Journal of Ecohumanism
2025
Volume: 4, No: 2, pp. 1561 – 1567
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i2.6532

The Limitation of Liability of the Marine Carrier of Goods in Omani Law: Comparative Study

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Abstract

This research discusses the limitation of the liability of the carrier of the goods who carries the goods via the sea; it focuses on the limitation in case of destruction and in case of damage of the goods. This is because the carrier is considered liable if the goods destructed or damaged during the voyage while they are under his possession and, precisely, when the destruction or the damage comes from his mistake. The rules of limitation are regulated in order to keep the carrier away from financial exhaustion. This critical position may come as a result of the large amount of goods which the vessel may carry and some of these goods may have large value. Therefore, the laws usually set rules protect the carrier from an unlimited liability. These rules determine a maximum limit for the liability of the carrier to ensure that this liability remains within reasonable level even if the destructed or the damaged goods have large value. This study comes to discuss the limitation of liability of the carrier in Omani Law. It aims at comparing this limitation with the international criteria that are regulated in the international conventions, particularly, Hamburg Convention and Rotterdam Convention.

Keywords: *Carriage of Goods, Destruction of Goods, Damage of Goods, Limited Liability.*

Introduction

It is known that the international commerce has been expanding to become wider and wider in the recent decades. This rapid growth in commerce resulted from the rapid growth in all aspects of the life. In particular, it resulted from the wide technological and tele-communicational development that join traders everywhere regardless of their places. Goods and products become under the reach of the merchants whether they are in the east or in the west.

Since the international trade depends basically on the marine carriage, many countries have regulated this carriage contract as a part of their internal legislative system. The extreme importance of this contract, truly, requires special attention that guarantees balance and parallel rights between its parties. Thereby, in the one hand, the owner of the goods reassures on his goods when he transports them from country to country and, on the other hand, the carrier knows that the law guarantees his rights and protects him from unexpected obligations that may arise from this contract.

Study Objectives

- To show the maximum limit of the liability of the marine carrier in case of destruction and damage in Omani Law.
- To determine the similarities and the differences between the rules of limitation in Omani Law and in the international conventions.
- To show the positive points and the negative points that come from the differences between Omani Law and the international conventions.

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Statement of Problem

The study discusses an important issue relates to the limitation of the liability of the marine carrier of goods in Omani Law. The main question that the study tries to answer is: Is the maximum limit of liability of the carrier consistent with the international criteria?

Methodology

The study is based on qualitative methodology where descriptive and analytic methods are adopted. Thus, the researcher gathers data and collects information from the sources and arranges them to carry out this research. The data includes statutory provisions in Omani Law, provisions in Hamburg Convention, provisions in Rotterdam Convention and details and explanations about the basic rules of limitation of marine carrier. After collecting data, the researcher analyzes them to reach the result that he seeks for.

The research is divided into two sections. The first section explains the concept of the limitation of the liability. It gives us the meaning of this term and the causes of regulating this principle. The second section shows the mechanism of calculating the maximum limit in Oman and in the international conventions.

Section One: Concept of the Limitation of Liability

The principle of limitation of liability has appeared with the emergence of international conventions that regulate the international carriage of goods. These conventions were held to create balance between the parties of the contract. In order to clarify this principle, it is necessary to clarify its meaning and then we will look at the justifications that motivate the international society to regulate this principle. Accordingly, this section will be divided into two parts. The first one discusses the meaning of this principle and the second explains the justifications on which this principle is built.

The Meaning of the Principle of Limitation of Liability

Omani Maritime Law No. 19 of 2023 did not provide a direct definition for the principle of "limitation of liability" in its legal texts although there are indirect provisions point to the definition. Similarly, the international conventions do not provide a direct definition for this principle. These conventions left that to the general context contained in its legal texts.

Actually, the rules of liability in the contract of carriage of goods differ from the general rules of liability. This is because the legislator stepped out of the general rules in this regard. So, if the carrier makes a mistake during the sea voyage and that mistake lead to destruction or damage of the goods, the carrier is not always obligated to compensate based on the amount of the value of the destruction or the damage. This is because there is a maximum limit of compensation that the carrier is entitled to adhere towards the other party (Salim, J, 2021).

