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RESEARCH ARTICLE

INVESTIGATION OF THE LAW ON LIABILITY FOR THE CARRIAGE OF GOODS IN MARITIME TRANSPORT

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ABSTRACT

The United Nations Convention on Contracts of Carriage ratified by the UN General Assembly in December 2008. The convention, known as "International goods in total or in part by sea", was published in September 2009. The rules governing the maritime transport of goods internationally are of particular importance to the owners of the goods and to the owners of the maritime fleet in terms of its numerous effects. The most important role of the merchant fleet is the movement of goods at high volumes, so traditionally the first litigation and problems between the fleet owners and the trader on the responsibility of parties to maintain the goods. Principles and rules have been developed over the years regarding the transfer of responsibilities to the parties so that they can establish justice for each party and reduce the litigation of both parties. Given the dangers that occur when shipping goods at sea, the greatest focus is on the liability that occurs when damage or casualties occur. Therefore, this article seeks to introduce new dimensions of these responsibilities by examining and studying the past and present laws about the limits of the responsibilities and the established rules.

INTRODUCTION

Humans have long been unable to produce all the goods they needed, so they had to trade with their fellow humans. This relationship did not remain the same in its primitive level, and gradually, with the technical advancement of the means of transport, it significantly improved the transportation of goods and passengers, and this was compounded by a variety of difficulties and complexities. Departure of goods from one country to another due to the various political, economic, and social consequences that they entailed, led governments to devise specific systems and laws in order to transfer rights and obligations related to transportation and transportation. Make customs more regular. Maritime transport plays an important role in the economies of countries that have the advantage of accessing the sea, with over 90% of Iran's foreign trade by sea. The rules governing maritime transport were first approved in the City of Brussels in 1924 as the Hague Rules. In the transport history, ratification of this treaty plays an important role in ending the overruns that were imposed on the freight forwarders by the freight forwarders, before the freight forwarders discontinued delivering the goods safely they did. The treaty for the first time not only disenfranchised the bidder in carrying out its duty of maintaining and delivering the goods safely to the destination, but also its non-liability issues were clearly identified, resulting in unequivocal states' compliance with the treaty.

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For decades to come to an end in the field of maritime transport rules, some countries have benefited from ratification and accession to the, Hague treaty and others to the treaty law. Given the developments that have taken place over the last several decades due to various technical developments in the field of maritime transport the, Hague rules were no longer appropriate to respond to the problems arising out of maritime transport, so a decision was made to amend these rules. Hague-Visby protocol title adopt in February 1968. This amendment made limited modifications to the Hague treaty, including that the unit of transport was based on packing and weight, the container, pallets and similar devices were considered to be transported units, but no changes were made to the maritime operator's responsibility, and the countries' widespread disapproval of this protocol meant that they did not meet the public expectation of drastic changes in the rules of liability. In other words the, Hague rules with many exceptions to liability are no longer justified by their technical data, but their corrective protocol can be maintained, for example, by offshore carrier liability in the event of a fire. Suspected or found guilty of sailing or maritime drunk driving or his lack of responsibility in carrying cargo on board or in the case of live animals. Dissatisfaction with the Hague rules and its protocols led the UN Trade and Development Conference to adopt new rules on maritime transport, known as the Hamburg Rules, after lengthy discussions and numerous meetings in 1978 at its meeting in Hamburg, Germany. In the Hamburg rules, the term of the ceiling was changed, with the exception of the rule of responsibility changed by eliminating the exceptions, by maintaining the provisions of the, Hague Rules and the Reform

Protocol, such as the approval of the unit weight system this eliminated many loopholes and failures of the Hague Rules, including the lack of responsibility of the operator in case of delay in delivery.

History of Commodity Liability Regime: Shipping is a major activity of the maritime transport industry more than 95% of the world's cargo is shipped by weight many of the ship's legal disputes relate to the liability of the goods. Historically, by common law, ship owners were automatically liable for any loss or damage to their goods while in their care unless they were able to prevent their negligence or one of the four acquittals in the loss or damage of the goods. These four factors include natural disasters, the actions of a public enemy, the fault of the owner of the goods, and the natural nature of the goods themselves (Black and Gilmore, 1975). It is very unfair to transfer the responsibility for damages or losses on the goods owned and protected by the ship owner. The rule of cargo liability gradually shifted from strict liability to negligence or carelessness, due to a combination of factors such as access to goods insurance, the principles of a free economy and the use of maritime cargo. Maritime licenses issued by ship owners provide an opportunity to add exceptions to the main responsibilities, free economic principles are added to validate this clause or exemptions, and may even occasionally remove ship owners from a clause the above justifies the liability for negligence. As a result, by the end of the 19th century, although strict liability was still in the form of default laws, ship owners could exempt themselves from a series of responsibilities through "exemption clauses" in a maritime cargo called Freedom of Contract.

