

**A GUIDED TOUR OF CLAIMS HANDLING FOR CARGO
LOSSES BY SEA AND BY AIR:
Warsaw, Hague, Hamburg or Montreal**

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A GUIDED TOUR

- Introduction
- History of Aviation Conventions
 - Recent developments
- History of Maritime Conventions
- Documentary Provisions
 - Article 3 Rules 3, 4 and 5 (Hague / Hague – Visby)
 - Includes Articles 5, 6, 7, 8, 9, 10 and 11 (Warsaw / Warsaw-Hague)
- Carrier Defences
- Limits and breaking limits. What is a “Package”?
- Jurisdiction
- Liability of servants and agents: Ability to extend contractual protection to them



INTRODUCTION

- Development between marine and aviation closely linked
- Common issues arise including
 - Deciding where the risk of loss or damage should fall as between carrier and cargo owner
 - Ability of carrier to limit liability or not
 - Computation of limits
 - Amount of limits
 - Extent to which carrier is able to protect its servants and agents from risk
 - Ability of cargo owners to break limits and tests to be applied
 - Jurisdiction for claims
 - No contracting out or providing “lesser” liability regime.
- BUT some different solutions found to similar problems



CONVENTIONS

- Both industries have been debating reforms to their respective liability regimes for years
 - Marine
 - Hague Rules 1924
 - Visby Protocol 1968
 - Hamburg Rules 1978
 - Brussels Limitation Convention 1957
 - London Limitation Convention 1976
 - Athens Convention 1974 (passenger)
 - Carriage of Goods by Sea (Amendment) Act 1997 (Australia)
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AVIATION CONVENTIONS / REGIMES

- Aviation
 - Warsaw Convention 1929
 - Hague Protocol 1955
 - Guadalajara Supplementary Convention 1961
 - Montreal Agreement 1966
 - Guatemala City Protocol 1971
 - Montreal Protocols 1 – 4
 - Japanese Initiative 1992
 - IATA Inter-carrier Agreement 1995
 - EU Directive 2027/97
 - Montreal Convention 1999



DOCUMENTATION

- Bill of Lading vs Air Waybill
 - Format similar
 - Both contain conditions of contract
 - BoL negotiable, AWB not
 - New Conventions & non-negotiability may enable carriers to dispense with paper AWBs, but carriers moving slowly to embrace electronic data recording methods
- Applicability to Charterparties and waybills



CARRIER LIABILITY

- **Marine Conventions establish carriers' duty of care to**
 - exercise due diligence before beginning voyage
 - to ensure that ship is seaworthy
 - to carefully handle, stow, load and carry goods
 - properly man, equip and supply ship
 - Make holds etc. safe for reception, carriage and preservation of cargo
- **Aviation**
 - Carrier presumed liable if damage proven and sustained during carriage by air
 - Carriage by air includes time the goods are in care of carrier on board an aircraft or in an airport



DEFENCES

- MARINE
 - A continuation of system of limited, defensible liability
- Unseaworthiness
 - Carrier may show it exercised due diligence
- Properly and carefully load, etc. (amongst others):
 - Act or neglect of Master, pilot, mariner or servants of carrier in the navigation of the ship
 - Fire unless caused by actual fault or privity of the carrier
 - Perils, dangers and accidents of the sea
 - Acts of God
 - Acts of war
 - Acts of public enemies
 - Quarantine restrictions
 - Acts or omissions of the shipper
 - Strikes, lockouts or restraints of labour
 - Latent defect
 - Any other cause arising without the fault of the carrier.



DEFENCES

- AVIATION – Presumed liability moving to unlimited liability
- Warsaw and Warsaw/Hague
 - That the carrier took all necessary measures to avoid the damage
 - Late notification of the damage (Article 26)
- MAP 4 and Montreal Convention
 - Inherent defect
 - Defective packaging
 - Act of war
 - Act of public authority in connection with entry, exit or transit requirements



LIMITS OF LIABILITY

- Marine

- Hague Rules – GBP 100 per package
- Hague Visby – 10,000 Poincare Francs per package or 30 Francs per kilo, whichever is higher
- SDR Protocol 1979
- SDR2 per kg / SDR666.67 per package, whichever is higher
- Limitation Conventions: The “*Sanko Harvest*”
- *Brown Boveri v Baltic Shipping (1989) NSW CA* and *The Rosa S (1988) QBD*

- Aviation

- 250/kg Gold Francs – Warsaw Convention
- 250/kg French Francs – Hague Protocol
- SDR17/kg – MAP 4 and Montreal Protocol
- *SS Pharmaceuticals v Qantas Airways Ltd*



BREAKING THE LIMITS

- Marine
 - Art IV rule 5 (e)
 - Note confined to carrier and ship. Not extended to acts by servants and agents (*The European Enterprise*) and
 - *The “Sanko Harvest”* 1957 Limitation Convention found to apply but limit successfully broken
- Aviation
 - Show wilful misconduct or default equivalent to wilful misconduct – Warsaw Convention
 - Show intent to cause damage or recklessness with knowledge that damage would probably result – Hague Protocol
 - Unbreakable limits – MAP 4 and Montreal Convention



JURISDICTION

- Marine
 - Hague and Visby Rules
 - Based on place of shipment usually
 - Article 10 of amended Hague Rules (Australia)
 - Clause Paramount
 - Hamburg Rules
 - carrier's principal place of business
 - Place where contract was made
 - Port of loading and port of discharge
 - Place designated by contract
- Aviation
 - Warsaw System
 - Place of domicile of carrier or principal place of business
 - Place of destination
 - Place where contract was made (if carrier has place of business there)
 - Montreal Convention
 - As above plus place of domicile of passenger ("fifth jurisdiction" controversy)



SCOPE OF CONVENTIONS

Conventions Cover

- Jurisdictional Parameters
- Time for suit
- Notice period for claims
- Scope of actionable claims
- Limits of liability
- Ways to break limits
- Defences available
- Uniform system for documentation for carriage of passenger, registered baggage and cargo

