] held that the carrier is responsible for cargo damage or loss during the loading operation[164]. The UK court goes further and applies this convention to the door to door application in the case of *Mayhew Foods Limited v Overseas Containers Ltd.*[165] This provides the principle of the carrier being responsible beyond the stages of tackle to tackle to door to door. The issue of the period of carrier liability will be discussed in greater detail in Chapter Five.[166]

To sum up, the definitions of article 1(b) and (e) under the Hague/Hague–Visby Rules exclude multimodal transport modes and also make clear that electronic documents are not in line with current maritime practice.

3.2.2 The Definitions of the Contract under the Hamburg Rules

The UNITCD working group, which drafted the Hamburg Rules, decided to consider and revise the ambiguities in the Hague/Hague–Visby Rules as well as to look at the lack of clarity in the articles.[167] The central debate here relates to the period of carrier liability under the Hamburg Rules. The Hamburg discussion

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[161] *Captain v Far Eastern Steamship Co* [1979] 1 Lloyd's Rep. 595.
[162] *The Happy Ranger* (n158).
[163] *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd* [1954] 2 QB 402, 403-404.
[164] *The Happy Ranger* (n158).
[165] *Mayhew Foods Limited v Overseas Containers Ltd* [1984] 1 Lloyd's Rep. 317, 320.
[166] See Section 5.3.1.
[167] United Nation, United Nations Commission on International Trade Law, ' Working Group on International Legislation on Shipping: Report on the Work of the First Session, (A/CN.9/55) (22–26 March 1971), 135.

sought to avoid the problem in the Hague/Hague–Visby Rules relating to the stages before and after the tackle to tackle period.[168]

Some delegates suggested a contract definition covering all the modes with the sea leg. They argued that the application from the tackle to tackle phase would exclude the period of carrier liability during transit at an inland location or termination at a location inland. They also suggested that the port to port period concept would not solve specific problems, particularly where the carrier often receives the goods inland. Hence, they proposed the concept of the period of a carrier liability from the time the goods are received inland and transported by other modes, (including the sea leg) until the time the carrier delivers the goods.[169] However, other participants disagreed with the period of carrier liability. They contended that the period of carrier liability should be from port to port since the operation before the port of loading or after the port of discharge comes under national law.

The delegates further argued that extending the period of a carrier liability would have a negative impact on carriage cost because the extension would lead the carrier to insure the carriage. Therefore, the length of the period would raise the insurance cost, thereby increasing the freight cost. Additionally, the extension would lead to an uncertain period of liability for the carrier, which could have many implications leading to more litigation and legal costs. Moreover, the ambiguity of the uncertain period of liability of the carrier would require the shipper to insure the goods, which would mean double insurance. Hence, they indicated how these

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[168] Leopold Peyerfitte, 'The Period of Maritime Transport' in Samir Mankabady (ed), *The Hamburg Rules on the Carriage of Goods by Sea* (A.W. Sijthoff-Leyden 1978), 125-126; Wilson (n 146) 216.
[169] UN, (A/CONF.89/14) (n 47) 41–44.

issues concerning the expensive cost of transport and litigation would have a negative impact on the trade cost and commercial value.[170] After intensive debate and having studied the outcome of the carriage-of-goods practice, article 1(6) of the Hamburg Rules defined the carriage of goods as a sea contract.

Based on the contract definition, the Hamburg Rules cover the period of carrier liability from port to port, including the terminal operation, and hence is wider than the Hague/Hague–Visby Rules. This means that the problem of the uncertainty of the application of rules took time in the cases of *Captain,* [171] *The Happy Ranger*[172] and the *Pyrene*[173] it therefore no longer exists in the Hamburg Rules. However, these rules mainly apply to the sea mode and therefore exclude the application of other modes of transport.

Additionally, the definition of the contract makes it possible to make a more accurate comparison with the Hague/the Hague- Visby Rules because the Hamburg Rules mention the 'carrier' in the contract. However, it does not mention other parties. Here, the word ‘undertakes’ is used in the contract definition instead of ‘arrange’ because with this word, the main objective of the carriage contract and the principal obligation of the carrier is envisaged, namely carrying and delivering the goods from the port of loading to the port of discharge.[174]

3.2.3 The Definitions of the Contract under Rotterdam Rules

The definitions of the carriage of goods by sea contract under the Hague/Hague–Visby Rules have created several problems. Here, the standard period of carrier

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[170] Ibid.
[171] *Captain* (n 161).
[172] *The Happy Ranger* (n158).
[173] *Pyrene* (n163).
[174] UN, (A/CONF.89/14) (n 169) 41–44.

liability in the Hague/Hague–Visby Rules has created difficulties, with carrier liability being applied in the period before loading to the ship and after unloading from the ship; this problem arose in the cases of the *Captain*[175], *The Happy Ranger*[176] and the *Pyrene*[177].

In addition to the problem regarding the scope of liability under the Hamburg Rules, there is also the complication of the liability being applied in the period before the port of loading and after unloading port, as occurred in the case of *Mayhew,*[178]. This has been problematic because the standard of a carrier liability with these two conventions does not satisfy the requirements of containerisation services and the current maritime practice. The current practice contract applies to the period from the time of receiving the goods out of the port of loading at the door of the shipper to the time of the delivery of the goods out of the port of discharge at the door of the consignor.[179]

Hence, it took time in the discussions to define the carriage of goods by sea contract and the scope of application under the Rotterdam Rules. Typically, the most central issue was the new concept of the door to door contract period of carrier liability and multimodal transportation. The argument here was that the maritime plus approach or the pure maritime one should be used, as with the

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[175] *Captain* (n 161).
[176] *The Happy Ranger* (n158).
[177] *Pyrene* (n 163).
[178] *Mayhew* (n 165).
[179] Michael F Sturley, 'Transport Law for the Twenty-First Century: An Introduction to the Preparation, Philosophy, and Potential Impact of the Rotterdam Rules' in D Rhidian Thomas, (eds), *New convention for the carriage of goods by sea-the Rotterdam rules: an analysis of the UN Convention on contracts for the international carriage of goods wholly or partly by sea* (Lawtext Publishing 2009), 10; Michael F Sturley, 'General Principles of Transport Law and the Rotterdam Rules' (2010) 2 EJCCL 98, 104-105; Hakan Karan, 'Any Need for a New International Instrument on the Carriage of Goods by Sea: The Rotterdam Rules' (2011) 42 J Mar L & Com 441, 443.

Hague–Visby Rules and the Hamburg Rules.[180] The working group of the Rotterdam Rules was decided consensually and employed the maritime plus approach, redrafting the definition of the carriage of goods by sea contract and the scope of application.[181]

Here, there are four proposals concerning the concept of the period of carrier liability. Some delegates suggested using the multimodal approach without limitation to cover all the transport contracts without any sea-leg limitation. However, other delegates put forward the idea of a period of carrier liability restricted to the port to port option since a door to door application is similar to the scope of the United Nations Convention on International Multimodal Transport of Goods (Geneva 1980). The delegates argued that the idea of rules for different modes would be unsuccessful, as with the Geneva 1980 convention.[182] Some of the delegates also suggested dividing the period of carrier liability into two parts — from port to port under international convention and carriage by other modes before port or after port under the national law.

The fourth proposal, which was approved and suggested by the delegates, was the door to door concept.[183] The definition of the carriage of goods contract and the concept of the door to door application were highly controversial. Hence, after intensive debate and having studied the outcome of the carriage-of-goods practice, Article 1(1) of the Rotterdam Rules was chosen as the carriage of goods by sea option.

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[180] UN, (A/CN.9/510) (n 25) 9-12.
[181] United Nation, United Nations Commission on International Trade Law, Report of Working Group III (Transport Law) on the work of its twelfth session (A/CN.9/544) (Vienna, 6-17 October 2003), 6.
[182] UN, (A/CN.9/510) (n 25) 9-12.
[183] UN, (A/CN.9/544) (n 181) 6-7.

Here, in the Rotterdam Rules, a significant step forward in the definition can be seen. The ambit of the Rotterdam Rules is the extension of the period of carrier liability from one place to another in addition to the carriage of goods by sea. Due to the nature of its definition, Charles Debattista used many different names for this convention, such as the maritime multimodal, the wet multimodal and the maritime plus multimodal conventions.[184]

It is worth noting that the definition in the Rotterdam Rules seems to be more comprehensive and uses the multimodal transport concept. This is consistent with container services and current practice because the definition extends the period of carrier liability between the points where the goods are received to the points where the goods are delivered. Hence, the use of the term ‘places’ instead of ‘ports’, implies that the contract will involve other types of transport that must be linked to the sea for this convention to apply. This point is an essential departure compared to the period of a carrier liability under the Hague/Hague–Visby Rules and the Hamburg Rules.

3.2.4 The Definitions of the Contract under Omani Maritime Law

Article 237 of Omani Maritime Law defines the contract of carriage by sea. The definition views a 'carrier' as being an agent, shipowner or charterer and does not consider other parties such as the shipper or other third party. This is to emphasise that the carrier is the leading party in the contract. Here, according to the wording, the carrier ‘undertakes to carry the goods' and it is envisaged that

[184] Charles Debattista, ‘General Provision’ in Yvonne Baatz, Charles Debattista, Filippo Lorenzon, Andrew Serdy, Hilton Staniland and Michael Tsimplis, *The Rotterdam Rules: A Practical Annotation* (CRC Press, 2013), 16.

the core aim of the contract and the core obligation of the carrier is the carrying and delivering of the goods from the port of loading to the port of discharge.

The wording ‘port to another' shows that the standard period of carrier liability is envisaged as pure maritime transport, namely from port to port. This means that Omani Maritime Law excludes transport by other modes, such as road, air or rail.

It is worth noting that the provision of article 237 of Omani Maritime Law is similar to article 1(6) of the Hamburg Rules. This shows that the Omani Maritime Law adopted the provision of Article 1(6) of the Hamburg Rules because Omani Maritime Law was issued on 15 April 1981, while the Hamburg Rules were approved in 1978. Additionally, in the definition of Omani Maritime Law as with the Hague/ the Hague-Visby Rules and the Hamburg Rules, the standard form of transport is sea mode which excludes from its application any other modes of transport.

3.2.5 The Definitions of the Contract under the proposed new Omani Maritime Law

Article 1 of the proposed new Omani Maritime Law defines the contract of carriage as being by sea. It is worth noting that the definition of the contract under the proposed new Omani Maritime Law is similar to article 1(6) of the Hamburg Rules. This indicates that the proposed new Omani Maritime Law adopted the provision of Article 1(6) of the Hamburg Rule. Therefore, all the criticism of the definitions under the Hamburg Rules would also be applied to the new Omani Maritime Law.

Following the discussion of the similarities and differences between Omani Maritime Law and the proposed new Omani Maritime Law's definition as well as between the three sets of international rules, it can be seen that the Omani Laws constitute a hybrid system which has largely been influenced by the Hamburg Rules. Here, the definitions of the contract refer to three significant aspects within the scope of this thesis. The first indicates the main party in the contract, namely the carrier, and this will be discussed in the following section. Secondly, the primary obligation of the carrier is transport and the delivery of the goods, this being discussed in Chapter Four. The third aspect is the period of carrier liability as well as the multimodal transport modes, as discussed in Chapter Five.[185]

As regards definitions in general, it is evident that the Omani Maritime Law and the proposed new Omani Maritime Law require some improvement in terms of the nature of the contract to be more comprehensive and consistent with the contemporary regime of the carriage of goods by sea practices. Hence, Omani legislators should take article one of the Rotterdam Rules into consideration when revising the legislation, this being an significant step forward in revising and reforming Omani Laws.

3.2.6 Definition of a Carrier

There are different definitions for the role of a carrier and the central purpose of this section is therefore to study and analyse the legal standing of the carrier. This is consequently a comparative analysis of the legal standing of a person analogous to the carrier in the international conventions relating to the carriage of goods by sea, Omani maritime law, and the proposed new Omani Maritime

[185] See Section 5.3.

Law. It is important to clarify the definition of a carrier so that the cargo interest knows who the potential defendant is in a claim for cargo loss, damage or delay. Where the carrier is not clearly defined and the role is not described, confusion may arise if legal action is started in terms of who is initiating the action and against whom.[186]

In addition, the bill of lading (or transport document) can be issued by a carrier or other people who are acting on behalf of the carrier. It is therefore critical to know the identification of the carrier in order to distinguish between the latter or other persons who signed the transport document and to define their respective obligations and liabilities. Hence, it also follows that it is necessary to know whether the person who is acting on behalf of the carrier is authorised or not, as in the case of the *Nea Tyhi.* Here, the defendant claimed that the charterer's agent was unauthorised to issue a bill of lading which was expressed in a clause as being shipped under the deck.[187]

Moreover, some of the carrier's obligations (discussed in Chapter Four) enable the carrier to delegate the obligation of proper loading, unloading, stowing, handling, keeping and caring for the goods carried, as well as delivering the goods to others persons.[188] Additionally, modern practice is such that the carrier assigns these obligations to be performed by the terminal operator or others, such as cargo or marine agents, stevedoring services companies, customs clearance companies, etc.[189] This is why it is necessary to identify the carrier and to make

[186] Tetley, (n146) 445; Wilson (n 146) 244-246; Todd (n 146) 294-295.
[187] The *Nea Tyhi* [1982] 1 Lloyd's Rep 606.
[188] See Section 4.3.4, and Section 4.4.5.
[189] Nikola Mandić and Vesna Skorupan Wolf, 'Maritime Performing Party under the Rotterdam Rules 2009' (2015) 04 Transactions on Maritime Science 132, 134.

a distinction between the carrier or other persons who are acting on behalf of the carrier in order to define the liability of the parties involved in the contract. Furthermore, the cargo interest must know whom to sue in tort and who the contractual remedy is against in the contract.[190] For example, in the case of *The Owners of the Cargo Lately Laden on Board the Rewia v Caribbean Liners (Caribtainer) Limited*, the contract involved several parties, and therefore, the claimant sued all the parties, such as the shipowner, the charterers, the sub-charterers, and the container line company. Here, the container line issued the bill of lading without identifying the carrier. The court therefore held the shipowner responsible as in the owner's bill, it was not the charterer's bill of lading that would make the charterer alone responsible, and the person signing should have an authorisation form for the charterer.[191]

The development of the carriage of goods by sea (door to door application and multimodal transportation) have led to significant improvements in the carrier concept, and therefore an analysis of the definition of the carrier in these sets of rules has disclosed specific differences in the definitions based on the scope of obligation and the liabilities of the carrier in each convention. The Hague/the Hague–Visby Rules have a gap that makes it possible to provide the criteria to define the carrier in the bill of lading. This is for when a court faces a problem identifying the carrier in the bill of lading, and the court has several possibilities to resolve this problem.[192]

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[190] Tetley (n 146) 445; Wilson (n 146) 244-246; Todd (n 146) 294-295.
[191] *The Owners of the Cargo Lately Laden on Board the Rewia v Caribbean Liners (Caribtainer) Limited and Others*, [1991] 2 Lloyd's Rep 325.
[192] Zunarelli (n 147)1012.

A carrier is defined under article 1(a) of the Hague/the Hague–Visby Rules. Here, the concept of the carrier under the Hague/ the Hague–Visby Rules implies it is limited to the person who may be a carrier, such as a shipowner or a charterer. This leads to difficulties identifying a carrier because it is not necessary to be a carrier to be a shipowner or charterer, and it may even refer to a sub-charterer, subcontractor or agent.[193] It seems that this is because the Hague/ the Hague–Visby Rules were first drafted in 1924, almost 100 years ago, when most carriage-of-goods contracts were carried out specifically by shipowners or charterers, and they performed all the obligations..

This is different to current modern practice where the contract can also be made through marine agents, sub-charterers/ subcontractors or cargo agents. Hence, the Hague/the Hague–Visby Rules' definition is not compatible with modern carriage of goods by sea transactions. Further to this, these rules have a gap between solving the problem in the case of a bill of lading issued without identifying the carrier.

In *Homburg Houtimport B.V v. Agrosin Private LTD (The Starin)* this issue was addressed by Lord Justice Colman, and his judgment was upheld up by the House of Lords. The bill of lading was issued by the agent for CPS (the carrier) when the vessel was under a time charter to CPS with the shipowner. Here, the cargo owner claimed against both the vessel owner and charterer (CPS) for the damage.[194] The first court sentence required the charterer (CPS) to pay damages because this was the contractual carrier.[195] However, the appeal court ruled that

[193] Force (n 18) 2056.
[194] *Homburg Houtimport B.V v. Agrosin Private LTD (The Starin)* [2004] 1 AC 715; [2003] UKHL 12.
[195] *Homburg Houtimport B.V v. Agrosin Private LTD (The Starin)* [2000] 1 Lloyd's Rep 85.

the shipowner was the contractual carrier.[196] Here, the House of Lords supported the first court decision, demanding that the charterer (CPS) should pay the damages since the typed words in the case determined that 'since the bills of lading contained a clear and unambiguous statement on their face that the cargo owners' contracts were made with CPS as the sole carrier, they were charterer's bills notwithstanding contrary indications in clauses 33 and 35'.[197]

The first judgement of *The Starin* provided guidance with which to identify the carrier, as follows: 'If the shipper were to ask the question what is the identity of the carrier, in this case, that is to say, the person undertaking the obligation of carriage, the answer would surely be: the shipowner, unless the bill of lading stated that some other person was to be treated as the carrier'.[198] The same problem arose in the case of the *Berkshire* where Justice Bradon reached a different conclusion because the charterers had signed on behalf of the shipowner and not as the carrier, so the court held that the cargo interest was entitled to sue the shipowner.[199]

Article 1(1) of the Hamburg Rules have a definition that is more comprehensive and wider than the definition of the Hague/the Hague-Visby Rules. The former define a carrier as ‘any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper’. The wording ‘any person’ widens the concept of the carrier to include marine agents, freight owners, shipowners, intermediate charterers, sub-charterers, cargo agents, etc., so

[196] *Homburg Houtimport B.V v. Agrosin Private LTD (The Starin)* [2001] 1 Lloyd’s Rep 437.
[197] *The Starin* (n194).
[198] *The Starin* (n195) 95.
[199] *The Berkshire* [1974] 1 Lloyd’s 185.

providing a comprehensive scope regardless of the personal relationship to the ship.[200]

In modern practice, the majority of shipping companies act through their marine agents, subcontractors or cargo agents, so the Hamburg Rules' definition is more compatible with modern carriage-of-goods-by-sea transactions. In addition, this convention has another definition under Article 1(2), namely that of an 'actual carrier'.

Clearly, there is a distinction between the two definitions. The carrier in the first definition refers to the first person who negotiated the contract with the shipper and made the contract, this being the contracting carrier. In contrast, the actual carrier (non-contracting carrier) acts on behalf of the contracting carrier who transports the goods, these being people such as marine agents, freight owners, shipowners, intermediate charterers, sub-charterers and cargo agents. It can therefore be seen that the Hague/the Hague–Visby Rules recognise only the contractual carrier.[201]

This distinction between the carrier and actual carrier in this convention is compatible with developments in modern commercial and maritime transactions, which identify the contractor who did not carry out all the obligations of the carriage-of-goods contract and the actual carrier who carried out the performance of the contract. This means one or more persons could have the title of the actual carrier since nowadays it is often the case that carrier corporations and

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[200] Force (n 18) 2056.

[201] Samuel Robert Mandelbaum, 'Creating Uniform Worldwide Liability Standards for Sea Carriage of Goods under the Hague, COGSA, Visby and Hamburg Conventions' (1996) 23 Transp LJ 471, 486.

subcontractors work through agents to perform a particular aspect or some of the transportation with other contractors.

The duties of the actual carrier partially reflect the duties of the performing party under the provision of Article 1(6) in the Rotterdam Rules. The new concept of the 'performing party' in these Rules has been widely discussed because the provision of the actual carrier is confusing. It implies that the contractual carrier making the contract with the shipper is not the actual carrier. This is why the Rotterdam Rules employ the performing party provision — i.e. in order to be more accurate.[202]

Article 1(5) of the Rotterdam Rules defines the 'carrier' as 'a person that enters into a contract of the carriage with a shipper', this being the person who negotiated and made the contract. Hence, all the current international conventions relating to the carriage of goods by sea have only identified the carrier who makes the contract with the shipper and who undertakes to execute the transportation as per the contract without necessarily undertaking to execute the transportation personally.[203] Here, the terms of the actual carrier or performing party specifically describe the persons who are acting or subcontracting on behalf of the carrier. However, the Rotterdam Rules go further because they have a broader scope of application and take cognisance of other modes of transport.

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[202] ; Frank Smeele, 'The Maritime Performing Party in the Rotterdam Rules 2009' (2010) 2 EJCCL 72; Mandić and Skorupan Wolf (n 189) 134.

[203] Mandić and Skorupan Wolf (n 189) 134; UNCITRAL, 'Consolidated Official Reports on the Preparation of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the 'Rotterdam Rules'), (New York, 2008), 13.

It is clear that the Rotterdam Rules stipulate that the performing party must meet three elements, namely to:

- perform or undertake to perform the carrier's obligations;
- act directly or indirectly on behalf of the carrier and under the carrier's supervision as per the carrier's request or control;
- not act directly or indirectly on behalf of the shipper.[204]

As discussed above, the definition of the Rotterdam Rules provides the multimodal aspect of transportation with the sea leg. They also have more accurate definitions for the performing party, these being divided between the maritime performing party and the non-maritime performing party. Here, the door to door concept in the contract's definition has two stages, these being the maritime stage, with services from port to port, and the non-maritime stage, which involves other types of transportation.[205]

It can be seen that the term 'performing party' is more accurate than that of 'actual carrier'. However, both terms are intended to define the person who undertakes obligations and liabilities on behalf of the carrier. In addition, these differences in definitions are highly significant for the shipper because they make it easier to find the person responsible and meet the needs of the contemporary carriage of goods by sea transactions and container operations. In this respect, the Hague–Visby Rules have gaps because they only recognise the contractual carrier, which

[204] UNCITRAL, 'Consolidated Official Reports' (n 203) 14–28.
[205] Ibid 151–157.

logically creates difficulties for shippers in determining the responsible party accurately, as discussed in the cases of *The Starin, and Berkshire* above.

The main reason for the lack of unification in the definitions of the carrier relates to the different times at which each convention was drafted because the definitions reflect the practice of the carriage of goods by the sea at that time. Another reason is the differences in the period of liabilities of these conventions. Since the Rotterdam convention regulates multimodal transport from door to door, its definition covers the liability at each stage.

Clearly, it is essential to define what a carrier is in order to determine the person responsible for loss or damage at every stage of the carriage of goods by sea contract. Omani maritime law does not define the carrier. However, the definition of 'the contract' in Article 237 implies that the carrier who negotiated the contract with the shipper is the owner or the charterer. This interpretation reflects the definition of the carrier under the provision of Article 1(a) in the Hague–Visby Rules. In addition, Omani maritime law refers indirectly to the actual carrier under article 261.

Hence, the lack of a definition in Omani maritime law has created many difficulties. For example, this gap has resulted in the carrier using an exemption to escape from his/her liabilities. Furthermore, Ministerial Decision No: 2/4/87 states that a foreign carrier should not be allowed to carry out shipment transactions in Oman unless it has a marine agent registered in the register of the Ministry of Commerce and Industry and the Chamber of Commerce and Industry. However, Omani maritime law and the Ministerial Decision do not specify the scope of the application and responsibilities of the marine agent.

This ambiguity and gap in Omani maritime law as well as the lack of definition of the 'carrier' have caused some judges in Oman to consider the responsibilities of the marine agent to be those of the one who made the contract with the shipper. However, in practice, the marine agent receives the goods from the master at the discharge port, unloads the goods from the vessel and delivers the goods from the port of discharge in Oman to the consignee. This ambiguity has raised many difficulties in Omani courts. In the Omani court case the *Iron Butterfly*, the shipper is Bharat Bhagli from Mumbai in India. The shipper shipped 51 packages of an electrical transformer to be transported by the Henderson Line (the carrier) from India to Sultan Qaboos Port in the Sultanate of Oman and to be delivered to the Occidental Company (consignee) in Oman.[206] *The Primary Court:* The Primary Court in Muscat decided that the damage was the carrier's fault and ordered the carrier and the marine agent to jointly pay the amount of 115,334 Omani rials to the shipper. *The Court of Appeal:* The Court of Appeal upheld the judgement of the Primary Court and dismissed the appeal. *The Supreme Court:* The Supreme Court dismissed the Appeal Court's decision against the carrier because of lack of evidence for damage. Moreover, the Supreme Court dismissed the case against the marine agent as regards liability and the order to pay damages jointly with the carrier, declaring that the limited liability of the marine agent arose from when they received the goods from the master to the time of delivering them to the consignee.

In the Omani court case of *Moon Golden Wattle* 36 pieces of gold-plated glass were shipped to the Delta Company Limited from the port of Istanbul in Turkey to

[206] Muscat Primary Court, Commercial Case 150/2009, 16/01/2010 (Iron Butterfly); Muscat Appeal Court, Commercial Case, 167/2010, 05/04/2010 (Iron Butterfly); Supreme Court, Commercial Case 250/2010, 12/02/2011, (Iron Butterfly).

the port of Sultan Qaboos in Oman. *The Primary Court:* The Primary Court in Muscat decided that the damage was the carrier's fault and ordered the carrier and the marine agent to jointly pay the amount of 11,424 Omani rials to the Delta Company Limited (the consignee). *The Court of Appeal:* The Court of Appeal upheld the judgement of the Primary Court and dismissed the appeal. *The Supreme Court:* However, the Supreme Court then overruled the decisions of the Primary and Appeal courts and exempted the marine agent from joint liability for the damage. The court ordered the carrier to only pay the amount of 11,424 Omani rials to Delta Company Limited (consignee). Additionally, the Supreme Court stated that the limited liability of the marine agent arose from receiving the goods from the master to the time of delivering them to the consignee.[207]

Article 1 of the new Omani Maritime Law defines the carrier as the charterer. This means the application of this law will create further problems due to the ambiguity of the definition. Here the proposed new Omani Maritime Law indirectly recognises the actual carrier in article 219. Here it defines the people who are now acting on behalf of the carrier, such as the marine agent and the load agent, in addition to the loading and unloading agent. In short, both Omani Laws lack an adequate definition to avoid problems in applying the law.

Therefore, the lack of clarification and definition of Omani maritime law with regard to who the carrier is and who the other people are who may be acting on behalf of the carrier (either directly or indirectly) to perform all or some parts of the carriage-of-goods-by-sea contract confused judges in the Omani courts in

[207] Muscat Primary Court, Commercial Case 105/2010, 16/05/2010 (Moon Golden Wattle) ; Muscat Appeal Court, Commercial Case 276/2010, 01/11/2010 (Moon Golden Wattle) ; Supreme Court, Commercial Case 508/2010, 13/07/2011(Moon Golden Wattle).

terms of the marine agent's responsibilities. As in the previous case, the Primary and Appeal courts ordered the agent to pay the cost of the damage incurred jointly with the carrier as this was the mistake of the carrier and occurred before receiving the goods.

Additionally, the lack of definition confused the shipper and the consignee; in both cases, the shipper and the consignee claimed that the marine agent should pay for the damage. The Rotterdam Rules address this problem in detail by identifying the parties who may act on behalf of the carrier as well as the limits of their responsibilities. The term 'performing party' has therefore resolved this problem and identified the scope of application and liabilities. Hence, the maritime party has scope exclusively with the port, while the non-maritime party has the scope of application and responsibility before the port or after the discharge port.

3.3 The Obligation of Issuing a Bill of Lading

The obligation of issuing a bill of lading (or transport document) is usually the first obligation that should be carried out by the carrier. All the rules under the scope of this thesis hold that the carrier must issue a bill of lading. This obligation is regulated under articles 3(3) as well as 3(7) of the Hague/the Hague–Visby Rules, article 14(1) and 15(2) of the Hamburg Rules, article 35 of the Rotterdam Rules, Article 239 (1), 244 of Omani Maritime Law and article 181of the proposed new Omani Maritime Law.

There is a consensus between all three sets of international law and both Omani laws, as the obligation of issuing a bill of lading (or transport document) is not necessary and should be performed by the carrier himself; it can be authorised and delegated to others who are acting on behalf of the carrier, such as the agent,

the charterer, the sub-charterer, the subcontractor, the container liner, etc. This element is regulated under articles 3(3) and 3(7) of the Hague/the Hague–Visby Rules, article 14(2) of the Hamburg Rules, article 38 of the Rotterdam Rules, Article 239 (1) of Omani Maritime Law and article 181 as well as 183 of the proposed new Omani Maritime Law.

In *Boukadur Maritime Corpoation v. Societe Anonyme Marocaine Delindustrie Et Du Raffinage (the Boukadoura)* the owner authorised the master to issue and sign the bill of lading. However, the master refused to sign unless this was endorsed with the ship's figures.[208] In *Venezuela*, the agent issued the bill of lading on behalf of the charterer because the vessel was under the charter party contract, and the charterer authorised his agent to issue and sign the bill of lading.[209] Moreover, in *W. and R. Fletcher (New Zealand) LTD v. Sigurd Haavik Aksjeselskap (the Vikfrost),* Mocatta J held that the sub-charterer and his agent had implied that they had the authority to issue and sign the bill of lading.[210] In the Omani court case of the *Iron Butterfly*, the bill of lading was issued by the owner of the Iron Butterfly ship and the court further clarified that the carrier was not necessarily the owner of the ship and could be a charterer, as stipulated in Article 237.[211]

There is also a second consensus between all three sets of international rules and both Omani laws whereby the nature of the obligation of issuing a bill of lading (or transport document) is a non-absolute obligation (optional upon the

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[208] *Boukadur Maritime Corpoation v. Societe Anonyme Marocaine Delindustrie Et Du Raffinage (the Boukadoura* [1989] 1Lloyd's Rep. 393.
[209] The *Venezuela* [1980] 1Lloyd's Rep. 393.
[210] *W. and R. Fletcher (New Zealand) LTD v. Sigurd Haavik Aksjeselskap (the Vikfrost)* [1980] 1Lloyd's Rep. 560.
[211] Iron Butterfly (n 206).

demand of the shipper) since the parties can apply the rules without issuing the bill of lading (or transport document).[212] This issue is regulated indirectly under Articles 3(7) of the Hague/ the Hague–Visby Rules which hold that the carrier should apply these Rules if the carrier issuing such a document received the goods and has the particulars of the articles 3(3).

In the case of the *Pyrene*, the court applied the Hague/the Hague–Visby Rules even for the goods damaged during loading operation before issuing the shipped bill of lading.[213] In the *Happy Ranger*, Lord Tuckey quoted the *Pyrene* case and applied the Hague/ the Hague-Visby Rules, even for damage that occurred earlier on the dockside and when the bill of lading had not yet been issued.[214]

However, in the case of *Harland and Wolff LTD v. Burns and Laird Lines LTD,* the carrier issued a mate's receipt. However, the parties did not express their intention to apply the Hague/ the Hague/ the Hague-Visby Rules. Hence the court did not apply the rules.[215] In the case of the *Pyrene* the parties expressed their intention in the shipped bill of lading, even for the goods damaged when the Mate's Receipt had been issued. The *Travaux- preparatoires* of the Hague/the Hague-Visby Rules emphasise the Mate's Receipt if used as the bill of lading.[216]

The Hamburg Rules refer indirectly to the issue of applying the rules without issuing the bill of lading under article 15(2) of the Hamburg Rules, as with the Hague/the Hague-Visby approach. However, the Rotterdam Rules are stuck with

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[212] Richard Aikens, Richard Lord, and Michael D Bools, *Bill of lading*, (Informa, 2006) 24; Wilson (n 142) 330-331; Girvin (n 160) 327-331; and Guenter Heinz, Francis Martin Baillie Reynolds, and Gilbert Carver Thomas, *Carver on bills of lading*, (4th edn, Sweet & Maxwell,2017) 636.
[213] *Pyrene* (n 163).
[214] *The Happy Ranger* (n 158).
[215] *Harland, and Wolff LTD v. Burns and Laird Lines LTD* [1931] 40 Lloyd's Rep. 286.
[216] CMI (n 6)114.

the principle of clarity and certainty as is always the case, and the rules define under article 35 that the parties can agree to transport the goods without issuing a transport document. In addition, this makes it possible to have articles to regulate how to deliver the goods when no transport document has been issued under article 45. Article 244 of Omani Maritime Law and article 181 of the proposed new Omani Maritime Law used the same approach as that used in the Hague/the Hague-Visby Rules, and the Hamburg Rules refer indirectly to the fact that the rules would apply if the carrier issued the received document; this has particular bill of lading details.

There is a third consensus between all three sets of international laws and both Omani laws whereby the period of the obligation for issuing a bill of lading (or transport document) does not refer to a specific time. Here, the carrier, or the person who is acting on behalf of the carrier, can issue the bill of lading (or transport document) before or after the shipment. This issue is regulated under articles 3(3) and 3(7) of the Hague/the Hague–Visby Rules. The provision of articles 3(3) and 3(7) of the Hague/the Hague–Visby Rules is reflected in articles 14(1) and 15(2) of the Hamburg Rules, as well as article 35 of the Rotterdam Rules, Article 244 of Omani Maritime Law and article 181of the proposed new Omani Maritime Law.

To sum up, there are no differences in terms of the nature or period of obligation and with the principle of the delegation of this obligation. However, there is a significant difference between all three sets of international laws and both Omani laws in terms of the transport document application. This therefore brings into

question the extent to which the carrier can issue a transport document as well as what kind of transport documents cover these rules.

Here, it can be seen that the door to door concept, the multimodal mode, and the recognition of the electronic document of transport played a significant role in developing the obligation of issuing the bill of lading (or transport document) and the transport document application. This section will therefore look at how the Rotterdam Rules improve the obligation of issuing a transport document and covers a large amount of the transport document, this being consistent with the contemporary carriage of goods by sea practice and a comparison will be made with other rules relating to the carriage of goods by sea within the scope of this thesis.

In addition, consideration will be given to how the Rotterdam Rules address particular and vital transport document application issues, and a comparison will be made with the other rules within the scope of this thesis. This will also consider aspects not adequately addressed before, such as the recognition of the electronic bill of lading (or transport document) and the matter of the absence of such information in the bill of lading (or transport document) particulars. The section aims to show how the Rotterdam Rules as the best practice of law will fill all the gaps in both the Omani laws relating to the obligation of issuing a transport document and the transport document application.

This section will further examine the substantive transport document application and the recognition of the electronic bill of lading (or transport document). Following this, the bill of lading (or transport document) types, their functions and evidentiary effects will be examined. Finally, the particular bill of lading and how

important this is for the transport document, with all the particulars relating to the Rotterdam version, will be looked at. Additionally, the argument will be made for how the Rotterdam Rules fill the gaps as well as solve the problems of missing particular information in the transport documents.

3.3.1 The Substantive Application of the Transport Document and the Recognition of the Electronic Bill of Lading (or Transport Document)

The differences in the transport document application indicate that the founders used various approaches to establish the three international rules. The Hague/the Hague-Visby Rules adopted a documentary approach. Consequently, the mechanism of the convention focuses on certain documents, such as bills of lading or similar documents.[217] There is, however, no definition for the bill of lading or similar documents in this convention. Here, this is a significant problem, and it can be seen that The Hague/the Hague -Visby Rules do not define the bill of lading, which has raised particular issues regarding the application of some transport papers, such as the straight bill of lading, the waybill bill of lading, and so on; these will be discussed in the type of transport document section.

The reason why *The Travaux- preparatoires* of the Hague/the Hague-Visby Rules used the documentary approach is because it promotes predictability and stability, since this document has been used for a lengthy period. Here, since the parties are issued with the bill of lading, this would apply automatically and mandatorily within the relevant liability system.[218]

[217] UN (A/CN.9/572), (n145) 22-23; Schoenbaum (n145) 6.
[218] Ibid.

However, the documentary method is limited as it only recognises the paper bill of lading and a specific contract, which may be inconsistent with modern practices of transporting goods by sea and electronic transport documents. However, a new document may be issued and adopted in the future.[219] To sum up, the substantive application of the transport document under article 1(b) of the Hague/the Hague-Visby Rules applies to the bill of lading, a similar document, and the bill of lading issued and incorporated with the charter party contract. Hence, the charter party contract is excluded from the application of this convention.[220]

It is worth noting that the application of the bill of lading, issued and incorporated with the charter party contract, does not automatically apply as the standard bill of lading. Here, the parties must express the conditions incorporated with the charter party contract, otherwise this will not apply or will cause confusion.[221] In the case of *Anglo-Saxon Petroleum Co. Ltd. V. Adamastos Shipping Co Ltd* the appeal court held that the paramount clause has ambiguities, inconsistencies and incongruities which are not deemed to be incorporated into this contract.[222] However, the House of Lord held that the Hague Rules did consider them to be incorporated into this contract.[223] Viscount Simonds and others stated

> [T]hat the parties in this action, when they [were in agreement with] Clause 52 that the "Paramount Clause" should be incorporated in their agreement, had [...] a common meaning and

[219] UN (A/CN.9/572), (n145) 22-23.
[220] CMI (n 6) 114-120.
[221] Wilson (n 146)210.
[222] *Anglo-Saxon Petroleum Company, Ltd. V. Adamastos Shipping Company, Ltd* [1957] 1 Lloyd's Rep. 271.
[223] *Anglo-Saxon Petroleum Co. Ltd. V. Adamastos Shipping Company Ltd* [1958] 1 Lloyd's Rep. 73.

> intention; that applying the principle of *falsa demonstratio non nocet*, the opening words of the Paramount Clause were to be read as if they were: "This *charter-party* [. . .]"; and that, since the Paramount Clause said that the charter-party should be subject to the Act, it was insensible to incorporate into the Paramount Clause a condition (in Sect. 5) which said that the Act should not apply to charter-parties.[224]

The same decision was issued in *Overseas Tankship(U.K), LTD. V BP Tanker Company LTD* and the case referring to the appeal court, as well as the House of Lords' decision in the case of *Anglo-Saxon Petroleum Co. Ltd. V. Adamastos Shipping Co Ltd* because it has the same conflicting clause and ambiguous documents.[225]

Here, the paramount clause of the incorporation clause, the bill of lading, is deemed to be incorporated without consuming more discussion in court, as was decided by the court in *Nea Agex S.A. v. Baltic Shipping Co. LTD and Intershipping Charter Co (the Agios Lazaros*). The court defined that

> [P]aramount clause" is a term of art, and means a clause incorporating the Hague Rules either simpliciter or if, and as, made compulsory by whatever may be the relevant local law'. Here, Lord Denning, M.R., Lord Justice Goff and Lord Justice Shaw held 'that (1) when the "Paramount clause" was

[224] Ibid 74.
[225] *Overseas Tankship(U.K), LTD. V BP Tanker Company, LTD* [1966] 2 Lloyd's Rep. 386.

incorporated without any words of qualification, it meant that all the Hague Rules were incorporated.'[226]

It is worth noting that the bill of lading incorporation should be explicit with all the conditions of incorporation. Were this not the case, any condition not mentioned would not be applicable, as the Court of Appeal decided in *Skips A/s Nordheim v Syrian Petroleum (The Varenna)* where it held that a provision in a bill of lading incorporating the conditions of a charter party referred to those conditions that applied to the carriage and delivery of the goods so that in the absence of more specific words than "all conditions and exceptions of ... charterparty," the bill of lading could not be construed as incorporating the arbitration clause of the charterparty'.[227]

The Hamburg Rules adopted a contractual approach to draft the definition of the contract of carriage under article 1(6) and also to draft article 2(3) of the scope of application. Additionally, the same approach was used to draft the definition of a bill of lading under article 1(7). Here, the focus was on the contract regardless of the paper or electronic document, so a particular element of the contract as defined under the scope of the transport document application and the types of the contract outside the transport document application, such as the charter party contract and the non-linear transport contract.[228] However, this approach was criticised in the *Travaux- preparatoires* of the Hamburg Rules where the application to all contracts is undesirable since some carriage of goods contracts

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[226] *Nea Agex S.A. v. Baltic Shipping Co. LTD and Intershipping Charter Co (the Agios Lazaros)* [1976] 2 Lloyd's Rep. 47.
[227] *Skips A/s Nordheim v Syrian Petroleum (The Varenna)* [1984] Q.B.599.
[228] Francesco Berlingieri, 'A New Convention on the Carriage of Goods by Sea: Port to Port or Door to Door' (2003) 265 Unif. L. Rev, 265, 273; UN (A/CN.9/572) (n 145) 22-23; Schoenbaum (n 145) 6

are not for commercial value and the application should be limited to the contract agreed by the parties in order to apply the convention.[229]

Additionally, another criticism is that there is a contradiction in the convention, which may create possible problems in determining the definition of the contract. This is because the convention stated that it applies to all carriage of goods by sea contracts, while it simultaneously excludes some carriage of goods by sea contracts.[230] In addition, the Hamburg Rules do not regulate an electronic bill of lading (or transport document); only the definition implies the meaning of the electronic documents under article 1(7). Further, the Hamburg Rules refer to the possibility that the bill of lading can be signed electronically.[231] Article 2(3) of The Hamburg Rules adopted the same provision of the Hague/the Hague-Visby Rules for the exclusion of the charter party, and applied the issued bill of lading which incorporated the charter party contract.

The Trade approach uses the transport document application and the transport definition under Article 1(14), and 1(18). The Rotterdam Rules appear to address the limitations of the Hague/Hague-Visby Rules, and the Hamburg Rules introduce a new trade approach that focuses on the feasibility and modern requirements of transporting goods by sea. Hence, the *Travaux- preparatoires* of the Rotterdam Rules adopted a trading approach that can be described as a hybrid regime designed to fill all the gaps in the previous two international conventions and remain consistent with modern maritime industry practices.[232]

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[229] UN (A/CONF/89/14) (n 47) 42
[230] UN (A/CN.9/572) (n 145) 22-23
[231] Georgios I Zeros, 'Electronic Bills of Lading and Negotiability' (2001) 4 J World Intell Prop 977, 979
[232] Schoenbaum (n 145) 6; UN (A/CN.9/572) (n 145) 22-23.

Here, it can be seen that the transport document application has improved significantly from the Hague/the Hague-Visby Rules of 1924 to 2008 when this convention was adopted. It extended the limits of the contract by introducing the new concept of a "transport document". This is suitable for the modern practice of transporting goods by sea and makes it possible to adopt any new document; here the name of a document or a specific document is no longer problematic in terms of applying the rules, as the document regulates the relationship between the carrier and cargo interest. The Rotterdam Rules are hence developed to new practice needs and they apply regardless of the contract issued by paper or electronic document. These were drafted to address the longstanding needs of the commercial purposes of electronic transport documents, especially negotiable transport documents.[233]

Miriam Goldby makes clear that the Rotterdam Rules discuss the two forms of documents (paper and electronic) comprehensively, and this convention makes it attractive to use electronic documents rather than paper ones.[234] Furthermore, the Rotterdam Rules cover more carriage contracts than the Hague/ the Hague-Visby Rules, or the Hamburg Rules. The definition here is comprehensive, and the aim of the non-specific type of document in the definition is to expand the application of this convention so that many documents and contracts are without limitation, this being consistent with the modern practices of transporting goods by sea. As has been demonstrated, the document is changeable from time to

[233] Manuel Alba, 'The Use of Electronic Records as Collateral in the Rotterdam Rules: Future Solutions for Present Needs' (2009) 14 Unif L Rev 801, 801-804.
[234] Miriam Goldby, 'Electronic Alternatives to Transport Documents: a Framework for Future Development?' in D Rhidian Thomas, (eds), *New Convention for the Carriage of Goods by Sea- the Rotterdam Rules: an Analysis of the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea* (Lawtext Publishing 2009), 240-241.

time depending on several factors, such as technological change and maritime practice.