Limitation of Liability of Goods to Weight or Package: Liability for damage or loss of goods by limiting it to weight or packages, under separate conventions, liability for the goods can be further reduced[1]in other words, even when the ship owner's liability for loss of goods is less than the limit specified in the convention. General liability is a liability such liability may be greater than the weight or package defined under the goods liability convention[2].In such cases, the liability shall be reduced by the weight / package limitation unless the owner of the goods declares the full amount of the goods in the maritime document; if applied publicly, liability will be reduced to the extent of general conventions. Despite the prevailing liability limitation under general conventions such as the LLMC 1976, ship owners still oppose any increase in the packages / weight limitations under the commodity conventions, using insurance arguments. For example, when Hamburg laws were enacted, ship owners were warned to increase the scope of the package's liability or weight; if the new convention enters into force, significant insurance costs[3].Will be borne by the liability of the ship owners, ship owners and freight owners. They usually insure themselves against liability and injuries. There is a different insurance argument in this regard, which is to minimize overall insurance costs, (Sturley, 1993) and both parties agree to decrease insurance costs in three ways: A) Avoiding the administrative costs of "dual insurance" and transfer responsibility only to one side B) Removing ambiguity in legal regulations to reduce litigation C) Improving the level of care to reduce the number of events.

[1] Griggs et al, 2005
[2] Sturley, 1993
[3] Billah, 2014

Dual functions of rules of responsibility: The liability rules apply two functions: "Deterrence" and "Restitution"[4]the main purpose of liability under the economic analysis of deterrence is negligence, and compensation will be important when applicants for "Liability" are not insured[5]. This is because "Restitution" only transfers the loss from one side to the other, while "deterrence" will reduce the potential losses by creating the responsibility of caring for one side. In terms of maritime liability, ship owners and owners of goods almost always insure against their respective liability or loss. However, there are some provisions of the Maritime Liability Act mainly for indirect insurance. These provisions include two principles of general indemnity and limitation of liability. In the pre-insurance, these regulations applied insurance performance by transferring part of the potential losses from more risky to less risky by dividing losses between ship owners and goods owners. With today's advanced insurance market, the justification for these concepts can be questioned. Unfortunately, the new liability regime adopted by the United Nations Commission on International Trade Law, Rotterdam, made no changes to these principles generally, maritime liability laws serve the "Deterrence" function because there is a recurrence of negligence or neglect under the liability given in all 3 commodity liability agreements. Also, some liability laws, although initially intended to compensate or insure, have been gradually amended to include a deterrent function. These rules include: A) The specific responsibility of the carrier,B) The absolute guarantee of navigability, C) Automatic cancellation of the contract after the diversion of the provisions of the contract.

Liability for goods: Destruction or damage to the goods during shipping there are contractual terms. Contracts of carriage between ship owners and cargo owners are documented by a bill of lading or other similar documents (Hague-Visby, 1924). Rotterdam law is the new convention on liability for goods that has not yet been enforced. The basic principle of responsibility in all conventions is negligence. According to The Hague- Visby laws, ship owners are negligent if they fail to fulfill their two main duties. Tasks include: 1) Constant efforts are made to take care of the creation and maintenance of the sailing capability at the beginning of the voyage. 2) Carrying and taking proper care of the goods during the journey. In other words, ship owners are solely responsible for their negligence in creating and maintaining the ability to navigate and carry goods[6].