Accordingly, some jurists believe that the meaning of "limitation of liability" is determining a specific amount of money to be paid to the consignor of the goods or to the consignee when the goods are destructed or damaged. This specific amount constitutes the maximum limits of the carrier's liability and, accordingly, it is not allowed to bind the carrier to pay more than this amount even if the value of the destruction or the damage was higher than the limit (Shukry, A, 2003, 224). This concept is, really, what the legislation intended in regulating the limitation of the carrier's liability. This can be understood from the context of the texts contained in these legislations and in the international conventions. This means that the liability of the marine carrier is disciplined by setting a maximum limit for compensation if losses occur due to destruction or damage. So, the maximum limit is the purpose of the limitation, but not the compensation itself. Accordingly, if goods are destructed or damaged during a marine voyage due to a mistake of the carrier and the value of the losses that resulted from that destruction or damage is less than the maximum limit, the carrier must pay the full value of compensation without any decrease. However, if the losses exceed the maximum limit, the carrier has the right to compensate only within that limit (AlJazwi, S, 2023, 107).

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Thus, the carrier may be liable if the goods destructed or damaged during the marine voyage. If he is really held liable, then he has the right to stop paying more than the limit of liability set by the law. But what is the meaning of destruction and what is the meaning of the damage?

Destruction of the goods means that the goods are not arrived to the port of arrival as if they were burned during the voyage, or as if they arrived but the carrier delivered them to a person differs from the legitimate person who is entitled to collect them. In these cases, the person entitled to collect the goods will not collect them as they are not existent or they exist but without value (Maghdadi, A, The Commercial Contracts, 2014, 90).

Meanwhile, the damage means a defect happens to the goods and leads to a change in their conditions from what they were at the place of shipment, i.e. the change happens at the time of carriage and reduces the value of the goods (Maghdadi, A, The Commercial Contracts, 2014, 93).

Thus, damage differs from destruction in that the goods, in case of damage, arrive to the port of arrival. But they arrive defected with decreased value. As for destruction, it means that the goods do not arrive the port of destination, or they arrive but without value and cannot be delivered to the person who has the right to receive them. This means that the difference between destruction and damage is a physical difference, while the legal ruling on both is almost the same.

It is noteworthy to mention and confirm that, according to Article 206 of Omani Maritime Law, the marine carrier can cling the principle of limitation of liability only if the destruction or the damage occurs during the marine voyage. Specifically, it must occur during the period within which the carrier is responsible for the goods as a marine carrier. This time starts at the moment when the carrier collects the goods at the port of departure and ends with the moment the goods are delivered at the port of arrival. The rules in Omani Law exactly fit the rules in Hamburg Convention. (Bodalyo, S, 2017, 55).

We note here that the Omani legislator determines the responsibility of the marine carrier as a marine carrier between the two times mentioned above. This does not mean that the carrier is not responsible if the goods are deposited with him before or after the time mentioned. Rather, the carrier here remains responsible for the goods and his responsibility is unlimited, i.e. he is not subject to the rules of limitation of liability that this study discusses.

Justifications of Limitation of Liability

Due to the increasing demand for marine carriage of goods after the industrial revolution, many marine carriers have resorted to insert provisions, in the bills of lading, exempt them from liability for any destruction or any damage that may happen to the goods during the voyage. The marine carriers have imposed these conditions by virtue of their influence and the merchants' need for them. Also, marine carriers accustomed to set these conditions because of the risks they face in marine voyages and because the goods they transport are often of high value. Destruction of these goods may lead to huge losses that may exceed the financial capabilities of the carrier (Salim, J, 2021, 55).

However, the owners of the goods gradually started to disagree to insert conditions, in the bill of lading, that exempt the carrier from liability. The marine carriers also realized that the laws began to intervene to prevent them from inserting a clause, in the bill of lading, exempts them from liability. Because of that, the carriers have started to demand setting limitation for their liability in case of destruction or damage of the goods during the voyage (Ababna, M, 2015, 115).

Gradually, the demands of the carriers have been embodied in the provisions of the international conventions and in the national laws. This is because the risks faced by marine navigation are very serious. Further, the unlimited liability would hinder maritime transportation. Furthermore, the value of commercial vessels and shipments amounts to millions or more. So, if unlimited liability is established, the carrier is threatened with losing all his wealth and finds his activity completely stopped (Al Mukhtar, S, 157).

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Thus, we can say that the purpose of the principle of "limitation of liability" is to avoid the financial exhaustion that the carrier may face in the event of destruction or damage of the goods during the marine voyage. Namely, limitation of liability of the carrier aims to establish a contractual balance between the parties of the contract. So, neither the carrier reaches the point of exhaustion, nor the owner of the goods loses the entire goods if they are destructed or damaged (Al Jazwi, S, 2023, 107).