In addition, a specified name on the document will limit the transport to a particular time, while an unspecified type of transport document keeps this convention valid for a longer period. Therefore, the Rotterdam Rules cover all types of transport document, such as the received goods transport document, the goods shipped transport document, negotiable and non-negotiable transport documents (a straight bill of lading, a ways bill, etc.), direct/through/multimodal transport documents, as well as clean and non-clean transport documents. All these types of bill of lading (transport documents) will be discussed in the following sections. It is worth mentioning that article 6(1)(a) of the Rotterdam Rules excludes the charter party contract.

It is unfortunate that Omani Maritime Law falls in line with the Hague/Hague-Visby Rules, and both exhibit a reluctance to define a bill of lading. Omani Maritime Law also accords with the Hamburg Rules, adopting the contractual approach. Article 260 (2) of Omani Maritime Law limits the application for the bill of lading incorporated with the charter party contract. Additionally, nothing in these laws regulates the issue of an electronic bill of lading or other electronic documents. Omani Maritime Law also refers to the possibility that the bill of lading can be signed electronically pursuant to article 239(3).

However, the proposed new Omani Maritime Law has moved a step forward because it has the same definition of a bill of lading as the Hamburg Rules without any changes. Here, the proposed new Omani Maritime Law has adopted the contractual approach, based on the definition of the contract in the Hamburg

Rules. However, Article 207 of Omani Maritime Law limits the application to the bill of lading or the bill of lading incorporated within the charter parties, and it excludes the charter party contract. Nevertheless, it should be pointed out that the proposed new Omani Maritime Law moves a step forward in regulating the possibility of issuing the electronic bill of lading. Article 183 states that the bill of lading may be issued electronically and is subject to the same provisions prescribed for the traditional versions and has the exact evident effects.

Additionally, article 185 clarifies that electronic bill of lading is negotiable in an electronic way. However, in the context of clarity and the certainty of the electronic bill of lading rules in the new Omani Maritime Law, it is not the same as the Rotterdam Rules, which cover this comprehensively. It can thus be deduced that Omani Laws fail to cover many aspects regarding the substantive application of the transport document. The recognition of the electronic bill of lading (or transport document) under both Omani laws is not the same as in the Rotterdam Rules. In this respect, the Omani legislators should fill this gap to remain consistent with modern carriage of goods by sea practices.

3.3.2 The Significance of Using the Electronic Bill of Lading (or Transport Document) in Maritime Industry

The vital gap in Omani Maritime Law is the non-recognition of the electronic transportation document which is in line with the Hague/the Hague-Visby Rules and the Hamburg Rules. Article 1(b) of the Hague/the Hague-Visby Rules is only applicable to the documentary contracts. However, in the Hamburg Rules, only the definition of a bill of lading implies the meaning of the electronic documents, and there is a lack of the separate sections of the Rotterdam Rules regarding the

electronic transportation document detail. The proposed new Omani Maritime Law recognises the electronic transportation document but it is not covered comprehensively as it is in the Rotterdam Rules.

The question here is the extent to which the importance of Omani maritime law requires electronic documents rather than traditional ones.

From an operational perspective in terms of cost, timing and security, as discussed in Chapter Two, all ports have adopted e-commerce and other technologies, which will have a significant impact on the maritime industry, as they will increase the speed of operations, enhance security and minimise costs.

It is also worth observing specific points from the fieldwork data relating to the development of the maritime industry in Oman, and to see how foreign investors and shipping companies are attracted to work in Omani Ports. Some comments have shown that the efficiency of ports and speed operation, safety and stability and the lowering of port costs are central elements in attracting investment and developing the Oman maritime industry.[235] Here, it can be said that technology plays a significant role in reducing the cost and time of operations, and offering greater security. Therefore, the absence of the recognition of an electronic document in Omani Law is a barrier to operating and transforming Omani maritime industry from traditional operations into e- maritime operations because the parties have to use the paper transport document.

It is also worth observing how in certain points of the fieldwork data, the marine agent cannot issue a delivery order to discharge the cargo from the port without

[235] Interview with Legal Staff in Oman Shipping Company (Oman, Muscat, 15th May 2019).

receiving the original copy of the bill of lading. Therefore, the delay in receiving the paper transport document has increased costs because the parties have to pay detention to the shipping line, and demurrage to the port for each extra day if the parties have failed to finish an operation within the free time. [236]

The problem of delay in receiving the transport document would not exist if the bill of lading were electronic because the electronic transport document would be available for all parties which could access and track the movement of goods in any place in the world.

In addition, all the ports in Oman now use the BAYAN system for customs clearance, hence the traditional paper document has a negative impact with the application of the BAYAN system. The traditional paper document doubles the work and costs for the shipping company, customs clearance agents and marine agents as they need to enter the bill of lading or transport document particulars which are already in the paper document into the BAYAN system again. This requirement would not be necessary if Omani Maritime Law regulated the electronic bill of lading or electronic transport document because the detailed data could be integrated directly with the BAYAN system.

A.N. Yiannopoulos emphasises how important it is to issue the electronic bill of lading from an operational perspective due to the advanced technology in the maritime industry, faster modern ships, the container system, the multimodal form of transport and the growth of the non-negotiable sea waybill.[237]

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[236] Al wahaibi (n 141).

[237] A.N. Yiannopoulos, 'General Report' in A.N. Yiannopoulos, (eds), *Ocean Bill of Lading: Traditional Forms, Substitutes, and EDI System* (Kluwer Law International, 1995), 21.

From a legal perspective, the paper document is also a way of committing fraud. In contrast, the electronic transport document is more secure because the parties can protect the electronic transport document using a sophisticated code as with the protection system in the bank transaction.[238]

From an Omani technology' vision perspective, Oman aims to switch entirely to e-transformation transactions in order to enhance the quality of services and the methods used to provide them. They are also aware of the specific regulations, standards and timing stages that effectively simplify services for citizens and businesses. In fact, all governmental sectors, including the maritime industry, have sought to execute the transformation strategy.[239] Therefore, Omani Maritime laws should be revised and adopt the electronic transport document so that they are in line with advanced maritime technology practice, the country vision, and have the best practice in law to serve the Omani maritime industry, to boost the national economy and to increase the GDP revenue from the maritime industry.

Here, it can be deduced that the Rotterdam Rules reflect modern carriage of goods practices and will achieve and enhance Oman's technological vision. The terms of the Rotterdam Rules' transport document cover paper documents as well as electronic ones. Additionally, due to the development of transportation transactions and to meet the needs of technological developments, this convention regulates the electronic document comprehensively as an alternative

[238] Chester D. Hooper, 'Carriage of Goods and Charter Parties' (1998-1999) 73 Tulane Law Review 1697, 1729-1730.
[239] E-Government Transformation Plan, The Official Oman eGovernment Services Portal, <https://www.oman.om > accessed 22nd April 2021.

to paper documents.[240] Further, there are many examples of electronic transport documents which the Omani legislator can look at as a sample, such as the Atlantic container line data freight, the electronic data exchange system and Bolero. These three examples were each designed to replace traditional bills of lading (or transport documents) and to exploit the advancement of technology to exchange data and be more commercially practical.[241]

After the discussion of the substantive application of the transport document and the recognition of the electronic bill of lading or transport document, the following section will provide a general overview of the types of bill of lading or transport documents, and their effect in the carriage of goods by sea. Following this, there will be an examination of the bill of lading or transport document particulars, and the effect of the absence of information.

3.3.3 The Types of Bills of Lading/Transport Documents, and Their Function.

There are many variations on the bill of lading (or transport document) based on different perspectives due to the change of maritime practices and the new concept of the door to door application and multimodal modes of transport. These include the received transport document, the shipped bills of lading, direct, through or multimodal bills of lading, negotiable and non-negotiable bills of lading and clean and non-clean bills of lading.

[240] Goldby (n 234) 240-241.
[241] Wilson (n 146) 165-170.

3.3.3.1. The Received Goods Transport Document

The carrier (or person acting on behalf of the carrier) has to issue the received transport document with a declaration and acknowledgement of receiving the goods for shipment.[242] Carriers increasingly use the received transport document while waiting for loading.[243] The function of this document is *prima facie* evidence of the receiving of goods and of the contract.[244] Examples of these are liner booking notes, tally clerk's receipts and mate's receipts.[245] The received document is considered as the bill of lading, as decided in *Kum v. Wah Tat Bank LTD* where the mate's receipts were universally adopted as documents of title in the same way as bills of lading'.[246] Moreover, the received bill of lading can be treated as a bill of lading even when this does not use the traditional language of being 'received for shipment'. The court was satisfied in *Ishag v. Allied Bank International, Fuhs and Kotalimbors* as the received bill of lading was issued when the goods were in the warehouse before the goods were shipped and without mentioning the term received for shipment.[247]

It should be pointed out that the Hague/ the Hague- Visby Rules will not apply with the received bill of lading unless the parties express their intention for the application of the Hague/ the Hague- Visby Rules.[248]

This kind of bill of lading operates according to article 3(7) of the Hague/the Hague-Visby Rules. Here, Article 15(2) of the Hamburg Rules adopted the same

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[242] Bernard Eder., et al, *Scrutton on Charterparties and Bills of Lading* (22nd edn, Sweet & Maxwell, 2011), 129-134; Tetley (n 146) 530; Charles Debattista, *Bills of Lading in Export Trade* (3ed edn, Tottel Publishing, 2008) 149.
[243] Girvin (n 160) 23.
[244] Eder B., et al, (n 242) 129-134; Carver (n 212) 10-12.
[245] Girvin (n 160) 23.
[246] *Kum v. Wah Tat Bank LTD* [1971] 1 Lloyd's Rep. 439.
[247] Ishag v. Allied Bank International, Fuhs and Kotalimbors [1981] 1 Lloyd's Rep. 92, 97.
[248] *Harland, and Wolff* (n 215).

provision of the article 3(7) of the Hague/the Hague-Visby Rules. The Rotterdam Rules' transport document is more comprehensive than its counterparts, placing this type of transport document under the ambit of the document or record, this being defined broadly.[249] The received transport document operates according to article 244 of Omani Maritime Law and 181 of the proposed new Omani Maritime Law. It can therefore be concluded that there is no gap in terms of issuing the paper for receiving the bill of lading, and both Omani Maritime Laws are in line with international conventions.

3.3.3.2 Shipped Goods Bill of Lading or Transport Document

The carrier (or person acting on behalf of the carrier) has to issue the shipped bill of lading after the goods have been loaded into the vessel. The effect of this bill of lading serves as evidence of the goods being received and as a *prima facie* evidence of the contract with the carrier of the shipper and the goods shipped.[250]

In *Ocean focus Shipping LTD. V. Hyundai Merchant Marine CO. LTD. (the" Hawk"),* the shipped bill of lading indicated when the goods were received on board. This is 'a complex document which fulfils three different functions: as a receipt for the goods, a document of title and either a contract of carriage or evidence of a contract of carriage'.[251] It is vital that the shipped bill of lading complies with the received document, otherwise the shipped bill of lading is ineffective, as was decided in *Trade Star Line Corporation v. Mitsui CO. LTD (the " Arctic Trader").* Here, 'the mate's receipt had effect only in relation to the

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[249] United Nation, United Nations Commission on International Trade Law, Report of Working Group III (Transport Law) on the work of its eleventh session (A/CN.9/526) (New York, 24 March to 4 April 2003) 13.
[250] Carver (n 212) 10-12.
[251] *Ocean focus Shipping LTD. V. Hyundai Merchant Marine CO. LTD. (the " Hawk")* [1999] 1 Lloyd's Rep. 176, 185.

charter-party and the shipowner's liabilities as [the] bailee of goods in fact received on board … the charterer might be authorised to sign on behalf of the master, in both cases the bills had to be in accordance with the mate's receipt'.[252]

Additionally, the carrier must issue the shipped bill of lading when the goods are on board, otherwise the carrier will be charged with fraud. In *Grant v Norway,*[253] quoting from *Lickbarrow v. Mason*,[254] Buller, J. says

> A bill of lading is an acknowledgement by the captain of having received the goods on board his ship: therefore, it would be a fraud in the captain to sign such a bill of lading, if he had not received the goods on board; and the consignee would be entitled to his action against the captain for the fraud.

The shipped bill of lading (or transport document) operates according to article 3(7) of the Hague/the Hague- Visby Rules. Article 15(2) of the Hamburg Rules states that the carrier has to produce a bill of lading upon the request of the shipper. Moreover, the shipped bill of lading must contain the bill of particular lading, as mentioned in 15(1) of the Hamburg Rules.

The Rotterdam Rules' transport document is more comprehensive than its counterparts and places this type of transport document under the ambit of the document or record, which is defined broadly.[255] Article 244 of Omani Maritime Law and article 181 of the proposed new Omani Maritime Law are in line with the international rules above whereby the carrier has to produce a shipped bill of

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[252] *Trade Star Line Corporation v. Mitsui CO. LTD (the " Arctic Trader")* [1996] 2 Lloyd's Rep. 449
[253] *Grant v. Norway* (1851) 10 C.B. 665, 9.
[254] *Lickbarrow v. Mason* 101 E.R. 380.
[255] UN, (A/CN.9/526) (n 249) 13.

lading upon the request of the shipper; it must also contain the bill of particular lading mentioned in 238 of Omani Maritime Law and article 182 of the new Omani Maritime Law. It can be concluded that there is no gap in terms of issuing the shipped bill of lading as both Omani Maritime Laws are in line with international conventions.

3.3.3.3 Multimodal and Director bills of lading (or transport documents)

The multimodal transport document (through the bill of lading) is issued by the carrier (or person acting on behalf of the carrier) who regulates the carriage of goods for different modes of transport under one contract with the sea leg.[256] For instance; the waybill is a non-negotiable bill of lading, and suitable for container services, which is used with great frequency in modern practice.[257] However, the direct bill of lading (liner bill of lading) is opposite and regulates the sea mode between the two ports. For instance, Conlinebill 2000, the Marine bill of lading, the Ocean bill of lading, etc.[258]

Here the Hague Rules/Hague-Visby Rules and the Hamburg Rules do not address multimodal bills of lading so the carrier cannot issue a multimodal bill of lading. This is because of the standard of their application from port to port whereby they regulate the carriage of goods by sea mode only and their rules do not apply to other modes of transport, such as road, rail and air.

There is controversy about the application of the sea waybill under the Hague/the Hague-Visby Rules. In *Voss v. APL CO. PTE. LTD*, the rules of the Hague/the

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[256] Girvin, (n 160) 40.
[257] Branimir Luksic, 'The Bill of Lading or the Sea Waybill' (2000) 37 Zb Radova 307, 309; Wilson (n 146) 159-160.
[258] Girvin (n 160) 35.

Hague-Visby Rules did not apply because the carrier issued a seaway bill.[259] This is defined as the maritime version of a document that has long been in use in the context of land and air carriage. It operates as a receipt for goods received for shipment and evidences the contract of carriage.[260] However, William Tetley explains that the waybill is a non-negotiable bill of lading within the scope of 1(b) of the Hague/the Hague-Visby Rules if issued in the ordinary course of trade, otherwise, it will be out of this scope.[261]

A recent case applies with the Hague/the Hague-Visby Rules in *Kyokuyo CO LTD v. AP Moller Maersk A/S Trading AS (The Maersk Line)* where the carrier issued a sea waybill to carry containers with frozen tuna and bags of frozen tuna parts. The court determined that:

> Where the Carriage is Multimodal Transport, the Carrier undertakes to perform and/or in his own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever is applicable.[262]

To sum up, the application of Hague/the Hague-Visby Rules for the multimodal bill of lading is still uncertain.

Here, the Rotterdam Rules apply to all modes of transport, and the multimodal transport document must be included with the sea leg.[263] As discussed in the

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[259] *Voss v. APL CO. PTE. LTD* [2002] 2 Lloyd's Rep 707, 713.
[260] Ibid.
[261] Tetley (n 146) 21.
[262] *Kyokuyo CO LTD v. AP Moller Maersk A/S Trading AS (The Maersk Line)* [2017] 1 Lloyd's Rep 580, 604.
[263] UN, (A/CN.9/544) (N181) 6-7.

definition of the contract, the Rotterdam Rules required two considerations to define the contract: the concept of the door to door application and multimodal modes of transport with a sea leg. Therefore, the Rotterdam Rules strove to make this type of bill of lading (or transport document) consistent with the current carriage of goods by sea practices, which often entails several different modes of transport.

Omani Maritime Law and the proposed new Omani Maritime Law apply port to port shipping, so they do not have rules to cover a multimodal bill of lading, and they apply for the direct bill of lading using the sea mode. In addition, they have adopted the same approach of the Hague/ the Hague-Visby Rules and the Hamburg Rules approach in order to issue the multimodal bill of lading based on the freedom of contract clause, as discussed in Chapter Five under the period of carrier liability.

In the Omani court case of *Oil Aintaqirati,* the carrier issued a direct bill of lading, and a clean bill of lading to carry buffalo meat from Nana Shiva Port in India to Sohar Port in Oman[264].

Additionally, in the Omani case of *Care Demarks, and Ornet Patriot*, the carrier issued a direct bill of lading and a non-negotiable bill of lading. Here, the carrier shipped electronic goods packaged in seven boxes to be transported by the carrier from New York Port in the US to Sultan Qaboos Port in the Sultanate of Oman and to be delivered to The General Company for Electronics and Trade.[265]

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[264]Muscat Primary Court, Commercial Case 38/2010, 10/04/2010 (Oil Aintaqirati); Muscat Appeal Court, Commercial Case 556,568/2010, 08/11/2011 (Oil Aintaqirati); Supreme Court, Commercial Case 526,541 /2011, 16/12/2011(Oil Aintaqirati).

[265] Muscat Primary Court, Commercial Case 167/2002, 26/05/2004 (Care Demarks, and Ornet Patriot); Muscat Appeal Court, Commercial Case103/2004 , 21/02/2005 (Care Demarks, and

Clearly, the Rotterdam Rules approach can fill the omission of this provision in both Omani Maritime Laws.

3.3.3.4 A Negotiable, and Non-negotiable Bill of Lading (or the Transport Document)

Negotiable bills of lading or transport documents constitute a transferable document. It is possible to transfer them and deliver to whoever has the original copy of the bill of lading. Negotiable bills of lading or transport documents usually contain words such as 'to order' or 'assigns to bearer'. [266] *The Travaux-preparatoires* of the Hague/the Hague-Visby Rules emphasise that the rules apply to a negotiable bill of lading or similar document.[267] In *C. P. Henderson & Co. v, The Comptoir d'Escompte de Paris* it is set out that 'a bill of lading, in which the words "or order or assigns" are omitted is not a negotiable instrument'.[268]

In the case of negotiable bills of lading or transport documents, the carrier must deliver the goods to the holder the original of the bill of lading, and a transfer can be made from one person to another in a similar way to cash or be delivered to a person so that it is like filling in a blank of the bill of lading by endorsement.[269]

Ornet Patriot); Supreme Court, Commercial Case 66 /2005, 16/11/2005 (Care Demarks, and Ornet Patriot).

[266] Raymond E Negus, 'Negotiability of Bills of Lading' (1921) 37 L Q Rev 442, 447; Todd (n 146) 239-241.

[267] CMI (n 6) 114

[268] *C. P. Henderson & Co. v The Comptoir d'Escompte de Paris* (1873-74) L.R. 5 P.C. 253

[269] Todd (n 146) 239-241

Lord Seborne explained the effect of the endorsement in the blank of a negotiable bill of lading in the delivery in *J. Sewell and Nephew v James Burdick*,[270] and quoted from *Lickbarrow and Another v Mason*[271] where:

> [E]ndorsements of bills of lading in blank may be filled up by the person to whom they are delivered or transmitted, with words ordering the delivery of goods to be made to such person; and, according to the practice of merchants, the same when filled up have the same operation as if it had been done by the shipper.

Article 1(7) of the Hamburg Rules apply to the negotiable bill of lading. *The Travaux- preparatoires* of the Hamburg Rules notes that the application of the negotiable bill of lading increased the speed of the delivery operation. The use of the negotiable bill of lading is growing due to the use of an electronic data process instead of a negotiable paper bill of lading.[272]

Unlike the Hague/the Hague-Visby Rules and the Hamburg Rules, the Rotterdam Rules comprehensively cover the negotiable transport document. In article 1(15), they define a transport document as something indicated by wording such as "to order" or "negotiable" or other appropriate wording and having the same effect by the law applicable to the document; here the goods are consigned to the order of the shipper, to the order of the consignee, or bearer, and are not explicitly stated as being "non-negotiable" or "not negotiable". As always, the Rotterdam Rules stick with the principle of clarity and the certainty of rules to avoid any problem in the application. The Rotterdam Rules consist of many articles to

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[270] *J. Sewell and Nephew v James Burdick* [1884] 10 App. Cas. 74, 5
[271] *Lickbarrow v Mason* 100 E.R. 35
[272] UN, (A/CONF/89/14) (n 47) 42.

regulate the gaps and ambiguities under the Hague/the Hague-Visby Rules and the Hamburg Rules regarding the negotiable transport document. For example, article 9 identifies the procedure for the use of negotiable electronic transport records, while article 10 defines the replacement of the negotiable transport document whether this is the traditional paper or the electronic form. In addition, article 35 (b) regulates the issuance of a negotiable transport document, regardless of whether it is the traditional paper or electronic. Further to this, article 41 (i) explains the evidentiary effects of the negotiable transport document, and articles 45 and 47 clarify the effect of the negotiable transport document in the delivery of goods obligation.

Articles 240 and 247 of Omani Maritime Law and articles 1, 185, 192 and 194 of the new Omani Maritime law are in line with the international rules on this issue, both outline the negotiable bill of lading (or transport document) and define particular elements regarding the delivery obligation under a negotiable bill of lading (or transport document). However, in the context of clarity and the certainty of rules, the Rotterdam Rules are much more developed. Hence, these Rules constitute the best practice of law with which to revise Omani Maritime Laws regarding the negotiable bill of lading (or transports document).

A non-negotiable bill of lading (or transport document) is the precise opposite to the negotiable document, and the carrier (or person who is acting on behalf of the carrier) must deliver to a specific consignee. This type of document is impossible to transfer by endorsement.[273] The *Travaux- preparatoires* of the

[273] Todd (n 146) 239-241.

Hague/the Hague-Visby Rules state that the convention did not apply to the non-negotiable bill of lading (or transport document).[274]

Unfortunately, the uncertainty of the Hague/ the Hague-Visby Rules in the transport document application has given rise to many cases regarding the application of some of the transport documents, such as the straight bill of lading and the waybill. The straight bill of lading is a non-negotiable bill of lading, and is most commonly used today.[275] In *International Air and Sea Cargo GmbH v Owners of the ship 'Chitral'* the straight bill of lading is defined as a non-negotiable document and it is not possible to transfer by endorsement.[276] The application of the straight bill of lading was discussed in the English commercial court in the *Rafaela S,* [277] The House of Lords concluded that the straight bill of lading falls within the scope of article 1(b) of the Hague/the Hague-Visby Rules.[278] Additionally, there is uncertainty in the application of the non-negotiable bill of lading, such as the waybill under the Hague/the Hague-Visby Rules being a controversial issue.[279]

Article 1(7) of the Hamburg Rules applies to the non-negotiable bill of lading and *The Travaux- preparatoires* of the Hamburg Rules emphasises that the Hamburg Rules should cover the non-negotiable bill of lading, so avoiding the problem of the application of the straight bill of lading.[280]

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[274] CMI (n 6) 114.
[275] Todd (n 146) 242.
[276] *International Air and Sea Cargo GmbH v Owners of the ship 'Chitral'* [2000] 1 Lloyd's Rep 529.
[277] *The Rafaela S* (n 154).
[278] *The Rafaela S* (n 153).
[279] Tetley (n 146) 21.
[280] UN, (A/CONF/89/14) (n 47) 42.

Article 1(16) of the Rotterdam Rules outlines as non-negotiable the transport document, which means a transport document that is not negotiable. The Rotterdam Rules therefore continue to provide the clarity and certainty of rules with which to regulate the non-negotiable transport document comprehensively. For example, article 35 (a) regulates the issuance of a non-negotiable transport document, whether this is a traditional paper or an electronic one. Moreover, article 41 (ii) explains the evidentiary effects of the non-negotiable transport document while article 46 clarifies the effect of the negotiable transport document in the delivery of goods obligation.

Articles 240, 247 of Omani Maritime Law and articles 1, 185, 192, and 194 of the new Omani Maritime law are in line with the Hamburg Rules on this issue, both being non-negotiable outline bills of lading (or transport documents), and define some elements regarding the delivery obligation under the non-negotiable bill of lading (or transport document). However, in terms of clarity and the certainty of the rules, the Omani laws are much less clear than the Rotterdam Rules. Therefore, the latter constitute the best practice of law with which to revise Omani Maritime Laws as regards the negotiable bill of lading (or transport document).

In the Omani court case of the *Iron Butterfly,* the bill of lading was non-negotiable and the carrier issued a non-negotiable bill of lading to deliver the goods to a specific consignee. In one case, the shipper was Bharat Bhagli from Mumbai in India. The shipper shipped 51 packages of an electrical transformer to be transported by Henderson Line (the carrier) from India to Sultan Qaboos Port in the Sultanate of Oman and to be delivered to the Occidental Company

(consignee) in Oman[281]. Additionally, in the *Moon Golden Wattle* case, the shipper shipped 36 glass panels, packaged in 56 boxes to be transported by the carrier from Istanbul Port in Turkey to Sultan Qaboos Port in the Sultanate of Oman and to be delivered to Delta Company Limited.[282]

Here, it can be deduced that both Omani Maritime Laws need particular improvement to bring clarity and establish certainty in the rules, which can then use the provision of the Rotterdam Rules, as discussed above. Further, the effect of a negotiable and non-negotiable bill of lading or transport document as regards the delivery obligation will be discussed in greater detail in the carrier obligation chapter. This is because this type of bill of lading or transport document is linked to the carrier or to the person who is acting on its behalf to deliver the goods to the shipper or consignee. There may also be problems with wrong delivery, questions about who should deliver and the issue of non-delivery of the goods.

3.3.3.5 Clean and Non-Clean Bill of Lading (or Transport Document)

Clean and non-clean bills of lading or transport documents are based on the burden of proof perspective. In terms of the level of the evidentiary value of the bill of lading or transport document, the carrier can issue two different documents, such as a clean bill of lading or a transport document and a non-clean bill of lading or transport document. The clean bill of lading or transport document means the carrier inspected and verified the nature and conditions of the goods. Here, the carrier has the burden of proof for any damage or loss.

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[281] *Iron Butterfly* (n 206).
[282] *Moon Golden Wattle* (n 207).

In contrast, the non-clean bill of lading or transport document means the carrier did not inspect and verify the nature and conditions of the goods and the carrier or the person acting on behalf of the carrier issued the bill of lading or transport document as per the shipper or the person who acted on behalf of the carrier. Here, the burden of proof shifts to the shipper. In this case, there is one matter that has led to issuing the non-clean bill of lading or transport document, namely a reservation clause issued by the carrier or the person acting on behalf of the carrier [283].

In *Silver v Ocean Steamship Company Limited*, Scrutton L.J stated

> The last objection was that the witness did not say he relied on the bill of lading being a clean bill of lading because of the statement as to good order and condition. The mercantile importance of clean bills of lading is so obvious and important that I think the fact that he took the bill of lading, which is in fact clean, without objection, is quite sufficient evidence that he relied on it.[284]

This problem with the effect on the evidentiary value of the bill of lading or transport document is the reservation clause. In practical terms, usually the goods are sealed and packages in the container, which makes it challenging to check the goods accurately and sometimes verification is unfeasible. In addition, to

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[283] *Golodetz & CO INC v. Czarikow-Rionda CO. INC (The Galatia)* [1979] 2 Lloyd's Rep 450, 457; Daniel C Draper, 'What is a Clean Bill of Lading A Problem in Financing International Trade ' (1951-1952) 37 Cornell L Q 56, 59; Caslav Pejovic, 'Clean bill of lading is the contract of carriage and documentary credit: When clean may not be clean' (2016) 55 Poredbeno Pomorsko Pravo, 9, 9-30.

[284] *Silver v Ocean Steamship Company Limited* [1930] 1 K.B. 416, 427.

extend the speed of the operation, the carrier ships the goods as per the shipper information. Here, the carrier must mention in the bill of lading or transport document as per the shipper information and without verification[285].

In *Attorney-General of Ceylon v Scindia Steam Navigation Co. Ltd India,* the carrier inserted the following into the bill of lading

> [W]eight, contents and value when shipped unknown […] [the court] held 'that though the statements in the bills of lading as to the number of bags shipped did not constitute conclusive evidence as against the respondent, they formed strong prima facie evidence that the stated number of bags was shipped unless there was some provision in the bills of lading which precluded that result, or very satisfactory rebutting evidence was produced by the respondent, and it was not.[286]

It is important to note also that reservation is subject to article (3) 8 where the reservation clause should not be derogated from the carrier's liabilities. In *Noble Resources LTD v. Cavalier Shipping Corporation (the "Atlas"),* it is determined:

> [T]hat the effect of the Hague Rules was to make any bill of lading prima facie evidence of quantity shipped, because (i) it was contrary to art. III, r. 3 or r. 8 for the shipowners to include or rely on clauses such as "said to be" or "weight unknown" and (ii) art.

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[285] *The Galatia* (n 203) 457; Draper (n 283) 59; Pejovic (n 283) 9-30.
[286] *Attorney-General of Ceylon v Scindia Steam Navigation Co. Ltd India* [1962] A.C. 60.

III, r. 4 provided for the statements in the bill to be prima facie evidence.[287]

Article 16 of Hamburg Rules, article 40 of the Rotterdam Rules, Article 258 of Omani Maritime Law and 186 of the proposed new Omani Maritime Law provide the principle of reservation. The Omani Court in *Moon Golden Wattle* defines the clean bill of lading of the carrier if the bill of lading is issued without reservation and he inspects the condition of the goods[288]. In *Mediterranean Navigation*, the shipment arrived at Sultan Qaboos Port in a damaged condition due to a delay in the shipment from the port of Cape Town. The court decided to oblige the carrier to pay the damage due to his fault. The court held the carrier responsible because the carrier issued a clean bill of lading showing that the oranges and lemons being transported were shipped in good condition in the container. The carrier did not express any reservations about the bill of lading.[289]

However, the Rotterdam Rules in article 40 set out guidance in detail concerning a reservation. This is considerably different from the position of the Hague/the Hague-Visby Rules, the Hamburg Rules, Omani Maritime Law and the proposed new Omani Maritime Law, all of which only mention the right of the reservation, without detail. The Rotterdam Rules identify some elements when the carrier should issue a clean transport document without reservation and define the circumstances when the carrier has the right to issue unclean transport

[287] *Noble Resources LTD v. Cavalier Shipping Corporation (the "Atlas")* [1996] 1 Lloyd's Rep 642, 646.
[288] *Moon Golden Wattle* (n 207).
[289] Muscat Primary Court, Commercial Case 598/2009, 06/01/2010 (Mediterranean Navigation) ; Muscat Appeal Court, Commercial Case 103/2010, 25/04/2011(Mediterranean Navigation) ;Supreme Court, Commercial Case 304/2011, 16/02/2012 (Mediterranean Navigation).

documents with reservation. Here, it can be deduced that the Rotterdam Rules provision would be more advanced in revising both Omani Maritime Laws.

3.3.4 The Bill of Lading (or Transport Document) Particulars and the Problem of Missing Information.

The bill of lading or transport document should contain a particular piece of specific information to have a legal effect; omitting significant information would affect the value evidence of this document. These issues are regulated in many articles such as Articles 3 (3) to (7) of the Hague/ the Hague-Visby Rules, articles 14 to 18 of the Hamburg Rules, articles 35 to 41 of the Rotterdam Rules, articles 238, 239, 241, 244 and 245 of Omani Maritime Law and articles 182, 184, 186, 187, 190 and 191 of the proposed new Omani Maritime Law.

The bills of lading (or transport documents) play three significant roles, *prima facie* evidence, the document title, evidence of the receipt of the goods or evidence of shipped goods.[290] Here, it should be said that they are not the contract themselves.[291]

In the Omani court case for *Inchcape Shipping Services*, the Supreme Court clarified that the Court of Appeal had made a mistake in not considering the bill of lading in particular and had to consider the latter as evidence.[292] The Omani Court in *Caravel Pride* interpreted article 245 to mean that the bill of lading is *prima facie* evidence between the carrier and the shipper and is also prime

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[290] *The Hawk* (n 251) 185; Carver (n 212) 59-60.
[291] *Captain* (n 161) 599.
[292] Muscat Primary Court, Commercial Case 1691/2009,13/02/2010 (Inchcape Shipping Services); Muscat Appeal Court Commercial Case 277/2010, 03/05/2010 (Inchcape Shipping Services); Supreme Court, Commercial Case 308/2010, 01/02/2011 (Inchcape Shipping Services).

evidence for others parties involved in the carriage contract[293]. Additionally, the same interpretation was adopted in the Omani court in the case of the *Iron Butterfly* where the bill of lading proves the contract of carriage. The carrier should issue this document upon receipt of the goods from the shipper under Article 238.

Furthermore, the bill of lading is considered to be a piece of evidence in proving the particulars that it contains between the carrier and the shipper and for other parties as well. It is possible that the carrier and shipper may prove the opposite of what is stated in the bill of lading. However, the carrier cannot prove the opposite of what is stated in the bill of lading against a third party.[294]

The issue of the absence of some bill of lading particulars, as discussed with the missing data of the bill of lading or transport document particulars, disable the function of *prima facie* evidence. However, The Hague/ the Hague-Visby Rules, the Hamburg Rules, the Oman Maritime Law and the proposed new Omani Maritime Law do not precisely mention the issue of the absence of some bill of lading details. Unlike the Rotterdam Rules, these comprise greater detail, information and solutions regarding the transport document particulars and the absence of transport document details. Consequently, it can be deduced that this provision to improve Omani Maritime Law, and the proposed new Omani Maritime Law is a matter of great importance and the lack of particulars in the bill of lading and transport document would affect evidentiary value; this would automatically raise problems and disputes. The following discussion therefore concerns the bill

[293] Muscat Primary Court), Commercial Case 492/2012, 23/03/2013 (Caravel Pride); Muscat Appeal Court Commercial Case 271/2013, 13/02/2014(Caravel Pride); Supreme Court, Commercial Case 183/2014, 25/01/2015 (Caravel Pride).
[294] *Iron Butterfly* (n 206).

of lading (or transport document) in particular and how the Rotterdam Rules resolved the problem of the missing information. Hence, the bill of lading (or transport document) must include the following information:

Parties of contract: the Hague/ the Hague Visby Rules do not mention the parties of the contract. the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law or the proposed new Omani Maritime Law. This concurs with determining that the bill of lading or transport document must contain the details of the contract parties such as the carrier, the shipper and the consignee.

The Rotterdam Rules move future-forward step, providing the article identifies the carrier in the case where no person is identified in the transport document as the carrier. Here, article 37 of the Rotterdam Rules defines two alternative solutions, such as with the presumed registered owner of the ship being the carrier unless the person is proved to be the shipper under the charter contract. Lord Colman J adopted the same approach in *The Starin.*[295]

Alternatively, if the ship is under charter contract, it is presumed the charterer is the carrier. Identifying the parties is significant for determining who is being sued and claimed against. In *Fetim B.V v Continental Pacific Shipping Ltd (the Flecha)* the cargo owner claimed to be the owner of the ship and the charterer. The vessel was under the time charter and the court held that the identity of the carrier was the owner of the ship because the bill of lading had been signed by agents for Continental Pacific Shipping as carriers.[296] The Omani court in the *Iron Butterfly*

[295] *The Starin* (n 194) 95.
[296] *Fetim B.V v Continental Pacific Shipping Ltd (the Flecha)* [1999] 1 Lloyd's Rep 612.

illustrates how defining the carrier and shipper in the bill of lading helps determine who is being sued and claimed against[297].

The goods nature: the bill of lading is evidence of having received the nature of the goods.[298] All the international conventions and both Omani Maritime Laws define in detail how the bill of lading or transport document must contain the nature of the goods, the quantity, quality, the number of packages or pieces, the value of the goods, the weight, trademark and the description of the goods. Here, the Hague-Visby Rules, the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law, and the proposed new Omani Maritime Law all have the same provision for this duty despite their different expressions. *The Atlas* defines:

> Both sets of rules provided by art. III, r. 3 that, on the demand of the shipper, the carrier shall issue a bill of lading showing, inter alia, the number of packages or the quantity of the goods shipped and their apparent good order and condition; they further provide, by art. III, r. 4 that such a bill of lading shall be prima facie evidence of the number or quantity and the apparent order and condition of the goods shipped.[299]

Here, this bill of lading will be prima facie evidence of who is identified on it. In *Oricon Waren-Handelsgeselischaft M.B.H v. Intergraan N.V* it is stated '[i]t is, therefore, as plain as plain can be that [...] each of these bills of lading being

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[297] *Iron Butterfly* (n 206).
[298] David A. Glass, and Chris Cashmore, *Introduction to the Law of Carriage of Goods* (Sweet & Maxwell, 1989) 162.
[299] *The Atlas* [1996] 1 Lloyd's Rep 642, 646.

Hague Rules bills of lading acknowledged the numbers of packages shipped and are *prima facie* evidence of those numbers'.[300]

The apparent good order and condition of the goods: the bill of lading is evidence of the apparent good order and condition of the goods.[301] All the international conventions and both Omani Maritime Laws determine the carrier's obligation to state the apparent condition of the goods at the time of receipt from the shipper. In *Canada and Dominion Sugar Company LTD v. Canadian National (West Indies) Steamships, LTD* the court:

> Held 'that the statement in the bill of lading that the goods had been "received in apparent good order and condition" was clearly qualified by the marginal indorsement that it had been "Signed under guarantee to produce ship's clean receipt," and that therefore the shipowners were not estopped from adducing evidence that the goods were damaged before shipment.[302]

In the Omani court in *Mediterranean Navigation*, the shipment arrived at Sultan Qaboos Port damaged due to a delay in shipment from the port of Cape Town. The court decided to oblige the carrier to pay the damage due to his fault and held the carrier responsible because the latter issued a clean bill of lading that oranges and lemons were shipped in good condition in a container. The carrier did not express any reservations about the bill of lading.[303]

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[300] *Oricon Waren-Handelsgeselischaft M.B.H v. Intergraan N.V* [1967] 2 Lloyd's Rep 82, 90.
[301] Glass, Cashmore (n 298) 162.
[302] *Canada and Dominion Sugar Company LTD v. Canadian National (West Indies) Steamships, LTD* [1946] 80 Lloyd's Rep 13.
[303] *Mediterranean Navigation* (n 289).

However, the supposed goods were not apparent, or the carrier was unable to inspect the condition of the goods. In this case, the carrier has the right to issue a reservation.

The port of loading and the port of discharge: All the international conventions and both Omani Maritime Laws determine that the bill of lading or transport document must contain the details of the port of loading. However, the Hague/ Hague-Visby Rules do not have this provision.

The place of receipt and delivery: the Hague/ Hague-Visby Rules and the Hamburg Rules have a gap in this aspect because without invoking the freedom of contract clause, these rules do not regulate the multimodal transport, as discussed in Chapter Five in the section on the period of carrier liability.[304] However, the Rotterdam Rules stipulate that the transport document must contain the details of the receipt and delivery places because of the scope of application door to door, as discussed above. Here, Omani Maritime Law and the proposed new Omani Maritime Law are in line with the Hague/ Hague-Visby Rules and the Hamburg Rules approach.

The vessel information: the Hague/ the Hague-Visby Rules has a gap in this aspect. However, the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law and the proposed new Omani Maritime Law determine that the bill of lading or transport document must contain the details of ship names, weights, capacity, nationality, etc. The vessel information is significant and relevant for the seaworthiness obligation, as discussed in Chapter Four. For example, the

[304] See Section 5.3.

capacity of a ship is essential to identify if the ship is able to carry the goods or not.

The place, date of issuance of the bill of lading or transport document and the number of copies issued: The Hague/ the Hague-Visby Rules have a gap here. However, the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law and the proposed new Omani Maritime Law require that the bill of lading or transport document must contain the details of where the bill of lading or transport document was issued, the number of original copies issued and the date of issue. This is the essential information and it is relevant to identify the jurisdiction. This problem will not be discussed because it is outside the scope of this thesis.

The date of delivery and the period of delivery: The Hague/ the Hague-Visby Rules have a gap here because they do not cover the liability of delay, as discussed in Chapter Five.[305] However, the Hamburg Rules and the Rotterdam Rules require that the bill of lading or transport document must contain the details of the date of delivery and the period of delivery at the port of discharge of the goods. Unfortunately, Omani Maritime Law and the proposed new Omani Maritime Law have a gap regarding the date of delivery and the period of delivery. Nevertheless, both Omani laws cover the liability of delay, as discussed in Chapter Five.[306]

The Omani court in the case of *Mediterranean Navigation* discussed this issue because the bill of lading did not mention the date of delivery and the cargo interests claimed the goods damaged due to delay. Here the court addressed the

[305] See Section 4.4.4.
[306] Ibid.

issue of the carrier's obligation to deliver the goods at the specified time as the carrier must deliver the goods at the date specified in the bill of lading; the event was not specified in the bill of lading, this being an estimate of the period the ship would usually take for such a voyage.[307]

The place of the carrier's business: the Hague/ Hague-Visby Rules have gaps in defining this, while the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law and the proposed new Omani Maritime Law are in line with the principle defined in the bill of lading or transport document, with the name and place of the carrier's business. The place of the carrier's business is significant because it makes clear that a competent court has the jurisdiction to settle the dispute. This issue will not be discussed here because it is once again outside the scope of this thesis.