Any loss or damage to the goods is assumed by the ship owner. However, this assumption can be rejected by the ship owner by proving that he has "taken all measures necessary to prevent the occurrence and consequences of the accident." In other words, as long as the ship owners can prove that they have no negligence on their own, they have no liability for shipping damage or loss. Rotterdam rules also set the basis for similar liability. Notwithstanding similar principles of responsibility, the responsibility to prove or disprove negligence in all three conventions is not the same. Under the Hague- Visby law, the burden is largely on the owners of the goods to prove the negligence of the ship owner[7]. According to the laws of Hamburg and Rotterdam, ship owners must violate their own negligence. Although shifting this burden of responsibility

[4] Brown, 1978
[5] Shavell, 2004
[6] Gilmore and Black, 1975
[7] Gilmore and Black, 1975

from one side to the other may create a different world in the real world, the basis of responsibility in all these regimes is the same, and it is negligence or carelessness in some way that holds firm or unconscionable responsibility.

Maritime Law Responsibility Systems

Proved Fault

Presumption of Fault: That will be resolved by proving that the carrier is not committing a crime or proving to be a standard effort.

Presumption of Responsibility: That can be rejected by proving the cause of the damage or failure to perform the obligation and its impossibility to the carrier.

Absolute Liability: Differences between the second and third systems can be observed in addition to how the carrier is defended, about damage caused by unknown causes. Under a system of fault-based assumptions about damages due to unknown and unknown causes, the bailiff can easily defend him or herself and be removed from liability, simply because it is sufficient to prove that he or she was not guilty. However, under the system of liability assumption, the carrier is held responsible and cannot be relieved of its burden because it must prove the cause of its impossibility and impermissibility for the exemption. This is not possible in the assumption that the cause of the damage is unknown[8].

Shipping contract at the Rotterdam Convention: With regard to the scope of the Rotterdam Regulations, for the following reasons, in particular Article 1 (1) which defines the contract, there must be a contract of sea transport between the parties. In fact, the criterion is the will of the parties. Of course, this contract must have a number of features in order for it to be subject to the Rotterdam Convention. Article 5 does not have a regulation similar to that in paragraph 3 of Article 10 of the Hague Regulations. Paragraph 3 of Article 10 of The Hague -Visby Regulations provided that this Convention shall apply when its provisions or the laws giving effect to them have been incorporated into a maritime voyage[9]. The Convention has spoken of the existence of the contract, and any document or electronic shipping record used should be followed before or after the shipment contract in order to speak of the application of the Rotterdam Convention. This means that the goods may not be shipped not only by sea, but also by other non-maritime, pre- or post-maritime modes of transport, and as long as the contract stipulates that the goods will be shipped by sea, the rules of Rotterdam will apply, although the goods are not really shipped as stated in the contract[10]. In this regard, it is not necessary to actually transport goods by sea. As soon as the contract can specify one port as the port of shipment and one as the port of discharge in different countries, the provisions of Rotterdam will apply, even if the goods are actually in those ports specified in the contract of carriage, loading or unloading they had not been evacuated[11]. In addition to sea transportation, there may be other types of transport or transportation other than sea transport. At the same time, it may be the place of receipt of the goods and the place of delivery of the goods or one of them somewhere other than the port of loading or unloading. In fact, the main title is the Rotterdam Convention. The term "United Nations" refers in part to the international or international contracts for the carriage of goods by sea, in whole or in part, before or after sea transport. As noted above, under this Convention, the contract of carriage must be the carrier of the carriage of cargo by sea and the discharge port of the same by sea. Reference to the additional requirement in paragraph 1 of this Article is also useful in this sense. The Convention does not apply to the contract of carriagebe those of different States which authorize the carriage by sea, not by coercion." Reference to other modes of transport is not compulsory. However, if other modes of transport are agreed upon by the parties, the Rotterdam rules also apply to that mode of transport, but this is not always the case. The contract of carriage as referred to in paragraph 1 of Article 1 shall speak of the carriage in return for payment of the carriage. Therefore, transportation for propaganda purposes and the like, where no freight is paid, is outside the scope of the Rotterdam Convention[12]. If there is no talk of shipping in the contract of carriage, but the type of rent payable is similar to the rent typically paid for shipping, it is interpreted that the parties to the contract are implied they have agreed on sea shipping. For example, if 10 large containers were shipped from New York to Cape Town and the total amount paid was less than the amount that would have to be paid by air for one of those containers, in such a case, we would argue that the parties were considering shipping, Because in this example, rail and road transport is out of the question. Conversely, if the contract of carriage is generally silent on the mode of transport, it cannot be said that the rules of Rotterdam are applicable, though no one can talk about maritime transport.