Besides, the financial exhaustion that may happen to the carrier in the absence of the principle of "limitation of liability" does not only affect the carrier, as it only puts him in a financial dilemma, but it also leads to the reluctance of ship-owners to work in maritime carriage and to slowdown of international trade. This, surely, has a negative impact on the economy and on the international trade (Al Jazwi, S, 2023, 107).

These factors resulted in the conclusion of Successive international conventions for maritime carriage. The purpose of these conventions was to unify the rules of the maritime bill of lading, and to create "limitation of liability" for the parties of the contract of carriage. Despite the many conflicting opinions among the states, and despite that some countries entered into multiple international conventions, the situation has stabilized with binding legal limitations in Hamburg Convention and Rotterdam Convention which depend on Special Drawing Rights (SDR) to reach that limitation (Bodalyo, S, 2017, 88).

Section Two: Mechanism of Calculation of the Maximum Limit of Liability

In order to specify the limitation of liability of the carrier, it important to determine the rules upon which we depend to specify this limitation. The international conventions and the national laws adapt two basic criteria to determine the maximum liability; they are the shipping unit criterion and the weight criterion. This is mentioned in Article (212) of Omani Maritime Law which provides: "The carrier's liability, whatever its type, for the destruction, damage or loss of the goods shall be limited to an amount not exceeding (OMR 500.00) for each package or shipping unit that is taken as a basis when calculating the fare, or to an amount not exceeding (OMR 5) for each kilogram of the total weight of the goods, whichever is higher".

Accordingly, this section will be divided into two parts. The first part will be about the limitation based on the unit of shipment and the second part will be about the limitation based on the weight.

The Limitation that is Based on the Unit of Shipment

The aforementioned text states that the maximum liability of the marine carrier, in cases of destruction or damage, is (OMR 500) for each package or shipping unit. Namely, the text set a numerical limit for the carrier's liability. It is five hundred riyals for each package or shipping unit taken as a basis for calculating the transportation fee in the bill of lading.

It is noted that this text was greatly influenced by the Hamburg Convention which adapted the package or the shipping unit to determine the maximum limit of compensation. This convention was the reference for many countries' internal legislation to regulate this issue. However, the convention contains numbers different from what is stated in the text in Omani Law. Paragraph (a) of the first section of Article (6) of the convention provides: "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 kilogram of gross weight of the goods lost or damaged, whichever is the higher".

In this text, the convention sets a maximum limit for the marine carrier's liability if destruction or damage to the goods occurs. The Article shows clearly that the maximum limit set by the convention differs from that set by Omani Law. It is 835 units of account in the convention and 500 riyals in Omani Law. However, both texts depend on the package or shipping unit.

Besides, the Rotterdam Rules" have similar position. Article 59 of this convention provides: "the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package

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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…".

The package means any bag, box, or container used to put the goods in it. As for the unit of charge, it is a specific unit for measuring a specific thing, such as a unit of volume for something measured by volume or a unit of length for something measured by length (Maghdadi, A, Maritime Law according to Omani Law, 2011, 266).

It seems that the term "shipping unit" is more stable than the term "package". This is because the package is a variable method according to variables in trade, technology, and means of transportation, i.e. it is merely a means of wrapping the goods in order to preserve them during the marine voyage. It is changed with the changes of technology and with the means of packing (Al Ibraheem, M, 2006, 98).

This shows many problems in determining the maximum limit of liability. This was confirmed by the British courts in the case (A.M.C., 1958, 439): In Gulf Italia Co v American Export Lines. In this case, the court held that it is necessary to establish a clear meaning for the package as its absence leads to many problems between the parties. On the other hand, an American court held, in a case (A. M. C., 1974, 350) in companhia Hidro Electric v SS Loide Honduras, that packaging the goods in order to preserve them during the marine voyage is considered a package.

At any rate, the amount of five hundred riyals mentioned in the texts of Omani Law is linked to the package or the unit that the parties relied on to determine the transportation fee. If it is a package, the maximum compensation will be five hundred riyals for each package. Meanwhile, if it is a unit, such as a cubic meter, the maximum compensation is five hundred riyals for each cubic meter. It is noteworthy that the maximum compensation is calculated based on the number affixed in the bill of lading (Omran, A, 2009, 302).

According to the aforementioned rules, it becomes clear that the difference between the maximum limit mentioned in Omani Law and the maximum limit mentioned in the Hamburg Convention and in the Rotterdam Convention will, inevitably, lead to a difference in the maximum total compensation if goods are destructed or damaged. So, if two parties to a contract of carriage agreed that Omani Law would be the applicable law, the maximum compensation would be completely different from the maximum compensation if they agreed that the Hamburg Convention or the Rotterdam Convention would be the applicable law for their relation. The difference arises not only in the numbers, but also in the money unites (currencies) of the amount of compensation. In Omani Law, the Omani legislator renders the Omani Riyal the approved currency to determine the maximum limit. Meanwhile, The Conventions relied on the Special Drawing Rights unit (SDR). It is a unit determined by the International Monetary Fund every five years (Ababna, 2015, M, 371). This means that the monetary unit (the currency) also has a role in varying the maximum limit of liability between Omani Law and the international conventions.