In *Caribtainer,* the shipowner alleged that the principal place of business was Hamburg. However, the defendant claimed that it was Hong Kong. The first instance was held by Sheen J where the principal place of business was Hong Kong. However, the appeal court decided 'that the owners' principal place of business was in Germany—Hamburg—and not in Hong Kong. Hong Kong was the principal place of business of Turbata, the managing agents, but it was not the principal place of business of the owners'.[308]

The payment of freight: The Hague-Visby Rules have a gap here, while the Hamburg Rules, the Rotterdam Rules, Omani Maritime Law and the proposed new Omani Maritime Law are in line with the principle defined in the bill of lading

[307] *Mediterranean Navigation* (n 289).
[308] *Caribtainer* (n 191)

which determines the amount of freight or the calculation of freight. Moreover, it should be defined as the freight payable by the shipper or the consignee. The identification of the amount of freight or the calculation of the freight in the bill of lading is significant as it is relevant to the issue of the limitation of delay liability, as discussed in Chapter Five.[309] However, the obligation of the shipper to pay the freight will not be discussed because it is outside the remit of this thesis.

In Compania Naviera General S.A. v. Kerametal LTD (The Lirnai) the court explained that '[f]reight is the consideration payable for the carriage of the goods to and their delivery at the destination. In the absence of special contractual provisions, it is earned only upon the delivery of the goods at their destination'.[310]

In the Omani Court in the case of *AM TINAI,* the carrier issued the bill of lading without mentioning the freight, and the court decided that defining the amount of freight, or the calculation of freight should be defined in the bill of lading pursuant to article 238(2).[311]

3.4 Conclusion

The definitions of any contract are based on the essential roles, obligations and liabilities of the parties. In addition, the contract definition shows the fundamental aspects of the contract, clarifying their purpose and the meaning of the words. As discussed in the definition of the Hague/the Hague-Visby Rules, the Hamburg Rules, and both Omani Maritime Laws definitions of contracts are not consistent with the current practice of the maritime industry and the container system due to

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[309] See Section 5.4.
[310] *Compania Naviera General S.A. v. Kerametal LTD (The Lirnai)* [1983] 1 Lloyd's Rep 373, 374.
[311] Muscat Primary Court, Commercial Case 381/2009, 26/04/2009 (AM TINAI); Supreme Court Commercial Case 275/2013, 17/04/2014 (AM TINAI).

the non-recognition of the multimodal mode of transport. Here, it can be concluded that the definition of a contract under the Rotterdam Rules constitutes the best practice of law and guidance to reform both Omani Maritime laws. As already discussed, the definition of the contract under the Rotterdam Rules is more precise and comprehensive, with a recognition of the multimodal mode of transport with the sea leg and suitability for the container system.

The definitions of the carrier, and who the other people are who may be acting on behalf of the carrier are vital to establish who the potential defendant is in a claim for cargo loss, damage or delay from the point of view of the cargo interests. In cases where the carrier is not clearly defined, or the carrier's role is not described, confusion may arise if legal action is initiated in terms of who is starting the action and against whom. As already discussed, the lack of clarification and the definition of Omani maritime laws concerning who the carrier is and who the other people are who may be acting on behalf of the carrier (either directly or indirectly) to perform all or parts of the carriage-of-goods-by-sea contract confused judges in Omani courts in terms of the marine agent's responsibilities.

The Rotterdam Rules address this problem in detail by identifying the carrier, the parties who may act on behalf of the carrier, and the limits of their responsibilities. The term 'performing party' is consistent with the multimodal mode of transport and the container system. It has therefore resolved this problem and identified the scope of application and liabilities. Hence, the maritime party has scope exclusively with the port, while the non-maritime party has the scope of application and responsibility before the port or after the discharge port.

The door to door concept, the multimodal mode and recognition of the electronic document of transport played a significant role in developing the obligation of issuing the bill of lading (or transport document) and the transport document application, the lack of clarification and the non-recognition of the electronic transport document under Omani Maritime Law made it necessary to reform it.

The terms of the transport document and the trade approach under the Rotterdam Rules cover many contracts and documents in comparison to other rules within the scope of this thesis, regardless of the paper document and electronic documents. Moreover, due to the development of transportation transactions and to meet the needs of technological development, this convention regulates the electronic document comprehensively as an alternative to paper documents. It can therefore be concluded that the Rotterdam Rules reflect modern carriage of goods practices and will achieve and enhance Oman's maritime industry and technological vision. Here, the use of technology and electronic transport documents will speed up the transport operation and reduce the cost of transport and legal costs, thereby having a positive impact on Oman's maritime industry; it will also enhance the GDP in Oman’s economy.

Additional to this, rules need to have certainty and clarity; here the Hague/ the Hague-Visby Rules, the Hamburg Rules, Oman Maritime Law and the proposed new Omani Maritime Law have gaps, weaknesses and less clarity regarding the transport document in particular, and they do not precisely indicate the issue of absence in some bills of lading particulars. These are different to the Rotterdam Rules which have more detail, information as well as solutions regarding the issues of transport document details and the absence of transport document

particulars. Consequently, it can be argued that this provision to improve Omani Maritime Law and the proposed new Omani Maritime Law will greatly affect evidentiary value, because this matter is of great importance and lacks detail in the bill of lading and transport document. Were it not to be tackled, it would raise problems and disputes, so increasing legal costs and would have a negative impact on the carriage of goods cost as well as trade value.

Chapter 4. The Obligations of a Carrier

4.1 Introduction

Carrying and delivering goods are the main aims of the contract of carriage. The goods must be safely transported to the shipper or a third party from one place to another, conditionally on time and as agreed in the bill of lading or transport document.

As discussed in Chapter One, three factors have a significant impact on the design of the obligations of a carrier. The first of these is the conflict between the carriers and cargo interests in minimising or maximising the carrier's obligations. The second is the container carriage system which requires the door to door concept and the multimodal mode and the third is the advanced technology. In addition, all three factors above have a significant impact on the transport cost and trade value, reflecting on the economy and competition in the carriage of goods by sea market.[312]

This chapter sets out to establish if the rules relating to the carrier's obligations under Omani maritime laws and the proposed new Omani Maritime Law are still suitable for the latest development in the modern carriage of goods industry in Oman and worldwide.

It also examines how, if the law raises the carrier's obligations in favour of the shipper, this will increase the insurance from the carrier's side. Alternatively, if the law reduces the carrier's obligations in favour of the carrier, this would incur

[312] See Section 1.7.

double insurance from both parties. In this way, the insurance costs would have negatively impacted on the economy and competition in the carriage of goods by sea market due to the higher cost of insurance or double insurance increasing the cost of the product and transport cost. The chapter also examines how, if the law adopted rules suitable for the container carriage system, the multimodal mode approach and use of advanced technology would reduce costs, which would have a positive impact on the economy and enhance Omani maritime industry in the competition for the carriage of goods by sea market.

In addition, this chapter will assess how the carrier's obligation rules under the Rotterdam Rules are a big step forward in successfully regulating the carriage of goods by sea practice today as the latest version of the carriage of goods by sea contract was drafted as recently as 2008.

There are two reasons for addressing the carrier's obligations before discussing the carrier's liabilities. Firstly, the carrier's liabilities are triggered when the carrier has breached one or all of the obligations. Secondly, it is necessary to gain an accurate understanding of the nature of the carrier's obligations in order to understand and analyse the nature of the carrier's liabilities because there is a link between the two. Therefore, this chapter will address the carrier's obligations in the following order:

- Exercising due diligence as regards the ship's seaworthiness
- Proper loading, unloading, stowing, handling, keeping and care for the goods carried
- Delivering the goods

4.2 Exercising Due Diligence As Regards the Ship's Seaworthiness

The due diligence provision regarding ensuring a vessel is seaworthy was adopted by the Hague Rules/Hauge–Visby Rules from the Harter Act 1893.[313] Here, it can be seen that the seaworthiness principle has remained unchanged in the Rotterdam Rules since the Harter Act 1893.[314] Therefore, the carrier, under international rules related to the carriage of goods by sea, must exercise due diligence in regards to the seaworthiness of the ship, as the carrier is liable for any damage or loss or delays resulting from an unseaworthy vessel.[315]

However, due to the multimodal mode, advanced technology and the conflict between carriers and the cargo interests in minimising or maximising obligations, the definition of seaworthiness has not remained the same because two elements have changed dramatically: the nature of the carrier's obligation of due diligence and the period of this obligation.[316]

Hence, the following discussion will clarify the position of the three international rules, Omani maritime laws and the proposed new Omani Maritime Law regarding the duty to provide a seaworthy vessel. This section aims to examine how to revise Article 219(1) of Omani maritime law and Article 197 of the proposed new Omani Maritime Law taking into consideration developments in the maritime transport industry. The aim of this debate is to conclude how the seaworthiness

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[313] CMI (n 6) 154; Dewey R Villareal Jr, 'The Concept of Due Diligence in Maritime Law' (1971) 2 J Mar L & Com 763, 765-766.
[314] Harter Act 1893, s 191.
[315] Appendix 1, Table of International Conventions Articles.
[316] UNCITRAL, Consolidated Official Reports, (n 203) 151–157.

obligation rules under the Rotterdam Rules constitute the best practice of law and guidance with which to reform Omani laws.

4.2.1 The Concept of Seaworthiness

The provision of a seaworthy vessel is a highly controversial topic that has two main aspects. The first of these is the vessel's fitness to undertake the voyage, this being called 'vessel seaworthiness'. Hence, the vessel must be able to survive the ordinary perils during the voyage to deliver goods safely, on time and as per the bill of lading's or transport document's quantity and quality conditions to its shipper or third party. The aspects of vessel seaworthiness are physical worthiness, crew worthiness and documentary worthiness. To this end, the carrier must ensure the vessel's body, engines and devices are fit for purpose, undamaged and functioning correctly, all supplemented by the necessary requirements, documents and equipment. In addition, the carrier must ensure the competency of the crew and a sufficient number of crew.[317] *Dixon v Sadler* defines the vessel's seaworthiness as 'she [the ship] shall be in a fit state as to repairs, equipment, and crew, and in all other respects to encounter the ordinary perils of the voyage'.[318]

The second aspect is the ability of the ship to receive and carry the goods based on the nature, type and condition of the goods, this being called 'cargo worthiness'. The Omani courts in *Harvey,* held the carrier responsible to pay the damage amount of 141,218 US Dollars due to the ship being unfit to carry

[317] Girvin (n 160) 296–299; Eder B., et al (n 242) 117-120.
[318] *Dixon v Sadler*, (1839) 5 M & W 405, 414.

goods.[319] The carrier must take into consideration the type and nature of the goods, make any necessary arrangements and take precautions to have the ship ready to receive, carry and deliver goods in the same condition as they were received and described in the bill of lading or transport document. For example, carrying meat requires a frozen hold, while carrying rice requires a dry container without humidity.

In *Rathbone Brothers & Co. v D Maciver, Sons & Co.* refers to cargo worthiness, meaning the ship must be in a suitable and seaworthy condition for carrying the goods. As Wills J stated:

> [T]he word admits of two meanings the one relating to the fitness of the ship to encounter the perils of the sea; the other in relation not only to that fitness, but also to the fitness of the ship and her equipment to carry the particular goods with which she is to be loaded.[320]

The three sets of international rules, Omani maritime laws, and the proposed new Omani Maritime Law do not define seaworthiness. However, Johan F Wilson defines the seaworthiness obligation as covering 'not only the physical state of the vessel but also, the competence and adequacy of the crew, the sufficiency of fuel and other supplies, and the facilities necessary and appropriate for the carriage of the cargo'.[321] Additionally, William Tetley defines seaworthiness as 'the state of a vessel in such a condition, with such equipment, and manned by

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[319] Muscat Primary Court, Commercial Case 1004/2003, 5/05/2004 (*Harvey*); Muscat Appeal Court, Commercial Case, 177, 180 /2004, 10/01/2005 (*Harvey*); Supreme Court, Commercial Case 30,31/2005, 04/05/2005 (*Harvey*).

[320] *Rathbone Brothers & Co. v D. Maciver, Sons & Co.* [1903] 2 KB 378, 393.

[321] Wilson (n 146) 9.

such a master and crew, that normally the cargo will be loaded, carried, cared for and discharged properly and safely on the contemplated voyage'.[322]

Here, the court defines seaworthiness as:

> (1) The vessel must be in a suitable condition and suitably manned and equipped to meet the ordinary perils likely to be encountered while performing the services required of it. This aspect of the duty relates to the following matters. (a) The Physical condition of the vessel and its equipment; (b) The competence/efficiency of the master and crew. (c)The adequacy of stores and documentation. (2) The vessel must be cargoworthy in the sense that it is in a fit state to receive the specified cargo.[323]

The terms of the seaworthiness obligations are expressed clearly in those rules that have a separate article devoted to seaworthiness. However, some rules do not allocate separate provisions and imply the meaning of seaworthiness in a general article about the carrier's liabilities. Article 3(1) of the Hague/Hague–Visby Rules provides the three factors that constitute seaworthiness.

The Hamburg Rules left out the specific obligations relating to seaworthiness entirely, only using a general article for the carrier's liability under Article 5(1) of the Hamburg Rules. It can be inferred that Article 5 applies to all obligations of the carrier under the contract of the carriage of goods by sea, including the

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[322] Tetley (n 146) 877.

[323] *Papera Traders Co Ltd v Hyundai Merchant Marine Co Ltd (The Eurasian Dream)* [2002] 1 Lloyd's Rep 719, 736.

seaworthiness obligation. Thus, the carrier, including the carrier's servants or agents, is liable for loss, damage or delays if the carrier does not take all measures to make the ship seaworthy, unless something out of the carrier's control occurs.[324]

In this regard, however, the Rotterdam Rules took a further step in defining seaworthiness by providing detailed provisions in Article 14. Here, there is a slight difference in terms of the period and the nature of the obligation, also introducing the term container since it adopts the latest developments in maritime industry practice.

The standpoint of Article 219(1) of Omani maritime law defines the seaworthiness obligation in a separate article. However, Omani maritime law differs slightly from the Hague/Hague–Visby Rules and the Rotterdam Rules in terms of the nature and the period of obligation.

Article 250 of Omani maritime law indicates the provision of paragraphs 1 and 2 of Article 219 about the duty of the charter party to exercise due diligence regarding to a seaworthy vessel. This should be applied under the same principle to the carrier in the carriage of goods by sea contract. Thus, any breach of the seaworthiness obligation in Article 219(1) and of Omani maritime law triggers the application of the carrier's liabilities in Article 219(2). In addition, article 251 of the Omani maritime law sets down the liabilities and limitations of the carrier.

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[324] Samir Mankabady, 'Comments on the Hamburg Rules' in Samir Mankabady (ed), *The Hamburg Rules on the Carriage of Goods by Sea* (A.W. Sijthoff-Leyden 1978), 54; Tetley (n146) 936; Delphine Aurelie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' (2015) 28 USF Mar LJ 237, 243.

The proposed new Omani Maritime Law articulates a separate article to define the obligation of seaworthiness under Article 197 of the new Omani maritime law. Based on the provision of the proposed new Omani Maritime Law, it can be seen that this new law has taken a backward step, in contrast to the Hague/Hague–Visby Rules, the Rotterdam Rules, and Omani maritime law, because the proposed new Omani Maritime Law provision is narrow and misses significant details, such as the period of seaworthy obligation. Furthermore, it shifts the nature of seaworthiness from exercising reasonable efforts to the absolute obligation to make a vessel seaworthy, which would have a negative impact on transport costs and commercial value. This will be discussed in the following sections.

Here, the breach of the seaworthiness obligation under Article 197 of the new Omani maritime law triggers the application of Article 207, which holds the carrier liable for loss or damage and delay.

The following section of this chapter will consider these two aspects of seaworthiness, starting with the seaworthiness of the vessel and then that of the cargo. As briefly discussed earlier, the vessel's seaworthiness has three main aspects: its physical seaworthiness, the seaworthiness of the crew and documentary seaworthiness. Additionally, the following section of this chapter will debate the nature of the seaworthiness obligation, and the period of the seaworthiness obligation in order to determine if Omani maritime law or the proposed new Omani Maritime Law should be revised or not in its seaworthiness obligation and to examine if the current position of the seaworthiness obligation in the Omani laws is suitable for the latest development of the transport industry

in Oman and globally. In contrast to the rules mentioned above, Article 14 of the Rotterdam Rules is seen to be more comprehensive and consistent with the carriage of goods by sea contract practices. Hence, the discussion will concentrate on how Article 14 of the Rotterdam Rules may serve as the best practice of law, and a guide for the revision of Article 219(1) of Omani maritime law and Article 197 of the new Omani maritime law in order to fill the gaps and ambiguities in terms of the seaworthiness obligation. Hence, each of these issues will be considered separately.

4.2.1.1 Vessel Worthiness

Article 3(1)(a & b) of the Hague/Hague–Visby Rules, Article 14(1)(a & b) of the Rotterdam Rules, Article 219(1 & 2) of Omani maritime law and Article 197 of the new Omani maritime law refer to vessel worthiness. Hence, the question here is: what are the aspects and elements of vessel worthiness?

- Physical worthiness

The concept of physical worthiness refers to the physical qualities of the ship itself and the carrier must ensure the capacity of the ship to travel the route to its destination in the required time. This means the carrier has to consider the physical seaworthiness, the equipment, system, facilities, engines, the proper type of ship for the goods (i.e. age, navigational water such as sea, river, ocean, etc.), the route (short or long), the time of sailing (winter or summer) and the ability of the ship to face common perils and avoid loss, damage or delay during the

voyage.[325] Once the physical worthiness element was the timing of the journey, so the carrier had to sail in proper time to deliver the goods safely.

For example, in *Daniels v Harris,* the cargo was carried onto the deck from St Lucia to England and because of bad weather at the time of the voyage, the cargo was damaged. It was decided that the vessel was not fit to carry the goods on deck at that time.[326] Moreover, in *Quebec Marine Insurance Company v the Commercial Bank of Canada*, the cargo was to be carried from Montreal to Halifax in two stages: a river stage and a sea stage. The vessel completed the river stage but did not complete the sea stage because of a problem with the boiler. It was fit only for the river stage and so became disabled in the sea stage.[327] Therefore, in *Garnat Trading & Shipping (Singapore) PTE LTD v. Baominh Insurance Corporation* defines that the carrier must ensure the vessel can sail in all types of water along its route. Here , the court emphasises that with

> [T]he "doctrine of stages" it was sufficient if the ship was seaworthy for some definite, well recognised and separate stage of the voyage, even though some work, or change, to the vessel, her equipment, supplies or crew was required before she is fit for a second or later stage of the voyage.[328]

The concept of equipment worthiness is another significant obligation relating to physical worthiness. The carrier has to inspect the vessel before starting the voyage to ensure the ship's engines, tools and devices are fully functional and

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[325] Eder B., et al (n 242) 117.

[326] *Daniels v Harris* (1874-75) LR 10 CP 1, 2.

[327] *The Quebec Marine Insurance Company v the Commercial Bank of Canada* (1869-71) LR 3 PC 234.

[328] *Garnat Trading & Shipping (Singapore) PTE LTD v. Baominh Insurance Corporation* [2011] 1 Lloyd's Rep 589, 590.

working as they should. Additionally, the carrier must provide adequate materials in the bunker: spare parts, fuel, and consumable items to ensure the vessel is ready to navigate to the destination without any problem and has all it needs to conduct any necessary repairs or make any necessary alterations during the voyage.

- Crew worthiness

The concept of crew worthiness refers to how the carrier must recruit sufficient and competent staff with the necessary skills and experience, such as the master, sailors, mechanical, electrical and instrument engineers, first aid officers and other categories of staff required in the ship.[329] Article 3(1)(b) of the Hague/Hague–Visby Rules, Article 14(1)(b) of the Rotterdam Rules and Article 219(1) of Omani maritime law regulate crew worthiness. Article 5(1) of the Hamburg Rules and Article 197 of the new Omani maritime law do not discuss crew worthiness directly, but the general term of seaworthiness implies the inclusion of crew worthiness.

Therefore, the carrier has to ensure that all the staff recruited have been trained and have the right qualifications, skills, and experience to allow them to work on the ship and that they are capable of dealing with ordinary accidents and problems during the voyage. To satisfy the obligation of crew worthiness, the carrier not only has to recruit competent staff but also must employ an adequate number of employees for any emergencies or problems, accidents or dangers that the vessel might face during the voyage and provide excellent service to

[329] Girvin (n 160) 296–299; Eder B., et al (n 242) 120.

deliver the vessel on time, including safeguarding the vessel, the environment, the cargo, and the crew.[330] Rudolf, a member of The *Travaux- preparatoires* of the Hague/Hague–Visby Rules, suggested using the words 'a competent crew' in Article 3(1)(b) of the Hague/Hague–Visby Rules.[331]

Using a hypothetical example, if a ship has a fire that threatens to damage the cargo and cause a delay, while the carrier may have recruited an excellent crew and supplied all the right equipment, including a fire extinguisher, the fire might not be extinguished in time because there are simply not enough crew to put it out. Alternatively, the number of crew could be adequate, but they might not have enough training and experience to deal with the fire and the emergency. In both scenarios, the carrier would be liable for unseaworthiness and would have to pay damages because the carrier provided insufficient crew or did not ensure that the crew were trained and competent; in short, the carrier would not have met the requirement of crew worthiness.

For example, in *Hongkong Fir Shipping Company, Ltd v Kawasaki Kisen Kaisha, Ltd, The 'Hongkong Fir'* vessel was old, had arrived in Liverpool in good condition, but needed careful and adequate maintenance by an experienced, competent and adequate crew during the voyage. Despite the physical worthiness of the ship, the court decided the ship was unseaworthy because the number of crew who were operating the engine room was insufficient or the crew did not have

[330] Roger White, 'The Human Factor in Unseaworthiness Claims' (1924) Lloyds Maritime and Commercial Law Quarterly 221, 221–227.
[331] CMI (n 6) 185

sufficient competence to provide an excellent service or face ordinary accidents and problems during the voyage. Salmon J. found:

> [T]hat the right conclusion as to the causes of the breakdowns and delays was that stated by the consulting engineer acting for the owners on taking over the vessel: “The engine room executive appeared to lack the necessary experience and/or perspicuity normally expected of them and in consequence the machinery was deprived of the care and attention which it would otherwise have been afforded ... the adverse condition of the machinery disclosed during examination on the completion of the voyage is attributable in part to heavy weather and in part to progressive negligence through a combination of what appears to have been gross dereliction of duty and inexperience on the part of the engine room personnel.[332]

There is one additional issue relating to crew worthiness, namely the difference between an incompetent and a negligent crew.

The difference between these two types of crew is crucial because they have two different results and a severe impact. As discussed above in the definition of crew worthiness, the carrier has to recruit skilled and experienced crew members and must ensure that all the crew have the training and qualifications required to allow them to work on the ship. They must be capable of controlling and facing any ordinary accidents and problems during the voyage. Additionally, the carrier

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[332] *Hongkong Fir Shipping Company, Ltd v Kawasaki Kisen Kaisha, Ltd*, The ‘Hongkong Fir] 1962[2 QB 26, 29.

must recruit an adequate number of crew members to transport the goods. It can therefore be seen that competency has two elements: a skilled crew and a sufficient number of crew members. The carrier has to fulfil both elements to complete the duty regarding crew seaworthiness.[333] Therefore, an incompetent and an insufficient crew means that the carrier has failed to fulfil the duty of seaworthiness and is liable for loss, damage, or delay under all the five rules discussed in this thesis.

However, the fault or negligent performance of a crew produces different results among all the five rules. When poor performance is the fault of crew members, the carrier may use exceptions to accept liability for damage, loss, or delay under the exception clause in Article 4(2)(a) of the Hague/Hauge–Visby Rules and Article (252)(1)(a) of Omani maritime law. However, under the Hamburg Rules, the Rotterdam Rules and the proposed new Omani Maritime Law, the carrier is liable for loss, damage and delay resulting from the fault of the crew.

In other words, Article 5 of the Hamburg Rules, Article 17 of the Rotterdam Rules, and Article 210 of the proposed new Omani Maritime Law do not have an exemption clause to exempt the carrier from the liability incurred because of crew negligence or fault, which is different to the protection offered by the Hauge/Hauge–Visby Rules and Omani maritime law. Hence, this thesis will give special attention to the exemption clause in Chapter Five for carrier liabilities.

Chapter 9 of the International Convention for the Safety of Life at Sea in the 1974 (SOLAS) Convention provides for the safe operation of ships, so the International

[333] White (n 330) 221–227; Eder B., et al (n 242) 120.

Shipping Management Code (ISM) may provide the carrier with useful guidance about standard due diligence to ensure a competent and sufficient number of crew to comply with and fulfil the crew worthiness requirement. The ISM Code requires that the carrier establishes a system to ensure that all crew in the ship have information, training, and access to manage the ship. In addition, it is an advanced tool to assist the court and to determine whether the carrier has exercised crew worthiness or not because the court will discuss if the carrier and crew have followed the guidelines of the ISM Code.[334]

Hence, the carrier in Oman must follow the framework and guidelines of the ISM Code, as Oman is a member of the International Maritime Organisation (IMO) and the SOLAS Convention. The *Travaux- preparatoires* of the Rotterdam Rules recommended the ISM Code as a guideline to making a vessel seaworthy.[335] *The Eurasian Dream* case refers to the ISM as a standard framework for a carrier to exercise due diligence in order to provide a seaworthy ship.[336]

- Documentary worthiness

The concept of documentary worthiness is not as clearly articulated as physical and crew worthiness in Article 3 of the Hague/Hague–Visby Rules, Article 14 of the Rotterdam Rules, Article 219(1) of Omani maritime law and Article 197 of the new Omani maritime law. Documentary worthiness is implied under the general terms of vessel seaworthiness because the vessel might be unseaworthy if it does not have the necessary documentation required for safe navigation to a

[334] International Convention for the Safety of Life at Sea 1974 (SOLAS); International Safety Management Code (1993) ISM Code); Nikaki (n 22) 11-14.
[335] UN, (A/CN.9/510) (n 25) 15-16.
[336] *The Eurasian Dream* (n 323) 739.

destination, such as up-to-date charts, ship plans, equipment and system manuals or other documents required by authorities relating to a vessel's seaworthiness, permission to leave port or loading and unloading operations.[337] Here, documentary seaworthiness can be divided into two aspects: documents relating to the ship itself and the crew; documents relating to goods.

- Documents Relating to the Ship and Crew

The carrier has to provide the master and the crew with all the documents required to allow the ship to sail safely and on time, such as navigational charts, these being fundamental to sailing the correct route. Sailing without a chart or an up-to-date chart will lead to accident, damage, loss and delay.[338] For example, in *Grand Champion Tankers Ltd v Norpipe A/s*, the court found that the damage in the oil pipeline was due to the lack of up-to-date documentation to operate the vessel safely – the master had crashed into a pipe in a loading port because he was using an outdated chart which indicated there were no pipes in the location.[339]

In addition, the master must have by-laws on board to ensure that the he/she has sufficient knowledge to navigate in foreign ports.[340] Moreover, the carrier must provide a shipping plan and a manual of devices and equipment to help the crew to function and operate the equipment efficiently and correctly. Hence, the carrier must obtain all the certificates identified by the ISM Code to protect the

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[337] Girvin, (n 160) 299; Eder B., et al (n 242) 120.
[338] Ibid.
[339] *Grand Champion Tankers Ltd v Norpipe A/S (The Marion)* [1984] AC 563.
[340] *Rederij Erven H. Groen and Groen v. The "England* [1973] 1 Lloyd's Rep 373.

crew from injury or loss of life and to avoid damage to the environment – to the marine environment, in particular – and to property.

For example, in order to issue a Safety Management Certificate, the carrier has to ensure that all the documents in the vessel are available and updated, and that there is a system to monitor the documents to make sure all the required documentation has been updated.[341] Furthermore, the carrier must obtain documents and certificates as per the requirements of an International Ship and Port Facility Security (ISPS) Code (see Chapter 11 of the SOLAS Convention – for example, the International Ship Security Certificate (ISSC). The main objectives of this document are to extend and guarantee the security of the ship and crew at national and international levels. Additionally, as per the requirement of ISPS, the carrier must provide the crew and master with the procedure for a security assessment of the ship or port and a potential security plan to deal with any threats to the ship.[342]

Hence, the documentary duty aims to guarantee the safety of sailing and fulfil the requirements of both international and national rules and regulations. The purpose of this documentary worthiness related to the ship and crew is not limited to providing international and local documents, but extends to the provision of all the documents required for sea vessels, such as the navigational charts to support the ship's operation, the ship plan and the manual of devices and equipment to help the crew operate the equipment efficiently and correctly. Furthermore, the carrier must ensure that all the crew and the master have all the

[341] International Code for the Security of Ships and Port Facilities 2002 (ISPS Code).
[342] Ibid.

necessary licences, crew passports, required certificates, the flag state and other documents required by port authorities for navigation, to anchor the ship or leave port. Failing to provide such documents will lead to a delay, and the ship may be deemed unseaworthy.

- Documents Related to the Goods

At times, the carrier is obliged by port authorities to provide documents before loading or unloading goods, and therefore, the absence of these required documents will prevent the master from loading and unloading the goods. Inevitably, this will lead to a delay in the transportation and delivery of the goods to the shipper or the third party. For example, in *Cheikh Boutros Selim El-Khoury and Others v Ceylon Shipping Lines, Ltd*, the charterer cancelled the contract because in Calcutta the vessel could not leave the port without a Deratisation Certificate. On 6 May 1957, the parties agreed that if the vessel was not delivered by 6 p.m. on 10 May 1957, the charterers had the right to cancel. Justice Roskill reached the conclusion that the charterer had the right to cancel because the duty to make a vessel seaworthy included all the necessary certificates and documents.[343]

In addition, the carrier has to provide all the measurement certificates required otherwise the ship is considered unseaworthy, as with the decision decided in *Chellew Navigation Company, LTD v. A.R. Appelquist Kolimport, A.G.* which 'Held affirming award, that the vessel was not unseaworthy by reason of her

[343] *Cheikh Boutros Selim El-Khoury and Others v Ceylon Shipping Lines, Ltd (The Madeleine)* [1967] 2 Lloyd's Rep. 224, 225.

having no Swedish measurement certificate'.[344] In *Seagate Shipping LTD v. Glencore International AG (the Silver Constellation)* it was decided that there should be 'the necessary valid equipment and all certificates, records and documents necessary to comply with safety and health regulations, international regulations and all current requirements at all ports […]'.[345]

In Oman, the port authority requires some documents before the loading or unloading operations, such as the commercial invoice, the packing list, a certificate of origin and a bill of lading and some specific goods need specific documents, such as health certificates for food, goods and medicines.[346] In addition, the carrier or his master or marine agency must provide a manifest document within 36 hours from the ship's arrival at an Omani port to allow for loading and unloading operations.[347] Failing to provide such documents will lead to a delay and may render the ship unseaworthy.

4.2.1.2 Cargo Worthiness

As discussed earlier, the seaworthiness concept has two aspects: vessel worthiness (physical, crew and documentary worthiness) and cargo worthiness. Carver defines cargo worthiness as follows: 'the ship must be suitable for carrying the cargo contemplated, on the voyage contemplated'.[348] Here, the carrier must

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[344] *Chellew Navigation Company,LTD v. A.R. Appelquist Kolimport, A.G* [1933] 45 L.I.L.Rep. 190.

[345] *Seagate Shipping LTD v. Glencore International AG (the Silver Constellation)* [2008] 2 Lloyd's Rep. 440.

[346] *Oman Country Commercial Guide*, *'Oman – Import Requirements and Documentation'* <https://www.export.gov/article?id=Oman-Import-Requirements-and-Documentation> accessed 22nd April 2021.

[347] The Executive Regulation of the Unified Customs Law of the Cooperation Council for the Arab States of the Gulf 2005/23 issued on 2nd May 2005, art 30.

[348] Carver (n 212) 588.

ensure the ability of the ship to carry the goods,[349] for example, providing refrigerators for products that need cooling and rooms free of moisture for goods that need dry air. Moreover, the goods must be stowed so that they are delivered in the same condition as they were received and described in the bill of lading or transport document.

Therefore, the carrier has to comply with and fulfil all elements of these two aspects of seaworthiness in order to complete the obligations of seaworthiness. In other words, if the carrier exercises physical, crew, and documentary worthiness but fails to fulfil the obligation of the cargo worthiness, this will mean that the carrier has failed to exercise his obligation in respect of seaworthiness. Here, Article 3(1)(c) of the Hague/Hague–Visby Rules, Article 14(1)(c) of the Rotterdam Rules, Article 219(1) of Omani maritime law, and Article 197 paragraph (2) of the new Omani maritime law refer to cargo worthiness. These articles are all similar, based on their provisions for the cargo worthiness principle. However, the Rotterdam Rules have taken this a step further by introducing the term 'container' in Article 14(c). Additionally, the Rotterdam Rules use the words 'any containers' to avoid the misunderstanding that the container is an intrinsic part of the ship.[350]

This significant improvement emphasises how the container system is a result of many factors, one of which is the advent of new technology that has improved maritime services and the maritime industry in general.[351] Hence, the carrier has

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[349] *Rathbone Brothers* (n 320) 393; Todd (n146) 63.

[350] United Nation, Report of United Nations Commission on International Trade Law, forty-first session (A/63/17) (New York, 16 June–3 July 2008)13.

[351] Nikaki, ' The Carrier's Duties' (n 22) 5.

to provide a container fit to carry the goods as part of its cargo-worthiness duty. Further, Article 197 paragraph (2) of the proposed new Omani Maritime Law is narrow and lacks detail, in contrast to Article 3(1)(c) of the Hague/Hague–Visby Rules, Article 14(1)(c) of the Rotterdam Rules, and Article 219(1) of Omani maritime law.

Here, it can be seen that the provision of the Rotterdam Rules is a good example to use for revising Omani maritime laws. Moreover, cargo worthiness means that if, for example, the goods are frozen, the carrier must provide a vessel that has refrigeration and the carrier has to make sure that the cooling system is working correctly to keep it suitable for the goods so that they arrive in the same condition as received and described in the bill of lading or transport document. In *Maori King' v Hughes*, the court found that the vessel was not fit to carry hard frozen mutton because the refrigeration was not working correctly and the frozen mutton arrived damaged.[352] The court reached the decision in *Stanton v. Richardson* that the ship was unfit to carry a cargo of wet sugar.[353]

In the Omani courts in the *Carval Pride* case, it was illustrated that cargo worthiness and the container must be fit to carry the goods. The cargo owner shipped 23,000 kilos of rice on the Carval Pride ship from the port of Kitchen in India to the port of Sultan Qaboos in Muscat. At the discharge port, the cargo was found to be damaged due to the entry of water into the container from cracks in the vessel's roof and walls and the container was deemed not good enough for shipping these goods. The court decided that it was the carrier's responsibility to

[352] *Maori King v Hughes*]1895[2 QB. 550, 562.
[353] *Stanton v. Richardson* (1871-72) L.R. 7 C.P. 441.

place the goods *in a proper place and to transport them and preserve them from damage.*[354]

Furthermore, in Omani courts in the Oil Aintaqirati case it is clear that the carrier issued a clean bill of lading to carry buffalo meat from Nana Shiva Port in India to Sultan Qaboos Port in Oman. At the discharge port in Oman, the goods were damaged due to the temperature being too low in the refrigerated container. The court decided here that the carrier had to pay for the damage because he failed to provide a proper container to carry the goods.[355] Moreover, the Omani courts held the carrier liable due to having an improper container so allowing the entry of water into the container from cracks.[356]

Based on the interpretation of the concept of seaworthiness, the carrier has to meet all aspects of seaworthiness to fulfil the seaworthiness obligation, such as vessel worthiness and cargo worthiness.

The carrier has to provide a physically capable vessel with a competent and sufficient number of crew and all the documents required for safe sailing or loading and unloading operations, as well as providing all the equipment and spare parts usually needed by the vessel during a voyage. The second aspect of seaworthiness is cargo worthiness, which is the ability of the vessel to receive the goods and to carry and deliver them safely.

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[354] *Carval Pride* (n 293).
[355] *Oil Aintaqirati* (n 264).
[356] *Moon Golden Wattle* (n 207).

4.2.2 The Nature of the Seaworthiness Duty

The nature of the obligation to make a vessel seaworthy is one of the most controversial concepts under the carriage of goods by sea rules. Here, it can be questioned whether it is an absolute obligation (warranty) or if only due diligence (reasonable effort) is required to achieve a degree of fitness.

The nature of seaworthiness under common law is an absolute obligation that imposes on the carrier a strict and stringent duty to provide a seaworthy ship.[357] In *McFadden v Blue Star Line*, Channel J defines the nature of the seaworthiness duty under common law as 'the warranty, which is prima facie implied in a contract for the carriage of goods by sea, that the ship is fit for the reception of the cargo, is an absolute warranty […]'.[358] Additionally, Lord Blackburn in *Steel v State Line Steamship Co* clearly describes the nature of seaworthiness duty under common law as a 'warranty', not merely that they should do their best to 'make the ship fit , but that the ship should really be fit '.[359]

However, here the absolute-obligation approach has been changed to exercising due diligence to provide a seaworthy vessel under the Hague/the Hague-Visby Rules.[360] It can be seen that this is a radical change under the Harter Act 1893 in respect of the seaworthiness obligation from an absolute obligation under common law to due diligence to make the vessel seaworthy and to take care of

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[357] Tetley (n 146) 875; Defossez (n 324) 239.
[358] *McFadden v Blue Star Line* [1905] 1 KB 697, 698.
[359] *Steel v State Line Steamship Co* (1877) 3 App. Cas. 72, 86.
[360] *Riverstone Meat Company, Pty. Ltd v Lancashire Shipping Company Ltd* (*the Muncaster Castle)* [1961] A.C. 807, 872; [1961] 1 Lloyd's Rep 57, 87.

the goods in order to prevent the carrier from incurring liabilities from loss or damage resulting from faults or errors in navigation.[361]

The Hague/Hague–Visby Rules also use the term 'due diligence' and Tetley interpreted the nature of due diligence to provide a seaworthy vessel under article 3(1) of the Hague/Hague–Visby Rules as a 'genuine, competent and reasonable effort of the carrier to fulfil the obligations' of seaworthiness.[362] In *Northern Shipping Co. v Deutsche Seereederei G.m.b.H(the Kaptan Sakharo)* the nature of due diligence as reasonable efforts under is thus:

> [A]rt. III, r. 1 of the Hague Rules to exercise due diligence to make the vessel seaworthy … as the test whether it had shown that it, its servants, agents or independent contractors, had exercised all reasonable skill and care to ensure that the vessel was seaworthy at the commencement of its voyage, namely, reasonably fit to encounter the ordinary incidents of the voyage.[363]

The Hamburg Rules also adopted the same nature of due diligence as the Hague/Hague– Visby Rules but the Hamburg rules use a different term, this being a 'reasonable measure'. Article 5(1) makes clear that the prudent carrier or his crew or agents has to make every effort and take reasonable measures to fulfil

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[361] Harter Act 1893, s. 192. Limitation of liability for errors of navigation, dangers of sea and acts of God; *the Muncaster Castle* (n 357) 58.

[362] Tetley (n 146) 876.

[363] *Northern Shipping Co. v Deutsche Seereederei G.M.B.H (the Kaptan Sakharo)* [2000] CLC 933, 946; [2000] 2 Lloyd's Rep 255, 266.

the obligation to provide a seaworthy ship and also to take reasonable measures to have the vessel inspected for any latent defects.[364]

The Rotterdam Rules, also the Travaux- preparatoires, make clear that the obligation to provide a seaworthy ship under Article 14(1) must be like the Hague/Hague–Visby Rules – that is, with due diligence and an obligation to make reasonable efforts during the voyage, rather than being an absolute obligation.[365]

The wording of Article 219 (1) of Omani maritime law is quite similar to the wording of Article 3(1) of the Hague/Hague–Visby Rules which states that the carrier has to exercise due diligence to provide a seaworthy vessel. Lord Al Rahbi interprets the nature of due diligence under 219(1) of Omani maritime law where reasonable effort should be exercised by the prudent carrier to fulfil the obligation of seaworthiness.[366] However, the new Omani maritime project has made a radical change compared to the three sets of international rules and Omani maritime law because the wording of Article 197 of the new Omani maritime determines that the obligation of seaworthiness is an absolute obligation. Hence, the carrier has to warranty a seaworthy ship.

Additionally, the nature of due diligence under Article 200 of the new Omani maritime to provide another vessel to complete the voyage if the first vessel is unable to continue is not regarded as reasonable effort. It is clearly an absolute obligation because, pursuant to Article 200 of this law, the carrier will be liable for damage, loss or delay even if providing a second vessel unless the

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[364] Mankabady (n 324) 54; Tetley (n 146) 936.
[365] UN, (A/CN.9/544) (n181) 46.
[366] Al Rahbi (n 39) 41.

unseaworthiness was caused by force majeure, fault of the shipper, fault of third parties or a special defect in the goods as defined in Article (210) of this law. Here, it can be seen that the proposed new Omani Maritime Law adopts the common law principle of absolute obligation to provide a seaworthy vessel. The fieldwork shows that Adel Ali Al Miqdai comments that the nature of the seaworthiness obligation in the new Omani maritime law is an absolute obligation.[367]

It can be further argued that extending the seaworthiness obligation from reasonable effort to warranty duty would have a negative impact on the carriage costs because the extension would raise the insurance costs, thereby increasing the freight charges. This is significant because the expensive transport costs would have a negative impact on trade costs and the commercial value in Oman. The high cost of transport would also reduce the Oman Maritime Industry opportunity to compete in the maritime industry market. Hence, the principle of continuous obligation under the Rotterdam Rules, which aims to unite, modernise and strike a balance between the carrier and the cargo interests. This upholds the seaworthiness aspect and nature (due diligence) and maximises the period of seaworthiness obligation to continuous obligation. Here, it can be seen that article 14 of the Rotterdam Rules is the best practice of law to reform Omani law because it strikes a balance between the carrier and the cargo interest to maintain the transport cost and retain the parties' rights.

[367] Interview with Adel Ali Al Miqdai, Associate professor at University of Sultan Qaboos, and a member of new Omani Maritime Law committee (Oman, Muscat, 21st May 2019).

To sum up, the requirement to provide a seaworthy vessel is an absolute obligation under common law and the proposed new Omani Maritime Law, whereas under the Hague/Hague– Visby Rules, the Hamburg Rules, the Rotterdam Rules and Omani maritime law, the obligation to provide a seaworthy vessel only involves reasonable measures. Here, the question is how the court can determine that the carrier has achieved the standard of due diligence and reasonable measure.

- **The Due Diligence Standard**

The due diligence standard depends on the surrounding circumstances, which include factors such as time, the route, the age of the vessel, the vessel's location, the available technology, etc.[368] For example, the carrier effort in an old vessel would not be the same as in a new vessel because old vessels need more maintenance, repairs and spare parts than new vessels. Moreover, this depends on the available technology and inspection facilities. Some ports have advanced technology and facilities. If a vessel is unseaworthy because of a latent defect, the carrier can check this by using the advanced technology available at the port, if the carrier does not use the available technology, this means the carrier has not taken reasonable measures. Should the technology not be available and if the carrier takes all reasonable measures through normal tests, he/she will not be liable for loss, damage or delay because of the latent defect.