The Hague Rules of Responsibility: Determining the basis of liability in Hague Rules is very difficult, as it involves examples of the presumption of fault and the presumption of responsibility. Clause 1 of Article 3 of these regulations obliges the carrier to exercise the necessary care: The carrier is required to provide the following precautions prior to each voyage: A) Prepare the ship for sailing; B) Provide adequate staff, equipment and supplies; C) Provide warehouses, refrigerators, cold stores and other parts of the ship in which the goods are transported and ready for the reception, shipment and processing of the goods; and that is what forms the basis of liability for the ' presumption of fault ' and enhances Article 4. The ship and the carrier are not responsible for any loss or damage caused by inability to navigate unless they have been prepared to receive and provide the ship with sufficient staffing and equipment and supplies, and to accommodate warehouses and cold stores. Many parts of the ship carrying the goods, as well as due diligence and care, in accordance with the first paragraph of Article 3, have not been given adequate effort. Whenever loss or harm is the result of inability to sail, the carrier or other person claiming liability under this article shall be required to substantiate the exercise of due diligence and care in their area. Therefore, some people believe that the basis of responsibility in these regulations is the presumption of guilt[13].But this view is not correct, as article 4 of the convention, in the wording of paragraph (q) above, in clause 2, lists seventeen cases, each of which proves that the carrier is exempt. In other words, in this paragraph, exemptions are given to the carrier, which is not inconsistent with the presumption of guilt and brings it closer to the assumption of responsibility. In addition, since these rules are

[8]Rodière, 1978, No. 356, p.455
[9]Ibid., p. 154
[10]Meltem.Deniz&Guner-Ozbek, op.cit., pp. 126-7
[11] Ibid., p. 127
[12]Unan, Samim, op.cit., P. 90
[13]Rodière, 1978

more in line with the Anglo-Saxon legal system, jurists in the Anglo-American countries are better able to comprehend it than written law practitioners, and given that their jurisdiction for bailiff liability is in addition to one's liability. Of the seventeen, he is also required to prove the ship's navigability. It can be said that under these rules, by the presumed fault system, they have intensified the system of liability assumption, although in the written system of law, especially France, the system of liability assumption alone is so robust that it is not necessary to strengthen and supplement it. Assumption is not a fault the point that may be raised here is how to interpret paragraph "q" of paragraph 2 of article 4 of the Convention, and in other words, the seventeenth case of the carrier exemption. Any other cause not caused by the intervention the primary characteristic of the carrier or the carrier's negligence or wrongdoing but the proofs shall prove that neither the carrier's negligence nor negligence is negligent. The fault of the agent did not affect the loss or damage. Given the appearance of this clause, it may be said that the provisions of the Brussels Convention refer to the fault or the second system because, under that clause, the carrier is liable if he or she has proved that the fault did not have any effect on the damage caused. Exempt. And this is what is at stake in the fault-based system. It should be noted, however, that none of the seventeen paragraphs of this paragraph has been as thoroughly researched and studied by maritime writers and scholars as far as (Rodière) has commented. Determining the Carrier's Responsibility Under this clause, it is best to first examine the issue of damage caused by unknown and unknown causes and to see if the clerk can relieve himself of liability under this clause. What is certain is, to invoke this clause the carrier is obliged to clarify all the circumstances which have led to the damage so as to be able to prove that his or her employees' fault or interference was not affected. In other words, if it fails to explain the circumstances that led to the damage or to explain the cause of the damage, it cannot prove that it was not caused by his or her fault or by his agents[14]. Accordingly, it should be said that if the cause of the damage is unknown, the liability of the carrier has also been borne by the carrier and the carrier cannot be relieved of it.