Some jurists believe that linking the maximum limit to the Special Drawing Rights is closer to fairness. This is because they change from time to time according to standards adopted by the International Monetary Fund. In other words, if the maximum limit is linked to a specific currency belongs to a specific state, that currency may be affected by the economic changes and fluctuations of that state. This is, surely, reflected on the maximum limit of liability (Al Tarawneh, M, 2017, 53).

Since the Special Drawing Rights are variable units, the maximum limit is calculated based on the value of the unit on the date when the court issues a decision between the conflicting parties. Or, it is calculated according to the date agreed upon between the parties if there is an agreement between them about that (Raqeeq, A, 2023, 314).

What is worth mentioning is that if transportation occurs through a container and the goods are not placed in the form of units inside the container, then that container is considered the shipping unit. This is stated in the last paragraph of Article 212 of the Omani Maritime Law and also stated in the provisions of Hamburg and Rotterdam Conventions (paragraph two of Article (6) of Hamburg Convention and paragraph two of Article 59 of Rotterdam Convention).

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The Limitation that is Based on the Weight

The aforementioned Article (Number 212 of Omani Maritime Law) states a criterion, as we mentioned, other than the package and the unit for calculating the maximum limit of the carrier's liability. It is the weight criterion. The Article provides: "…Not to exceeding five Omani Riyals per kilogram of the total weight of the goods, whichever is higher…". It is noted that this criterion also finds its roots in the international conventions. The first section of Article 6 of the Hamburg Convention provides: "Or, 2.5 of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher". Besides, Article 59 of the Rotterdam Convention provides: "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…".

Thus, these texts show that Omani Law and the international conventions adapt the weight as a criterion for determining the maximum limit of liability of the marine carrier of goods. However, Omani Law contains points different from what is stated in the mentioned international conventions. First, Omani Law set the limit at five riyals per kilogram of the total weight of the goods. Meanwhile, the Hamburg and the Rotterdam Conventions set the limit at 2.5 units of account per kilogram and 3 units of account per kilogram for each convention, respectively.

Second, the monetary currency is different. In Omani Law, the currency is clear, which is the Omani Riyal. As for the international conventions, they adopt the unit of account in general, which is, as previously mentioned, a variable unit from time to time according to criteria adopted by the International Monetary Fund.

Third, the Article in Hamburg Convention shows that the maximum limit set by the convention is calculated based on the "goods lost or damaged". Also, the Article in Rotterdam Convention shows that the maximum limit set by the convention is calculated based on the "goods that are the subject of the claim or dispute". Meanwhile, the Article in Omani Law does not mention if the calculation depends on the "goods lost or damaged" or on the "goods that are the subject of the claim or dispute" or even on the entire shipped goods. It is a clear lacuna in Omani Law. Depending on the text, we believe that the entire shipped goods is the closer.

In another context, some jurists believe that adopting the weight of the goods as a criterion for determining the maximum limit of the carrier's liability achieves justice between the two parties of the contract in a way that the package standard does not achieve; A large package is not equal to a small package and this leads to different results. As for the weight, it a fixed criterion regardless of the size of the package ((AlJazwi, S, 2023, 110).

It is worth noting that adopting the weight as a criterion for determining the maximum limit of the carrier's liability is very useful if the goods are transported arbitrarily without placing them in the form of units or packages and also without placing them in containers. In other words, the presence of this criterion is of great benefit in the absence of the first criterion (Khalaf, A, 2009, 95).

It is noted that the difference between the criterion of unit or package on the one hand and the criterion of weight on the other hand may lead to large differences in the maximum limit of liability. This has led to the presence of jurisprudential disagreements in this aspect. For example, Dealing with a truck transported on a ship as a transport unit is different from dealing with it based on the weight criterion. This clearly shows lack of convergence and homogeneity between the criteria adopted in the international conventions and also in the national laws (Al Aytoni, S, 2018, 27).

At any rate, according to the provisions stated in the international conventions and in the Omani Maritime Law mentioned above, the maximum limit of liability depends on the two criteria together (the unit or package criterion, and the weight criterion), and then the higher number is the limit.

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