Additionally, the standard of due diligence depends on whether the ship was in port or at sea, and therefore this standard must be more than when the vessel is

[368] Tetley, (n146) 899.

at sea. *The Travaux- preparatoires* of the Rotterdam Rules expressed modern tools to manage the standard of due diligence as follow:

> [T]he content of such a duty of due diligence should be drafted so that account could be taken of evolving standards such as the International Management Code for the Safe Operation of Ships and for Pollution Prevention (1993, 'the ISM Code') and evolving international standards that might be developed, in particular, by the International Maritime Organization.[369]

Here, in *Papera Traders Co. Ltd and Others v Hyundai Merchant Marine Co. Ltd and Another* refers to:

> [T]he ISM Code [...] a framework upon which good practices should be hung. Even for companies — or for that matter vessels — who have waited until the last minute to apply for certification the principles are so general and good that a prudent manager/master could very well organize their companies/vessels work following those (at present) guidelines — unless hindered to do so by other instructions that have not yet been withdrawn.[370]

Therefore, it can be concluded that the ISM code is a modern advanced tool to identify the measurement of due diligence of seaworthiness.

The nature of due diligence of seaworthiness is an overriding obligation, so there is a question of what an overriding obligation is.

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[369] UN, (A/CN.9/510) (n 25) 15-16.
[370] *The Eurasian Dream* (n 323) 739.

The Hague/Hague–Visby Rules identify due diligence as providing a seaworthy vessel, this being is an overriding obligation, so the carrier cannot escape from his/her liabilities unless the carrier proves that he/she or his/her servants or agents exercised due diligence to make the ship seaworthy.[371] In *Maxine Footwear Co v Canadian Government Merchant Marine* states that 'due diligence to, (a) make the ship seaworthy' is an overriding obligation, and if it is not fulfilled and in consequence damages results, the immunities of article IV'.[372]

Therefore, the exemption clause under Article 4(2) of the Hague/Hague–Visby Rules will not be applicable if the carrier failed to exercise due diligence to make the ship seaworthy or failed to prove he/she had exercised due diligence to make the ship seaworthy. In addition, the provision of Article 5(1) is quite different from Article 3(1) of the Hague/Hague–Visby Rules, but in terms of the context of the Hamburg Rules, has the same principle of overriding obligation, so the carrier is liable for damage, loss, and delay resulting from unseaworthiness unless he/she can prove that he or his servants or agents took all reasonable measures to prevent the damage or loss or delay.[373]

Additionally, *The Travaux- preparatoires* of the Rotterdam Rules adopts the doctrine of overriding obligation under Article 14.[374] Also, the construction and wording of Article 219(1) and 251 of Omani maritime law is quite similar to the Hague/Hague–Visby Rules, hence the overriding obligation will apply to Omani

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[371] *Mediterranean Freight Services Ltd v BP Oil International Ltd (The Fiona)* [1994] C.L.C.808, 814; Tetley (n 146) 903.

[372] *Maxine Footwear Co v Canadian Government Merchant Marine* [1959] AC 589, 590.

[373] Sze Ping-Fat, *Carrier's liability under the Hague, Hague-Visby and Hamburg rules* (Brill Nijhoff 2002) 63-66.

[374] United Nation, United Nations Commission on International Trade Law, Report of Working Group III (Transport Law) on the work of its tenth session (A/CN.9/525) (Vienna,16-20 September 2002) 19.

maritime law. In addition, the new Omani Maritime law continues with the same principle in its articles 197 and 207.

4.2.3 The Period of the Seaworthiness Obligation

All carrier' obligations in carriage of goods by sea contracts have a certain period of time in which the carrier must comply. The common law defines the stages doctrine that the carrier has to make a ship seaworthy at the beginning of each stage.[375] However, the Hague/Hague–Visby Rules has replaced this provision with the phrase 'before and at the beginning of the voyage'. The main question to be discussed is how to identify the 'before and at the beginning' stage because some voyages have to sail into several ports or waters.

For example, cargo carried from Sohar Port (Oman) to Jeddah (Saudi Arabia) will be in transit at Sana (Yemen). At the moment, the transit transaction of goods is common, especially in container systems where the cargo involves multiple ports and waters. Here, the term 'before and at the beginning of the voyage' has created the theory of stages, which has made it necessary for the carrier to divide the voyage into a series of stages such as the bunker stage, the port stage, etc.

Here, the Hague/Hague–Visby Rules abolished the concept of the common law, which stated that the carrier had to exercise only at the beginning of each stage. This might be unreasonable because some vessels' needs must be arranged beforehand to avoid delay, especially at the bunker stage where the carrier has

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[375] *The Vortigern* [1899] P. 140, 159-160; *E.Timm & Son, LTD v. Northumbrian Shipping Company* [1939] 64 L.I.L.Rep. 33, 38; *The Makedonia* [1962] 1 Lloyd's Rep 316, 326.

to measure sailing and equipment and cater for every need to complete the voyage safely and on time.[376]

For example, in *Quebec Marine* the carrier did not make arrangements before the vessel entered the second stage, which resulted in delay and loss of cargo. The voyage from Montreal to Halifax had two stages: the river stage and the sea stage. The boiler became disabled when the vessel entered the sea because the boiler needed some adjustment before entering the sea. The carrier did not make the adjustment, so there was a defect in the boiler, which led to the voyage being delayed because the vessel needed to stop for repairs.[377]

Therefore, the difference between the common law concept and the Hague/Hague–Visby Rules concept is the separation between stages, as the Hague/Hague–Visby Rules eliminates the separation between the two stages. The carrier has to make arrangements before starting the second stage. Hewson J states in *the Makedonia*:

> In my view, the obligation on the shipowner was to exercise due diligence before and at the beginning of sailing from the loading port to have the vessel adequately bunkered for the first stage to San Pedro and to arrange for adequate bunkers of a proper kind at San Pedro and other selected intermediate ports on the voyage.[378]

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[376] *The Makedonia* (n 375) 329.
[377] *Quebec Marine* (n 327).
[378] *The Makedonia* (n 375) 330.

The Hague/Hague–Visby Rules solve the problem of the old doctrine stage under common law. However, the period of seaworthiness under the Hague/Hague–Visby Rules is still not desirable in the light of recent developments in the maritime industry which require continuous obligation. In addition, the 'before and at the beginning of the voyage' requirement is unfair because it discharges the carrier from liability for an unseaworthy vessel after the commencement of the voyage. Further, carriers would not take prudent measures during the voyage after the beginning because legally they would be exempt from liability if the vessel became unseaworthy during this period.

Thus, Article 5(1) of the Hamburg Rules implies an ongoing obligation to make a vessel seaworthy before, at the beginning, and during the voyage till the final destination,[379] as with the Rotterdam Rules. The wording of Article 14(1) expresses clearly the continuous obligation of seaworthiness, which states '[…] The carrier is bound before, at the beginning of, and during the voyage by sea […]'.

The *Travaux- preparatoires* of the Rotterdam Rules favoured the idea of the continuous obligation of seaworthiness for many reasons. Firstly, the period of seaworthy obligation under Article 3(1) of the Hague/Hague–Visby Rules conflicts with the recent composure rules evolving in the due diligence duty under the Safe Operation of Ships and for Pollution Prevention (1993), specifically in the ISM Code. The ISM code requires an ongoing obligation of seaworthiness.

[379] Tetley (n 146) 896; Defossez (n 324) 243.

Secondly, the present technological development has changed the management style from the traditional process when the Hague/Hague–Visby Rules were drafted to the modern style where the carrier can control and manage the vessel from a distance.[380] The technology enables the owner of a vessel to communicate with crew members if problems occur in the middle of the voyage and an ongoing obligation of seaworthiness strikes a balance between the parties which will have impact on the freight rates.[381]

Here, it can be concluded that the ongoing obligation of seaworthiness is important and the limited period of obligation of seaworthiness is unreasonable. This is because it is always possible for a vessel to complete a journey to its final destination by communicating with the carrier. Logically, reducing the period of seaworthiness obligation is unfair because it is possible to increase the transport cost due the cargo interests, and the latter will insure the goods because the rules are in favour of the carrier.

The wording 'before and at the beginning of the voyage' under Article 219(1) reflects the same meaning as Article 3(1) of the Hague/Hague–Visby Rules. Here, Lord Bader Al-Rahbi interprets the period of the carrier's obligation to furnish a ship and to make a ship seaworthy before the beginning and at the beginning of the voyage, as set out in Article 219.[382]

Article 197 of the proposed new Omani maritime project does not specify the period of seaworthiness obligation clearly. The words of Article 197 for the ship

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[380] UN, (A/CN.9/510) (n 25) 15-16; Nikaki (n 22) 10-14.
[381] Defossez (n 321) 245; Nikaki (n 22) 10-14.
[382] Al Rahbi (n 39) 59.

to be ‘seaworthy to perform the voyage’ implies the meaning of ongoing obligation. Additionally, Article 207 of the new Omani maritime project determines the liabilities of the carrier from the time of receiving the goods at port to the time of delivering them at the discharge port. Here, the fieldwork data shows that Adel Ali Al Miqdai, a member of the proposed new Omani Maritime Law committee drafted the law which states that the obligation of seaworthiness is an ongoing obligation.[383]

Here, it can be concluded that the seaworthiness obligation is an ongoing obligation and an essential element. From a legal perspective, a member of the IMO has to fulfil the requirements of the ISM code, which is a continuing obligation before, at the beginning, and during the voyage to the final destination. From an economic perspective, however, reducing the period of seaworthiness obligation in favour of the carrier is unfair since with advanced technology the carrier can easily communicate with the master and crew, even in the middle of the ocean. Here, reducing the law in favour of the carrier would lead to the shipper insuring his/her goods because the cargo interests feels that the law does not protect him/her, and simultaneously the carrier will insure the goods. Such double insurance which will then increase the cost of the product. This reflects negatively on the economy and reduces competition because the high cost of transport would reduce the opportunity of the Oman Maritime Industry to compete in the maritime market.

[383] Al Miqdai (n 367).

4.3 Obligations For Receiving, Loading, Handling, Stowing, Carrying, Keeping, Caring for and Discharging Carried Goods

The journey for transporting goods undergoes several stages and has various operations to fulfil the carrier's primary obligation. These are, to transport and deliver goods from one location to another until they reach the recipient. Logically, these stages and operations create certain obligations for the carrier to receive, load, handle, stow, keep, carry and deliver the goods in the same condition as they were received and described in the bill of lading or transport document.

The following discussion clarifies the Hague/ the Hague Visby Rules, the Hamburg Rules, the Rotterdam Rules, Omani Maritime laws and the proposed new Omani Maritime Law regarding the duty to load, handle, stow, carry, keep, care for, and discharge carried goods. This section aims to examine how to improve and revise Article 249 of the Omani Maritime law and Article 198 of the proposed new Omani Maritime Law, bearing in mind the developments in the maritime transport industry. Hence, this section will discuss how Article 13 of Rotterdam Rules may serve as a guide and the best practice in law for reforming Omani Maritime laws.

Additionally, this section will endeavour to fill the gaps and clarify ambiguities in terms of the carrier’s obligations for loading, handling, stowing, carrying, keeping, caring for and discharging the goods carried so that the laws can be brought into line with the current practice needs.

4.3.1 Articulation of the Carrier's Obligations For Receiving, Loading, Handling, Stowing, Carrying, Keeping, Caring for and Discharging Carried Goods

The terms of the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging the goods carried are expressed clearly in those rules that have a separate article devoted to these duties under Article 3(2) of the Hague/Hague-Visby Rules. However, the Hamburg Rules left out these specific obligations entirely, merely using a general article (Article 5(1)) for the carrier's liability.[384] However, the Rotterdam Rules went a step further in defining the carrier's obligations from the point of receiving the goods until the point of delivering the goods carried by providing detailed provisions in Article 13. They also have a slight difference in terms of the period of the obligation as well as the terms of delegating the obligation.[385]

Article 249 of the Omani Maritime law's standpoint is similar to the Hague/Hague-Visby Rules' approach. However, the Omani Maritime law differs slightly from the Rotterdam Rules regarding the period of the obligation, and the terms of delegating the obligations are not clear.

The proposed new Omani Maritime Law articulates these obligations under Article 198. Based on the provision of the proposed new Omani Maritime Law, it can be seen that the new law takes a further step forward, in line with the Rotterdam Rules because it provides important details, such as the delegation of the carrier's obligations for loading and discharging the carried goods. However,

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[384] Mankabady (n 324) 54; Tetley (n 146) 1346.
[385] UN, (A/CN.9/510) (n 25) 36-38.

it is not clear in terms of the delegation of the carrier's obligations to receive, handle, and stow the carried goods. In brief, Article 13 of the Rotterdam Rules is more comprehensive and consistent with the carriage of goods by sea contract practices than other rules in this thesis; each of these issues will therefore be discussed in the following sections.

4.3.2 The Nature of the Carrier's Obligations For Receiving, Loading, Handling, Stowing, Carrying, Keeping, Caring for and Discharging Carried Goods

The nature of the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging carried goods is one of the most controversial concepts under the rules of carriage of goods by sea. Therefore, it is pertinent to question whether the achievement of this duty is an absolute obligation or if only due diligence (reasonable effort) to achieve a degree of the appropriate or careful undertaking of this obligation is necessary.

Worldwide, the court's application of 3(2) of the Hague/Hague-Visby Rules creates a non-united definition of the nature of the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging carried goods. In the United States, *Royal Insurance Co of America v SS Robert E Lee* proposes that the nature of the obligation under Article 3(2) of the Hague/Hague-Visby Rules is only to exercise due diligence to load, handle, stow, carry, keep, care for and discharge carried goods.[386]

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[386] *Royal Insurance Co of America v SS Robert E Lee* cited in Nikaki (n 22) 23.

However, the Canadian court in *Mediterranean Shipping Co S.A. Geneva v Sipco Inc* ruled that the nature of obligation under the same article is an absolute obligation.[387] The same decision was made in the Australian court in *Great China Metal Industries Co Ltd v Malaysian International Shipping*, which defines the nature of the obligation of Article 3(2) under Hague/Hague-Visby Rules thus: '[…] the duties imposed by Art. III, R.2 are not those of exercising due diligence to produce defined results'.[388]

Kirby, J. cites the *Gamlen case* and argues that the nature of the obligation under Article 3(2) of the Hague/Hague-Visby rules is not a standard of due diligence to make the ship seaworthy under Article 3(1). Here, the carrier has to exercise the obligation at a higher level than that of due diligence for seaworthiness because the words 'properly and carefully' indicate a stringent obligation rather than due diligence.[389] Here, the standards involved in exercising the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging carried goods are defined in *G. H. Renton & Co Ltd v Palmyra Trading Corporation of Panama,* 'The word 'properly' is used in addition to the word 'carefully' and shows that this provision is concerned with more than the degree of care with which these operations are affected'.[390] In other words, the carrier

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[387] *Mediterranean Shipping Co S.A. Geneva v Sipco Inc* (2001) 211 F.T.R.248 cited in Tetley (n 146); 1252; Nikaki (n 22) 23.

[388] *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Bhd (The Bunga Seroja)* [1999] 1 Lloyd's Rep. 512, 537.

[389] *Gamlen*, (1980) 147 C.L.R. 142, 163 cited in *The Bunga Seroja* (n 385) 537; *Albacora S.R.L. v. Westcott & Laurance Line Ltd.*, [1966] 2 Lloyd's Rep. 53, 63.

[390] *G. H. Renton & Co. Ltd. v Palmyra Trading Corporation of Panama* [1956] 1 Q.B. 462, 483-484.

has to exercise the obligation in an appropriate manner that must involve a high level of skill and proper systems.[391]

To sum up, these obligations are absolute, as the *Travaux Préparatoires* of the Hague/Hague–Visby Rules also interpreted article 3(2) and article 4(2) in a similar way, as Norman Hill states:

> The carrier shall be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care, and unloading of the goods carried'. That is an absolute obligation of the carrier during the voyage, and the exemptions in article 4 only qualify it.[392]

The Hamburg Rules also adopted the same nature of seaworthiness obligation, namely due diligence, as it uses the term 'reasonable measure'.[393] William Tetley states that the statement in Article 5(1), 'took all measures that could reasonably be required to avoid the occurrence and its consequences', this being admittedly a slightly lighter degree of obligation than 'properly and carefully' in Article 3(2) of the Hague/Hague-Visby Rules.[394]

The *Travaux Préparatoires* of the Rotterdam Rules stated that the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging carried goods under Article 13(1) must be similar to the Hague/Hague-Visby rules, that is, using the terms 'properly and carefully' to

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[391] C C Nicoll, 'Do the Hamburg Rules Suit a Shipper-Dominated Economy' (1993) 24 J Mar L & Com 151, 162-163.
[392] CMI (n 6) 185.
[393] Mankabady (n 324) 54.
[394] Tetley (n 146) 1346.

perform the duty during the voyage rather than only as a due diligence obligation.[395]

Theodora Nikaki argues that the nature of obligation under Article 13, adopted from Article 3(2) of the Hague/Hague-Visby Rules, is still uncertain and has not resolved the problem of interpreting the nature of the carrier's obligations for loading, handling, stowing, carrying, keeping, caring for and discharging carried goods.[396]

It can therefore be inferred that the Rotterdam Rules do not merely ask for due diligence in carrying out these obligations, but require an absolute obligation. Since the working group has separated this obligation from the obligation to make a vessel seaworthy, Article 14 of the Rotterdam Rules regulates the seaworthiness obligation, and Article 13 regulates the carrier's obligations for receiving, loading, handling, stowing, carrying, keeping, caring for, discharging and delivering carried goods. Therefore, if the *Travaux Préparatoires* intended both obligations to have the same nature, they could regulate them in one article or write 'due diligence' before 'properly and carefully' in Article 13 of the Rotterdam Rules. However, the *Travaux Préparatoires* omitted the phrase ‘due diligence’, providing evidence that the obligation is absolute and not only a due diligence duty.

The wording of Article 249 of Omani Maritime law is quite similar to Article 3(2) of the Hague/Hague-Visby Rules that state that the carrier shall load, store, stow, carry, keep, care for, and discharge carried goods. However, Article 249 of Omani

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[395] UN, (A/CN.9/510) (n 25) 36.
[396] Nikaki (n 22) 21.

Maritime law omitted the phrase 'properly and carefully'. Omani court defines the nature of this obligation under 249 of Omani Maritime law as an absolute obligation that shall be exercised by the prudent carrier to fulfil this obligation.

The nature of obligation under the proposed new Omani Maritime Law is similar to the Hague/Hague-Visby Rules, the Rotterdam Rules and Omani Maritime law. In addition, Article 198 of the proposed new Omani Maritime Law is more precise, using the word ‘undertake’ before defining these obligations. The fieldwork data shows that Adel Ali Al Miqdai comments the nature of this obligation under 198 of Omani Maritime law as an absolute obligation that shall be exercised by the prudent carrier to fulfil these obligations.[397]

It can be argued that why the nature of the carrier's obligations for receiving, loading, handling, stowing, carrying, keeping, caring for, discharging and delivering carried goods is absolute, it is striking a balance between the parties, and it does not increase the cost. However, the absoluteness of the seaworthiness obligation is unfair, and it increases the cost.

The absolute obligation of seaworthiness is an exaggerated matter. For example, if the carrier owns a new ship from the best ship factory, the ship may still have a defect. Here, the carrier will find it impossible to fulfil the seaworthiness obligation. Therefore, when the rules require the carrier to guarantee the ship's seaworthiness, the carrier must raise the insurance to protect against paying for damage, loss or delay. The high cost of insurance has major drawbacks for competition in the shipping market and the economy.

[397] Al Miqdai (n 367).

Consequently, the Rotterdam Rules' working group has stuck with the due diligence principle to define the seaworthiness obligation and to avoid high costs because the due diligence obligation strikes a balance between the parties.

However, the obligation to be guaranteed, for receiving, loading, handling, stowing, carrying, keeping, caring for, discharging and delivering carried goods are possible and manageable. The carrier should choose the competent crew carefully. The carrier can be used with the competent crew and modern technologies to ensure the commitment of these obligations. Therefore, these obligations' absolute obligation is possible and balances between the parties. In contrast, if it is supposed these obligations require due diligence, this will reduce the carrier's commitment for implementation, which will then negatively affect the shipper. The latter will consequently insure the goods for fear of not being committed by the carrier. In this case, the contract will have two forms of insurance: the carrier’s and the shipper's insurance. This will negatively affect the product price and thereby negatively affect trade, possibly reducing Oman’s opportunities and competition in the carriage of goods by sea market.

It can therefore be concluded that Omani lawmakers should stick with the absolute obligation approach; in the context of clarity and certainty, all aspects of these obligations should follow the word of article 13 of the Rotterdam Rules.

4.3.3 The Period of the Carrier's Obligations for Receiving, Loading, Handling, Stowing, Carrying, Keeping, Caring for and Discharging Carried Goods

The carrier's obligations in the carriage of goods by sea contract have a certain period in which the carrier must comply. The period of these obligations under Hague/Hague-Visby Rules under Article 1(e) and Article 3(2) taken together, suggests the length of time of these obligations is continuous from tackle to tackle.[398] Devlin. J states that Article 1(e) covers the whole period, including the loading and discharge operation.[399]

Due to developments in the maritime industry and according to the shipping application in Oman, the cargo may be received either inside or outside the port through the carrier's marine agent, freight forwarders, etc. In addition, the carrier may also deliver the goods either inside or outside the port through the consignor's agent.[400] Based on current practice, this requires an ongoing obligation, either port-to-port or door-to-door. This appears to be a weakness under the Hague/Hague-Visby Rules as regards who will be responsible for receiving, keeping and caring for the goods beyond the tackle-to-tackle period. However, Bingham, J., concludes that the Hague/Hague-Visby Rules apply if the carrier issued with the bill of lading has a condition beyond the tackle-to-tackle

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[398] Tetley (n146) 1249.
[399] *Pyrene* (n 163) 328; Theodora Nikaki, 'International Recent Developments: the United Kingdom' (2017) 41 Tul Mar LJ 563, 564.
[400] Al wabaihi (n 141).

period.[401] Otherwise, these rules will not apply to damage or loss if the parties do not define the extension provision in the bill of lading.

The period of the obligation under Article 5(1) of the Hamburg Rules solves the Hague/Hague-Visby Rules' problem because it extends the period between the points where the carrier is in charge at the loading port during carriage and at the port of discharge. There also appears to be a weakness in the Hamburg Rules in these obligations, however, because it is not specified who is responsible for receiving, keeping and taking care of the goods beyond the port-to-port period, as recent developments in the maritime industry and container system require continuous door-to-door obligations.

Article 13(1) of the Rotterdam Rules seems more comprehensive and extends the period between where the goods are received and where the goods are delivered. Hence, this article defines the period of the obligation as defined in Article 12 of the Rotterdam Rules and uses the terms ‘receive’ and ‘deliver’ to emphasise the period of obligation from door-to-door.[402] Here, the extension of the carrier’s obligation period for receiving, loading, handling, stowing, carrying, keeping, caring for, discharging and delivering carried goods in the Rotterdam Rules will solve the problem and bridge the gaps with the period of obligation under the Hague/Hague-Visby Rules as well as the Hamburg Rules. Moreover, this will be desirable in light of recent developments in the maritime industry and container systems requiring continuous door-to-door obligations.

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[401] *Mayhew Foods* (n 165) 320.
[402] UN, (A/CN.9/510) (n 25) 16.

The period of these obligations under Omani Maritime law is not precise. However, according to Article 260(1) and Article 249 together, the period of these obligations are from the goods being loaded onto the vessel until they are discharged from the vessel. Notwithstanding this, it appears that the Omani Maritime law adopted the period of obligation underlined in the Hague/Hague-Visby Rules to have the same gaps and ambiguities as discussed above.

The period of these obligations under the proposed new Omani Maritime Law is not precise. However, according to Articles 207 and 198 together, the period of these obligations are between the points where the carrier is in charge at the loading port, during carriage and at the port of discharge. It appears therefore that the proposed new Omani Maritime Law adopted the period of the obligation under the Hamburg Rules, so it will have the same gaps and ambiguities, as discussed above.

Hence, the Omani lawmakers should adopt the Rotterdam Rules sample, as these are more desirable; in the light of recent developments in the maritime industry, the container system requires continuous door-to-door obligations.

4.3.4 Special Issues in Oman Relating to the Carrier's Obligations for Receiving, Loading, Handling, Stowing and Discharging Goods from the Ship

In the Omani maritime industry, these obligations are performed by port operators and stevedore services. Therefore, the shipper and the carrier are not permitted to undertake the duties of loading, stowing and discharging, as the port operator has a monopoly on these operations. In practical terms, there are two scenarios

where the port operator can receive the goods. Firstly, the port operator can receive the goods from the shipper or act on his/her behalf for loading and stowing the goods on the ship through cargo agents or marine agents. The second scenario is where the port operator receives the goods from the carrier, or whoever is acting on his behalf, for loading and stowing on the ship or discharging the goods from the ship through cargo agents or marine agents or the master. In addition, the cargo interests may perform these obligations instead of the carrier under the new clauses of Free In and Out (FIO) or Free In, Out and Stow (FIOS), in this case, in practice, the port operators and stevedore services may be approached by the cargo interests.[403]

Here, the debate is whether the carrier's obligation for receiving, loading and discharging goods carried can be delegated?

The Hague/Hague-Visby rules do not have a united interpretation regarding the delegation of Article 3(2) because they are not explicit. There are two views on recognising the clauses of the FIO or FIOS where the carrier may delegate the obligation of 3(2). However, a second view is that the carrier cannot delegate these obligations.[404]

As with the Hague/Hague-Visby rules, there is a lack of clarity with delegating obligations under Article 5(1) of the Hamburg Rules for loading, stowing and discharging the goods.

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[403] Al wabaihi (n 141).
[404] Nikaki, ' The Carrier's Duties' (n 22) 19−21.

Those in the Rotterdam Rules working group favoured the idea of the delegation being carried out by the shipper, the documentary shipper or the consignee. Hence, Article 13(2) allowed the parties to delegate the obligation of receiving, loading, stowing and discharging the goods.[405] Unfortunately, Article 249 of the Omani Maritime law is similar to the Hague/Hague-Visby Rules' approach where the terms of delegating the obligations are unclear. However, in *Bayreuth Global Four*, the Omani court indicates the carrier is liable for improper unloading and the delegation of the carrier's obligations for receiving, loading, handling, stowing and discharging goods from the ship. Here, the carrier undertook the transporting of 49 boxes from Ulsan Port in Korea to Sohar Port in Oman. The operation of unloading was carried out on behalf of the carrier by stevedoring services company is C. Steinweg Oman LLC. During the unloading operation, box number 8 was damaged because the crane which hit the box inside. The court then decided that the carrier and Stevedoring Services Company had to pay for the damage.[406]

The delegation's advantages included reducing transportation costs and allowing the more experienced stevedore company to continue loading, stowing, and discharging services.[407] It can also be argued that the delegation of receiving, loading, and unloading obligations was desirable in the light of recent developments in Oman's maritime industry practices. Furthermore, the stevedore services' cost and competence would positively impact on the carriage of goods because the low cost and speed of the stevedore services would increase cargo

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[405] UN, (A/CN.9/510) (n 25) 37.

[406] Muscat Appeal Court, Commercial Case 268, 271/2010, 21/02/2011 (*Bayreuth Global Four*); Supreme Court, Commercial Case 163 /2011, 15/02/2012 (*Bayreuth Global Four*).

[407] UN, (A/CN.9/510) (n 25) 37.

transactions, resulting in a positive impact on Oman's trade costs and commercial value. Additionally, it would enhance Omani shipping companies, providing them with the opportunity to compete in the maritime industry market.

The proposed new Omani Maritime Law took a further step forward in defining the delegation of the loading and unloading obligation in Article 198(1) to align with the maritime industry practice of the FIO in Oman. However, the delegation of stowing the goods obligation is not expressed under Article 198(2) of the proposed new Omani Maritime Law as it is in Article 198(1). In this instance, Article 13(2) of the Rotterdam Rules is more comprehensive and consistent with the carriage of goods by sea contract practices than other rules in this thesis.

There is one additional issue relating to the obligation to stow which concerns the difference between improper stowing and the ship being unable to receive and stow.

The differences between improper stowing and the ship being unable to receive and stow is crucial because they have two different results and a severe impact. As discussed above, if the ship is unable to receive and stow goods safely, the carrier will breach the obligation of seaworthiness because the ship is not then cargo worthy and will be liable for damage or loss delay.[408] However, improper stowing is the fault of crew members and the carrier may use exceptions to accept liability for damage, loss or delay under the exception clause in Article 4(2)(a) of the Hague/Hauge–Visby Rules, and Article (252)(1)(a) of the Omani maritime law. However, under the Hamburg Rules, the Rotterdam Rules and the proposed

[408] See Section 4.2.1.2.

new Omani Maritime Law, the carrier is liable for the loss, damage and delay resulting from the crew's fault, as will be discussed in Chapter Five. [409]

In the case of *'Maori King' v Hughes*, the court found the carrier liable for damage because the bill of lading implied the warranty of the fitness of the refrigeration machinery. In addition, the vessel was unseaworthy because the refrigeration machinery was not fit to carry frozen mutton all time.[410]

In *Paterson Zochonis & Co Ltd v Elder Dempster & Co Ltd,* there is a damage caused for two reasons: unseaworthiness and bad stowage. The court held the carrier liable for the damage caused by unseaworthiness due to the absence of 'tween decks. However, the court relieved the carrier due to the bad stowage caused by heavy palm kernels which were stowed on the top of palm oil casks; they had crushed the casks, causing damage and a loss of product.[411]

In *International Packers London Ltd v Ocean Steam Ship Co Ltd,* the court defines the differences between the obligations of 3(1) and 3(2) of the Hague/Hague-Visby Rules.

> [The court] –Held, (1) that there was no breach by defendants of their duty under Art. III, r. 1, to provide a seaworthy ship on or before leaving Melbourne (Although the main purpose of locking bars was to provide security for the hatches at sea in heavy weather, the weather experienced at the time of sailing did not

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[409] See Section 5.3.
[410] *Maori King' v Hughes*]1895[2 QB. 550, 551.
[411] *Elder Dempster & Co Ltd* v *Paterson Zochonis & Co Ltd* [1924] A.C. 522.

> then require that they should be fitted or that other precautions should be taken); that the weather experienced on the voyage to Fremantle was such as to require added precautions to be taken to secure the hatches (such as by the use of locking bars, etc.), and that defendants in failing to take such steps were in breach of their duty of care of cargo under Art. III, r. 2; but that that failure to do so was negligence in the management of the ship and was excused by Art. IV, r. 2 (a).[412]

The Oman court in *O I L Barat* shows that the carrier undertook to carry 1,556 boxes of frozen meat from Nhava Sheva Port in India to Sohar Port in Oman. At the discharge port in Oman, the goods were damaged due to the temperature being too low in the refrigerated container. The liability for bad stowage for not maintaining the refrigerated container resulted in the court deciding that the carrier had to pay for the damage because he failed to maintain a proper container temperature.[413]

To sum up, article 13 of the Rotterdam Rules is the best practice of law to reform Oman laws due to the clarity and certainty in defining requirements in a comprehensive manner such as the nature, period and delegation principle. Further, it accommodates all the latest developments in the maritime industry application to reduce the costs, fast operation, and enhance security.

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[412] *International Packers London Ltd v Ocean Steam Ship Co Ltd* [1955] 2 Lloyd's Rep. 218, 219

[413] Muscat Primary Court, Commercial Case 718/2018, 01021/20119; Muscat Appeal Court, Commercial Case 146/7103/2019 and 152/7103/2019,29/04/2019.

4.4 Obligations to Deliver the Goods

The journey involving the transportation of goods ends with the delivery of the goods to the recipient. Logically, at this stage, the obligation to care for the goods will be transferred from the carrier to the consignee. At this point, the carrier no longer has any liability in terms of any damage or loss that occurs after delivery, since he/she is only liable for loss, damage or delay during their period of liability, that is, during transportation. In the final stage of the carriage of goods by sea, the contract will involve how the carrier must deliver the goods within the agreed period and must ensure that they are delivered in the same condition as when they were received and as they are described in the bill of lading or transport document.

With this in mind, the following discussion clarifies the Hague/Hague Visby Rules, the Hamburg Rules, the Rotterdam Rules, the Omani Maritime laws and the proposed new Omani Maritime Law regarding the duty to deliver the goods to the shipper or consignee. Specifically, this section aims to examine how articles 246, 247 and 248 of the Omani Maritime laws and articles 192, 193, 194, 209 of the proposed new Omani Maritime Law could be revised giving consideration to any developments in the maritime transport industry. Here, it will be discussed how articles 11, 12, 13, 21 and the Chapter 9 articles of the Rotterdam Rules may serve as a guide for the revision of the delivery obligation under the above stated Omani Maritime regulations in order to address the gaps and ambiguities in terms of the carrier’s obligations in delivering the goods.

4.4.1 Articulation to Deliver the Goods

The Hague/Hague-Visby Rules did not regulate or allocate a separate article for the carrier's obligations to deliver the consignee's goods. However, Hemphill, D.J argues that the terms of delivery under Article 3(6) is not synonymous with discharge, rather the obligation of discharge and delivery occurred at a different time.[414]

In other words, the Hague/Hague-Visby Rules contain ambiguity relating to the carrier's obligations as a whole concerning the delivery of goods to consignee, including the nature, period and the delegation of the delivery obligation. The *Travaux Préparatoires* of the Hague and Hague-Visby Rules defines the carrier liability as being limited to tackle to tackle. Here, the carrier has to hand over the goods to the national authority at the port of discharge.[415] Therefore, the Hague and Hague-Visby Rules cover the liability of delay in delivery.[416] However, the *Hamburg Rules' Travaux Préparatoires* that the Hague and Hague-Visby Rules approach left the liability after the discharge of the goods from the ship to national law. This would lead the cargo interests to insure the goods due to the uncertainty of national law, in addition to the regular insurance from the carrier. Here, the goods would be doubly insured, which would increase the insurance and transport costs.[417] As already discussed, the expensive transport cost would

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[414] *American Hoesch INC. and Riblet Products INC. v Steamship Aubade ETC .and Maritime Commercial Corp. INC.* [1971] 2 Lloyd's Rep. 423, 425.
[415] CMI (n 6) 137-138.
[416] Wilson (n 146) 220.
[417] UN, (A/CONF.89/14) (n 47) 43.

negatively impact on trade costs and Oman's competitiveness in the shipping market.

The Hamburg Rules refer to the carrier's obligations for delivering the goods, as described in the bill of lading contract in Article 1(7). At the same time, articles 4(2) and 5(2) also indicate delivery must be at the port of discharge within the agreed time.

The Rotterdam Rules went a step further in defining the carrier's obligations for delivering the goods to the shipper or consignee in Article 11, 13, 21, providing comprehensive and detailed rules in Chapter 9. The Rotterdam Rules identify many issues relating to the delivery obligation, bearing in mind the current practice of the maritime industry. This includes the issues relating to delivery when no negotiable bill of lading, transport document or electronic transport record is issued, when no non-negotiable bill of lading or transport document is issued and delivered, or when a negotiable bill of lading or transport document is issued. In addition, there are issues when the carrier refuses to deliver the goods, and when the carrier is exonerated from any delivery of the goods obligations. Further, when the goods remain undelivered, the carrier has the right to sell the goods in the case of non-delivery, and to accept the delivery and acknowledgement of receipt.[418]

Omani Maritime laws refer to the obligation of delivery through articles 240 (2), 246, 247 and 248, which define how the delivery should be made; through articles 252(3) and 253(2) they are also related to the area of liability. For example, Article

[418] Wilson (n 146) 239-240.

246 states that 'the master shall deliver the goods to the legitimate holder of the bill of lading'.

Meanwhile, the proposed new Omani Maritime Law's standpoint is similar to that of the Rotterdam Rules which articulates the carrier's obligation to deliver the goods to the consignee. Article 198 (3) of the proposed new Omani Maritime Law runs as follows: ‘the carrier undertakes: to transport and maintain the goods during the voyage and deliver them to the Bill of Lading's holder. In addition, the Omani Maritime law refers to the obligation of delivery by defining how delivery should occur and outlining the liability aspects.

However, the new law is clear in that most of the issues related to delivery are not covered as comprehensively as they are with the Rotterdam Rules, which provide essential details on all matters as per the development of the carriage of goods by sea contract practices. Indeed, the Rotterdam Rules comprehensively and extensively define matters according to the contemporary application of the carriage of goods by sea contracts and resolve the issues, gaps and ambiguities of previous conventions, as well as Omani Maritime laws. Each of the relevant issues will now be discussed in the following sections.

4.4.2 The Definition of the Delivery Obligation

There are two types of delivery under the carrier of goods sea contracts: actual delivery and constructive delivery.[419] Actual delivery means handing over the cargo and transferring possession to the consignee or his/her agents.[420] Nothing

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[419] *American Hoesch* (n 415).

[420] *P.s. Chellaram & CO.LTD. v China Ocean Shipping CO. (the Zhi Jiangkou)* [1991] 1 Lloyd's Rep. 493, 499; Edward Richard Hardy Ivamy and William Payne, *Payne and Ivamy's carriage of goods by sea* (3ed eden, Lexis Pub, 1989) 165; Tetley (n142) 1364.

in the Hague/Hague-Visby Rules refers to the actual delivery because the period of liability was limited to tackle to tackle.[421] In contrast, the Hamburg Rules refer to this aspect in Article 4(2)(b) while the Rotterdam Rules define the actual delivery under Article 12 and Article 43. Article 246 of the Oman Maritime laws and Article 192 of the proposed new Omani Maritime Law refer to actual delivery.

Constructive delivery means notifying the cargo owner or his/her agents about the arrival of the goods at the port so that they can receive and remove the goods from the port within a specific time.[422] Nothing in the Hague/Hague-Visby Rules, the Hamburg Rules, the Oman Maritime laws or the proposed new Omani Maritime Law indicate when the carrier or his/her agents should issue the constructive delivery. In contrast, this aspect is referred to in the Rotterdam Rules in various articles of Chapter 9.

The fieldwork shows that constructive delivery is significant to notify the cargo owner on time because the parties have to discharge the goods from the port within the free time. If the parties fail to complete the process within this period, the consignee or the carrier has to pay 'detention' to the shipping line and 'demurrage' to the port for each extra day.[423] Here, it can be argued that chapter 9 of the Rotterdam Rules are more comprehensively up to date, and in line with current practice to boost the Omani maritime industry.

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[421] *American Hoesch* (n 415).

[422] *American Hoesch* (n 415); *Salmon and Spraggo (Australia) PTY.LTD v. Port Jackson Stevedoring PTY.LTD (the New York Star)* [1980] 2 Lloyd's Rep. 317; Tetley (n 146) 1364.

[423] Al wahaibi (n 141).

4.4.3 The Nature of the Carrier's Obligations to Deliver the Goods

The nature of the carrier's obligations to deliver the goods is one of the most controversial concepts under the Hague/Hague-Visby Rules because this duty is not regulated in it. Smith L.J. points out that the carrier's obligations to deliver is absolute.[424] However, the nature of the carrier's obligations for delivering the goods under the Hamburg Rules is due diligence as the carrier has to take all reasonably required measures to avoid delay or failure to deliver.[425]

While the Rotterdam Rules have absolute obligations (as discussed above) the terms 'properly' and 'carefully' were used in Article 13(1) concerning the carrier's duty to deliver the carried goods. The nature of the carrier's obligations for delivering the goods under the Rotterdam Rules is in line with article 3(2) of the Hague/ the Hague-Visby Rules, which is an absolute obligation.[426]

Meanwhile, while the wording of articles 246, 247 and 248 of the Omani Maritime laws indicates an absolute obligation, and the carrier has liability for any delay, unless exonerated from liability caused by any of the exceptional clauses in Article 252. The new Omani Maritime Law sticks with the same nature of the absolute obligation. However, here, the new law is more precise since Article 198 adopts the term 'undertake' before defining the delivery obligation.

In the Omani court, the act of defining is an absolute obligation. The carrier is obliged to transport the goods and deliver them to the consignee at the place and time specified in the bill of lading. In addition, the nature of the delivery obligation

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[424] *Maori King* (n 352) 560.
[425] Mankabady (n 324) 54.
[426] See section 4.3.2; UN, (A/CN.9/510) (n 25) 36.

is to achieve the result. However, the carrier is not responsible for the delay to deliver the goods if the delay arises from one of the reasons mentioned in article 252, paragraph 1, of the Maritime Law.[427]

4.4.4 The Period of the Carrier's Obligations to Deliver the Goods

The carrier's obligations in the carriage of goods by sea contract include a specific period in which the carrier must comply. Articles 5(2) and 15(n) of the Hamburg Rules define the period of delivery according to what the parties agreed in the bill of lading or transport documents. Here, the *Travaux Préparatoires* of the Rotterdam Rules adopted the same period of delivery obligation as that under the Hamburg Rules.[428]

Unfortunately, Omani Maritime Law has a gap regarding the date of delivery and the period of delivery, while Omani law retains a provision for carrier liability for delay in Article 254 (2). The Omani court in *Mediterranean Navigation* defines the carrier's obligation to deliver the goods at the specified time in the following manner: the carrier must deliver the goods at the date or period specified in the bill of lading. In the event that the date or period was not specified in the bill of lading, the carrier must deliver the goods within the period that the ship would usually take for such a voyage is estimated.[429] The proposed new Omani Maritime Law goes further and adopts the same approach as the Rotterdam

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[427] Muscat Commercial Appeal Court, Commercial Case 250/1998, 01/10/1998.

[428] United Nation, United Nations Commission on International Trade Law, Report of Working Group III (Transport Law) on the work of its thirteenth session (A/CN.9/552) (New York, 3-14 May 2004) 7.

[429] *Mediterranean Navigation* (n 289).

Rules in article 209. It determines that goods should be delivered within the agreed time in the bill of lading or transport document.

One additional issue relates to the obligation of the delivery period if the date or period in the bill of lading or transport document is absent. Here, the Hague/the Hague-Visby Rules, and Omani Maritime Law have a gap. However, Article 5(2) of the Hamburg Rules, Article 43 of the Rotterdam Rules and article 209 of the proposed new Omani Maritime Law provide a solution to this problem in the following manner: in the absence of such a condition, it is determined that this should be a reasonable time for a diligent carrier to deliver the goods with the same circumstances. The Omani Court defined this approach in the *Mediterranean Navigation* case.[430]

From an economic perspective, the delivery within the period agreed is significant in order to avoid economic loss because of delay. This is because the international sales contract would have a fundamental impact. After all, traditional marine insurance does not cover economic loss and will only cover physical damage or loss.[431] Here, the cargo interests has to insure insurance to cover the economic loss because of delay or not receiving compensation. More costs than insurance in one contract will lead to the high cost of transport, as discussed above. The high cost of transport will increase the product cost, which will negatively impact on trade value and the Omani Maritime market.

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[430] *Mediterranean Navigation* (n 289).