Reasons for not accepting a reservation in the Convention: Careful in these materials and in the spirit of the other articles of the Convention, it can be said first that the Rotterdam Convention would have allowed states to impose certain conditions and offered a solution. Secondly, the Convention aims at achieving its original aim of harmonizing, harmonizing and updating the rules and regulations governing the maritime transport of goods, providing only for cases where the exercise of their reservations does not prejudice the above objective. Has offered them a solution and that means other things that are not foreseen, even if there is a conflict, are subject to this Convention, not to any other international convention or directive. In fact, this is due to the convergence of the Convention and the fear of the fact that the release of states may harm the unity and harmony of the provisions that Antitrust sought to draft the Rotterdam Convention. Third, and more importantly, that the international contracts for the carriage of goods, even if they are concluded by governments, are subject to corporate action and so it is in the private relations of individuals. Therefore, there is no justification for recognizing the right of conditionality for governments in a relationship that has virtually nothing to do with their sovereign and imperative aspect. This analysis in itself promotes a global view of international rules on private and commercial relations and is a good starting point for abandoning the rational intervention of governments in the laws governing international business relations. Only in respect of Chapters 14 and 15 of the Convention, since its application to States Parties pursuant to Articles 74 and 78 of paragraph 1 of Article 91 shall require prior consent of those States, Article 90 may be withdrawn. That is how the denial of the conditional right contradicts. In response to this conflict, it would seem that the material in these seasons should be considered as separate from the main body and the materials of the Rotterdam Convention, proposing these materials as a system of equal settlement and according to the needs of the maritime shipping of goods to know. Now if a country does not want to join them for any reason, it is not compulsory and may not be binding on them. In such case, and in the light of disputes arising out of the international maritime transport of goods, in accordance with the general principles of private international law and the conflict of laws, the competent court shall determine and resolve such disputes. Therefore, in cases where the Convention avoids conflict resolution or resolves the Convention, but the matter remains subject to the Rotterdam Convention, it must be said that there is no other way than to accept the Convention. In this respect, we must interpret that the Rotterdam Convention must be adopted in order to achieve the main objective of the Convention, albeit in conflict with the provisions of other existing Conventions.

Rotterdam Convention Regulations on Avoidance of Conflict: Regarding the avoidance of conflict, there are provisions in Article 26 which we will address here and the concepts contained in this Article. But before that, it is better to explain that we call this article for the purpose of conflict-of-law regulation, which sets out the priority of a set of other international rules regarding the determination of the scope of actions from the outset and, under the conditions set out in this article. This Article provides: Article 26 Prior or Late Maritime Operations: When the loss or damage to goods or incident or circumstances leading to delay in their delivery is during the period of responsibility of the carrier, but exclusively before loading the goods or Exclusively after their discharge from the ship, the provisions of this Convention shall apply to the provisions of another international directive which, at the time of its occurrence, has resulted in a loss or damage or accident resulting in a delay in the content or content of the following: will not be:

- In accordance with the provisions of that international instruction, if a consignor has a separate or direct contract with the bidder in respect of a particular stage of shipment operation that has resulted in a loss or damage or accident resulting in the delivery of the goods during that incident. The carriage had been concluded, in which case the provisions of that international instruction would have to apply to all or part of the carrier's actions.
- The provisions of those instructions shall expressly state the liability of the carrier, the limitation of liability or the time of litigation.
- In accordance with the provisions of that International Instruction, the Contract may not waive, in whole or in part, any of the provisions of the said Instruction to the detriment of the sender.

[14]Fraikin, 1975

This Article states that the specific provisions of that Convention shall apply where damage is at a specified location and another Convention applies at that stage of carriage. Likewise, because of the Convention governing other modes of transport, certain issues of the principal carrier's liability under a hypothetical contract between the consignor and the part of the carrier other than maritime transport, The Convention establishes, and otherwise, the provisions of the Rotterdam Regarding All Cruises will be the responsibility of the Principal Carrier for the entire shipping period[15]. As such, there is no further news of the bidder being part of a hypothetical contract. The following example illustrates this situation:

Some of the goods are shipped from China to Iraq via Bandar Abbas in Iran. The goods are transported from China to Iran by sea and from Bandar Abbas to Iraq by road. Damage occurs during a road transport from Bandar Abbas to Iraq. Under the hypothetical contract technique, if the sender has a separate and direct contract for a particular stage of carriage during which the goods have been lost, damaged or delayed in their delivery.