[431] Alexander von Ziegler, 'Delay and the Rotterdam Rules' (2009) 14 Unif L Rev 997, 1009.

4.4.5 Special Issues Related to Delivering the Goods to the Consignee

The limited coverage in terms of the delivery obligation under the Hamburg Rules, the Oman Maritime laws and the proposed new Omani Maritime Law could lead to several practical problems. In contrast, with the Rotterdam Rules, great efforts were made to fill the gaps of the Hague/Hague-Visby Rules and the Hamburg Rules. Many issues were addressed concerning the development of maritime industry practice, as discussed below.

a. The debate about whether the carrier's obligation to deliver the goods carried can be delegated

In Omani practice based on the fieldwork data, the carrier issues the delivery notice on the arrival of the goods at the discharge port. Here, there are two applications. Firstly, there is the port to the port application if the parties agree to delivery at the discharge port. For this, the consignee must obtain customs clearance to complete all the formalities and pay the required duty. Several registered companies provide customs clearance services in all the ports in Oman. The consignee must also approach the cargo agent to receive the goods on his/her behalf and transport them to the consignee' delivery place within the time free. The second application is the door to door one. Here, the carrier must obtain customs clearance to complete all the formalities and pay the required duty, At the same time, the consignee must also approach the cargo agent to receive the goods and transport them to the consignee's place of delivery within the free time.[432] Here, it can be seen that with both scenarios, the obligation of

[432] Al wahaibi (n 141).

delivery is carried out by others on behalf of the cargo owner or the carrier, depending on their agreement concerning the scope of application.

The Hague/Hague-Visby is not explicit about the delegation of the delivery obligation. Article 4 (2) (iii) is in line with current practice, where the carrier can delegate the delivery obligation to an authority or third party. However, the carrier liability is limited to the port to port application. The Rotterdam Rules, however, favour the idea of delegation to a delivery obligation. Therefore, Article 12 allows the parties to delegate the obligation of delivery to an authority or a third party at the discharge port. The Rotterdam Rules are more advanced and suitable for maritime practice because they provide a port to port application and door-to-door application. Unfortunately, Omani Maritime law's standpoint and the proposed new Omani Maritime Law have a gap similar to the Hague/Hague-Visby Rules' approach.

The delegation's advantages included reducing transportation costs and allowing the more experienced cargo agents to deliver the goods on time. It can also be argued that the delegation of the delivery obligation is desirable in light of recent developments in Oman's maritime industry practices. Furthermore, the service costs and competence of cargo agents would positively impact the carriage of goods because the low cost and speed of the services would increase cargo transactions, benefiting Oman's trade costs and commercial value. In addition, it would enhance Omani shipping companies, providing then with the opportunity to compete in the maritime industry market.

b. Delivery When No negotiable Bill of Lading and Transport Document is Issued or a Non-negotiable Bill of Lading or Transport Document that Requires Surrender is Issued.

The Hague/ the Hague-Visby Rules, the Hamburg Rules, the Omani Maritime laws and the proposed new Omani Maritime Law are lacking in covering cases where no bill of lading or transport document is issued. At the same time, the Rotterdam Rules provides a significant resolution to this issue through Article 45. In brief, firstly, the carrier must deliver the goods to the consignee named in the contract of carriage between the parties involved, and at the agreed time and location. Secondly, if the name and address are not in the carriage contract, the carrier must obtain this information from the controlling party before or on arrival at the port of discharge. Thirdly, in the event that the carrier is unable to locate the consignee with the delivery instructions provided, the carrier must obtain further instructions from the controlling party to deliver the goods. Fourthly, if the carrier cannot locate the controlling party, he/she must obtain the shipper's delivery instructions. Fifthly, if the carrier is unable to locate the shipper, he/she must obtain the delivery instructions from the documentary shipper. Furthermore, the carrier has the right to refuse to deliver the goods if the consignee does not identify his or herself on delivery. At the same time, Article 46 of the Rotterdam Rules provides the same rules for delivery in the case of a non-negotiable bill of lading or transport document where a surrender is issued.

c. When the Goods are Undelivered

Article 3(6) indicates the carrier liability for misdelivery and the cargo owner is entitled to sue within one year from the delivery date. However, the carrier is not liable for misdelivery after the discharge of the goods.[433]

Under the Hamburg Rules, the goods become 'undelivered' when the consignee refuses to receive the goods. Here, Article 4(2) has two ways of dealing with the problem. Either the goods must be transferred to the consignee by the carrier in accordance with the law, contract or trade use , this being required at the port of discharge, or the goods must by law be given to an authority or third party at the port of discharge.

However, Article 48 of the Rotterdam Rules has provided a solution for four circumstances where the goods may be undelivered. The first relates to when the consignee does not claim the goods within the agreed time at the agreed location; the second concerns what to do when the consignee refuses to receive the goods; the third considers what action is necessary when the controlling party – or the shipper or the documentary shipper – and the holder fail to provide adequate delivery instructions; the fourth, in contrast, relates to when the carrier refuses to deliver because the consignee fails to identify his or herself on delivery. This may also refer to when the carrier is not allowed to deliver the goods according to the law and regulations of the delivery location and the consignee refuses to acknowledge receipt. The Rotterdam Rules also provide several

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[433] *The New York Star* (n 423) 323.

options to deal with these problems and the carrier's right against the cargo interests due to the undelivered goods.

Meanwhile, Article 248 of the Omani Maritime laws discusses the issued undelivered goods, and provides a solution for two circumstances where the goods remain undelivered, the first relates to when the consignee does not claim the goods within the time and location agreed and the second concerns when the consignee refuses to receive the goods. In this situation, the master may request relevant court permission to place the goods with a custodian designated by the court. Here, it is clear that Article 248 lacks clarity in comparison to the Rotterdam Rules in many issues. Firstly, when the goods are placed in custody and who will bear the risk of further expenditure if the consignee does not show up. Secondly, when the cargo interest fails to provide adequate delivery instructions. The third consideration is when the carrier refuses to deliver because the consignee does not identify themselves on delivery or when the carrier is not allowed to deliver the goods according to the delivery location's law and regulations. Fourthly, the matter of what to do when the consignee refuses to acknowledge receipt.

Article 193 of the proposed new Omani Maritime Law discusses the issue of undelivered goods and provides a solution, such as where the carrier may request a relevant court to authorise them to place the goods with a custodian appointed by the court if the consignee fails to receive the goods or refuses to do so. The second step involves the carrier requesting permission from the court to sell all or part of the goods to recover any freight costs or additional expenses

resulting from non-delivery. Here, it can be seen that both Omani laws do not cover all aspects of an undelivered issue, whereas the Rotterdam Rules do.

d. The Issue of Responsibility When the Goods are at the Discharge Port and When the Consignee Receives the Constructive Delivery Notice.

In Omani practice, based on the fieldwork data, the carrier issues the constructive delivery notice before or on the arrival of the goods at the discharge port. Following this, the carrier drops off the container at the port. If the parties agree to delivery at the discharge port, the consignee must obtain customs clearance to complete all the formalities and pay the required duty. Several registered companies provide customs clearance services in all ports in Oman.

The consignee has to coordinate with the transporter to 'gate-out' the container from the port to the consignee's warehouse for destuffing. Once the transportation is complete, the transporter must take the empty container back to port. This whole process must be completed by the consignee or their agents within the free time. If the consignee fails to complete the process within this period, the consignee has to pay 'detention' to the shipping line and 'demurrage' to the port for each extra day.

In the event that the parties agree to have the goods delivered to the warehouse (door to door application) the whole process must also be completed by the carrier within the period or, once again, they will be liable for detention and

demurrage to the port for each extra day. The carriers also needs to obtain customs clearance and carry out the above process by themselves.[434]

Article 4(2) of the Hamburg Rules clearly shows how the carrier is liable for loss, damage or delay when the goods are at discharge port, unless the law of the port of discharge requires the goods to be handed over to an authority or third party.

Article 12 of the Rotterdam Rules makes clear that the carrier is liable for loss, damage or delay when the goods are at the discharge port, unless the law of the port of discharge requires the handover of the goods to an authority or third party. Alternatively, if there is a particular agreement, the carrier is liable as the Rotterdam Rules cover the door to door application. In this case, the carrier may be liable for damage or loss when the goods are at the discharge port if the carrier issued the transport document cover door to door.

4.5 Conclusion

The period of seaworthiness obligation under Omani Maritime law, both before and at the beginning of the voyage, is outdated because recent developments in the ISM code require a continuing obligation before, at the beginning and during the voyage to the final destination. In addition, the reduced period of the seaworthiness obligation in favour of the carrier is unfair because, with technological advances, the carrier can easily communicate with the master and crew. even in the middle of the ocean. Here, the period of seaworthiness obligations should be extended to be a continuous obligation, as with the

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434 Al wahaibi (n 137).

Rotterdam approach, instead of merely limiting it to port to port or the beginning of the voyage.

The proposed new Omani Maritime Law aims to increase the nature of the carrier's obligation to make a ship seaworthy an absolute obligation under Article 197 of the proposed new Omani Maritime Law. This is, however, not desirable to service, fulfil the requirement, and develop the Omani maritime vision 2040 and modern practice. The absolute obligation would lead to a rise in insurance costs, which would in turn increase the transport cost, and would have a negative impact on trade costs and commercial value. Thus, high maritime transport prices reduce the Omani shipping companies' opportunities to compete with international transport companies. This would also reduce the desire of international shipping companies to use Omani ports, which would also negatively impact on trade costs and commercial value in Oman. Therefore, the principle of a continuing obligation under the Rotterdam Rules aims to unite, modernise and strike a balance between the carrier and the cargo interests. It upholds the seaworthiness aspect and nature (with due diligence) and maximises the period of the seaworthiness obligation making it a continuous obligation. In addition, the ISM Code constitutes a good practice with which to monitor the carrier's obligation to exercise due diligence regarding the ship's seaworthiness.

The period of receiving loading, unloading, stowing, and delivery obligations under Omani Maritime law and the proposed new Omani Maritime Law is limited from port to port. This is an apparent weakness in Omani laws with these obligations because it is not specified who is responsible for keeping and taking care of the goods beyond the port-to-port period, recent developments in the

maritime industry and container system require continuous door-to-door obligations. However, the Rotterdam Rules solved this problem under articles 12 and 13 which define the period of these obligations door to door unless the parties agreed otherwise or there is a law or regulations for the place of receipt and delivery to hand over the cargo to an authority or other third party.

The delegation of these obligations is not apparent under Omani Maritime Law, with the proposed new Omani Maritime Law defining the delegation of the loading and unloading obligation. However, the delegation of receiving, stowing and delivering the goods obligation is not expressed. The delegation's advantages include reducing transportation costs and allowing the more experienced stevedore companies, cargo agents and marine agents to continue receiving, loading, stowing, discharging, and delivering services. It can also be concluded that the delegation of these obligations would be desirable in the light of recent developments in Oman's maritime industry practices. Furthermore, stevedore companies, cargo agent ' costs and competence would positively impact the carriage of goods because the low cost and speed of the stevedore services would increase cargo transactions, so making a positive impact on trade costs and commercial value in Oman. In addition, this would enhance Oman’s shipping companies, providing them with the opportunity to compete in the maritime industry market.

Unfortunately, Omani Maritime Law has a gap regarding the date of delivery and the period of delivery, while it retains a provision for carrier liability in the event of delay in Article 254 (2). Moreover, it has gaps relating to the absence of the date or period in the bill of lading or transport document. However, Article 43 of the

Rotterdam Rules provides a solution for this problem in the following manner: in the absence of such conditions and when the time is reasonable, a diligent carrier can deliver the goods given the appropriate circumstances.

In addition, both Omani laws lack clarity regarding the issue of delivery when no document is issued. However, the Rotterdam Rules provide a significant resolution to this issue through Article 45. Further, both Omani laws lack covering cases where the consignee refuses to acknowledge receipt or refuses to identify him or herself. Unfortunately, both Omani laws also lack responsibility after discharging and handing over the goods to an authority or other third party. Here, it can be concluded that articles 11, 12, 13, and the Chapter 9 articles of the Rotterdam Rules may serve as a guide for the revision of the delivery obligation under the above stated Omani Maritime regulations. This will address the gaps and ambiguities in terms of the carrier's obligations in delivering the goods.

Omani lawmakers should address these significant gaps because, from an economic perspective, the delivery obligation is significant to avoid economic loss through delay. This is because the international sales contract would have a fundamental impact. After all, traditional marine insurance does not cover economic loss and will only cover physical damage or loss. Here, the cargo interest has to insure insurance to cover the economic loss because of delay or through not getting compensation. More than insurance in one contract will lead to a product's high cost, as discussed above. Inevitably, the high cost of a product will have a negative impact on trade value.

Chapter 5. The liabilities of a carrier

5.1 Introduction

The nature of the carrier's obligation is a fundamental element which also defines the nature of liability; it identifies the carrier's basic liability to specify the burden of proof and the order of proof. In other words, it can be said that there are integrated chains that complement each other. Therefore, it is the aim of this thesis to analyse the carrier's obligations and to identify the nature of the carrier's liability. The thesis will then describe the basis of the liabilities in order to identify the burden and order of proof for any loss, damage or delay resulting from the carrier's failure to fulfil his/her obligations.

The nature of the carrier's duties was discussed in Chapter Four, i.e. whether this should be an absolute obligation or a due diligence obligation. Here, it can be concluded that there are two systems upon which the nature of liability is built; the first is absolute liability where the carrier must ensure the carriage and delivery of the goods within the period of the carrier's liability. Under common law, the carrier is liable without any consideration of fault or negligence for loss, damage or delay. This is the case unless it is proved that negligence for loss, damage or delay was caused by items listed in the exemption clause and identified in the bill of lading or transport documents.[435] However, under the

[435] *President of India v West Coast Steamship Co (The Portland Trader)* [1963] 2 Lloyd's Rep 278, 280–281; Carver (n 212) 582-583; Girvin, (n 160) 300.

Hague/the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules absolute liability is based on the carrier's fault or negligence.[436]

The second system is due diligence liability, whereby the carrier must take all reasonable and necessary precautions to deliver the goods and prevent damage, loss or delay. Here, the carrier is also liable as regards fault or negligence for loss, damage or delay.[437] In addition, there are two other bases of liability dealing with fault, namely proved fault and presumed fault.

This chapter examines the basis of liability, i.e. the liabilities based on non-fault where the carrier is liable for loss, damage or delay until it is proved that the cause of the latter three was brought about by items listed in the exemption clause. There is also a discussion in the chapter concerning liabilities based on fault-based liability, and whether these rest on proved or presumed fault. Following this, the burden of proof and the order of proof will be dealt with. Further, there will be an examination of the period of carrier liability, the exemption clause, the limitation of liability and exclusion from liability.

Also in this chapter, an attempt will also be made to prove how article 12 and Chapter 5 of the Rotterdam Rules may serve as a guide for the revision and review of articles 251 to 261 of the Omani Maritime Law, as well as articles 209 to 219 of the new Omani Maritime Law.

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[436] UNCITRAL, Note by the Secretary-General: Comments By Governments and International Organisations on the Draft Convention on the Carriage of Goods by Sea, (A/CN.9/109), (Year Book,1976), 220; UN, (A/CN.9/510) (n 25) 16.

[437] Francesco Berlingieri, 'A Comparative Analysis of the Hague/Hague–Visby Rules, the Hamburg Rules and the Rotterdam Rules' (*Paper delivered at the General Assembly of the AMD*, Marrakesh, 2009).

5.2. The Basis of Liability, the Burden and Order with regard tor of Proof

5.2.1 The Basis of Liability, the Burden and Order of Proof under the Common Law

It is necessary to discuss in brief the nature and basis of liability under the common law system. As discussed in Chapter Four, the proposed new Omani Maritime Law adopted the obligation of the common law system, which is an absolute obligation. In general, the obligation of exercising due diligence with regard to a ship's seaworthiness is absolute.[438] As identified in the case of *The Portland Trader*: 'the duty to furnish a seaworthy ship is absolute and is a species of liability without fault'.[439] Hence, the nature of liability under common law is that of absolute liability and the carrier must ensure that the goods are delivered. Here, it can be seen that under common law the basis of the carrier's liability is absolute liability without consideration for fault or negligence, and the carrier is liable unless he/she can prove that the damage, loss or delay was caused by an item listed in the exemption clause.[440]

In the case of *The Glendarroch,* the burden of proof and the order of proof were identified under common law. The dispute in this case arose from goods damaged by seawater at St Patrick's Causeway in Cardigan Bay. Here, the cargo interest claimed damage and the non-delivery of goods, while the carrier claimed that the damage was caused by an exemption, namely, a peril of the sea. Lord Esher set out the burden of proof and the order of proof as follows:

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[438] See Section 4.2.2.
[439] *The Portland Trader* (n 436) 280.
[440] *The Portland Trader* (n 436); Carver (n 212) 582-583; Girvin (n 160) 300-303.

> I think that according to the ordinary course of practice each party would have to prove the part of the matter which lies upon him. The plaintiffs would have to prove the contract and the non-delivery. If they leave that in doubt, of course, they fail. The defendants' answer is, "yes; but the case brought within the exception – within its ordinary meaning". That lies upon them. Then the plaintiffs have a right to say there are exceptional circumstances, viz, that the damage was brought about by the negligence of the defendants' servants, and it seems to me that it is for the plaintiffs to make out the second exception.[441]

The court cited with approval the decision of the case of *The Glendarroch* in *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd, The Kingswood.*[442]

Here, it can be seen that the carrier is liable for loss, damage or delay without fault-based liability, meaning that the carrier does not need to prove that he/she took all the necessary measures to fulfil all the obligations, or that the loss, damage or delay was not attributable to their fault or negligence, as the basis of liability grounded on non-fault or negligence requires.

Nugent v Smith clearly defines under common law 'the goods to be carried, to the liability of an insurer, except and against the act of god or the queen's enemies'.[443] Here, it can be seen that the burden of proof of unseaworthiness

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[441] *The Glendarroch* [1894] 226 CA cites in Anthony Rogers, Jason Chuah, and Martin Dockray, *Cases and Materials on the Carriage of Goods by Sea* (4th edn, Routledge 2016) 60.
[442] *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd, The Kingswood* [1941] 2 AII ER 165, HL cites in Dockray, at al (n 442) 61.
[443] *Nugent v Smith* (1875) 1 CPD 19; Eder B., et al (n 242) 218.

falls to the party who alleged the unseaworthiness.[444] Rationally, the cargo interest must prove that the ship was in an unseaworthy condition within the carrier's liability period. In the case of *The Europa*, it was set out that, 'if unseaworthiness in the carrying ship is relied on by the cargo owner, he must prove that it was the cause of the damage'.[445]

It can therefore be concluded that the order of proof under common law is as follows:[446]

Firstly, the cargo interest must prove the damage or loss for the nature and condition of the goods delivered, not as it was when first shipped. In addition, it must be proved that the loss or damage occurred within the period of the carrier's liability.[447] In this regard, two issues are discussed in Chapter Three concerning the clean and non-clean bill of lading. The first issue is the case of a non-clean bill of lading or transport documents when the carrier does not inspect or verify the nature of the goods and their condition. Hence, the cargo owner must first prove that the goods delivered by the shipper to the carrier are in good nature and condition. Then the cargo interest must prove the condition of the goods when delivered, not as they were initially shipped. However, in the second situation, the cargo owner does not need to prove that the goods delivered by the shipper to the carrier were in good nature and good condition if the carrier issued a clean bill of lading or transport documents. This is because he/she will have inspected and verified the nature and condition of the goods, and the cargo

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[444] Wilson (n 146) 13.
[445] *The Europa* [1908] P. 84, 85; *The Thorsa* [1916] P.257.
[446] Todd (n 146) 49.
[447] *Robin Hood Flour Mills Ltd v. N. M. Paterson & Sons Ltd v (The Farrandoc)* [1967] 2 Lloyd's Rep 276, 284.

interest could prove the damage and loss by reliance on a clean bill of lading as *prima facie* evidence.[448] In the case of *The River Gurara*, the carrier issued a clean bill of lading which had a 'stated number of containers and/or pallets and quantified number of goods loaded'.[449]

Secondly, the carrier must prove that the cause of damage or loss was brought about by an exemption clause in the bill of lading or transport documents.[450]

Thirdly, the cargo owner may disprove the carrier's allegation and show that the cause of damage or loss is unseaworthiness. For example, in *The Europa* case, the carrier undertook to deliver a cargo of sugar from Stettin to Liverpool. Some goods arrived damaged by seawater because of a defect in the closet pipe on the port side. The cargo interest alleged that the cause of damage was the ship's unseaworthiness. However, the carrier proved that the damage was due to the protection clause of the sea's peril. The court therefore concluded that the damage was caused by sea peril and there was no relation between the damage and unseaworthiness. In the case of *The Europa* the court states:

> It appears to us, therefore, that whenever a cargo-owner has claimed damages from a shipowner for loss occasioned to his goods on the voyage, and the ship was, in fact, unseaworthy at the material time, the cargo-owner has had to prove that the loss was occasioned through or in consequence of the unseaworthiness, and it has not been sufficient to say merely that

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[448] See Section 3.3.3.5.
[449] *The River Gurara* [1998] 1 Lloyd's Rep 225.
[450] *FC Bradley & Sons Ltd v Federal Steam Navigation Company Ltd* (1927) 27 Ll L Rep 395, 396.

> the ship was unseaworthy, and therefore that he was entitled to recover the loss, although there was no relation between the unseaworthiness and the damage.[451]

5.2.2 The Basis of Liability, the Burden and Order of Proof under the Hague/Hague–Visby Rules

The Hague/Hague–Visby Rules regulated the obligation of seaworthiness as due diligence subject to article 3(1). Here, when the obligation of Article 3(1) was breached, the liability would be a due diligence liability subject to article 4(1). The carrier is liable for damage or loss that results from the lack of due diligence, unless the carrier has proved that he exercised due diligence to ensure the vessel's seaworthiness subject to article 4(1).[452] The *Travaux Préparatoires* of the Hague/Hague–Visby Rules emphasised clearly that:

> The Commission was unanimous in its opinion that it was necessary to relate it to the interpretation that had already been looked at in [the] discussion of article 3(1)(a). Article 4(1) only applied to the lack of seaworthiness described in article 3(1)(a) and limited the obligation to exercise due diligence to the beginning of the journey.[453]

In other words, the carrier is liable if he/she failed to exercise his/her due diligence obligation to provide a seaworthy ship, and the immunities of article 4 cannot be

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[451] *The Europa* (n 446) 97-98.
[452] Tetley (n 146) 880-884.
[453] CMI (n 6) 366–367.

relied upon because of the obligation of seaworthiness.[454] In the case of *Maxine Footwear Co Ltd and Another v Canadian Government Merchant Marine Ltd*, the cargo owner claimed that the carrier failed to exercise due diligence in providing a seaworthy vessel, so resulting in damage. Here, the carrier could not rely on the immunities of article 4(2). The carrier contended that the vessel was seaworthy and that the cause of damage resulted from the provision of Article 4(2)(a) and (b) which exempted carrier liability.

> [The court] *Held*, (1) that, from the time when the ship caught fire, she was unseaworthy, that that unseaworthiness caused the damage to and loss of [the] cargo-owners' goods; and that the negligence of [the] shipowners' servants which caused the fire was a failure to exercise due diligence.
>
> –*Held*, (2) that Art. III, Rule 1, was an overriding obligation, and if it was not fulfilled and the non-fulfilment caused damage, the immunities of Art. IV could not be relied on.
>
> *Held*, (3) that, in Art. III, Rule 1, "before and at the beginning of the voyage" meant the period from at least the beginning of the loading until the vessel started on her voyage.
>
> –*Held*, (4) that, accordingly, [the] cargo-owners' goods were damaged and lost owing to unseaworthiness resulting from the

454 Eder B., et al (n 242) 436.

> failure to exercise due diligence during the required period, and that therefore [the] shipowners were liable.[455]

To summarise, the application of article 4 (2) is valid if the carrier fulfilled his obligation under Article 31(1) and Article 4(1). In addition, it is worth noting the period of liability under the seaworthiness obligation. Here, in the case of *Maxine Footwear*, it is made clear that the carrier must prove that the ship is seaworthy before and at the beginning of the voyage, but this is not a continuing obligation throughout the voyage. As discussed in Chapter Four, the obligation of seaworthiness under the Hague/Hague–Visby Rules is before and at the beginning of the voyage. If the unseaworthiness occurs after this period, the carrier will not be liable for damage or loss.[456]

In this case, it can be concluded that the order of proof of unseaworthiness under article 4 of the Hague/Hague–Visby Rules is as follows:[457]

Firstly, the cargo interest must prove the nature and condition of the goods delivered, not as they were when shipped for the first time, and that the loss or damage occurred within the period of the carrier's liability.[458]

Secondly, once the cargo owner has proved the damage or loss, the burden of proof shifts to the carrier. The liability basis is a proved fault, meaning that the carrier must prove that he exercised due diligence in providing a seaworthy ship. After this, the carrier must prove that the loss or damage resulted from an

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[455] *Maxine Footwear Co Ltd and Another v Canadian Government Merchant Marine Ltd* [1959] 2 Lloyd's Rep 105.
[456] See Section 4.2.3.
[457] Tetley (n 146) 880-884.
[458] *The Farrandoc* (n 448).

exemption clause. In the case of *Foscolo, Mango & Co Ltd and HC Vivian & Co Ltd v Stag Line Ltd*, the carrier undertook to carry the cargo from Swansea to Istanbul and the goods were damaged due to peril of the sea because the carrier deviated from the agreed route. The carrier alleged that the loss was caused by reasonable deviation, which, according to article 4(4), exempted the carrier from liability. The court 'held that the deviation was not justified and that the shipowners had failed to discharge the onus of showing that the deviation was reasonable within Art. IV (4)'.[459]

In addition, in the case of *Eridania SPA and Others v Rudolf A Oetker (The Fjord Wind)*, the court ruled that the carrier should pay for the loss and damage because he had failed to prove the vessel's seaworthiness. Sir Murray Stuart Smith concluded that:

> … the owners have failed to show that due diligence was exercised to make the vessel seaworthy before she sailed from Rosario that, given the further conclusion that the vessel was unseaworthy at that time, the defendants are liable for any loss caused by that unseaworthiness as damages for breach of the charter or of the contract of carriage contained in or evidenced by the bill of lading as the case may be.[460]

Thirdly, once the carrier has proved the immunities of an exemption clause, then the carrier will be not liable for loss, damage or undelivered goods unless the

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459*Foscolo, Mango & Co Ltd and HC Vivian & Co Ltd v Stag Line Ltd [1931] 41 Ll.L.Rep 165,166; Foscolo, Mango & Co Ltd and HC Vivian & Co Ltd v Stag Line Ltd [1930] 38 Lloyd's Rep 271.*

460 *Eridania SPA and Others v Rudolf A Oetker (The Fjord Wind)* [2000] 2 Lloyd's Rep 191, 204.

cargo owner has proved that the cause of the loss or damage was due to the fault or negligence of the carrier or the lack of due diligence to provide a seaworthy ship.

To summarise, the Hague/Hague–Visby Rules are heavily in favour of the carrier in terms of the proved fault system for loss or damage resulting from unseaworthiness. This is because the burden of proof is more likely to be on the shipper's side since the carrier will not be responsible without proved fault or negligence.

In the case of *A Meredith Jones & Co Ltd v Vangemar Shipping Co Ltd*, the cargo owner agreed with the carrier that the stevedore's operation was the cargo owner's responsibility. While the vessel was docked at Salonica for loading, it suffered a fire that caused damage in holds 4 and 5 where the cargo owner's goods were stored. The cargo owner claimed that the fire was caused by welding carried out by the carrier and that the latter failed to exercise due diligence to provide a seaworthy ship. The carrier counterclaimed for the damage to the vessel and demurrage. He alleged that the fire was caused by smoking materials from the stevedores, which fall under the cargo owner's responsibility, as per clause 3 in the bill of lading. The court ruled that the cargo owner failed to prove unseaworthiness and the carrier succeeded in claiming for demurrage.[461]

The case of *NM Paterson & Sons Ltd v Robin Hood Flour Mills Ltd* determines that the burden of proof is on the shipper's side.

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[461] *A Meredith Jones & Co Ltd v Vangemar Shipping Co Ltd* [1999] 2 Lloyd's Rep 292; 292-293; *A Meredith Jones & Co Ltd v Vangemar Shipping Co Ltd* [2000] 2 Lloyd's Rep 337, 337- 339.

> From the above it appears that it is for the cargo-owner to establish the damage to its goods. In the event, the shipowner establishes that he is entitled to the immunity provided for in the bill of lading, it should then become incumbent upon the cargo-owner to establish affirmatively (a) that the ship was unseaworthy and (b) that that unseaworthiness caused the damage unless the shipowner has already proven unseaworthiness in order to establish that he falls within the conditions of the exception he is claiming.[462]

Moreover, the case of *Great China Metal Industries Co Ltd v Malaysian International Shipping Corporation Berhad (The Bunga Seroja)* suggested the same order of proof:

> If unseaworthiness is relied on, the cargo-owner must prove that the loss or damage resulted from that unseaworthiness. Once that is proved, the burden is on the carrier to prove that it exercised due diligence to make the ship seaworthy. Oaboutn the other hand, if the cargo-owner alleges a breach of art. III, r. 1(b) or (c), it must prove about providing both a lack of due diligence in respect of that matter and that the loss or damage resulted from that breach.[463]

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[462] *The Farrandoc* (n 448) 284.

[463] *Great China Metal Industries Co Ltd v Malaysian International Shipping Corporation Berhad (The Bunga Seroja)* [1999] 1 Lloyd's Rep 512, 527.

Here, it can be seen that the cargo interest may face further challenges and difficulties because of a dearth of information providing proof about the lack of due diligence. Here, the ISM Code discussed in Chapter Four will make it slightly more manageable for the cargo interest to obtain information. The code obliges the carrier to keep documentary evidence such as charts, maintenance records, human resources certificates and training materials. However, the Hague/Hague–Visby Rules take a different approach in terms of the basis of liability and the burden of proof for improper loading, unloading, stowing, handling, keeping and caring for goods carried. The following argument will discuss the absolute liability and non-fault based system and how this will affect the order of proof between the parties.

The nature of liability for loss or damage arising from improper loading, unloading, stowing, handling, keeping and caring for goods carried and undelivered goods is an absolute liability, as discussed in Chapter Four.[464] Here, the carrier is liable unless he/she has proved that the cause of the loss or damage resulted from an item listed in the exemption clause, subject to Article 3(2) and Article 4(2) of the Hague/Hague–Visby Rules. The *Travaux Préparatoires* of the Hague/Hague–Visby Rules also interpreted Article 3(2) and Article 4(2), as Norman Hill states:

> The carrier shall be bound to provide for the proper and careful handling, loading, stowage, carriage, custody, care, and unloading of the goods carried. This is an absolute obligation of

[464] See Section 4.3.2.

> the carrier during the voyage, and it is only qualified by the exemptions in article 4.[465]

In the recent case of *Volcafe Ltd and Others v Compania Sud Americana De Vapores SA*, the court interpreted the liability of the carrier under article 3(2) and Article 4(2) and followed the same approach under common law in terms of the nature of liability, the basis of liability, the burden of proof and the order of proof, as in *The Glendarroch* case discussed above. The facts are that a cargo of green coffee beans was shipped from Buenaventura, Colombia, to Bremen. The cargo was delivered in bad condition due to water damage caused by condensation. The cargo owner claimed that the carrier failed to deliver the goods in the same condition as mentioned in the bill of lading. The cause of damage was improper loading, unloading, stowing, handling, keeping and caring for the goods carried because the carrier failed to provide sufficient 'kraft' (cardboard) in the walls and the roof of the container to absorb the condensation. The carrier argued that the damage was caused by an inherent defect in the nature of the beans and claimed exemption under article 4(2)(m). The court upheld carrier liability because the carrier failed to prove exemption under article 4(2)(m) and could not prove that the containers were appropriately dressed.[466]

Volcafe outlines The burden of proof and the order of proof as follows:

> The burden of proof arose at two stages of the analysis. The first was concerned with article III, rule 2 of the Hague Rules. Did the

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[465] CMI (n 6) 185.

[466] *Volcafe Ltd and Others v Compania Sud Americana De Vapores SA* [2019] 1 Lloyd's Rep 21; Joshua McKersey, 'The Perennial Question - The Burden of Proof in Cargo Claims under the Hague Rules: Volcafe Ltd v Cia Sud Americana de Vapores SA [2019] AC 358' (2019) 33 Austl & NZ Mar LJ 29, 29-33.

> cargo owner bear the legal burden of proving breach of that article, or was it for the carrier, once loss or damage to the cargo had been ascertained, to prove compliance? The second related to article IV, rule 2, and particularly to exception (m). The carrier accepted that it bore the burden of proving facts which brought the case within an exception, but submitted that once it had done so it was for the cargo owner to prove that it was the negligence of the carrier which caused the excepted peril (in this case, inherent vice) to operate on the cargo.[467]

Here, the order of proof for improper loading, unloading, stowing, handling, keeping and caring for the goods carried and undelivered goods under article 4(2) of the Hague/Hague–Visby Rules are as follows:

Firstly, the cargo owner must prove the nature and condition of the goods delivered, not as when shipped for the first time. The loss, damage or non-delivery must have occurred within the period of the carrier's liability.[468]

Secondly, the carrier must prove that the cause of damage or loss was brought about by a situation listed in the exemption clause in the bill of lading or transport documents.[469]

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[467] *Volcafe* (n 467) 27.
[468] *American Can Company Ltd and Gosse Millerd Ltd v Canadian Government Merchant Marine Ltd* [1927] 28 Ll.L.Rep 88, 103.
[469] *Gosse Millerd Ltd v Canadian Government Merchant Marine* [1927] 29 Ll.L.Rep 190; *Gosse Millerd Ltd v Canadian Government Merchant Marine* [1928] 32 Ll.L.Rep 91,95.

Thirdly, the cargo owner may disprove the carrier allegation and prove that the cause of the damage or loss was improper loading, unloading, stowing, handling, keeping and caring for the goods carried.[470]

To summarise, the Hague/Hague–Visby Rules distinguish between the lack of due diligence liability and absolute liability. The lack of due diligence liability is based on proved fault, meaning that the burden of proof is on the carrier to prove first fulfilment of the obligation of seaworthiness and then that the cause of damage was any of the exemption clauses in article 4(2). However, absolute liability is based on what is presumed, meaning that the burden of proof is on the carrier to prove that the cause of damage or loss was any of the exemption clauses in Article 4(2).

5.2.3 The Basis of Liability, the Burden and Order of Proof under the Hamburg Rules

In general, the nature of liability is due diligence liability, as discussed in Chapter Four, and the nature of all the obligations under the Hamburg Rules is that of due diligence obligations.[471] The *Travaux Préparatoires* of the Hamburg Rules adopted liability based on fault because this is the system most suitable for contemporary practice.[472] In general, Article 5 of the Hamburg Rules adopts the presumed fault approach for most liabilities of the breach, the carrier's obligations for loss, damage or delay resulting from the fault or negligence of the carrier or his servants or agents. Here, the carrier is liable for loss, damage or delay unless

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[470] *Volcafe* (n 467).
[471] See Section 4.2.2, 4.3.2, and 4.4.3.
[472] UN, (A/CN.9/109) (n 437) 220; Erling Selvig, 'The Hamburg Rules, the Hague Rules and Marine Insurance Practice' (1981) 12 J Mar L & Com 299, 305.

he has proved that there was no negligence or fault attributable to him, his servants or agents. He must then prove that the cause of the loss, damage or delay resulted from an occurrence listed in the exemption clause.[473] Based on presumed fault liability, the carrier is considered guilty unless he is proved innocent. Here, the order of proof will be as follows.[474]

Firstly, the cargo owner must prove the nature and condition of the goods delivered, not as initially shipped and as mentioned in the bill of lading or transport documents.

Secondly, the carrier must prove that the cause of loss, damage or delay is not attributable to the carrier's servants' or agents' fault or negligence.

Thirdly, the carrier must then prove any force major causes of loss, damage or delay and that the carrier's servants or agents took all the measures that could reasonably be required to avoid the occurrence and its consequences.

Fourthly, the cargo owner may disprove the carrier's evidence and prove that the damage, loss or delay was attributable to the carrier or his servants' or agents' fault or negligence.

There is an exception to the above principle under Article 5 (4) of the Hamburg Rules of presumed fault in the case of loss or damage caused by fire. Here, the Hamburg Rules shift from presumed fault to proven fault. Therefore, the carrier is not liable for loss or damage caused by fire unless the cargo owner has proved that the fire resulted from negligence or fault on the carrier's side or from his

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[473] UN, (A.CONF.89/14) (n 47) 154; Selvig (n 470) 305; Force, (n18) 2060-2061.
[474] Nicoll (n 391) 166-168.; Tetley (n 146) 364.

servants or agents.[475] Here, the order of proof will be different from the proof mentioned above under the Hamburg Rules. The order of proof for loss or damage caused by the fire is as follows:

Firstly, the cargo owner must prove the nature and condition of the goods as they were delivered and not as shipped for the first time, and as mentioned in the bill of lading or transport documents.

Secondly, the cargo owner must prove that the fire was attributable to the carrier or was his servants' or agents' fault or negligence.

Thirdly, and alternatively, the cargo owner must prove the lack of reasonable measures to avoid the fire, put out the fire or reduce its consequence.

Under the Hamburg Rules, the most practical cases would be too complicated or it would be impossible for the cargo interest to prove that the fire was caused by the fault of the carrier or the carrier's servants or his agents. This is because the vessel would be controlled by the carrier or his servants or his against, and therefore the carrier and his/her people might remove all evidence that would prove their fault or negligence.[476] Here, it can be seen that article 5(4) is heavily in favour of the carrier rather than proving fault under article 4(1) of the Hague/Hague–Visby Rules because the article obliges the carrier to prove due diligence in ensuring the seaworthiness of the vessel and loss or damage caused by an exemption clause. However, article 5(4) does not require anything of the carrier, and the burden of proof is only on the part of the cargo owner. This is

[475] UN (A/CN.9/109) (n 437) 245; Berlingieri, 'A Comparative Analysis' (n 438) 2.
[476] UN (A/CN.9/525) (n 374) 15-16.

unfortunately against the aims of the Hamburg Rules, as discussed in the Chapter One,[477] to protect the cargo interest and his/her rights under the contract for the carriage of goods by sea.

5.2.4 The Basis of Liability, the Burden and Order of Proof under the Rotterdam Rules

Article 17 of the Rotterdam Rules defines the basis of liability and the allocation of the burden of proof. The *Travaux Préparatoires* of the Rotterdam Rules expressed strong views in support of the basis of liability under the contract of carriage of goods by sea; it was maintained that this should be based on fault or negligence.[478] In addition, the *Travaux Préparatoires* of the Rotterdam Rules determined that the basis of the carrier's liabilities should be presumed fault. The structure of the burden of proof under article 17 is in a two-rounds system: between the presumption approach and the exonerations approach. This structure combines the Hague/Hague–Visby Rules and the Hamburg Rules. The article uses different wording to both the Hague/Hague–Visby Rules and the Hamburg Rules to increase certainty and provide a clear structure to prevent a misinterpretation of the provision.[479] However, the Rotterdam Rules are not designed purely under the presumption approach, although they are probably closer to this approach.[480] Here, it can be seen that the Rotterdam Rules' approach produces unique elements to identify the basis of the carrier's liability and the allocation of the burden of proof and the order of proof. This is done by

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[477] See Section 1.2.
[478] UN, (A/CN.9/510) (n 25) 16; Diamond (n 155) 149.
[479] UN, (A/CN.9/525) (n 374) 13-14.
[480] UN, (A/CN.9/544) (n 181) 31.

providing further detail and creates a new system of two rounds of proof and counterproof, with three presumptions of the carrier's fault. In addition, the working group agreed to use the term 'claimant' rather than 'shipper' because this more accurately reflects the party's identity of who will seek redress against the carrier.[481] Furthermore, the Rotterdam Rules' working group divides the provision of article 17 into two separate sections. This clearly defines the problem of the basis of the carrier's liability and the allocation of the burden of proof, as well as the order of proof, and it does so in a comprehensive manner.[482]

The first-round order of proof and counterproof for loss, damage or delay

Firstly, this is subject to article 17(1) where the claimant must prove the nature and condition of the goods delivered, not as shipped for the first time and as mentioned in the bill of lading or transport document. The claimant must also prove that the loss, damage or delay occurred during the carrier's period of responsibility. Here, this provision takes the same approach as in common law in The *Glendarroch* case,[483] and the same approach also as in the Hague/Hague-Visby Rules as defined in the case of *The Farrandoc*.[484] Furthermore, the cargo interest must demonstrate that the standard of proof was 'on the balance of probabilities'.[485]

Secondly, once the claimant has discharged the initial burden of proof, this shifts to the carrier. Here, the carrier is presumed to be at fault and negligent, and must

[481] UN, (A/CN.9/544) (n 181) 6.
[482] Ibid 37-38.
[483] The *Glendarroch* (n 442).
[484] *The Farrandoc* (n 448) 284.
[485] UN, (A/CN.9/572) (n145) 10.

prove that the cause of loss, damage or delay was not attributable to his own, his servants' or agents' fault or negligence subject to article 17(2). Here, it can be seen that this provision adopts the same approach as that of article 5(1) of the Hamburg Rules.[486]

Thirdly, the carrier must prove that the cause of damage, loss or delay was one or more of the events listed in article 17(3). Here, it can be seen that the provision of Article 17(3) reflects the approach taken by common law in the case of *FC Bradley*: 'Accordingly, in strict law, on proof being given of the actual good condition of the apples on shipment and their damaged condition on arrival, the burden of proof passed from the consignees to the shipowners to prove some excepted peril which relieved them from liability'.[487] In addition, the provision reflects the Hague/Hague-Visby Rules' approach in the case of *Gosse Millerd*.[488]

To summarise, in the first round of proof and counterproof, the carrier has two alternative options to put forward as counterproof to rebut presumption, as mentioned earlier, and the Rotterdam Rules are designed in the same way as the Hague/Hague–Visby Rules and the Hamburg Rules, as explained above.

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[486] UN, (A/CN.9/525) (n 371) 13-14.
[487] *FC Bradley* (n 448) 396.
[488] *Gosse Millerd* (n 467).

The Second-Round Order of Proof and Counterproof for Loss, Damage or Delay[489]

Firstly, subject to article 17(4)(a), the claimant must prove that the cause of the event or circumstance that the carrier relies upon and lists in article 17(3) was attributable to the fault or negligence of the carrier, his servants or agents.

Secondly, alternatively, the claimant must disprove the carrier's allegation that the cause of damage, loss or delay was an exemption listed in article 17(3), and prove that the cause of damage, loss or delay was an event or circumstance not listed in article 17(3). Here, it can be seen that the provision of Article 17(3) reflects the approach taken in *The Europa* case.[490] In addition, the same approach is taken in the Hague/Hague–Visby Rules, as in the case of *A Meredith Jones.*[491]

To summarise, in the second round, the claimant has two alternative options: to put forward counterproof to rebut the presumptions, as mentioned earlier in article 17(4)(a) or Article 17(4)(b). If the claimant succeeds in proving the alternative option, the carrier does not have the option of counterproof.

The Rotterdam Rules provide independent provision to deal with the burden of proof and the order of proof for the obligation of seaworthiness as the overriding obligation. Here, subject to article 17(5), the claimant must prove that the cause of damage, loss or delay was the lack of due diligence to provide a seaworthy

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[489] Berlingieri, 'A Comparative Analysis' (n 438) 2; Si Yuzhou and Henry Hai Li, 'The New Structure of the Basis of the Carrier's Liability under the Rotterdam Rules' (2009) 14 Unif L Rev 931, 932-934.

[490] *The Europa* (n 446).

[491] *A Meredith Jones* (n 462) 292; *A Meredith Jones* (n 462) 337.

ship according to article 14. If the claimant succeeds in proving the alternative option, the carrier does not have the option of counterproof. The provision of Article 17(5) of Rotterdam Rules reflects the approach taken in *The Bunga Seroja* case.[492]

Here, Tetley claims that article 17(5)(a) is an unreasonable provision.[493] It can be argued that the *Travaux Préparatoires* of the Rotterdam Rules designed article 17 is a workable balance between the interests of the carrier and those of the cargo interest.[494] In addition, articles 17 and 18 were drafted as a combination of the Hague/Hague–Visby Rules and the Hamburg Rules as an explicit provision to identify the burden of proof and the order of proof in more significant detail compared to the Hague/Hague–Visby Rules and the Hamburg Rules. As discussed earlier, they have gaps in terms of the order of proof and a lack of information based on liability. Furthermore, seaworthiness is an overriding obligation, meaning that if the damage, loss or delay is caused by lack of seaworthiness and other causes, the carrier should be considered liable for damage, loss or delay because of the doctrine of overriding obligation.[495]

William Tetley and Anthony Diamond criticised the provision of 'all or part of the loss' as there are ambiguities in article 17(4) and (6) because it may lead to misunderstandings and an incorrect interpretation of how the liability may be apportioned.[496] It can be argued that the provision of 'all or part of the loss' refers

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[492] *The Bunga Seroja* (n 388) 527.

[493] William Tetley, 'A Summary of General Criticisms of the UNCITRAL Convention (The Rotterdam Rules, (2008))Tetley's Maritime and Admiralty Law, 4.

[494] UN, (A/63/17) (n 350) 16.

[495] UN, (A/CN.9/525) (n374) 19.

[496] Diamond (n 155) 149; Tetley 'A Summary of General Criticisms' (n 494) 3.

to the crucial and significant issue of damage due to different causes, meaning that the liability may be apportioned between different causes. If the damage has two causes, the carrier will be liable for damage, loss or delay should this be caused by the carrier, his agents or servants. However, the carrier will not be liable for damage, loss or delay caused by an event for which the carrier was not liable.[497] For example, if the damage, loss or delay was caused by insufficient packing and improper handling of the goods, and the goods were damaged by insufficient packing, the carrier will not be liable if he has proved this. However, if the goods were damaged by improper handling, the carrier will be liable if the cargo interest has proved this and the carrier has failed to prove other causes. To summarise, the provision of 'all or part of the loss' is explicit and solves multiple causes of damage within the same contract.

5.2.5 The Basis of Liability, the Burden and Order of Proof under Omani Maritime Law

The nature of carrier liability in Omani Maritime Law is identical to the nature of carrier liability in the Hague/the Hague–Visby Rules. The liability for lack of due diligence for breaching the seaworthiness obligation, and absolute liability breaching other obligations are stipulated respectively mainly in Articles 251 and 252 of Omani Maritime Law. These articles correspond to Articles 4(1), 4(2) and 4(4) of the Hague/the Hague–Visby Rules. It can therefore be seen that the nature of carrier liability under Omani Maritime Law finds its roots in the Hague/the Hague–Visby Rules.

[497] UN, (A/CN.9/525) (n 374) 18-20.

However, there is one difference between Article 252(3) of the Omani Maritime Law and Article 4 of the Hague/the Hague–Visby Rules. The first holds the carrier liable for a delay in delivery unless the carrier proves an exempt cause for the delay, as listed under Article 252. On the other hand, the Hague/the Hague–Visby Rules do not cover the delay.[498]

The basis of carrier liability under Omani Maritime Law rests on fault as with the Hague/the Hague–Visby Rules approach; proven fault is the basis for liability due to unseaworthiness. The Omani court defines the presumed fault for breaching absolute liability in terms of the carrier's obligations concerning loading, handling, stowing, carrying, keeping, caring for and discharging the goods carried as well as the carrier's delivery obligation. Here, the burden of proof and the order of proof under Articles 251 and 252 of Omani Maritime Law has gaps and is ambiguous in a similar way to the Hague/ the Hague-Visby Rules (as discussed above).[499]

It is clear from the Oman Court in the case of *Caravel Pride* that particular facts of the case relating to this liability arose when the carrier undertook to deliver 23,000 kilos of rice from the port of Cochin in India to the port of Sultan Qaboos in Oman. At the discharge port, the cargo was damaged due to the entry of water into the container from cracks in the vessel's roof and walls and the container was deemed inadequate for shipping these goods. The cargo interest claimed that the vessel was unseaworthy because the container was unfit to carry the goods as it had cracks in the roof and walls. The carrier failed to disprove the

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[498] Berlingieri, 'A Comparative Analysis' (n 438) 2.
[499] Muscat Commercial Appeal Court, Commercial Case 480/1996, 21/12/1996.

cargo interest allegation and the court ruled that the cause of damage was because the container was not fit to carry the goods. The court also determined that the carrier's responsibility was to place the goods in a proper place and to transport as well as to preserve them from damage. The court ruled that the carrier has to pay a compensation of 6,212 Omani Rials to the claimant and, in addition, the Court of Appeal upheld the verdict.[500]

Omani Maritime Law clearly has its roots in the Hague/the Hague–Visby Rules. It follows the same approach as Article 3(2) and 4(2) of the Hague/the Hague–Visby Rules in terms of the basis of liability and the burden of proof for improper loading, unloading, stowing, handling, the keeping of and caring for carried goods and undelivered goods.

The liability for the loss or damage arising from the improper loading, unloading, stowing, handling, keeping of and caring for carried goods and undelivered goods is The word ‘absolute’ under the Hague/the Hague–Visby Rules obligation denotes an absolute obligation, as discussed earlier in Chapter Four.[501] The carrier is liable unless he/she can prove that loss or damage resulted from an item listed in the exemption clause, subject to Article 252 of Omani Maritime Law.

A case was reported from the Oman Supreme Court in *Mediterranean Navigation* where a carrier undertook to deliver oranges and lemons from Cape Town Port in South Africa to Sultan Qaboos Port in the Sultanate of Oman. The cargo was delivered late by the carrier. The cargo interest claimed that the goods were delivered in a condition of damage and loss due to the delay in delivering the

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[500] *Caravel Pride* (n 293).
[501] See Section 4.3.2, and 4.4.3.

goods. The cargo interest demanded compensation of 39 thousand Omani Rials. However, the carrier contended that the cargo interest received the goods at the port in good condition. The carrier also claimed that the cargo interest did not commit to notifying the carrier of damage resulting from the delay within 60 days from the day of the arrival of the goods under Article 255 of the Omani Maritime Law. The Primary Court decided to dismiss the case in the First Instance and the Court of Appeal upheld the verdict. Consequently, the cargo interest appealed to the Supreme Court.

The Supreme Court decided that the bill of lading was prime evidence to prove the nature of the goods between the carrier and the cargo interest under Article 238 of the Omani Maritime Law and others under Article 245 of the Omani Maritime Law. Here, the bill of lading shows that the goods were shipped in good condition and that the carrier issued a clean bill of lading without reservations. By submitting documents, the cargo interest proved that the goods were delivered late and had damage and loss.

The Supreme Court also decided that the carrier's obligation to deliver the goods absolutely constitutes the carrier’s commitment to deliver the goods to the shipper, or consignee or a third party. Furthermore, the carrier is liable for loss or damage caused by the delay in delivering the goods unless the carrier proves that the delay arises from something listed in the exemption clause and is mentioned in paragraph (1) of Article 252. In addition, the carrier must deliver the agreed goods to the port of arrival within the agreed time if the contract of carriage of goods by sea mentions a specific period. If the contract does not have

a particular period, the carrier shall be bound by the period taken by the regular carrier according to custom.[502]

5.2.6 The Basis of Liability, the Burden and Order of Proof under the proposed new Omani Maritime Law

The new Omani Maritime Law carrier liability system is identical to common law and the obligations in the proposed new Omani Maritime Law are absolute obligations, as discussed in Chapter Four.[503] The new Omani Maritime Law's liability system takes the same approach whereby absolute liability is as defined in the common law as in *the Portland Trader.*[504] Here, the carrier has absolute liability unless the loss, damage or delay is caused by anything listed in the exemption clause in Article 210 of the new Omani Maritime Law.

The new Omani Maritime Law presents gaps in the order of proof and the system for shifting the burden of proof as contained in the Hague/the Hague–Visby Rules, the Hamburg Rules and Omani Maritime Law.

In summary, Omani Maritime Law heavily favours the carrier when the proven fault system for loss or damage has resulted from unseaworthiness. This is because the burden of proof is more likely to fall on the cargo owner's side since the carrier will not be responsible without a proven fault or negligence, as seen in the Hague/the Hague–Visby Rules. In addition, both Omani laws have gaps in the order of proof, shifting the burden of proof and defining who should prove what. Here, Omani maritime law should shift the burden of proof for

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[502] *Mediterranean Navigation* (n 289).
[503] See Section 4.2.2.
[504] *The Portland Trader* (n 436) 280–281.

unseaworthiness from proven fault to presumed fault. In addition, Omani legislators should follow the same approach as the Rotterdam Rules because the latter have comprehensive provisions in terms of carrier liability when identifying the order of proof, shifting the burden of proof and defining who should prove what. Clear guidance would positively impact court work and the parties in any dispute because they would have a transparent system to deal with the case. It can be further argued that extending the seaworthiness liability from reasonable effort to warranty liability would have a negative impact on the carriage costs because the extension would raise the insurance costs, thereby increasing freight charges. This is significant because the expensive transport costs would have a negative impact on trade costs and the commercial value in Oman. The high cost of transport would also reduce the opportunities of the Oman Maritime Industry to compete in the maritime industry market. Hence, the principle of a continuing obligation under the Rotterdam Rules aims to unite, modernise and strike a balance between the carrier and the cargo interests. This upholds the seaworthiness aspect and nature (due diligence) as well as maximising the period of seaworthiness obligation to continuous obligation, as discussed in Chapter Four.[505]

5.3 The Period of a Carrier Liability

As is clear from the definitions of the contract of carriage, the period of a carrier's liability in the three sets of international rules and both Omani Maritime Laws varies. This section considers the period of a carrier's liability in more detail since this is one of the aims of the thesis. This has a significant impact on cargo practice

[505] See Section 4.2.2.

today as relates to the carrier period of liability and the issue of multimodal transport, in addition to the requirements of the container transport system.[506] This section seeks to address the issue of the period of carrier liability, and to consider how the parties can extend the period of carrier liability under the freedom of contract. In addition, the practical impact of an extension to the carrier liability period is examined.

5.3.1 The Period of Carrier Liability under the Hague/Hague–Visby Rules

The standard period of carrier liability under the Hague/Hague–Visby Rules is that of tackle-to-tackle. However the period of carrier liability may be extended under the freedom of contract terms, such as with the port-to-port and the door-to-door periods of application.[507]

The Hague/Hague–Visby Rules allow for a traditional period of cover from tackle to tackle as the wording of Article 1(e) envisages the Rules applying from when the goods are hooked into the vessel at the port of loading until the goods are unloaded from the vessel. The case of the *Captain* defines the period of a carrier's liability in the Hague/Hague–Visby Rules - this being from tackle to tackle - because the parties agreed to apply the standard period of application. Here, the court held that the carrier was excluded from liability during the period when the goods were at the dockside.[508]

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[506] See Section 3.2.

[507] Michael E Crowley, 'The Limited Scope of the Cargo Liability Regime Covering Carriage of Goods by Sea: The Multimodal Problem' (2005) 79 Tul L Rev 1461, 1471; O'Honnold (n160) 81; Wilson) (n 146) 181; Girvin (n 160) 215–217.

[508] *Captain* (n 161).

This convention covers the period of loading and unloading operation. For instance, the carrier is responsible for damage if the goods fall and break during lifting or hooking by crane from the ship during the time of loading or unloading the ship.[509] In the case of the *Happy Ranger*, the carriage of goods contract was made in March 1998 to transport goods from Italy to Saudi Arabia. During the loading operation, one of the hooks on the vessel's crane broke, causing massive damage to the goods. The claimant argued that the carrier failed to exercise due diligence to make the ship seaworthy. This was because he had not tested the crane's hook properly to ensure it could carry the load safely after the shipowner received the vessel from her builder on 16 February 1998. The defendant argued that reputable builders had built the vessel, and a reputable inspection company had tested the crane's hook before delivery on 16 February 1998. He concluded that his seaworthy obligation had been fulfilled as per article 3(1). The court ruled in favour of the claimant because the inspection before the vessel's delivery had not asserted the obligation of Article 3(1) and the carrier should have inspected the carne after the delivery and before carrying the goods.

It can be understood from the above case that the standard period of application is tackle-to-tackle and anything beyond that must be clearly expressed in the bill of lading. The wording of article (6) implies the term freedom of contract, which allows the parties to extend the period scope of application to cover when the goods are in port or under the carrier's control, or to provide cover from place to place beyond that.[510]

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[509] *Pyrene* (n163); The *Happy Ranger* (n158).
[510] Girvin (n160) 215–217.

Article (6) of the Hague–Visby Rules defines the term ‘freedom of contract’ as the parties having the right to extend and negotiate the application's period scope. This extension is consistent with contemporary carriage of goods by sea practice since today's practice requires the period from a warehouse of a marine agent or cargo agent to the shipper or consignee home or warehouse. This is a noticeable gap and weakness identified by those who have criticised the Hague/Hague–Visby Rules about the problem of the before and after tackle-to-tackle application.[511] Here, there is the question of whether article (6) will solve the problem of before and after the loading or unloading operation and whether the Hague/Hague–Visby Rules apply to any carriage of goods by sea involving carriage by other modes, such as road, air, or train. This question will be answered using relevant cases to see the different interpretations and understanding of the period scope of application of the Hague/Hague–Visby Rules. It will also be shown how this gap will create problems in the future since container services require a broader period scope of application. The UK court heard the case of *Mayhew Foods,*[512] which provides the principle of the carrier being responsible beyond the stages from tackle-to-tackle to door-to-door. The facts of the case are that the shipper signed the bill of lading contract to transport frozen poultry from Sussex in the UK to Jeddah in Saudi Arabia and in the bill of lading the carrier accepted liability for any losses or damage to the goods from the time of receiving the goods in Uckfield to the time of delivery in Jeddah. This contract involved two different transport modes. The carrier had to transport the goods from Uckfield to Southampton Port by road, and from Southampton Port

[511] UN, (A/CN.9/55) (n 167)135.
[512] *Mayhew Foods* (n 165).

to Jeddah by sea. The carrier carried the goods by road to Shoreham Port, shipped them from Shoreham Port to Le Havre Port and then transhipped them from Le Havre Port to Jeddah. The goods arrived in Jeddah damaged due to the insufficient container temperature; the cargo required 18 degrees, but the container had been set up 2 to 4 degrees higher. The shipper claimed the carrier should pay for the damage. In contrast, the carrier argued that the damage had occurred while the cargo was dockside at Le Havre Port waiting to be transhipped, which is out of the period scope of application of the Hague/Hague–Visby Rules, and used the case of the *Captain* as a precedent. The court concluded that the carrier was responsible and that the Hague/Hague/Hague–Visby Rules applied. Here, the court distinguished between the cases of the *Captain v Far Eastern Steamship Co* and *Mayhew Foods Limited v Overseas Containers Ltd.* In the first case, the carrier's bill of lading did not exclude liability for the transhipment period. In contrast, in the second case, the bill of lading contained the carrier liability during the transhipment period as both parties agreed to cover the door-to-door period. In a similar case - the *Anders Maersk* case - the High Court of Hong Kong reached the same decision and applied the Hague–Visby Rules.[513]

As discussed above, the standard period of application of the Hague– Visby Rules is tackle-to-tackle, and beyond that the parties have to agree to extend the period in case the parties expressed the extension of the period scope of application as per article 6. Here, the problem before the tackle-to-tackle period or after it will be the same. The Hague/Hague–Visby Rules do not satisfy the

[513] *Anders Maersk* [1986] 1 Lloyd's Rep. 483.

practice of container services and today's carriage of goods practice because the carrier's aim is to reduce the period of liability, and the carrier is a powerful party in the contract. Clearly, it is to the carrier's benefit to minimise his/her responsibility. A second factor is the length of time it takes for litigation because of the lack of application certainty in advance. This was because the ambiguity of the application led to the defendant playing the rules to avoid paying damages. This, in turn, affected the trade chain and increased legal costs, so also affecting trade costs. Additionally, the parties' lack of certainty in advance for the period of application as well as ambiguity will lead the shipper to take out insurance, increasing the transport costs and significantly impacting on the trade cost and the economy.

5.3.2 The Period of Carrier Liability under the Hamburg Rules

Article (2) of the Hamburg Rules defines the period scope of the application for port to port from a wider perspective than the Hague/Hague–Visby Rules.[514] However, the parties can extend the period scope of application using the freedom of contract in the Hamburg Rules under Article 23(2).

The Hamburg Rules come under article 4, which defines the period of carrier liability from the time the carrier takes charge of the goods at the loading port until the time of unloading at the discharge port. This includes the period of loading and unloading the goods since the operation before the port of loading or after the port of discharge comes under national law.[515] It can therefore be concluded that the Hamburg Rules solve the problem of the Hague/Hague–Visby Rules as

[514] UN, (A/CONF.89/14) (n 47) 41-44; Wilson (n 146) 216.
[515] Ibid.

they cover the period before loading into the vessel, after discharge from the vessel and at dockside.[516]

However, there are no rules that regulate the problems that occur before the port of loading or after the port of discharge, which indicates that this convention has a gap.

To sum up, the nature of the port-to-port period scope of application excludes transport by other modes. The period of carrier liability under the Hamburg Rules covers when the carrier takes charge of the goods at the port of loading to the port of discharge.[517] However, Marian Hoeks states that article 1(6) of the Hamburg Rules implies the meaning of door-to-door transportation.[518]

Despite the problem of the dockside being solved under the Hamburg Rules by introducing a port to a port concept, here it is clear that there are no rules to regulate the problems that occur before the loading port or after the discharge port.

The wording of Article 23(2) implies freedom of contract, which allows the parties to extend the period scope of application to cover more than the port to port period. To sum up, the impact of 23(2) of the Hamburg Rules in the contract will extend the carrier's liability to the door-to-door period and recognise other modes of transport. However, this extension would be similar to the situation of applying article 6 of the Hague/Hague–Visby Rules, which creates a problem because of the lack of certainty in advance and ambiguity, which in turn increases the legal

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[516] UN, (A/CN.9/55) (n 167) 135.

[517] Mankabady (n 324) 50; Ping-Fat (n 373) 21.

[518] Marian Hoeks, 'Multimodal Carriage with a Pinch of Sea Salt: Door to Door under the UNCITRAL Draft Instrument' (2008). European Transport Law, 257, 265.

costs, as shown above in the case of *Mayhew Foods Limited v Overseas Containers Ltd*.

5.3.3 The Period of Carrier Liability under the Rotterdam Rules

The definition in the Rotterdam Rules seems more comprehensive. It includes the multimodal transport concept because the definition extends the period between the points where the goods are received to the points where the goods are delivered.[519] Here, the scope of application in the Rotterdam Rules solves the problem under the Hague/Hague–Visby Rules and the Hamburg Rules.

The Rotterdam Rules recognise transport by other modes that must be linked to the sea and extend the period of carrier liability from when the goods are received to the time they are delivered. Here, article 12 of the Rotterdam Rules envisages the period of liability of the carrier or anyone who acts on behalf of the carrier, from the time the goods are received at the loading port until the time the goods are delivered at the port of discharge to the shipper or consignee. It can therefore be concluded that all the cases raised under the application of the Hague/Hague–Visby Rules would not occur if the parties applied the Rotterdam Rules, such as in the cases of the *Captain,*[520] *the Happy Ranger,*[521] *Pyrene,*[522] and *Mayhew Foods*[523]. This is because of predictability and certainty in advance of the rules of application.

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[519] See Section 3.2.3; Sturley, 'Transport Law' (n 175), 10; Sturley, 'General Principles' (n 175) 104-105; Karan, (n 175) 443.
[520] *Captain* (n161).
[521] *The 'Happy Ranger* (n 153).
[522] *Pyrene* (n 163).
[523] *Mayhew Foods* (n 165).

An interesting debate is whether the Rotterdam Rules should be a multimodal transport convention or a carriage of goods by sea convention. This issue is very controversial. Thomas J. Schoenbaum[524] and William Tetley,[525] have criticised the limitation of the Rotterdam Rules' of application. In their opinion, it should cover the carriage of goods without the sea-leg limitation and be a multimodal convention. However, Charles Debattista,[526] supported the working group's view that the application of this convention should have a maritime plus scope to cover the door-to-door period and with a sea leg limitation.[527]

In practice, the provisions of Article 1(1), and article 5 of the Rotterdam Rules have not applied without a sea leg, which means a sea leg is mandatory in the carriage of goods in order to apply the Rotterdam Rules, regardless of whether the sea transportation is shorter or longer. It can therefore be concluded that the Rotterdam Rules do not constitute a multimodal convention, but rather a maritime-plus convention because, in accordance with the discussion above concerning the Rotterdam Rules' working group, the view of a multimodal convention was raised during the time of drafting this convention. The UNCTAD suggested using the multimodal approach without limitation to cover all transport contracts which did not have a sea-leg limitation. This view was rejected because a multimodal convention has proved to be an unsuccessful approach, as with the Geneva 1980 convention.[528]

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524 Schoenbaum (n 145) 6–7.
525 Tetley 'A Summary of General Criticisms' (n 494)1.
526 Debattista (n 184) 15–16.
527 UN, (A/CN.9/544) (n 181) 6-7.
528 UN,(A/CN.9/510) (n 25) 9-12.

The door to door approach with a sea-leg application is feasible, desirable and practicable for the carriage of goods by sea practice today, as per the Rotterdam Rules' working group's study in maritime trade.[529] Moreover, the UNCITRAL objective was to fill the gaps left in the Hague/Hague–Visby Rules and the Hamburg Rules; the objective was also to solve the maritime problems by changing, updating, and replacing certain provisions rather than creating a multimodal convention covering all modes of transport. Hence, logically, this convention should not be criticised for something it was never intended to be.

Why is the door to door period with a sea-leg the period of carrier liability best suited to the Carriage of Goods by Sea Practice, rather than multimodal rules?

What is being debated here is whether a multimodal convention or a maritime plus convention is required for the transport of goods by sea. Here, the container operation perspective, as discussed in Chapter One.[530] Clearly, container transportation has grown globally at a massive rate, particularly that of liners. This can be attributed to multiple factors, such as innovative technology which has made liner container services and the maritime industry function much more efficiency. As a result, transport costs have been reduced and the supervision and control of the quality of goods in the container system has improved. There is also more linking of inland and maritime operations.

These elements can be seen in the national economies of the respective countries, and clearly improve international and national trade as well as the economy in general. Cheap maritime transport and connectivity has further

[529] Ibid.
[530] See Section 1.1.

resulted in more international goods being transported by sea, which greatly influences trade costs. Technology also significantly impacts liner container transportation through making the system of contracting more efficient and examining the movement of goods. This has boosted the transportation quality and logistics services, as well as the operation speed and transportation. In addition, electronic commerce has been hugely influential in enlarging the container shipping business. This has resulted in container services for the carriage of goods by sea dominating transport transactions when it is considered at a global level.

In terms of the character of modern container operations and the way in which the maritime industry has grown, it is vital that other modes are looked at as part of the same or linked transaction when considering the legislation and rules governing the carriage of goods by sea. This is because it is possible to move goods into or out of the port to be delivered inland while the goods are still in the container. Here, earlier attempts have been made to adopt a multimodal convention perspective.

Hence, the sea carriage of goods should also include carriage by other modes connected to the sea contract. The Rotterdam Rules provide a suitable solution for multimodal transport to cover a door to door approach, which may involve such modes as road, air, train and sea. The failure of the two preceding existing international rules to address the needs of the container operation made it necessary to draft the Rotterdam Rules. This means that the Rotterdam Rules are designed to fit the needs of modern-day practices of the maritime industry, in particular, the carriage of goods by sea contracts.

The contract definition under Oman Law states that the period of carrier liability starts at the port of lading and ends at the port of discharge.[531] However, article 260(1) defines the liability period as starting from within loading on and ending with discharging the goods from the vessel. This conflict produces a significant problem when determining who should be responsible when the goods are not physically on the ship at the port. Hence, there are two stages of liability — the first one under the carrier from the tackle-to-tackle period, and the second is the port to port period which may cause contention around the carriage of goods by sea in Oman. In addition, the uncertainty and conflict between the two articles in the same law is a significant problem. Moreover, Omani Maritime Law excludes transport by other modes, and has a gap which involves more than one mode of transportation. Further to this, as discussed in Chapter Three, the gap in the period of application in Omani Maritime Law has confused judges in Omani courts (*in the cases of Iron Butterfly*,[532] and *Moon Golden Wattle*[533]) in terms of the marine agent's responsibilities.[534]

Article 258 of the Omani Maritime Law determines that the parties can extend a carrier liability from port to port or door to door. This shows that Omani Maritime Law has adopted the Hague/ the Hague- Visby Rules. Therefore, it follows that all the criticism of the period of a carrier liabilities under the Hague/ the Hague-Visby Rules would also be applied to Omani Maritime Law.

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[531] See Section 3.2.4.
[532] *Iron Butterfly* (n 206).
[533] *Moon Golden Wattle* (n 207).
[534] See Section 3.2.6.

5.3.5 The Period of Carrier Liabilities under the proposed new Omani Maritime Law.

Under the New Omani Maritime Law project, the contract definition states that the period of carrier liability starts at the port of lading and ends at the port of discharge.[535] The new law project also avoids the conflict between articles 237 and 261(1) in the existing Omani Maritime Law. Article 207 of the proposed new Omani Maritime Law, in line with article 1, defines the period of a carrier liability port to port. Moreover, Article 217 of the new law project makes clear that the parties can extend the period of a carrier liability to door to door. This shows that the proposed new Omani Maritime Law adopted Article 1(6) of the Hamburg Rules. Therefore, all the criticism of the period of carrier liabilities under the Hamburg Rules would also be applied to the proposed new Omani Maritime Law.

Following the discussion about the similarities and differences between Omani Maritime Law and the proposed new Omani Maritime Law's period of carrier liability as well as the debate between the three sets of international rules, it can be seen that the Omani Laws constitute a hybrid system which has been mainly influenced by the Hague/the Hague-Visby Rules and the Hamburg Rules and neither convention is in line with the advanced development in the maritime industry. The limitation of the period of liability under Omani Maritime Law is that of tackle to tackle, while for the proposed new Omani Maritime Law it is port to port. The current law in Oman negatively affects the maritime industry as the law does not provide any legal provisions that recognise alternative modes of transport for container services. In addition, the extension of the period scope of

[535] See Section 3.2.5.

application under the freedom of contract terms will not satisfy the practice of container services and today's carriage of goods' practice because it is in the carrier's interests to reduce liability. The carrier is a powerful party in the contract — it is to his/her benefit to minimise carrier responsibility. A second factor is the long period of time it takes for litigation owing to the lack of application certainty in advance. This is because the ambiguity of application led to the defendant exploiting the rules to avoid paying damages. This then affected the trade chain and increased legal costs, which raised trade costs. In addition to this, the lack of certainty of the period of application in advance for the parties and general ambiguity results in the shipper taking out insurance so increasing transport costs and having a significant impact on trade costs and economics.

This situation necessitates amending the rules in Oman and adapting international conventions that address this problem. Hence, it can be seen that the period scope of the door to door application with the sea leg under the Rotterdam Rules covers the current carriage of goods by sea practices, and the period scope of application is tailored to the needs of current maritime shipping requirements.

5.3 Exemption Clause

The Hague/Hague–Visby Rules has a list of the various types of exoneration under article 4(2). Here, the carrier is not liable if it is proved that the loss, damage or delay was caused by something listed in the exemption clause and identified in the bill of lading or transport documents.[536] However, the Hamburg Rules abolished the exoneration list under article 4(2) of the Hague/Hague–Visby

[536] *Maxine Footwear* (n 456); *Foscolo, Mango* (n 460); *The Farrandoc* (n 448).

Rules.[537] Here, Article 5 of the Hamburg Rules defines several exemptions: the damage or loss caused by force major or a fire on a vessel. In addition, it covers the cases of the damage or loss caused by the inherent defect of the goods, or fault or negligence of the shipper or someone acting on behalf of the shipper, as well as the loss or damage caused by reasonable measures to save life or property at sea.

Article 17 (3) of the Rotterdam Rules has a unique exception clause, and it restructures the previous exception clause in two preceding existing international rules (the Hague/ the Hague–Visby Rules, and the Hamburg Rules) to modernise and strike a balance between the carrier and the cargo interest. In this case, Article 17 (3) of the Rotterdam Rules is similar to Article 4(2).In addition, the Rotterdam Rules eliminated the voyage fault's navigation or management. Here, the working group of the Rotterdam Rules emphasises removing the nautical fault exception because it may affect the economy due to insurance, and advanced technology enables the carrier to monitor and communicate with his/her crew easily.[538]

Moreover, in the context of clarity and the Hague/Hague-Visby Rules' exception clause, they are not the same as the Rotterdam Rules, which comprehensively cover this. The Rotterdam Rules introduces some modern terms, such as terrorism, the environment, and so on. Recently, data has shown that there have been 2% of maritime terrorism incidents in the last thirty years.[539] Additionally,

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[537] Hallawell (n 20) 358-367.
[538] UN, (A/CN.9/510) (n 25)16.
[539] Martin N. Murphy, *Contemporary Piracy and Maritime Terrorism: the Threat to International Security* (Routledge, 2013) 45.

the damage caused by taking reasonable measures to avoid environmental damage because of the ISM code recent development requirement demands an environmental component.[540] Moreover, in the context of clarity and certainty, the Rotterdam Rules define the carrier's liability for other people who are working or acting on behalf of the carrier, the maritime and non-maritime performance parties as well as the sole, joint and several liabilities.

The exception clause under Omani Maritime Law corresponds to Articles 4(2) of the Hague/the Hague–Visby Rules. It can be seen that this clause under Omani Maritime Law has its roots in the Hague/the Hague–Visby Rules.

The Omani court determines that the carrier's liability is absolute, and the carrier is liable for loss, damage or delay unless the carrier can prove that it was caused by something listed in the exemption clause.[541]

However, the proposed new Omani Maritime law adopted 5 (1), (6), and (7) of the Hamburg Rules.

The Hague/Hague–Visby Rules contain one major criticism concerning the nautical fault exception from the carrier liability.[542] Article 4(2)(a) of the Hague–Visby Rules adopted the nautical fault exception from the Harter Act 1893[543] and the Hamburg Rules, the Rotterdam Rules and the new Omani Maritime Law

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[540] ISM Code (n 341).

[541] Muscat Commercial Appeal Court, Commercial Case 18/1996, 25/03/1996; Muscat Commercial Appeal Court, Commercial Case 480/1996, 21/12/1996; Muscat Commercial Appeal Court, Commercial Case 445/1998, 13/10/1998.

[542] Rand R Pixa, (n 19) 439–443.

[543] R Glenn Bauer, 'Conflicting Liability Regimes: Hague-Visby v. Hamburg Rules - A Case by Case Analysis' (1993) 24 J Mar L & Com 53, 54.

Rules abolished the nautical fault exception. Omani maritime law, however, adopts the clues of navigation faults and Article 252 1(a).

In the case of *Good v The London Steamship Owners' Mutual Protecting Association*, the court held that the damage resulted from improper navigation because the crew left the sea-cock and a bilge-cock open which let water enter into the cargo. Additionally, the shipowner was entitled to exemption from liability due to the fault and negligence of the master.[544]

Further to this, the carrier has the burden of proof that the master or employee's action was a fault or negligence when failing to prove that the carrier would not be entitled to the exemption of Article 4(2)(a) of the Hague Visby Rules. In *Whistler International LTD v. Kawasakisen Kaisha LTD (the Hill Harmony)*, the charter party that was issued incorporated the Hague/ the Hague-Visby Rules. The master did not follow the order of the charterer, and the master took a different route which lasted a long time and included bunkers. The court held that the shipowner failed to prove the fault of the master; here the court defined the master as being responsible for the safety of the crew, goods and the ship, so the master was entitled to refuse any order that might affect him.[545]

In Article 252 1(a) of Omani Maritime Law, the carrier is relieved from liability due to the negligence or faults committed by the master, seamen, crew or the carrier's subordinates during navigation or in the management of the voyage. However,

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[544] *Good v The London Steamship Owners' Mutual Protecting Association* (1871) L.R. 6 C.P. 563, 568.

[545] *Whistler International LTD v. Kawasakisen Kaisha LTD (the Hill Harmony)* [2001] 1 Lloyd's Rep 147,160.

Article 5 of the Hamburg Rules and Article 17 of the Rotterdam Rules eliminated the voyage fault of the navigation or management.

The proposed new Omani Maritime Law moves a step further forward in comparison to Omani Maritime Law. Article 210 removes the voyage fault of the navigation or management, while Article 219 defines the carrier's liability or joint liability as being with or for other people working or acting on behalf of the carrier.

To sum up, Oman Maritime Law exempted the carrier from liability due to navigation or the management's fault. Here, relieving the carrier from liability is unfair, risking the possibility of the cargo owner being responsible for negligence or the fault of the people who worked on behalf of the carrier. Nowadays, advanced technology makes it possible to communicate with the ship's crew and master in the middle of the ocean. In addition, Omani Maritime law has gaps in defining the liabilities of other people who may be acting on behalf of the carrier (either directly or indirectly) to perform all or some parts of the carriage-of-goods-by-sea contract. This confused judges in the Omani courts in terms of the marine agent's responsibilities.[546] Moreover, Omani Maritime law also has gaps in defining the carrier sole, joint, and several liabilities with other people acting on behalf of the carrier.

[546] See section 3.2.6.

5.4 Limitation of liabilities

- **The Limitation of Liability for Delay**

The Hague/the Hague-Visby Rules does not cover the liability for delay.[547] Hence, there is a gap in the provision for delay, unlike the two existing conventions, and Omani Maritime Laws hold the carrier liable for delay in delivery.[548] As discussed in Chapter Four, the delay occurs when the cargo has not delivered at the date or period specified in the bill of lading. In the event that there is no date or period specified, the delay should be estimated as per the period that the ship would usually take for such a voyage.[549]

Article 19(5) of the Hamburg Rules and Article 255(5) of the Omani Maritime Law requires that notice must be given within 60 consecutive days after the goods are handed over to the consignee. However, in Article 23(4) of the Rotterdam Rules, notice must be given within 21 consecutive days of delivering the goods, while in the proposed new Omani Maritime Law, notice must be given within 30 consecutive days of delivering the goods. It can therefore be seen that the notice of delay is varied.

Article 6(b) of the Hamburg Rules and Article 254(2) of Omani maritime law define the limitation of liability for a delay in the delivery as an amount two and a half times the freight due for delayed goods; this amount should not exceed the total freight payable under the contract. However, the limitation of liability for a delay in the delivery of goods under Article 60 of the Rotterdam Rules is slightly different

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[547] Wilson (n 146) 220.

[548] The Hamburg Rules, Article 5(1); The Rotterdam Rules, Article 17(1); Omani Maritime Law, Article 255(5); the proposed new Omani Maritime Law, Article 209.

[549] See Section 4.4.4; The Hamburg Rules, Article 5(2); The Rotterdam Rules, Article 21; the proposed new Omani Maritime Law, Article 209.

and the amount is two and a half times the freight due for delayed goods; this amount should not exceed the total limit of liability as defined under Article (59) for loss or damage. The Hamburg Rules and Article Omani maritime law determine that the amount should not exceed the total freight payable under the contract.

Article 213 of the proposed new Omani maritime law takes the same approach of the Rotterdam Rules, and the limitation of liability for a delay in the delivery under the new law is an amount two and a half times the freight due for delayed goods; this amount should not exceed the total limit of liability defines under the Article (213) for loss or damage.

- **The limitation of liability for loss or damage.**

The three sets of international rules and both Omani Maritime Laws hold the carrier liable for loss or damage. As discussed in Chapter Three, all the international conventions and both Omani Maritime Laws make clear in detail that the bill of lading or transport document must contain the number of packages, pieces, the value of the goods, the weight, freight and a description of the goods.[550] In this case, all the international conventions and both Omani Maritime Laws have similarities where the carrier has to pay the damage or loss as per the value of the goods identified in the bill of lading or transport document.[551] However, the bill of lading or transport document does not contain the value of the goods or the three sets of international rules, and both Omani Maritime Laws

[550] See Section 3.3.4.

[551] The Hague/the Hague-Visby Rules, Article 4 (5) (a); The Hamburg Rules, Article; The Rotterdam Rules, Article 59(1); Omani Maritime Law, Article; the proposed new Omani Maritime Law, Article 214.

are varied. The following discussion addresses the differences between the three sets of international rules and both Omani Maritime Laws regarding the limitation amount and notice for loss or damage of the goods.

In Article 3 (6) of the Hague–Visby Rules, notice must be given before or at the time of delivery, and if the loss or damage is not apparent, it must be provided within three days of delivery. Article 4 (5) (a) of the Hague–Visby Rules states an amount of 666.67 SDRs (special drawing rights) per pre-package/unit or two SDRs per kilo for the gross weight of the goods.

Article 19 (1) (2) of the Hamburg Rules sets out the limitation of the period of notice for loss or damage whereby notice must be given within a period not exceeding the working day after the day of the delivery of goods, and if the loss or damage is not apparent, it must be completed within 15 days of delivery. Article 6 (a) of the Hamburg Rules indicates an amount of 835 SDRs per pre-package/unit or 2.5 SDR per kilo for the goods' gross weight, or whichever is the higher.

In Article 23(1) of the Rotterdam Rules, notice must be given before or at the time of delivery and if the loss or damage is not apparent, this must be done within seven days of delivery. In addition, Article 59 (1) of the Rotterdam Rules indicates an amount of 875 SDRs per pre-package/unit or three SDR per kilo for the goods' gross weight, or whichever is the higher.

Omani maritime law adopted provision 19 of the Hamburg Rules because Article 255(1) and (3) of Omani maritime law have a similar provision for the limitation of the period of notice for loss or damage. Here, notice must be given within a period not exceeding the working day after the day of the delivery of goods. If the loss

or damage is not apparent, notice must be given within 15 days of delivery. The limitation on liability amount for the loss or damage of goods in Article 254(1) of Omani maritime law is an amount not exceeding 300 Omani rials (559.28 SDRs) or the equivalent in another currency for a pre-packaged/unit. However, Omani maritime law has a gap in the amount of loss and damage by the kilo.

The Omani Court in *AM TINAI* defines the unit as the goods which are packed in one or more packages or units, wrapped with some and placed in boxes or other containers to consolidate goods in the container or pallets. All the packages or units have specific numbers and marks and are mentioned in the bill of lading to determine the limits of liability for damage and loss.[552]

Article 217 of the proposed new Oman Maritime Law states the limitation of the period of notice for loss or damage whereby notice must be given within a period not exceeding two working days after the day of delivery of goods; if the loss or damage is not apparent, notice must be completed within 15 days of delivery. The limitation on the liability amount for the loss or damage of goods in Article 213 of the proposed new Omani Maritime Law must not exceed 500 Omani rials (902.83 SDRs), or the equivalent in another currency for a pre-packaged/unit, or 5 500 Omani rials (9.03 SDR) per kilo for the gross weight of the goods, or whichever is the higher.

One additional issue relating to the limitation of the liability in a case not defined in the bill of lading in particular is the number of packages or pieces carried in the container pallets or similar items of transport used to consolidate goods.

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[552] *AM TINAI* (n 311).

Here, the question is whether the container, pallets or similar items of transport used for the consolidation of goods are considered as a unit or not?

Article 6(2) of the Hamburg Rules and Article 59 of the Rotterdam Rules have a similar solution in case this is not defined in the bill of lading; this particularly relates to the number of packages or pieces carried in the container, pallets, or similar items of transport used for the consolidation of goods.

When cargo is transported in the containers, pallets or similar transport items are used to consolidate goods, the packages or units should be considered according to the bill of lading or the transport document information. In the event that the packages or units are not specified in the bill of lading or transport document's information, the containers, pallets or similar transport items used to consolidate goods should be considered as one unit or package.

Here, Omani Maritime law has a gap in cases not defined in the bill of lading, particularly for the number of packages or pieces carried in the container pallets or similar items of transport used to consolidate goods. However, the proposed new Omani Maritime law moves forward a step, and adopts a similar solution under article 59 (2) of the Rotterdam Rules. In contrast with the Rotterdam Rules, the proposed new Omani Maritime law has a gap in defining a solution in cases not defined in the bill of lading, particularly for the number of packages or pieces carried in the pallets or similar items of transport used for the consolidation of goods.

One additional issue relates to the inspection by Oman authority. In Omani practice, based on the fieldwork data, the goods on arrival at the discharge port are subject to a survey or inspection by the Omani authorities jointly with the

carrier and the cargo owner's agents if the bill of lading is issued to cover port to port.[553] In this case, all the international conventions and both Omani Maritime Laws have similarities that the cargo owner no longer needs to notify the carrier for loss or damage.[554]

To sum up, Omani maritime law has a gap in the amount of loss and damage per kilo. In addition, both laws have gaps regarding how to calculate the unit or packages when cargo is transported in pallets, or similar transport items are used to consolidate goods. Further to this, the proposed new Omani Maritime Law has the highest amount of limitation for liability. This would lead to a rise in insurance costs and would inevitably increase the transport costs. The result is that the expensive cost of transport would have a negative impact on trade costs and commercial value.

5.5 Exclusion from liabilities

As discussed in Chapter Three, the three sets of international rules and both forms of Omani Maritime Law stopped the charter party contract from applying these rules.[555]

Article 1(c) of the Hague/the Hague-Visby Rule and article 260 of Omani Maritime Law excluded the deck cargo from the carrier liabilities. However, Article (9) of the Hamburg Rules, Article (25) of Rotterdam Rules and article 199 of the proposed new Omani Maritime Law have a special rule regulating deck cargo.