Basis of Responsibility in the Hamburg Regulations

Article 5 of the Hamburg Regulations provides that

- The carrier shall be liable for losses caused by lack of success, damage to the goods as well as delay in delivery if the occurrence caused loss, harm or delay during the time during which the goods were covered under the carrier's article 4.
- Delivery time lag if it occurs when it is expressly agreed in the contract or otherwise during the period for a serious carrier considering the present circumstances and circumstances. The goods shall not be delivered at the discharge port provided for in the maritime contract.
- If the goods referred to in Article 4 were not delivered within 60 consecutive days of the expiry of the delivery period referred to in clause 2 of this Article, the person entitled may consider the goods as lost.
- (A) Carrier shall be liable for: (1) Loss or damage arising from the goods or the delay in delivery the fire, if it wishes to prove that the fire is caused by fault or negligence; the donor was his officers or representatives. (2) Loss, damage or delay in delivery, if the claimant has proved that it was due to fault or negligence on the part of the carrier, its agents or agents in taking reasonable steps to eliminate and avoid or mitigate the effects of the fire. (B) In the event that the fire in the ship causes the goods to diminish, an inspection shall be carried out at the request of the carrier or carrier and in order to determine the cause and manner of the fire, in accordance with customary shipping procedure and the requestor or carrier shall provide a copy of the expert report to the carrier or requestor.
- In the case of the carriage of live animals, the carrier shall not be liable for any harm, damage or delay in delivery arising from the special hazards of such transport; has acted in relation to animals given to him, and may be attributable to such special hazards in terms of circumstances, loss, damage, or delay. It is assumed that the loss, damage or delay was caused by those risks unless proven loss, due to the error, incompetence or neglect of the carrier, damage or delay in the delivery of the creation or part.
- The carrier shall not be liable for any loss, harm or postponement in delivery arising from measures taken to rescue persons or traditional measures to save assets at sea, except for joint damage.
- Whenever the carrier's fault or negligence, its officers or representatives, together with any other cause, cause loss, damage or delay in delivery, the carrier shall not be responsible unless such harm, damage or delay is due to its mistake or negligence if the carrier shows that the failure, harm or delay in delivery cannot be traced to the carrier.

Basis of Responsibility in Rotterdam Regulations: Paragraph 1 of Article 4 of the Rotterdam Convention provides: Any provision of this Convention which eliminates or restricts the liability of the carrier to be raised in arbitration or judicial proceedings, whether in litigation, contractual liability, or other breach or otherwise, damages to goods or delays in the execution or violation of any other duty under this Convention shall apply to:(1) A carrier or a maritime executor; (2) A captain, crew or any other person providing services on board a ship; (3) Officers or maritime executors

Article 17 Liability:

- The carrier is responsible for the loss, harm to the goods and any deferment in delivery; where the right owner shows that the loss, damage or delay or occurrence that caused or led to it happened during the carrier's term of duty as set out in chapter 4.
- The carrier shall be excluded from all or part of the liability set out in clause1 of this article; the causes of the failure, harm or delay shall not be due to his negligence or to any of the persons set out in article 18.
- The Carrier shall also be exempt from all or part of the responsibility mentioned to in clause 1 of this Article when, instead of demonstrating the absence of blame referred to in clause 2 of this Article, one or more of the following events is demonstrated or circumstances have caused, caused, delayed or delayed have or have been involved in its creation:(A) natural disaster;(B) accidents, hazards or accidents at sea or navigable waters; (C)war, wars, military activities, piracy, anarchy, unrest, internal insurgency; (D)Carnival restrictions: intervention by Governments, public authorities, or impediments, leaders with the public including inadmissible suspension, detention or detention of the carrier or any of the persons referred to in Article 18;(E)shipping, closing, stopping or obstruction; (F)Ship fire; (G)hidden flaws that are not accurately discovered; (H)Verb or omission of the verb of the sender, the sender of the document and the investigating party or any other person whose sender or sender of the document is responsible for their actions under Article 33 or Article 36; (I)Shipping, processing, shipping and unloading of goods carried out in compliance with Article 13, clause 2, unless such activities are carried out by the carrier or the executing party on behalf of the recipient or sender of the document or receiver; (J) Fraction of volume or weight or any other defect or damage resulting from a hidden defect or a particular nature or defect of the goods; (K)Inappropriate or damaged state of packaging or labeling not carried out

[15]M. D. Guner-Uzbek, op.cit., Pp. 128-9

by or on behalf of the carrier; (L)rescue or effort to save lives at sea; (M)Reasonable measures to save or attempt to save assets at sea; (N)Reasonable measures to avoid environmental harm; (O) Application of the powers granted by articles 15 and 16.

- The bailiff shall be liable for all or part of the loss, harm or delay, irrespective of paragraph 3 of this article: A. If the owner of the goods shows that the accident is caused by the carelessness of the carrier or one of the persons referred to in Article 18 or take part in the circumstances to which the carrier relies; or B. If the right holder proves that the incident involved in a loss, damage or delay other than that referred to in clause 3 of the article and the operator fails to prove that the event is attributable to his or her own fault or to any person It is not in article 18.
- The carrier is also responsible, in accordance with Clause 3 of this Report, in the event of failure, harm or delay in whole or in part:(A)The right holder can prove that an event in the following circumstances really or probably caused a loss, damage or delay, or really or likely contributed to the loss, damage or delay: 1.The boat could not sail; 2. The boat is not properly equipped and not well prepared for personnel and logistics; 3. Warehouses or containers supplied by the carrier and the goods are carried or stored therein and are not appropriate for the reception, transport and safety of the goods; and (B) The carrier cannot claim the following: 1. None of the occasions or positions specified in section A of this article entails any loss, harm or delay;2. It has departed from its obligation by applying reasonable conduct in accordance with article 14.
- Only for the part of the failure, harm or delay due to incidents with the circumstances to which this article is applicable, if the operator is liable for compliance with this article.

Resolving conflicts between conventions: We were drafted as a regulation for conflict avoidance with a system indicating the least amount of limited network liability. However, it was later revealed that the application of this Convention may in some cases still overlap with the scope of other conventions[16]. The reason for this overlap comes from the fact that the single-mode transport conventions had many dimensions that the Rotterdam Convention only preferred specific rules and regulations of these applicable single-mode transport conventions to their own rules. He would. These specific terms and conditions include the responsibility of the carrier, the limitation of liability, and the timing of the litigation. However, due to the composite dimensions of other transport conventions, both the Rotterdam rules and other transport-related conventions may apply simultaneously to a specific transport contract. In such a case, where the conflict is unavoidable and Article 26 is no longer capable of avoiding conflict, Article 82 shall resolve the conflict.

Conflict resolution in implementation; Article 82: As has been more or less pointed out in the preceding discussions, when we put Articles 26 and 82 together we find that Article 26 serves as a rule to prevent conflict, but only to the extent that Article That is, my practice is the same. In cases where we cannot prevent a conflict based on this Article, Article 82 shall apply. In this case, Article 82 is considered to be a conflict resolution regulation. It should also be noted that Article 26 deals with the loss, damage or delay in the delivery of goods where the goods are out of the ship, while Article 82 deals with the shipping sector. Before examining Article 82, we must say that if we are still faced with cases of ambiguity or conflict after the application of this Article, we must apply the Rotterdam Convention, which claims to govern maritime transport, and Article 90 prohibits us from exercising the right to proportion However, even though it has prohibited any part of the Convention. Article 82 Subject to the provisions of the International Conventions governing the carriage of goods by any other means of transport, no regulation in the present Convention shall preclude the application of any of the following international conventions required when this Convention enters into force. They shall be effective and shall not be subject to any subsequent amendments regulating the liability of the carrier for loss or damage to the goods:

- Any Convention governing the carriage of goods by air, to the extent that the Convention applies in accordance with its rules to any part of the Contract of Carriage.
- Each convention governing the carriage of goods by road, to the extent that the present Convention in accordance with its rules, deals with the carriage of goods loaded on a road vehicle for the carriage of goods by ship itself. Be, it is left.
- Any Convention governing the carriage of goods by rail, to the extent that the said Convention shall apply in accordance with its rules to the carriage of goods by sea as a complement to rail transport.
- Any Convention governing the carriage of goods by inland waterway, to the extent that the present Convention shall, in accordance with its provisions, to the carriage of goods carried by ship or by sea without transfer from one ship to another.