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[553] Al wahaibi (n 141).
[554] The Hague/the Hague-Visby Rules, Article; The Hamburg Rules, Article 19 (3); The Rotterdam Rules, Article; Omani Maritime Law, Article 255 (2); the proposed new Omani Maritime Law, Article 214.
[555] See Section 3.3.1.

The clarity and certainty of deck cargo in the Hamburg Rules as well as the proposed new Omani Maritime Law are not the same as the Rotterdam Rules which cover these areas comprehensively. The Rotterdam Rules define four situations when the goods should be carried on the deck: the first is when the carriage complies with the practice of a specific trade; the second is when such goods have to be carried on to the deck according to contractual provisions or legislation; thirdly, there are times when there should be carriage onto the deck by arrangement with the shipper; fourthly, and much more significantly, the cargo has to be carried in containers, cars or trucks. Such methods are suitable for deck transport and the decks are specially fitted to transport them.

The Rotterdam Rules also define rules for loss, damage or delay when the goods are required by law to be carried on deck. However, the Hamburg Rules have a gap in defining the fourth situation.[556] Here, article 219 of the proposed new Omani Maritime Law adopted the same provision of the Hamburg Rules, so it has the same gaps. It is significant that the exclusion from the application of these rules has a negative impact on a modern carrier of goods practice. The fieldwork shows that most containers are carried on deck because of the low cost of the faster loading, unloading, and stowage operation. In addition, the expense of loading, unloading and stowage on deck is cheaper than under the deck.[557] Therefore, the lawmaker in Oman should stick with deck cargo rules in order to be in line with modern maritime practices. However, in the context of clarity and certainty, the same approach of the Rotterdam Rules should be adopted.

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[556] Berlingieri, 'A Comparative Analysis' (n 438) 43.
[557] Al wahaibi (n 141).

Article 1(c) of the Hague/the Hague-Visby Rule and article 260 of Omani Maritime Law excludes live animal carrier liabilities. However, Article 5 (5) of the Hamburg Rules, Article (81) of Rotterdam Rules and article 203 (5) of the proposed new Omani Maritime Law define a special rule regulating the transportation of live animals.

It is worth mentioning that exclusion from the application of these rules has a negative impact on modern carriage of goods' practice. For example, the *MV Berux* ship is the largest vessel to carry live animals. This ship is 176.50 metres lengthwise and has a breadth of 31.10.[558] Here, the exclusion of liability for live animals increases the price of live animal transportation because the shipper has to transport live animals using the charterer contract which is more expensive than the carriage of goods contract. In the case of the *MV Berux* ship it was possibly more difficult for one shipper to hire the ship entirely. However, the *MV Berux* shipowner may carry out transportation for several shippers through the carriage of goods' contract.

5.6 Conclusion

Omani Maritime Law heavily favours the carrier. The reason for this is that the proven fault system for loss or damage has come about as a result of unseaworthiness because the burden of proof favours the cargo interest side more. Here, the carrier will not be responsible without proven fault or negligence according to the Hague/the Hague–Visby Rules. In addition, both Omani laws

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[558] Marine insight,'MV Becrux: The Largest Livestock Carrier in the World' < https://www.marineinsight.com/types-of-ships/mv-becrux-the-largest-livestock-carrier-in-the-world/> accessed 22nd April 2021.

have gaps in the areas of the order of proof, shifting the burden of proof and determining what each party should prove. Here, Omani maritime law should change the burden of proof for a lack of seaworthiness from being a proven fault to a presumed fault. Further, Omani legislators should follow the same approach as the Rotterdam Rules as these have comprehensive provisions in terms of carrier liability when identifying the order of proof, shifting the burden of proof and defining what each party should prove. Clearly, guidance would positively impact on court work and the parties in any dispute because there would be a transparent system to sort the case out.

The period of liability limitation under Omani Maritime Law is tackle to tackle, while that of the proposed new Omani Maritime Law is port to port. Here, the present law in Oman negatively affects the maritime industry because there is an absence of a suitable law to recognise other modes of transport and to regulate multimode transportation for container services. Hence, the Rotterdam Rules provide an appropriate solution for multimodal transportation to cover the door to door period with a sea leg, and this may involve road, air, train and sea modes. There is therefore a failure in Omani maritime law to address the recent development in Oman and the Oman Vision initiative such as the network system that links the sea to other modes of transport, like the ASYAD and Khazaen, the O C L and Oman Express Services. This means that the Rotterdam Rules are designed to fit the needs of modern practices in the maritime industry.

In Oman Maritime Law the carrier is absolved from liability because of the navigation management fault. This is unfair and risks the cargo owner being held responsible for negligence or persons working on behalf of the carrier. Nowadays, with advanced technology, it is possible to monitor or communicate

with the ship's crew and master in the middle of the ocean. Hence, the Rotterdam Rules have a unique exception clause which restructures the previous ones in the two preceding existing international rules (the Hague/ Hague–Visby Rules and the Hamburg Rules) to modernise and strike a balance between the carrier and the cargo interest, so benefitting the economy.

Omani Maritime Law releases the deck cargo from liability where the container is normally shipped on deck. Clearly, global trade relies enormously on the carriage of goods by sea, especially the container transport system. The reason for this is that container transport is safer, more secure for goods and provides faster transportation with more efficient and reduced operating costs. Hence, exclusion from liability is not in accordance with modern practices and needs. In addition, Omani Maritime Law excludes live animals from liability, which increases live animal transportation costs as the shipper has to transport live animals through the charterer contract, which is more expensive than the carriage of goods' contract. As previously discussed, the high cost of the product will have a negative impact on trade value. Hence, the Rotterdam Rules have unique articles with special rules to cover the deck cargo and live animals.

Chapter 6. Conclusion and Recommendations

6.1 Introduction

This chapter presents an overview of the research and defines this study's journey from its initial research questions to its final results and findings. The research started with the main research question: *How do Omani maritime laws compare to international conventions on the carriage of goods by sea, and how harmonious are they with them, or should Oman reform its maritime laws and how?*

The study approach is doctrinal and also utilises a critical comparative analysis, supplemented by qualitative research conducted with key informants in Oman's maritime sector, as well as those responsible for relevant policy and regulation formulation and enforcement.

The study has shown that the Rotterdam Rules constitute the best practice of law and guidance to reform Omani legislation in the country's maritime sector. Indeed, the latest version has adopted the maritime industry's developments, including technological developments, multiple modes of transport and the container shipping system. The Omani Maritime Law examinations, the Omani Maritime Law Project show that Omani Maritime Law is a hybrid law adapted from the Hague-Visby Rules and the Hamburg Rules.

The thesis demonstrated the similarities and differences between both Omani laws and the examined international conventions. It also demonstrated that Omani Maritime Law is outdated due to the lack of rules focusing on the latest developments in the maritime industry, including technological developments.

Additionally, both laws have uncertainties or gaps which are legally ambiguous and fail to regulate some areas of the sector.

The study concludes that both laws require modification in order to make them aligned with the modern practices of the carriage of goods by sea. They thus negatively impact the economic value of these sectors and fail to capitalise on Oman's opportunity to compete in the shipping market. The thesis therefore recommends to Omani lawmakers that they reform the law accordingly. This chapter presents a summary of the study's research findings, as well as putting forward its key recommendations, the limitations of the study and suggestions for future related research.

6.2. The impact of the carriage of goods by sea laws to Oman's economy

The Sultanate of Oman is strategically located between Asia, Africa and Europe, providing it with valuable opportunities to become an effective competitor in maritime trade. In fact, it is open to four maritime destinations: the Indian Ocean; the Arabian Sea; the Sea of Oman; the Arabian Gulf. Oman has a long maritime history, political stability, security and a unique legal approach. It also has additional attractive factors for foreign investors in its maritime sector, especially in the shipping trade. However, there are a number of areas which the Omani government could work on in order to improve its shipping trade to attract foreign investors; these are improved operation speeds and quality facilities at Oman's ports, competitive transportation costs, as well as the certainty, clarity and modernity of Omani maritime laws.

This study examined in detail the laws in Oman concerned with maritime shipping. In order to test the thesis's hypothesis, the study focused specifically

on the obligations and liabilities of carriers under Omani law, and explored how these may be reformed to align with contemporary realities in the shipping sector.

Maritime transport has developed significantly from its former status, especially with the growth of container transport and the use of advanced technology – features which exist both globally as well as in Oman. Global trade relies heavily on the carriage of goods by sea, especially using the container transport system. This system is safer, more secure for goods, ensures faster transport, is more efficient and reduces operating costs. This low cost also reduces transportation costs, leading to cost reductions in the product price and thereby promoting greater competitiveness. If Oman wants to more effectively compete in the carriage of goods by sea market, it needs to develop its ports so that they are fast in operation, have high quality facilities and are less expensive to operate. Should this not be achieved, Oman will not compete effectively due to its poor quality of service and high costs.

The study has shown that the infrastructure in the port and transport sectors are ready with the latest technology, in line with the global standards of container transport. It also shows that they are providing new services based on the idea of multimodal transport, such as the Express Shipping Services that connect the main ports in Oman (the *Khazaen hub),* as well as a proposed project to link Omani ports with railways between the Arabian Gulf States, according to Vision 2040. This development in technology and port infrastructure should be consistent with Oman's legislative development as well.

However, the development of Oman's maritime legislation has been slow, especially in relation to the obligations and responsibilities of carriers. The first challenge here is the cost of insurance: the more the law raises the obligations of the carrier in favour of the shipper, the more the carrier increases the insurance. It therefore follows that the higher the cost of insurance, the greater the cost of the final product, which inevitably decreases competitiveness. Conversely, if the law excessively reduces the obligations of the carrier, this will lead to the shipper insuring his/her goods because the cargo interest feels that the law does not protect him or her. This double insurance will also increase the cost of the product, so decreasing competition.

The second challenge concerns the legal costs: uncertainties and legal ambiguities raise legal expenses and prevent investors from using Omani ports. The lack of certainty and clarity leads to frequent disagreement; this in turn raises legal costs which result in decreased competition by similarly increasing the product cost. Additionally, conflicts generated by a lack of certainty and clarity in laws generate a destabilising effect on trade. The law should therefore be reformed to be made transparent and fair for foreign investors so that they can invest with the confidence that their rights will be guaranteed. When the law is unclear, the foreign investor is prevented from using Omani ports, which reduces the number of shipping companies that use Omani ports. As a result, the lack of companies can promote monopolisation and a dearth of competition in the sector. This may also increase the cost of shipping, and at a negative cost to the sector.

The third challenge concerns the gaps and unregulated issues in the law. The lack of legislation and the failure of regulations to keep the law in line with the modern realities of the sector is likely to generate frequent conflicts. This will have

a negative impact on trade due to the high legal costs incurred by such conflicts. A key issue is the lack of recognition of multimodal modes of transport on which the current maritime transport sector depends, especially as regards container transport. For example, the non-recognition of electronic documents has a significant negative impact because it reduces the speed of operation and raises transport and legal costs. Paper documents come with increased risks of delay, loss and forgery. Oman needs legislation which recognises and regulates electronic documents and acknowledges multimodal modes of transport. Additionally, a balance between the rights and responsibilities of carriers and the cargo interest are required to minimise the raising of insurance or double insurance costs.

Oman has been considered a shipper state because it did not own its own vessels and so could not be considered a carrier state. However, the new Omani vision and projects in the maritime transport sector have changed Oman from a shipper state to a carrier and a shipper state. Oman aspires to become one of the leading countries in maritime transport, according to Vision 2040. The country has undertaken many projects at its ports including the establishment of the Oman Shipping Company, which owns many ships suited to carry goods. These also include some vessels designed for the container system. Oman should thus legislate so that maritime shipping is perceived as being fair to both the carrier and the cargo interest.

The Hague/ the Hague-Visby Rules seem to provide more protection to the carrier than the cargo interest, while the Hamburg Rules offer greater protection to the cargo interest than to the carrier. These conventions are not suitable for a direct crossover for Oman since Oman needs a balance between the two. The

Rotterdam Convention was generated from solving the legal problems of these previous two conventions and fills the gaps that were not legislated for by either of them, especially in relation to the regulation of electronic documents and the recognition of multimodal modes of transport. It also modernised the rules to make them consistent with container transport. Accordingly, the Rotterdam Rules constitute the most suitable template for Omani legislators to follow in reforming the law. Here, the study shows that Omani Maritime Law is a hybrid law adapted from the Hague-Visby Rules and the Hamburg Rules.

The proposed new Omani Maritime Law took much from the Hamburg Rules and a certain amount from common law. The thesis concludes that both laws require modification and reform because they are not in line with the modern practice of the carriage of goods by sea, thereby impacting negatively on the sector's competitiveness. The following section summarises the areas where the Rotterdam Rules offer useful guidance for Omani legislators for reforming Omani maritime law, including the writing of a new provision that Omani legislators should consider. These are provided in Appendix 3 of this document and are identical to the Rotterdam Rules.

6.3 Findings and Recommendations of Articles in Omani Laws Are Not in Line With the Modern Maritime Industry

6.3.1 Limitation of Scope Under the Contract Definition

The definition of contracts under Omani maritime law as well as the proposed new Omani Maritime Law is identical to that of the Hamburg Rules, which has a limited scope from port to port. These definitions require modifications which would render them more aligned to the contemporary regime of maritime

transport, requiring a door-to-door carriage system and multimodal transport modes to service that system. Therefore, Omani legislators should consider the provisions of the Rotterdam Rules when revising Omani maritime legislation, as per *Recommendation One* in Appendix Three of this document.

6.3.2 Gaps and Ambiguities Relating to the Definition of a Carrier or Those Acting on Behalf of a Carrier

Omani maritime law has failed to define a carrier, and the proposal of the new Omani Maritime Law defines the carrier as the charterer. Therefore, the application of this law will continue to create problems due to the ambiguity of the definition, as charterers are not always the carriers in the modern maritime transport system. It is therefore essential to define a carrier in order to determine who is responsible for loss or damage at every stage of the transport process.

The Rotterdam Rules define the carrier as the person who enters into a contract of carriage with a shipper, namely the person who negotiated and made the contract. Using this wording, the concept is widened, in line with modern practice, to include marine agents, freight owners, shipowners, intermediate charterers, sub-charterers, cargo agents and others. This provides a comprehensive scope regardless of the personal relationship to the ship. The Rotterdam Rules are thus aligned with the reality of multimodal transport and provide additional details identifying the parties that may act on behalf of the carrier, as well as the limits of their responsibilities. Hence, the term ‘performing party’ has resolved this problem and identified the scope of application and liabilities. Accordingly, the maritime party’s scope is exclusively with the port, while the non-maritime party has the scope of application and responsibility before the port or after the

discharge port. Omani legislators should consider *Recommendation Two* of the Rotterdam Rules accordingly, as provided in Appendix Three of this document.

6.3.3 Legal Gaps and Ambiguities Related to Issuing a Bill of Lading

The issuing of electronic bills is a key component of modern maritime transport practice, requiring Omani legislative reform. The practice of electronic shipping and technology has developed rapidly in recent years, including in Oman. Here, Omani maritime law is outdated in not adapting to these changes. The new Omani Maritime Law stipulates that the carrier can issue an electronic bill of lading. However, these provisions are not as clearly defined as they are by the Rotterdam Rules, which deals with this issue in comprehensive detail. Without this level of comprehensiveness, the current Omani legislation is inadequate in competing in the global e-commerce market. Oman should thus develop Omani maritime law in relation to e-commerce accordingly. The recognition of e-transport documents will reduce financial expenses for bills of lading or transport documents as well as increasing efficiency and reducing transportation and other logistical costs. These documents will also protect parties from paying detention to shipping lines and demurrage costs to ports for the extra days of items spent at ports. In this way, the delay in receiving transport documents will be removed in the circumstance of electronic billing, so resolving this problem.

Additionally, the concept of a “transport document” as introduced by the Rotterdam Rules will be suitable for the modern practice of transporting goods by sea. This is because this concept solves problems with a straight bill of lading, waybills, or any other documents that may be introduced in the future – as the document regulates the relationship between the carrier and cargo interest.

Thirdly, the proposed new Omani Maritime Law has a number of gaps relating to transport documents. For example, it does not specifically address the issue of the absence of bills of lading particulars. The Rotterdam Rules, in contrast, provide this detail, including solutions regarding transport document particulars. A reform in line with the Rotterdam Rules in this instance will make it possible to avoid problems relating to connected disputes, which generate unnecessary legal costs. Omani lawmakers should thus consider all articles of the Rotterdam Rules relating to the issue of missing bills of lading or transport documents, as per *Recommendation Three* of the rules provided in Appendix Three of this document.

6.3.4 The Issue of the Seaworthiness Obligation

The period of the seaworthiness obligation under Omani maritime law both before and at the beginning of the voyage is outdated. This is owing to the recently developed requirement of ISM codes which requires a continuing obligation, both before, at the beginning and during the voyage to the final destination. The reduced period of the seaworthiness obligation in favour of the carrier in the case of Omani maritime law (by not being aligned with this requirement) is unfair. This is because the carrier is able to easily communicate with the master and crew throughout the sea voyage due to modern communications technology. As a result, the period of the seaworthiness obligation should be extended to the status of a continuous obligation – as per the Rotterdam Rules' approach – instead of how it is with its current status.

The proposed new Omani Maritime Law aims to increase the carrier's obligation to make a ship seaworthy as an absolute obligation under Article 197 of the

proposed new Omani Maritime Law. However, this will lead to an increase in insurance costs, which will, in turn, lead to a rise in transport costs so decreasing competitiveness. This will also reduce the desire of international shipping companies to use Omani ports. The principle of a continuing obligation – as per the Rotterdam Rules – is of greater value to the Omani context than the absolute obligation. Omani legislators should thus consider *Recommendation Four* of the Rotterdam Rules when revising the law. This is included in Appendix Three of this document.

6.3.5 The Issue of Receiving, Loading, Unloading, Stowing, Handling, Keeping, Caring for Goods Carried and Delivery Obligations

Omani maritime legislation does not specify who is responsible for keeping and taking care of goods beyond the port-to-port period. However, modern maritime transport practice often requires door-to-door obligations and guarantees. The Rotterdam Rules solved this problem under Articles 12 & 13 which define the period of these door-to-door obligations unless agreed otherwise by the parties, the law or regulations regarding the place of receipt. The delegation of these obligations are not clear under Omani maritime law, and the proposed new Omani Maritime Law fails to define how receiving, stowing and the delivery of goods is to be delegated. The inclusion of such delegations in the law is desirable as Oman's maritime transport practices already involve marine agents and cargo agents whose responsibilities are not clearly defined under the current legislation. Clear definitions for the obligations of these stakeholders will normalise modern maritime practice within an environment which is likely to see these practices

become more commonplace and secure. This, in turn, will result in lower costs and higher speeds of cargo transactions.

Omani maritime law also contains gaps regarding the dates and periods of delivery. While it retains provisions for carrier liabilities for delay in Article 254 (2), it has gaps relating to the absence of dates or periods in the bill of lading or transport documents. However, Article 43 of the Rotterdam Rules provides a solution to this problem by requiring a diligent carrier to deliver the goods in the absence of such a condition.

Additionally, both Omani laws lack clarity regarding the issue of delivery when no document is issued. However, the Rotterdam Rules provide a resolution to this in Article 45. Both Omani laws also lack specificity in cases where the consignee refuses to acknowledge receipt or refuses to identify him or herself. Neither law outlines the responsibility after goods are discharged and handed over to the authority or to other third parties. Articles 11, 12 and 13 (Chapter 9) of the Rotterdam Rules may serve as a guide to resolve the problem of delivery obligations in these circumstances.

The significance of economic losses generated by delivery delays constitutes a key gap which should be addressed by Omani lawmakers. Traditional marine insurance would not cover any such loss, and therefore the cargo interest would have to take on a double insurance. As detailed above, this double insurance would generate increases in product cost which have a negative effect on competitiveness.

Omani legislators should thus consider *Recommendation Five* of the Rotterdam Rules when revising Omani legislation in relation to this matter. This is provided in Three Four of this document.

6.3.6 Gaps and Ambiguities Relating to the Liability of a Carrier

Omani maritime law heavily favours the carrier because of a 'proved-fault' system for loss or damage resulting from unseaworthiness. In sum, the burden of proof is excessively high – a product of a carrier-favoured system influenced by the Hague-Visby Rules. Both Omani laws have gaps in the order of proof too, shifting the burden of proof and failing to define who should prove what. Here, Omani maritime law should shift the burden of proof in unseaworthiness from *proved fault* to *presumed fault*. The laws should also follow the same approach as the Rotterdam Rules which has comprehensive provisions regarding carrier liability when identifying the order of proof. This clarity will positively impact court work as well as reduce legal costs associated with disputes resulting from unclear legal provisions.

The limitation of the period of liability under Omani maritime law is that of tackle to tackle. The limitation period of the proposed new Omani Maritime Law is port to port. Neither law recognises other modes of transport and both regulate multimodal transport for container services. The Rotterdam Rules provide a suitable solution for a multimodal transport system to cover door-to-door shipping which may involve such modes as road, air, train and sea. Omani maritime law fails to align itself to recent developments, such as the network system that links the sea to other modes of transport, the ASYAD and Khazaen transportation links, the Oman Container Line and Oman Express Services. The Rotterdam

Rules would therefore be useful to fit the needs of contemporary practices of the maritime industry in Oman.

Oman maritime law exempts the carrier from liability due to the fault of navigation management. This is unfair since relieving the carrier from liability risks putting the cargo owner in a position of liability for negligence or makes it the fault of the staff who worked on behalf of the carrier. The Rotterdam Rules resolve this problem with a unique exception clause: they restructure the previous exception clause in two preceding existing international rules (Hague-Visby and Hamburg) to strike a balance of liability between the carrier and the cargo interest.

Additionally, Omani maritime law excludes the deck cargo from liability. As the container transport system is a key feature of the modern maritime transport system, this exclusion misaligns Omani maritime law from the realities of the global maritime transport system. Additionally, Omani maritime law excludes live animals from liability. This will increase the price of the transportation of live animals because the shipper will have to transport them through the charterer contract which is more expensive than the carriage of goods contract. This will lead to increased costs and decreased competitiveness. The Rotterdam Rules again provide useful provisions which cover rules for deck cargo and live animals.

Omani legislators should therefore consider *Recommendation Six* of the Rotterdam Rules, as provided in Appendix Three of this document.

6.4 Limitations of the Study and Suggestions for Future research

Oman's maritime transport industry has expanded due to trade developments and the growth in Oman's economy. Corresponding developments in Oman's

legislative frameworks are key to reducing litigation and attracting foreign investment. This study has not covered all aspects of the carriage of goods' contracts. During the research component of the study, many subjects recommended that issues of obligation and the liability of the shipper, dangerous goods, arbitration and jurisdiction, and issues surrounding contract volumes should be explored in future research. In addition, this thesis recommends that Omani legislators work with the Gulf Cooperation Council (GCC) to study the extent of the GCC's ratification of the Rotterdam Rules, as well as studying all aspects of the Rotterdam Rules. This is because ratification of these rules will unify the carriage of goods by sea rules among GCC members, as well as providing a useful boost to the intra-GCC shipping industry developments.

The List of legislation

International legislation

Harter Act 1893

International Code for the Security of Ships and Port Facilities 2002 (ISPS Code)

International Convention for the Safety of Life at Sea 1974 (SOLAS)

International Safety Management Code 1993 (ISM Code)

The International Convention for the Unification of Certain Rules of Law Relating to Bill of Lading 1924(Incorporating the Hague-Visby Rules & SDR Protocol)

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Appendix 1 Table of International Conventions Articles

1. Definition of the Contract of Carriage

The Hague/the Hague-Visby Rules as Amended by the Brussels Protocol	The Hamburg Rules	The Rotterdam Rules
Article 1 In these Rules the following words are employed, with the meanings set out below: ... ... (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same. (e) " Carriage of Goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.	*Article 1. Definitions* In this Convention: ... ... 6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.	*Article 1. Definitions* For the purposes of this Convention: 1. "Contract of carriage" means 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.

2. Definition of a Carrier

The Hague/the Hague-Visby Rules as Amended by the Brussels Protocol	The Hamburg Rules	The Rotterdam Rules
Article 1 In these Rules the following words are employed, with the meanings set out below: (a)‘carrier includes the owner or the charterer who enters into a contract of carriage with a shipper.	*Article 1. Definitions* In this Convention: ... ... (1)"Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper. (2)"Actual carrier" means any person to whom the performance of the carriage o f the goods, or o f part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.	*Article 1. Definitions* For the purposes of this Convention: ... ... 5. “Carrier” means a person that enters into a contact of carriage with shipper. 6. (a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts either directly or indirectly , at the carrier’s request or under the carrier’s supervision or control. (b) “ Performing party” does not include any person that is retained , directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier. 7. “Maritime Performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier ‘s obligations during the period between the

		arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

3. The Obligation of Issuing a Bill of Lading

The Hague/the Hague-Visby Rules as Amended by the Brussels Protocol	The Hamburg Rules	The Rotterdam Rules
Article 1 In these Rules the following words are employed, with the meanings set out below: ... ... (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.	*Article 1. Definitions* In this Convention: ... ... 7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the	*Article 1. Definitions* For the purposes of this Convention: ... ... 14. "Transport document" means a document issued under a contract of carriage by the carrier that: (*a*) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and (*b*) Evidences or contains a contract of

3(3). After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things: a) The leading marks necessary for identification of the goods as the same are fur- 18 nished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a	order of a named person, or to order, or to bearer, constitutes such an undertaking. 8. "Writing" includes, *inter alia,* telegram and telex. ... ... PART IV. TRANSPORT DOCUMENTS *Article* 14. *Issue ofbill oflading* 1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading. 2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of	carriage. 15. “Negotiable transport document” means a transport document that indi- cates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the doc- ument, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non- negotiable” or “not negotiable”. 6. “Non-negotiable transport document” means a transport

manner as should ordinarily remain legible until the end of the voyage. (b) Either the number of packages or pieces, or the quantity, or weight, as the case may 19 be, as furnished in writing by the shipper. (c) The apparent order and condition of the goods. 20 Provided that no carrier, master or agent of the carrier shall be bound to state or show 21 in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent	the ship carrying the goods is deemed to have been signed on behalf of the carrier. 3.The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued. *Article* 15. *Contents of bill of lading* 1. The bill of lading must include, *inter alia,* the following particulars: *(a)* the general nature of the goods, the leading marks necessary for	document that is not a negotiable transport document. 17.“Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference. 18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically

the goods actually received, or which he has had no reasonable means of checking. 4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the 22 goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith. ... ... 7, After the goods are loaded the bill of lading to be issued by the carrier, master, or 29	identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper; 2. *(b)* the apparent condition of the goods; 3. *(c)* the name and principal place o f business o f the carrier; 4. *(d)* the name o f the shipper; 5. *(e)* the consignee if named by the shipper; 6. *(f)* the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;	associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contem-poraneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that: (*a*) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and (*b*) Evidences or contains a contract of carriage. 19. "Negotiable electronic transport

agent of the carrier, to the shipper shall, if the shipper so demands be a `shipped' bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the `shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it	7. *(g)* the port of discharge under the contract of carriage by sea; 8. *(h)* the number of originals of the bill of lading, if more than one; 9. *(i)* the place of issuance of the bill of lading; 10. *(j)* the signature of the carrier or a person acting on his behalf; 11. *(k)* the freight to the extent payable by the consignee or other indication that freight is payable by him; *(l)* the statement referred to in paragraph 3 of article 23; *(m)* the statement, if applicable, that the goods shall or may be carried on deck; *(n)* the date or the period 'of delivery of the goods at the port of discharge if	record" means an electronic transport record: (*a*) That indicates, by wording such as "to order", or "negotiable", or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being "non-negotiable" or "not negotiable"; and (*b*) The use of which meets the requirements of article 9, paragraph 1. 20. "Non-negotiable

shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a `shipped' bill of lading.	expressly agreed upon between the parties; and *(0)* any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6. 2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other	electronic transport record" means an electronic trans- port record that is not a negotiable electronic transport record. 21. The "issuance" of a negotiable electronic transport record means the issu- ance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity. 22. The "transfer" of a negotiable electronic transport record means the trans- fer of exclusive control over the record.

	document of title with respect to any of such goods, on request of the carrier the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued docu- ment in order to meet the shipper's demand for a "shipped" bill of lading if, as mended, such document includes all the information required to be con- tained in a "shipped" bill of lading. 3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill	23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorse- ments) that is in a transport document or an electronic transport record. ... ... *Article 6 Specific exclusions* 1. This Convention does not apply to the following contracts in liner transportation: 1. (*a*) Charter parties; and 2. (*b*) Other contracts for the use of a ship or of any space thereon. 2. This Convention does not apply to contracts of

	of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1. *Article* 16. *Bills of lading: reservations and evidentiary effect* 1. I f the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is	carriage in non-liner trans- portation except when: (*a*) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and (*b*) A transport document or an electronic transport record is issued. *Article 7* *Application to certain parties* Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage

	issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking. 2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition. 3. Except for particulars in respect of which and to the extent to which a	excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6. Chapter 3 Electronic transport records *Article 8* *Use and effect of electronic transport records* Subject to the requirements set out in this Convention: (*a*) Anything that is to be in or on a transport

	reservation permitted under paragraph 1 of this article has been entered: *(a)* the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and *(b)* proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.	document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and (*b*) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document. *Article 9* *Procedures for use of negotiable electronic transport records*

	4. A bill of lading which does not, as provided in paragraph 1, subparagraph *(k),* of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in	1. The use of a negotiable electronic transport record shall be subject to procedures that provide for: (*a*) The method for the issuance and the transfer of that record to an intended holder; (*b*) An assurance that the negotiable electronic transport record retains its integrity; (*c*) The manner in which the holder is able to demonstrate that it is the holder; and (*d*) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10,

	the bill of lading of any such indication. ... ... *Article* 18. *Documents other than bills of lading* Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evi- dence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.	paragraph 2, or 47, subparagraphs 1 (*a*) (ii) and (*c*), the electronic transport record has ceased to have any effect or validity. 2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable. *Article 10* *Replacement of negotiable transport document or negotiable electronic transport record*

		1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record: (*a*) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier; (*b*) The carrier shall issue to the holder a negotiable electronic trans- port record that includes a statement that it replaces the negotiable transport document; and

		(*c*) The negotiable transport document ceases thereafter to have any effect or validity. 2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document: (*a*) The carrier shall issue to the holder, in place of the electronic trans- port record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

		(*b*) The electronic transport record ceases thereafter to have any effect or validity. Chapter 8 Transport documents and electronic transport records *Article 35* *Issuance of the transport document or the electronic transport record* Unless the shipper and the carrier have agreed not to use a transport docu- ment or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for

		carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option: (*a*) A non-negotiable transport document or, subject to article 8, subpara- graph (*a*), a non-negotiable electronic transport record; or (*b*) An appropriate negotiable transport document or, subject to article 8, subparagraph (*a*), a negotiable electronic transport record, unless the ship- per and the carrier have agreed not to use a

		negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one. *Article 36 Contract particulars* 1. The contract particulars in the transport document or electronic trans- port record referred to in article 35 shall include the following information, as furnished by the shipper: 1. (*a*) A description of the goods as appropriate for the transport; 2. (*b*) The leading marks necessary for identification of the goods; 3. (*c*) The number of packages or pieces,

		or the quantity of goods; and 4. (*d*) The weight of the goods, if furnished by the shipper. 2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include: (*a*) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage; 2. (*b*) The name and address of the carrier; 3. (*c*) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on

		which the transport document or electronic transport record was issued; and (*d*) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued. 3. The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include: 1. (*a*) The name and address of the consignee, if named by the shipper; 2. (*b*) The name of a ship, if specified in the contract of carriage; 3. (*c*) The place of receipt and, if known

		to the carrier, the place of delivery; and (*d*) The port of loading and the port of discharge, if specified in the contract of carriage. 4. For the purposes of this article, the phrase "apparent order and condition of the goods" in subparagraph 2 (*a*) of this article refers to the order and condition of the goods based on: (*a*) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and

		(*b*) Any additional inspection that the carrier or a performing party actu- ally performs before issuing the transport document or electronic transport record. *Article 37 Identity of the carrier* 1. If a carrier is identified by name in the contract particulars, any other infor- mation in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.

		2. If no person is identified in the contract particulars as the carrier as required pursuant to article 36, subparagraph 2 (*b*), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat char- terer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of

		being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner. 3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier. *Article 38 Signature* 1. A transport document shall be signed by the carrier or a person acting on its behalf.

		2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record. *Article 39 Deficiencies in the contract particulars* 1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character

		or validity of the transport document or of the electronic transport record. 2. If the contract particulars include the date but fail to indicate its signifi- cance, the date is deemed to be: (*a*) The date on which all of the goods indicated in the transport docu- ment or electronic transport record were loaded on board the ship, if the con- tract particulars indicate that the goods have been loaded on board a ship; or (*b*) The date on which the carrier or a performing party received the goods, if

		the contract particulars do not indicate that the goods have been loaded on board a ship. 3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them. *Article 40 Qualifying the information relating to the goods in the contract particulars*

		1. The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if: (*a*) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or (*b*) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport

		record is false or misleading. 2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper. 3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed

		container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if: (*a*) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or (*b*) The carrier has reasonable grounds to believe the information fur- nished by the shipper to be inaccurate, in which case it may

		include a clause providing what it reasonably considers accurate information. 4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in: (*a*) Article 36, subparagraphs 1 (*a*), (*b*), or (*c*), if: (i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and (ii) Neither the carrier nor a performing party

		otherwise has actual knowl- edge of its contents before issuing the transport document or the electronic transport record; and (*b*) Article 36, subparagraph 1 (*d*), if: (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or (ii) There was no physically practicable or commercially

		reasonable means of checking the weight of the container or vehicle. *Article 41* *Evidentiary effect of the contract particulars* Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40: (*a*) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars; (*b*) Proof to the contrary by the carrier in respect of any contract

		particulars shall not be admissible, when such contract particulars are included in: (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or (ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith; (*c*) Proof to the contrary by the carrier shall not be admissible against a consignee that in good

		faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non negotiable electronic transport record: (i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier; (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and (iii) The contract particulars referred to in article 36, paragraph 2.

		Article 42 "Freight prepaid" If the contract particulars contain the statement "freight prepaid" or a state- ment of a similar nature, the carrier cannot assert against the holder or the con- signee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

4. The Obligation of a Carrier

The Hague/the Hague-Visby Rules as Amended by the Brussels Protocol	The Hamburg Rules	The Rotterdam Rules
Article 2 Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier,	The Hamburg Rules left out the specific obligations entirely, only using a general article for the carrier's liability under Article 5 (1) of the Hamburg Rules. It can be inferred that Article 5 applies to all obligations	Chapter 4 Obligations of the carrier *Article 11* *Carriage and delivery of the goods*

in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth. *Article 3* 1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to: (a) Make the ship seaworthy; (b) Properly man, equip and supply the ship; (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation. 2. Subject to the provisions of Article IV, the carrier shall properly	of the carrier under the contract of the carriage of goods by sea as discussed in Chapter Four.	The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee. *Article 13. Specific obligations* 1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods. 2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars. *Article 14. Specific obligations applicable to the voyage by sea* The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.		(*a*) Make and keep the ship seaworthy; (*b*) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and (*c*) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation. *Article15* *Goods that may become a danger* Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are rea- sonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably

		appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment. *Article 16* *Sacrifice of the goods during the voyage by sea* Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the com- mon safety or for the purpose of preserving from peril human life or other property involved in the common adventure. ... ...

		Delivery of the goods *Article 43 Obligation to accept delivery* When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept deliv- ery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the

		carriage, delivery could reasonably be expected. *Article 44* *Obligation to acknowledge receipt* On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the per- forming party in the manner that is customary at the place of delivery. The car- rier may refuse delivery if the consignee refuses to acknowledge such receipt. *Article 45*

		Delivery when no negotiable transport document or negotiable electronic transport record is issued When neither a negotiable transport document nor a negotiable electronic transport record has been issued: (*a*) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

		(*b*) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address; (*c*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of desti-

		nation, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of

		the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods; (*d*) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (*c*) of this article is discharged from its obligations to deliver the goods under the contract of carriage. *Article 46* *Delivery when a non-*

		negotiable transport document that requires surrender is issued When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods: (*a*) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to

		properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity; (*b*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery

		of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the

		carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods; (*c*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (*b*) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it. *Article 47* *Delivery when a negotiable transport document or negotiable*

		electronic transport record is issued 1. When a negotiable transport document or a negotiable electronic transport record has been issued: (*a*) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder: (i) Upon surrender of the negotiable transport

		document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (*a*) (i), upon the holder properly identifying itself; or (ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record; (*b*) The carrier shall refuse delivery if the requirements of subparagraph (*a*) (i) or (*a*) (ii) of this paragraph are not met; (*c*) If more than one original of the negotiable

		transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1. 2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the

		negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply: (*a*) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder

		does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (*a*) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

		(*b*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (*a*) of this article is discharged from its obligation to deliver the goods under the contract of car- riage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the proce- dures referred to in article 9, paragraph 1, that it is the holder;

		(*c*) The person giving instructions under subparagraph 2 (*a*) of this arti- cle shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (*e*) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request; (*d*) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to

		subparagraph 2 (*b*) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods; (*e*)Notwithstanding subparagraphs 2 (*b*) and 2 (*d*) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the

		negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods. *Article48* *Goods remaining undelivered* 1. For the purposes of this article, goods shall

		be deemed to have remained undelivered only if, after their arrival at the place of destination: (*a*) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43; (*b*) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47; (*c*) The carrier is entitled or required to refuse delivery pursuant to

		articles 44, 45, 46 and 47; (*d*) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or (*e*) The goods are otherwise undeliverable by the carrier. 2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as

		circumstances may reasonably require,including: 1. (*a*) To store the goods at any suitable place; 2. (*b*) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and (*c*) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time. 3. The carrier may exercise the rights under paragraph 2 of this article only after it has

		given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper. 4. If the goods are sold pursuant to subparagraph 2 (*c*) of this article, the car- rier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the

		deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods. 5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage

		to the goods would result from its failure to take such steps. *Article 49 Retention of goods* Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

5. The Liability of a Carrier

The Hague/the Hague-Visby Rules as Amended by the Brussels Protocol	The Hamburg Rules	The Rotterdam Rules
Article 1 *(e)*"Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship. .... *Article 3* .... 6.Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be	PART 11. LIABILITY OF THE CARRIER *Article* 4. *Period of responsibility* 1. The responsibility of the carrier for the goods under this Convention covers 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. 2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods (a) from the time he has taken over the goods from:	*Article 12* *Period of responsibility of the carrier* 1.The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered. CHAPTER 5 LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY Article 17 Basis of liability 1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4. 2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this Article if it proves that

not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection. Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This	(i) the shipper, or a person acting on his behalf; or (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment; (b) until the time he has delivered the goods: (i) by handing over the goods to the consignee; or (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law	the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in Article 18. 3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this Article if, alternatively to proving the absence of fault as provided in paragraph 2 of this Article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay: (a) Act of God; (b) Perils, dangers, and accidents of the sea or other navigable waters; (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions; (d) Quarantine restrictions; interference by or impediments

period, may however, be extended if the parties so agree after the cause of action has arisen. In the case of any actual or apprehended loss or damage the carrier and the re- ceiver shall give all reasonable facilities to each other for inspecting and tallying the goods. 6 bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less	or with the usage of the particular trade, applicable at the port of discharge; or (Hi) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over. 3.In paragraph 1 and 2of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee. *Article* 5. *Basis of liability*	created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in Article 18; (e) Strikes, lockouts, stoppages, or restraints of labour; (f) Fire on the ship; (g) Latent defects not discoverable by due diligence; (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is

than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself. .... 8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules,	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 as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. 2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time	liable pursuant to Article 33 or 34; (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with Article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee; (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods; (k) Insufficiency or defective condition of packing or marking not

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. *Article 4* 1.Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating	expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case. 3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article. *4 (a)* The carrier is liable (i) for loss of or damage to the goods or delay in	performed by or on behalf of the carrier; (l) Saving or attempting to save life at sea; (m)Reasonable measures to save or attempt to save property at sea; (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or (o) Acts of the carrier in pursuance of the powers conferred by Articles 15 and 16. 4. Notwithstanding paragraph 3 of this Article, the carrier is liable for all or part of the loss, damage, or delay: (a) If the claimant proves that the fault of the carrier or of a person referred to

and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article. 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:	delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents; (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences. 5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to	in Article 18 caused or contributed to the event or circumstance on which the carrier relies; or (b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this Article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in Article 18. 5. The carrier is also liable, notwithstanding paragraph 3 of this Article, for all or part of the loss, damage, or delay if: (a) The claimant proves that the loss, damage, or delay was or was

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship. (b) Fire, unless caused by the actual fault or privity of the carrier. (c) Perils, dangers and accidents of the sea or other navigable waters. (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.	him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents. 6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea. 7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in	probably caused by or contributed to by: (i) The unseaworthiness of the ship; (ii) The improper crewing, equipping, and supplying of the ship; or (iii) The fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and (b) The carrier is unable to prove either that:

(i) Act or omission of the shipper or owner of the goods, his agent or representa- tive. (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general. (k) Riots and civil commotions. (l) Saving or attempting to save life or property at sea. (m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods. (n) Insufficiency of packing. (o) Insufficiency or	delivery not attributable thereto. Article 6 Limits of liability 1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher. (b) The liability of the carrier for delay in delivery according to the provisions of Article 5 is limited to an amount	(i) None of the events or circumstances referred to in subparagraph 5 (a) of this Article caused the loss, damage, or delay; or (ii) It complied with its obligation to exercise due diligence pursuant to Article 14. 6. When the carrier is relieved of part of its liability pursuant to this Article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this Article. Article 18

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, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage. ... ... 4. Any deviation in saving or attempting to	equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea. (c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred. 2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of	Liability of the carrier for other persons The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of: (a) Any performing party; (b) The master or crew of the ship; (c) Employees of the carrier or a performing party; or (d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's

save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom. 5 (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent	this Article, the following rules apply: (a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit. (b) In cases where the article of transport itself has been lost or damaged, that article of	request or under the carrier's supervision or control. Article 19 Liability of maritime performing parties 1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if: (a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and

of 666.67 units of account per package or unit or units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher. (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accor- dance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, 55 or, if there be no such price, according to the current	transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit. 3. Unit of account means the unit of account mentioned in Article 26. 4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed. Article 9 Deck cargo 1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations. 2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of	(b) The occurrence that caused the loss, damage or delay took place: (i) During the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) While the maritime performing party had custody of the goods; or (iii) At any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage. 2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or

market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality. (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be	carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith. 3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this Article or where the carrier may not under paragraph 2 of this Article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of Article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of Article 6 or Article 8 of this Convention, as the case may be. 4. Carriage of goods on deck contrary to express agreement for carriage under	agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits. 3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this Article. 4. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party. Article 20 Joint and several liability 1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint

considered the package or unit. (d) The unit of account mentioned in this Article is the special drawing right as defined by 57 the International Monetary Fund. The amounts mentioned in h_visby/art/art04_5asub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case. (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of 58 liability	deck is deemed to be an act or omission of the carrier within the meaning of Article 8. Article 10 Liability of the carrier and actual carrier 1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment. 2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of	and several but only up to the limits provided for under this Convention. 2. Without prejudice to Article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention. Article 21 Delay Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed. Article 22 Calculation of compensation 1. Subject to Article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established

provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result. (f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier. (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in	paragraphs 2 and 3 of Article 7 and of paragraph 2 of Article 8 apply if an action is brought against a servant or agent of the actual carrier. 3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement. 4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several. 5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the	in accordance with Article 43. 2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery. 3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this Article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16. Article 23 Notice in case of loss, damage or delay 1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars

sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appro- priate maximum mentioned in that sub-paragraph. Article 4 bis 1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort. 2. If such an action is brought against a servant or agent of the	limits of liability provided for in this Convention. 6. Nothing in this Article shall prejudice any right of recourse as between the carrier and the actual carrier. Article 19 Notice of loss, damage or delay 1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition. 2. Where the loss or damage is not apparent, the	unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods. 2. Failure to provide the notice referred to in this Article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in Article 17. 3. The notice referred to in this Article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules. 3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules. 4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted	provisions of paragraph 1 of this Article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee. 3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection. 4. Inthecaseofanyactual orapprehendedlossor damage,thecarrieran dtheconsigneemust give all reasonable facilities to each other for inspecting and tallying the goods. 5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee. 6. If the goods have been delivered by an actual carrier, any notice given under this Article to him shall have the same	4. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods. 5. When the notice referred to in this Article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party. 6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods. CHAPTER 6 ADDITIONAL PROVISIONS RELATING TO

from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result. *Article 6* Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to	effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier. 7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of Article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents. 8. For the purpose of this Article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.	PARTICULAR STAGES OF CARRIAGE Article 24 Deviation When pursuant to applicable law a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in Article 61. Article 25 Deck cargo on ships 1. Goods may be carried on the deck of a ship only if:

seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. An agreement so entered into shall have full legal effect. Provided that this article shall not apply to	Article 23 Contractual stipulations 1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of goods in favour of the carrier, or any similar clause, is null and void. 2. Notwithstanding the provisions of paragraph 1 of this Article, a carrier may increase his responsibilities and obligations under this Convention. 3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation	(a) Such carriage is required by law; (b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question. 2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this Article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck

ordinary commercial shipments made in the ordinary course of trade, but only to other 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.	derogating therefrom to the detriment of the shipper or the consignee. 4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present Article, or as a result of the omission of the statement referred to in paragraph 3 of this Article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.	when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this Article. 3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this Article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in Article 17. 4. The carrier is not entitled to invoke subparagraph 1 (c) of this Article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck. 5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from

		their carriage on deck. Article 26 Carriage preceding or subsequent to sea carriage When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or

		circumstance causing delay: (a) Pursuant to the provisions of such international instrument would have applied to allor any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred; (b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

		(c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument. CHAPTER 12 LIMITS OF LIABILITY Article 59 Limits of liability 1. SubjecttoArticles60and61,paragraph1,thecarrier'sliabilityforbreachesofitsobligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this Article has been agreed upon between

		the carrier and the shipper. 2. When goods are carried in or on a container, pallet or similar Article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such Article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such Article of transport or vehicle are deemed one shipping unit. 3. The unit of account referred to in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this Article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the

		method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State. Article 60 Limits of liability for loss caused by delay Subject to Article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with Article 22 and liability for economic loss due to delay is limited to an amount equivalent to two

		and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this Article and Article 59, paragraph 1, may not exceed the limit that would be established pursuant to Article 59, paragraph 1, in respect of the total loss of the goods concerned. Article 61 Loss of the benefit of limitation of liability 1. Neither the carrier nor any of the persons referred to in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 59, or as provided in the contract of carriage, if the

		claimant proves that the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result. 3. Neither the carrier nor any of the persons mentioned in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

		Article 79. General provisions 1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it: (*a*) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention; (*b*) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or (*c*) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18. 2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it: (*a*) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or (*b*) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Convention.

		Article 80. Special rules for volume contracts 1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention. 2. A derogation pursuant to paragraph 1 of this article is binding only when: (*a*) The volume contract contains a prominent statement that it derogates from this Convention; (*b*) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations; (*c*) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and (*d*) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation. 3. A carrier's public schedule of prices and

		services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract. 4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (*a*) and (*b*), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61. 5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that: (*a*) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and

		(*b*) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record. 6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled. Article 81 Special rules for live animals and certain other goods Notwithstanding Article 79 and without prejudice to Article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if: (a) The goods are live animals, but any such exclusion or limitation will not be effective if the

		claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in Article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or (b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special

		agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Appendix 2 Table of Omani Maritime Laws Articles

1. Definition of the Contract of Carriage

Omani Maritime Law (1981/35)	The proposed new Omani Maritime Law
Article 237. A contract of carriage by sea is a contract whereby a carrier, whether the owner, supplier, or charterer of a vessel, undertakes to carry goods in a vessel by sea from one port to another against the payment of freight. However, for the purposes of this law, a contract of affreightment shall not be considered to be so if it includes transport by sea as well as by other means of transport.	Article 1 A contract of carriage of goods by sea is a contract whereby the carrier undertakes against payment of freight to carry goods by vessel from one port to another.

2. Definition of a Carrier

Omani Maritime Law (1981/35)	The proposed new Omani Maritime Law
	Article 1 Carrier: charterer Marine agent: The legal person, registered and approved by the maritime authority, who is assigned by the shipowner, the supplier, or the master to carry out the works needed by the ship or its crew. Cargo agent: Any natural or legal person who works on behalf of the owners of the goods in all or some of the services related to the transportation of goods. Stevedoring broker: The legal person registered and approved by the maritime authority to practice maritime freight mediation business

	between the shipper and the carrier to provide marine services.

3. The Obligation of Issuing a Bill of Lading

Omani Maritime Law (1981/35)	The proposed new Omani Maritime Law
Article 238. 1. The bill of lading is evidence of the contract of carriage. 2. The bill of lading should be dated and signed by the carrier or by a person acting for him/her. It should mention the name of the carrier, shipper, and consignee as well as their addresses, and a description of the goods, particularly the number of packages, the weight of the goods, size or number of pieces, as well as the nature of the goods according to the information provided by the shipper, marks, and apparent condition, the port of loading, the port of destination, name, tonnage and flag of vessel, name of the master, amount of freight and the method of its calculation, place and date of issue of the bill of lading, and the number of copies issued. 3. The marks placed on the goods should be sufficient to identify them and remain eligible for the duration of the voyage. Article 239: 1. The bill of lading should be issued in two originals: one to be delivered to the shipper and the other to the carrier. The shipper or other party acting on his behalf should sign the original retained by the carrier wherein it should be mentioned that it is non-negotiable. The carrier or other party acting on his behalf	Article 1. The bill of lading is a document which is evidence of a contract of carriage by sea and the taking over or loading of the goods by the carrier, by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document states whether the goods are to be delivered to the order of a named person, or to order or bearer. Article 180 A contract of carriage of goods by sea shall only be considered valid if it is in writing. Article 181

should sign the shipper's original. Such an original shall give its legal holder the right to receive and dispose of the goods. The bill of lading signed by the master of the vessel carrying the goods shall be considered signed by the carrier. 2. Further copies may be issued if they are identical to the original delivered to the shipper. Each copy should be signed, and should mention the number of copies that have been issued. Each copy shall serve as a substitute for the other copies. The utilisation of one copy thereof shall result in considering the other copies, as the carrier is concerned, as cancelled. 3. The document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbols, or any other mechanical or electronic means. Article 240: 1. The bill of lading should be issued in the name of a specific person, to the order or holder thereof. 2. The nominal bill of lading may be assigned in accordance with the law's provisions for assignment of rights. The carrier must deliver the goods to the last assignee. 3. A bill of lading which has been executed to order shall be negotiable by endorsement. 4. A bill of lading which has been executed to the holder shall be negotiable by surrender. This provision shall apply to a bill of lading which has been executed to order and endorsed in blank.	The carrier shall issue the bill of lading upon receipt and shipment of the goods on board. The carrier may issue the shipper a receipt of taking delivery of the goods prior to shipment on board. Such a receipt shall be as authentic as the bill of lading if it includes the data mentioned in Article 182 of this law. The receipt mentioned in the preceding paragraph may be replaced by a bill of lading at the request of the shipper after shipment of the goods on board. The shipper may request the carrier or the captain to include a statement on the bill of lading indicating actual shipment to the vessel with the date of shipment. Article 182 The bill of lading shall include the following data in particular:

5. In the event of negotiating a bill of lading which has been executed to order, it may be agreed to restrict the guarantee on the presence of the goods and the validity of the carriage contract at the time of endorsement. Also, it may be agreed on the non-joint liability of the bill's signatories. 6. However, it may be provided in the bill of lading that assignment or negotiation is prohibited. Article 244: The carrier may issue the shipper a receipt for receipt of the goods before their shipment on board the vessel. At the shipper's request, this receipt shall be replaced after placing the goods on board by a bill of lading. The receipt shall be evidence of the bill of lading if it contains the particulars provided in article 238 and is marked by the word 'shipped'. Article 245: 1. The bill of lading shall be considered proof of the condition and particulars contained therein between the carrier and the shipper, as well as in respect of third parties. 2. Regarding the relationship between the carrier and shipper, it shall be permissible to provide proof that the contents of the bill of lading do not accurately represent the goods taken over. When third parties are concerned, the carrier may not provide such proof, but third parties are permitted to do so.	1. Names and addresses of carrier, shipper, and consignee. 2. Specifications of the goods according to the information given by the shipper, and in particular the type and nature of the goods, the number of packages, the weight or size of the goods, their distinctive signs and apparent condition. 3. The ship's name, nationality, and cargo. 4. The master's name. 5. The port of loading and port of discharge. 6. Full freight if due on arrival, or the portion due on arrival. 7. The place and date of bill of lading and the number of copies issued. 8. The bill of lading number. 9. The signatures of the shipper and captain. Marks on goods must be sufficient to identify them and placed in a prominent place so that they can be read until the end of the trip. Article 183 The bill of lading shall be issued in two originals, one of which shall be delivered to the shipper and the other to the carrier, stating that it is not negotiable. The carrier or captain shall sign the original delivered to the shipper, and

3. If the bill of lading fails to state the freight, the manner whereby it must be paid by the consignee, or the demurrage payable at the port of loading by the consignee, it shall be considered as evidence wavering the consignee from their obligation to pay either the freight or the demurrage. However, it is not permissable for proof of the above to be provided by the carrier when the bill of lading has been transferred to a third party, including any consignee acting in good faith and assuming the absence of such declaration in the bill of lading. Article 246: 1. The master must deliver the goods to the legal holder of the bill of lading. If several persons holding copies of the negotiable bill of lading come forward to receive the goods, preference should be given to the holder of the copy whereon the earliest endorsement has been made. 2. If a holder in good faith of a copy of the negotiable bill of lading receives the goods, preference should be given to him over holders of other copies, even if the date of endorsement thereof was earlier. Article 247: 1. Anyone holding a right to receive the goods pursuant to the bill of lading may request an order for the carrier to receive specific	this copy gives its legitimate holder the right to receive and dispose of the goods. If the bill of lading is issued electronically, it shall be subject to the same provisions prescribed for ordinary bills, and shall have the same authenticity and effect. Article 184 The bill of lading may be made in several duplicates at the request of the shipper, provided that each copy is signed, numbered and mentions the number of copies issued. Each copy shall serve as a substitute for the other copies. Delivery of goods under one copy shall result in the cancellation of the remaining copies for the carrier. Article 185 A bill of lading may be issued in the name of a particular person, to order, or to bearer.

quantities thereof, provided it is permissible to do so under the bill of lading. The delivery order shall be issued in the name of a specific person, to order or to bearer. The carrier must sign the delivery order. 2. If the bill of lading is negotiable, the carrier must mention the delivery orders he has issued and the goods covered therein. If the shipment has been distributed over different delivery orders, the carrier must recover the bill of lading. The delivery order shall give the legal holder thereof the right to receive the goods mentioned therein. Article 248: If the right holder does not come forward to receive the goods, or rejects the goods, the master may request permission from a competent court to place the goods with a custodian designated by the court.	The assignment of the nominal bill of lading shall be effected by following the procedures prescribed for assignment of rights, and the carrier shall deliver the goods to the last holder of the bill. A bill of lading issued to order shall be negotiable by endorsement. The holder's signature on the back of the bill of lading shall constitute endorsement, transferring ownership. The provisions of the Trade Law shall apply to such an endorsement. A bill of lading issued to bearer shall be negotiable by manual handling. The bill of lading may stipulate prohibition of its assignment and circulation. An electronic bill of lading shall be circulated via electronic means. Article 186 The shipper shall provide all information concerning the goods in

	writing on delivery of the goods to the carrier, and such information shall be recorded in the bill of lading. The carrier or the captain has the right to express reservations on registering the data concerning goods' marks, numbers, quantities, or weight if they have serious reasons to doubt the validity of such information, or if they have no reasonable means of checking such information, but in all cases the reason for such reservations must be stated in the bill of lading. The shipper shall notify the carrier if the goods are dangerous, flammable, or explosive and shall place a label on the goods warning of such danger and advising on the precautions to be taken,which must be in accordance with the requirements of the International Maritime Dangerous Goods Code.

	The shipper shall be liable to the carrier for any damage resulting from the invalidity of the data provided relating to the goods. The carrier shall not insist on the invalidity of the data mentioned in the bill of lading to any person other than the shipper, unless such reservations are mentioned in the bill of lading. Article 187 No letter or agreement whereby the shipper shall indemnify the carrier for damage, when the resulting from the issuance of a bill of lading free of any reservations relating to the data recorded shall be invoked with invalidity of such data towards third parties who at the time of their receipt of the bill of lading were unknown. The consignee in whose name or for whose order the bill of lading is issued is considered a third party in the

	provision of the preceding paragraph, except if he is the shipper himself. Article 190 The bill of lading shall be considered evidence of the carrier's receipt of the goods from the shipper as indicated therein. The bill of lading shall be evidence of the shipment of the goods as stated and on the date printed therein, if the bill of lading states the date of shipment and that the shipment has actually been loaded onto the vessel. The bill of lading shall be considered evidence of the validity of the data it contains between the shipper, the carrier and third parties. Regarding the relationship between the carrier and shipper, it shall be permissible to provide proof that the contents of the bill of lading do not accurately represent the goods taken

	over. When third parties are concerned, the carrier may not provide such proof, but third parties are permitted to do so. The consignee in whose name or to whose order the bill of lading has been issued is considered a third party under the provision of the preceding paragraph, except if he is the shipper himself. Article 191 The receipt referred to in the second paragraph of Article 181 of this law is taken as evidence of receipt of goods by the carrier from the shipper in the condition specified in the receipt, unless evidence to the contrary is provided.

4.The Obligation of a Carrier

Omani Maritime Law (1981/35)	The proposed new Omani Maritime Law

Article 219: 1. The chartering party is bound before the start of the voyage by sea to exercise due diligence by preparing the ship to ensure that it is seaworthy, and to furnish it with the required materials, supplies, and crew, as well as preparing the areas of the ship that are reserved for the preservation and carrying of goods. 2. The chartering party shall be liable for damages resulting from the unseaworthiness of the ship, unless it has been proven that the unseaworthiness has not arisen from any failure by him, his agent, or his servants to perform the obligations as defined in the preceding paragraph, or has arisen from a latent defect which could not be detected by a normal test. The burden of proving either of the above events shall be on the chartering party or other person invoking the exemption set forth in this Article. Article 249. the carrier shall load, store, stow, carry, keep, care for, and discharge the goods carried.	Article 192 The captain shall deliver the goods upon arrival to the legitimate holder of the bill of lading. If several persons carrying a negotiable bill of lading have come forward to receive the goods, preference shall be given to the holder of the copy with the earliest date of endorsement. If a holder in good faith of a copy of the negotiable bill of lading receives the goods, preference should be given to him over holders of other copies, even if the date of endorsement thereof is earlier. Article 193 If the rightful holder fails to receive the goods, or is present and refuses to pay the freight, the carrier may request a competent court to authorise him to deposit the goods with an honest person appointed by the court. The carrier may also request permission

	from the court to sell all or part of the goods in order to collect the amounts due to him for carriage. The carrier shall have lien on the price of the goods to collect the freight and other amounts due to him for carriage. Article 194 Any person entitled to receive the goods under the bill of lading may request the carrier to deliver certain quantities, provided that they are permitted to do so under the bill of lading. Permissions may be issued in the name of a particular person, its order or its bearer and shall be signed by the carrier and permission requester. The carrier must indicate in the bill of lading the delivery notes being issued, and the goods listed therein. If the bill of lading is negotiable and if the consignment is fully distributed under

	multiple delivery notes, the carrier must recover the bill of lading from its holder. The delivery note gives its holder the right to receive the goods specified therein. Article 197 The carrier shall undertake to prepare the ship and to furnish it with all requirements to make the ship seaworthy to perform the voyage, and to prepare the parts of the ship in which goods are carried, to ensure that they are fit for the carriage and preservation of the agreed type of good. Article 198 The carrier undertakes: 1. To load the goods onto the vessel and discharge them unless agreed otherwise. 2. To stow the goods on the vessel in a manner that

	preserves the goods and the balance of the vessel. 3. To transport and maintain the goods during the voyage and deliver them to the holder of the bill of lading.

5.The Liability of a Carrier

Omani Maritime Law (1981/35)	The proposed new Omani Maritime Law
Article 251. the liabilities and limitations of the carrier: 1. The carrier shall not be liable for the loss or damage of goods arising from the unseaworthiness of the ship, unless the unseaworthiness has been caused by neglect on the part of the carrier to exercise due diligence to make the ship seaworthy, to properly provide the ship with the required materials, supplies, and crew, or to prepare the holds, cooling chambers and all	Article 199 The carrier may not ship goods on the deck unless the shipper authorises him to do so in writing, the carrier is obliged to ship in this manner to comply with the regulations in force at the port of shipment, or the nature of the shipment or the custom in this port requires shipment of the goods in this

other parts of the ship in which goods are carried, ensuring that they are fit for the reception, carriage and preservation of the goods. 2. In all events where damage arises from unseaworthiness, the burden of evidence regarding the exercise of due diligence shall be on the carrier or other person invoking the exemption set forth in this Article. Article 252 1. The carrier shall not be responsible for loss or damage of goods arising or resulting from: a. The actions, neglect or default of the master, mariner, pilot or servants of the carrier, relating to the navigation or management of the ship; b. Fire, unless caused by the actual fault or privity of the carrier; c. Perils and accidents at sea or in other navigational waters; d. Force majeure; e. An act of war; f. An act of public enemies; g. The arrest or restraint of the carrier by a government or authority, or a judicial seizure; h. Quarantine restrictions; i. An act or omission of the shipper or the owner of the goods, his agent or his representative;	manner. The bill of lading must state that the goods are loaded on the deck. Article 200 The carrier shall, if the ship fails to continue the voyage for any reason, make his best efforts to have another vessel available to carry the goods to the port agreed upon at his expense, unless such vessel stoppage is referred to in the exemption cases stated in Article 210 of this law. In this case, the expenses shall be paid by the shipper, and the carrier shall be entitled to the freight agreed upon for the full trip. Article 207 The carrier shall be responsible for the loss or damage of the goods, or the delay in delivery if it occurs in the period between the receipt of the goods by the carrier at the shipment port and the delivery thereof at the port

j. Strikes, lockouts and stoppage or restraint of labour from whatever cause, whether partial or general; k. Riots and civil unrest; l. Saving or attempting to save lives or property at sea; m. Any diversion arising from saving or attempting to save lives or property at sea, or any reasonable diversion for justifiable reasons; n. Wastage in the bulk of weight or any other loss or damage arising from inherent defects in the quality of the goods; o. Inadequate packing; p. Insufficiency or inadequacy of marks; q. Latent defects not discoverable by due diligence; r. 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. 2. The shipper may, in any of the cases detailed above, prove that the damage was due to the actual fault of the carrier, or the fault of the agents or servants of the carrier and that it had nothing to do with the navigation or the management of the ship. 3. The carrier shall not be held responsible for a delay in the delivery of goods if he proves that the delay was caused by one of the causes mentioned in paragraph 1 of this Article. Article 254:	of discharge to the holder of the right to receive or deposit it. The provisions of liability provided for in the preceding paragraph shall not apply to carriage under the lease of the ship, unless a bill of lading has been issued to carry out such carriage. Article 209 The carrier shall be responsible for any delay in the delivery of goods at the port of discharge, and the carrier shall be in default if the goods are not delivered within the agreed time, or, if there is no agreement on the date of delivery of the goods, within the time that an ordinary carrier would take in similar circumstances. The shipper shall notify the carrier of the delay in writing within thirty (30) days from the delivery date and the shipper shall not be entitled to any compensation for any loss resulting

1. In all cases, the carrier's liability shall be limited to loss or damage sustained by the goods for an amount not exceeding three hundred Omani rials, or equivalent in other currency, per package or unit considered the basis for calculating the freight. The regulations provided for in the international conventions shall apply to the containers. 2. The carrier's liability for the delay in delivery of the goods shall be limited to an amount of two and a half times the freight due for the delayed goods. This amount may not exceed the total freight payable under the contract. 3. Limitation of liability may not be held against the shipper if he has declared the type and the value of goods before shipment, and such a declaration has been mentioned in the bill of lading. This declaration shall be considered evidence for the correctness of the value determined for the goods by the shipper, and the carrier shall have the right to prove otherwise. 4. A maximum liability of the carrier other than the amounts stipulated in this Article, but not less, may be defined by special agreement between both the shipper and the carrier or the latter's agent. 5. In all cases, the carrier is not to be held responsible for any damage that occurs to the goods if the shipper has deliberately given incorrect information in the bill of lading relating to its nature or value.	from delay in delivery if he fails to notify the carrier during this period. Article 210 The carrier shall not be held liable for the damage, destruction or loss of the goods, or the delay in their delivery, if the damage, destruction, loss, or delay is proven to be due to an external reason beyond his control, and not caused by him, his servants, or his agents. A reason is considered to be external if it arises from force majeure, fault of the shipper, fault of a third party, or a particular defect in the goods. The carrier is also exempt from the liability mentioned in the first paragraph of this Article if it arises from a rescue or an attempt to save lives and property at sea. Article 212 The carrier shall not be held liable for the loss, damage, or destruction of goods which the bill of lading states to be transported on deck if it proves that the loss, damage, or destruction results from the risks of such carriage. Article 213

Article 255: 1. If the consignee does not inform the carrier in writing of any loss or damage and the nature thereof within a period not exceeding the working day immediately following the delivery of the goods to the consignee, this shall be considered evidence of the delivery of goods by the carrier as defined by the bill of lading. If such a document has not been issued, it shall be considered that the goods were delivered in good condition. 2. If both parties examined the goods during the delivery time to the consignee, the need to inform the carrier of any loss or damage shall be waivered as a result of such an examination. 3. If the loss or damage is invisible, the provisions of paragraph q of this Article shall apply, provided that a written notification is addressed within fifteen consecutive days following the day of delivery of goods to the consignee. 4. In the case of actual or assumed loss or damage, both the carrier and consignee must give to each other all reasonable facilities to examine the goods and ascertain the quantity. 5. No compensation is permissible against any loss due to the delay of delivery unless a written notification is addressed to the carrier within sixty consecutive days immediately following the	The liability of the carrier of any kind for the loss, damage, or destruction of the goods shall be determined at a maximum of (RO 500) five hundred Omani rials per package or unit considered the basis for calculating the freight, or not exceeding (RO 5) five Omani rials per kg of the gross weight of the goods, whichever is higher. The liability of the carrier for delays in delivery of the goods or part thereof shall be determined by an amount equal to at least two and a half times the freight payable for the goods in arrears, provided that the compensation does not exceed the maximum limit mentioned in the preceding paragraph. Parcels or shipping units collected in containers are considered as separate parcels or shipping units for compensation when the container is destroyed if the number of packages

day of delivery of the goods to the consignee. Article 257 Any condition in the bill of lading or in any other similar instrument shall be considered as void if it relieves the carrier of his responsibility for loss or damage of goods that arises out of his negligence, fault or carelessness in complying with the commitments provided for under this chapter. Any condition which involves the assignment of rights arising from insurance on the goods, or any other stipulation similar thereto, shall be considered equivalent to a relief from responsibility. Article 258 The carrier may waive all or some of the rights and exemptions determined for him. He may increase his responsibilities as stipulated in this chapter, provided that such a waiver or increase of responsibilities is explicitly mentioned in the bill of lading delivered to the shipper. It is permissible to agree on conditions, reservations, or exemptions relating to the carrier and his responsibility for the loss or damage of goods, and to keep and maintain them during the period before the loading or after discharge from the vessel. It is also permissible to mention in the bill of lading any conditions relating to marine losses whenever such	or units in each container is stated on the bill of lading. If the bill of lading does not mention the number of units or packages in the container and the container is destroyed, the container shall be considered as one package. If the container is supplied by the shipper, it shall be counted as one package for the purpose of calculating compensation, but if it is provided by the carrier, it shall not be counted when the shipper is compensated. Article 216 Any agreement in the bill of lading or in any other document which occurs prior to the occurrence of an accident resulting in damage shall be void if one of its subjects is one of the following matters: 1. To exempt the carrier from liability for loss, damage, or destruction of goods or delay in delivery. 2. To determine the liability of the carrier as less than that stipulated in Article 213 of this law.

conditions are not in oppositon to the general average clause. Article 260: 1. The provision of liability mentioned in this chapter shall apply to carriage by sea under the bill of lading, within the period between the loading and discharging of the goods from the vessel. 2. These provisions shall not apply to conveyance under a charter party agreement, unless a bill of lading has been simultaneously issued in addition to the bill of lading regulating the relationship between the holder thereof and carrier. Also, these provisions shall not apply to the transportation of livestock or goods where it is mentioned in the bill of lading that they are to be shipped on deck and where they are actually shipped as such. Article 261: 1. The carrier may issue a direct bill of lading whereby he undertakes to ship the goods from a specific location on successive transshipment. In such a case, the carrier shall be accountable for all liabilities arising from the bill of lading until the completion of shipment. He shall be a guarantor of the acts of the subsequent carrier who takes delivery of the goods. 2. Every subsequent carrier shall not be liable, except for damages	3. To assign to the carrier the rights arising from the insurance on the goods. 4. Any other agreement that exempts the carrier from responsibility. Article 217 The carrier may assign all or some of his rights and exemptions. He may also expand his responsibilities or obligations in this chapter provided that it is permitted by the bill of lading. Article 218 A person who receives the goods must notify the carrier in writing in case of apparent damage or destruction within a period of no more than two business days following the day of delivery of the goods. Otherwise, such a delivery shall be regarded as evidence that the carrier delivered the goods in the condition stated in the bill of lading unless proven otherwise. Notification may be given to the carrier in writing within fifteen (15) days from

that occurr during the carriage of goods.	the date of receipt of the goods if the loss or damage is not apparent. The notification is not required if the goods have been inspected and their condition has been confirmed at the time of delivery in the presence of the carrier or his deputy and the person who submits to receive the goods. Article 219 The carrier may entrust the carriage of the goods, in whole or in part, to another carrier unless otherwise agreed. The main carrier who entered into the contract of carriage with the shipper remains liable for all damage caused to the goods during the execution of the contract of carriage. The secondary carrier shall not be liable to the shipper, except for damages caused to the goods during the execution of the part of the transport operation entrusted to them,

	and shall be responsible for such damages severally and jointly with the main carrier. The main and secondary carriers may adhere to the liability limitation provided for in Article 213 of this law, and the amount collected by the owner of the goods may not exceed the limit prescribed in the said article. All obligations arising from the contract of carriage of goods by sea shall apply to the main carrier and subsequent carriers, and shall be subject to the provisions of this law, in case of carriage by direct bill of lading.

Appendix 3 Table of Recommendations

1. Definition of the Contract of Carriage

Recommendation One	The Rotterdam Rules
	Article 1. Definitions For the purposes of this Convention: 1. "Contract of carriage" means 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.

2. Definition of a Carrier

Recommendation Two	The Rotterdam Rules
	Article 1. Definitions For the purposes of this Convention: ... ... 5. "Carrier" means a person that enters into a contact of carriage with shipper. 6. (a) "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts either directly or indirectly , at the carrier's request or under the carrier's supervision or control. (b) " Performing party" does not include any person that is retained , directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier. 7. "Maritime Performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier 's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

3. The Obligation of Issuing a Bill of Lading

	The Rotterdam Rules
Recommendation *Three*	*Article 1. Definitions* For the purposes of this Convention: ... ... 14. “Transport document” means a document issued under a contract of carriage by the carrier that: (*a*) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and (*b*) Evidences or contains a contract of carriage. 15. “Negotiable transport document” means a transport document that indi- cates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the doc- ument, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non- negotiable” or “not negotiable”. 6. “Non-negotiable transport document” means a transport document that is not a negotiable transport document. 17.“Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information

	communicated is accessible so as to be usable for subsequent reference. 18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contem- poraneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that: (*a*) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and (*b*) Evidences or contains a contract of carriage. 19. “Negotiable electronic transport record” means an electronic transport record: (*a*) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not

	explicitly stated as being “non-negotiable” or “not negotiable”; and (*b*) The use of which meets the requirements of article 9, paragraph 1. 20. “Non-negotiable electronic transport record” means an electronic trans- port record that is not a negotiable electronic transport record. 21. The “issuance” of a negotiable electronic transport record means the issu- ance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity. 22. The “transfer” of a negotiable electronic transport record means the trans- fer of exclusive control over the record. 23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorse- ments) that is in a transport document or an electronic transport record. ... ... *Article 6 Specific exclusions*

	1. This Convention does not apply to the following contracts in liner transportation: 3. (*a*) Charter parties; and 4. (*b*) Other contracts for the use of a ship or of any space thereon. 2. This Convention does not apply to contracts of carriage in non-liner trans- portation except when: (*a*) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and (*b*) A transport document or an electronic transport record is issued. *Article 7* *Application to certain parties* Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6. Chapter 3 Electronic transport records

	Article *8* *Use and effect of electronic transport records* Subject to the requirements set out in this Convention: (*a*) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and (*b*) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document. *Article 9* *Procedures for use of negotiable electronic transport records* 1. The use of a negotiable electronic transport record shall be subject to procedures that provide for: (*a*) The method for the issuance and the transfer of that record to an intended holder;

	(*b*) An assurance that the negotiable electronic transport record retains its integrity; (*c*) The manner in which the holder is able to demonstrate that it is the holder; and (*d*) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (*a*) (ii) and (*c*), the electronic transport record has ceased to have any effect or validity. 2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable. *Article 10* *Replacement of negotiable transport document or negotiable electronic transport record*

	1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record: (*a*) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier; (*b*) The carrier shall issue to the holder a negotiable electronic trans- port record that includes a statement that it replaces the negotiable transport document; and (*c*) The negotiable transport document ceases thereafter to have any effect or validity. 2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document: (*a*) The carrier shall issue to the holder, in place of the electronic trans- port record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and (*b*) The electronic transport record ceases thereafter to have any effect or validity.

	Chapter 8 Transport documents and electronic transport records *Article 35* *Issuance of the transport document or the electronic transport record* Unless the shipper and the carrier have agreed not to use a transport docu- ment or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option: (*a*) A non-negotiable transport document or, subject to article 8, subpara- graph (*a*), a non-negotiable electronic transport record; or (*b*) An appropriate negotiable transport document or, subject to article 8, subparagraph (*a*), a negotiable electronic transport record, unless the ship- per and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one. *Article 36 Contract particulars*

	1. The contract particulars in the transport document or electronic trans- port record referred to in article 35 shall include the following information, as furnished by the shipper: 5. (*a*) A description of the goods as appropriate for the transport; 6. (*b*) The leading marks necessary for identification of the goods; 7. (*c*) The number of packages or pieces, or the quantity of goods; and 8. (*d*) The weight of the goods, if furnished by the shipper. 2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include: (*a*) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage; 4. (*b*) The name and address of the carrier; 5. (*c*) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and (*d*) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.

	3. The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include: 4. (*a*) The name and address of the consignee, if named by the shipper; 5. (*b*) The name of a ship, if specified in the contract of carriage; 6. (*c*) The place of receipt and, if known to the carrier, the place of delivery; and (*d*) The port of loading and the port of discharge, if specified in the contract of carriage. 4. For the purposes of this article, the phrase “apparent order and condition of the goods” in subparagraph 2 (*a*) of this article refers to the order and condition of the goods based on: (*a*) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and (*b*) Any additional inspection that the carrier or a performing party actu- ally performs before issuing the transport document or electronic transport record. *Article 37 Identity of the carrier*

	1. If a carrier is identified by name in the contract particulars, any other infor- mation in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification. 2. If no person is identified in the contract particulars as the carrier as required pursuant to article 36, subparagraph 2 (*b*), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner. 3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier. *Article 38 Signature*

	1. A transport document shall be signed by the carrier or a person acting on its behalf. 2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record. *Article 39* *Deficiencies in the contract particulars* 1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record. 2. If the contract particulars include the date but fail to indicate its signifi- cance, the date is deemed to be: (*a*) The date on which all of the goods indicated in the transport docu- ment or electronic transport record were loaded on board the ship, if the con- tract particulars indicate that the goods have been loaded on board a ship; or

	(*b*) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship. 3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the con- tract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them. *Article 40* *Qualifying the information relating to the goods in the contract particulars* 1. The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if: (*a*) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or (*b*) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

	2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper. 3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if: (*a*) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or (*b*) The carrier has reasonable grounds to believe the information fur- nished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

	4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in: (*a*) Article 36, subparagraphs 1 (*a*), (*b*), or (*c*), if: (i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and (ii) Neither the carrier nor a performing party otherwise has actual knowl- edge of its contents before issuing the transport document or the electronic transport record; and (*b*) Article 36, subparagraph 1 (*d*), if: (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle. *Article* *41* *Evidentiary effect of the contract particulars*

	Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40: (*a*) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars; (*b*) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in: (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or (ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith; (*c*) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars

	included in a non-negotiable transport document or a non negotiable electronic transport record: (i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier; (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and (iii) The contract particulars referred to in article 36, paragraph 2. *Article 42 "Freight prepaid"* If the contract particulars contain the statement "freight prepaid" or a state- ment of a similar nature, the carrier cannot assert against the holder or the con- signee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

4. The Obligation of a Carrier

Recommendation Four and Five	The Rotterdam Rules
	Chapter 4 Obligations of the carrier *Article 11* *Carriage and delivery of the goods*

	The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee. *Article 13. Specific obligations* 1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods. 2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars. *Article 14. Specific obligations applicable to the voyage by sea* The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to: (*a*) Make and keep the ship seaworthy; (*b*) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and (*c*) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation. *Article15* *Goods that may become a danger* Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are rea- sonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to

	become during the carrier's period of responsibility, an actual danger to persons, property or the environment. *Article 16* *Sacrifice of the goods during the voyage by sea* Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the com- mon safety or for the purpose of preserving from peril human life or other property involved in the common adventure. ... ... Delivery of the goods *Article 43 Obligation to accept delivery* When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept deliv- ery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

	Article 44 *Obligation to acknowledge receipt* On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the per- forming party in the manner that is customary at the place of delivery. The car- rier may refuse delivery if the consignee refuses to acknowledge such receipt. *Article 45* *Delivery when no negotiable transport document or negotiable electronic transport record is issued* When neither a negotiable transport document nor a negotiable electronic transport record has been issued: (*a*) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

	(*b*) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address; (*c*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of desti- nation, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the deliv- ery of the goods; (*d*) The carrier that delivers the goods upon instruction of the control- ling party, the shipper or the documentary

	shipper pursuant to subparagraph (*c*) of this article is discharged from its obligations to deliver the goods under the contract of carriage. *Article 46* *Delivery when a non-negotiable transport document that requires surrender is issued* When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods: (*a*) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

	(*b*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destina- tion, (ii) the carrier refuses delivery because the person claiming to be the con- signee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the deliv- ery of the goods; (*c*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (*b*) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

	Article 47 *Delivery when a negotiable transport document or negotiable electronic transport record is issued* 1. When a negotiable transport document or a negotiable electronic transport record has been issued: (*a*) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder: (i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (*a*) (i), upon the holder properly identifying itself; or (ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record; (*b*) The carrier shall refuse delivery if the requirements of subparagraph (*a*) (i) or (*a*) (ii) of this paragraph are not met; (*c*) If more than one original of the negotiable transport document has been issued, and the number of originals is

	stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1. 2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply: (*a*) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (*a*) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable

	to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods; (*b*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (*a*) of this article is discharged from its obligation to deliver the goods under the contract of car- riage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the proce- dures referred to in article 9, paragraph 1, that it is the holder; (*c*) The person giving instructions under subparagraph 2 (*a*) of this arti- cle shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (*e*) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request; (*d*) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (*b*) of this article, but pursuant to

	contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods; (*e*)Notwithstanding subparagraphs 2 (*b*) and 2 (*d*) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods. *Article48* *Goods remaining undelivered* 1. For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

	(*a*) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43; (*b*) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47; (*c*) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47; (*d*) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or (*e*) The goods are otherwise undeliverable by the carrier. 2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require,including: 3. (*a*) To store the goods at any suitable place; 4. (*b*) To unpack the goods if they are packed in containers or vehicles, or

	to act otherwise in respect of the goods, including by moving them; and (*c*) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time. 3. The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper. 4. If the goods are sold pursuant to subparagraph 2 (*c*) of this article, the car- rier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods. 5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant

	proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps. *Article 49 Retention of goods* Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

5. The Liability of a Carrier

Recommendation	The Rotterdam Rules
Six	*Article 12* *Period of responsibility of the carrier* 1.The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

	CHAPTER 5 LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY Article 17 Basis of liability 4. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4. 5. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this Article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in Article 18. 6. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this Article if, alternatively to proving the absence of fault as provided in paragraph 2 of this Article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay: (a) Act of God; (b) Perils, dangers, and accidents of the sea or other navigable waters; (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions; (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not

	attributable to the carrier or any person referred to in Article 18; (e) Strikes, lockouts, stoppages, or restraints of labour; (f) Fire on the ship; (g) Latent defects not discoverable by due diligence; (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to Article 33 or 34; (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with Article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee; (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods; (k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier; (l) Saving or attempting to save life at sea;

	(m)Reasonable measures to save or attempt to save property at sea; (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or (o) Acts of the carrier in pursuance of the powers conferred by Articles 15 and 16. 6. Notwithstanding paragraph 3 of this Article, the carrier is liable for all or part of the loss, damage, or delay: (a) If the claimant proves that the fault of the carrier or of a person referred to in Article 18 caused or contributed to the event or circumstance on which the carrier relies; or (b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this Article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in Article 18. 7. The carrier is also liable, notwithstanding paragraph 3 of this Article, for all or part of the loss, damage, or delay if: (a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by: (i) The unseaworthiness of the ship;

	(ii) The improper crewing, equipping, and supplying of the ship; or (iii) The fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and (b) The carrier is unable to prove either that: (i) None of the events or circumstances referred to in subparagraph 5 (a) of this Article caused the loss, damage, or delay; or (ii) It complied with its obligation to exercise due diligence pursuant to Article 14. 6. When the carrier is relieved of part of its liability pursuant to this Article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this Article. Article 18 Liability of the carrier for other persons

	The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of: (a) Any performing party; (b) The master or crew of the ship; (c) Employees of the carrier or a performing party; or (d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control. Article 19 Liability of maritime performing parties 5. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if: (a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and (b) The occurrence that caused the loss, damage or delay took place:

	(i) During the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) While the maritime performing party had custody of the goods; or (iii) At any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage. 6. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits. 7. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this Article. 8. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party. Article 20 Joint and several liability 4. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Convention.

	5. Without prejudice to Article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention. Article 21 Delay Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed. Article 22 Calculation of compensation 4. Subject to Article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with Article 43. 5. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery. 6. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this Article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16. Article 23 Notice in case of loss, damage or delay 7. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless

	notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods. 8. Failure to provide the notice referred to in this Article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in Article 17. 9. The notice referred to in this Article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted. 10. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods. 11. When the notice referred to in this Article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party. 12. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods. CHAPTER 6 ADDITIONAL PROVISIONS RELATING TO PARTICULAR STAGES OF CARRIAGE Article 24 Deviation When pursuant to applicable law a deviation constitutes a breach of the carrier’s obligations, such deviation of itself

	shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in Article 61. Article 25 Deck cargo on ships 6. Goods may be carried on the deck of a ship only if: (a) Such carriage is required by law; (b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question. 7. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this Article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this Article. 8. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this Article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in Article 17. 9. The carrier is not entitled to invoke subparagraph 1 (c) of this Article against a third party that has acquired a negotiable transport document or a negotiable

	electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck. 10. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck. Article 26 Carriage preceding or subsequent to sea carriage When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay: (a) Pursuant to the provisions of such international instrument would have applied to allor any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;

	(b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and (c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument. CHAPTER 12 LIMITS OF LIABILITY Article 59 Limits of liability 4. SubjecttoArticles60and61,paragraph1,thecarrier'sliability forbreachesofitsobligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this Article has been agreed upon between the carrier and the shipper. 5. When goods are carried in or on a container, pallet or similar Article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such Article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such Article of transport or vehicle are deemed one shipping unit. 6. The unit of account referred to in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this Article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated

	in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State. Article 60 Limits of liability for loss caused by delay Subject to Article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with Article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this Article and Article 59, paragraph 1, may not exceed the limit that would be established pursuant to Article 59, paragraph 1, in respect of the total loss of the goods concerned. Article 61 Loss of the benefit of limitation of liability 1. Neither the carrier nor any of the persons referred to in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this

	Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result. 6. Neither the carrier nor any of the persons mentioned in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result. *Article 79. General provisions* 1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it: (*a*) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention; (*b*) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or (*c*) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18. 2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it: (*a*) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or (*b*) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Convention. *Article 80. Special rules for volume contracts* 1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention. 2. A derogation pursuant to paragraph 1 of this article is binding only when:

	(*a*) The volume contract contains a prominent statement that it derogates from this Convention; (*b*) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations; (*c*) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and (*d*) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation. 3. A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract. 4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (*a*) and (*b*), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61. 5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that: (*a*) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and (*b*) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record. 6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled. Article 81 Special rules for live animals and certain other goods

	Notwithstanding Article 79 and without prejudice to Article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if: (a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in Article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or (b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.