According to the above article, four categories of conventions take precedence over Rotterdam regulations. In other words, if any conflict arises between the provisions of the Rotterdam Convention and any of the four categories of the Convention, the relevant Convention which contradicts the Rotterdam Convention on the Territory of Application shall be preferred to the provisions of the Rotterdam Convention. The reason for these conflicts is the scope of these conventions. Before addressing these four categories of conventions, it is important to address the question of whether the precedence of the four conventions permitted under Article 82 and preferred by the Rotterdam Convention is limited to their rules on liability. Missing or inflicting damage on goods. It may be presumed that Article 82 restricts only the scope of the provisions of the Rotterdam Convention to the responsibility of the carrier and other matters such as shipping documents, control rights, sender liability, and delivery, transfer of rights, jurisdiction and arbitration are not covered. A Historical Review of the Draft Article 82 does not make it clear that such a purpose exists. Article 82 did not include these restrictions before it came into force. Concerns over the scope of other provisions of the Conventions on Transport were the main reason for the formulation of Article 82 in its current form. However, in order to resolve all conflicts arising out of the overlap in the scope of the provisions of the other conventions, Article 82 shall not be limited to the rules on liability; It is likely that the last sentence of Article 82, which regulates the responsibility of the carrier for the loss and damage caused to the goods, indicates the customary and classical structure of the Conventions

[16]M. D. Guner-Uzbek, op.cit., P. 133

concerning the rights of carriage which first and foremost concern matters of responsibility[17]. This argument is similar to the argument in Iranian domestic law about whether most of the catechisms are reserved only for the boa or are applicable to other specific contracts. It has been said that if the legislator has spoken of a contract with a believer, the reason is not the exclusive allocation of privileges to the believer; In fact, if we do not accept the above argument, the conflict intensifies as many countries join other conventions on other modes of transport, and the convention is not welcomed due to the prohibition on reservation. It will be gone on the web, something that is not pleasant at all. Note that the Convention preferred by Article 82 to the Rotterdam Regulations, It shall be enforceable at the time of entry into force of the Rotterdam Regulations. Any further amendments to the Conventions which were to take effect prior to the entry into force of the Rotterdam Convention shall also be subject to the provisions of Article 82. However, if a Convention is adopted on other modes of transport, it will be outside the scope of Article 82. But Article 26 also includes the form of instruction to be adopted in the future. On the other hand, the result is that the wording of the "Instructions", not the word "Convention" in Article 82, is a new word that may be adopted by the European Union outside the scope of Article 82. In that case, that Directive shall comply with Article 82 and other provisions of the Rotterdam Convention.

Staff Negligence Responsibility: In order to maintain the right motivations, the responsibility should apply to anyone who can be caring, such as the owner of the ship, the owners of the goods, the servants, the apprentices, or the independent contractors. However, the staff of a ship owner may not have the assets to pay for their responsibilities. Imposing responsibility on someone who is unable to pay may not provide good incentives for care. This is because the responsible parties are potentially unable to fulfill their full responsibility, may pay more than the expected cost for the caregiver, and may therefore decide not to care despite the liability in addition, because of the low probability or impossibility of obtaining compensation from such parties the costs of litigation may exceed their expected gains[18]. In other words, the inability to fully assume responsibility distorts the motivation of the party who is or is potentially responsible for the care and the claimant's responsibility to sue the responsible party. The incentive to care is lessened when the potentially responsible parties think they will not be prosecuted in all cases. All conventions of the code of commodity liability impose on the ship owner the responsibility for the error and negligence of the captain and crew. However, under the Hague Visby Act, ship owners only for the part of the failure, harm or delay due to incidents with the circumstances to which this Article is applicable, if the operator is liable for compliance with this article. The Hamburg Laws and the Rotterdam Laws do not include these exceptions, these conventions being more advanced in these areas than Higgs Wiesberger.

Conclusion

Many of the legal disputes involving ships are related to product liability. Historically, by common law, shipowners were automatically liable for any loss or damage to their goods while guarding them unless they could neglect their own safety or one of the four exoneration factors in the loss or damage of the goods. Liability for damages or losses of goods may be further reduced by limiting them in weight or packages under separate conventions on liability. Restitution will be important when applicants for "Liability" are not insured. This is because "Restitution" only transfers the loss from one side to another, while "Deterrence" reduces the potential losses by creating the responsibility of caring for one side.In order to maintain the right incentives, the responsibility should apply to anyone who can be caring, such as the owner of the ship, the owners of the goods, the servants, the apprentices, or the independent contractors. Subject to article 5 of the Hamburg Regulations, the carrier shall be liable for any loss, damage caused or delayed delivery of the goods where the incident caused loss, harm or delay of the products under the control of the carrier during the time referred to in article 4, has occurred.

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[17]M. D. Guner-Ozbek, op.cit., p. 134
[18]Shavell, 1978

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