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The Legal System for the Liability of the Sea Carrier regarding the Electronic Sales Contract

Khaled Bennoui

Associate Professor (Class A)

University of Mohamed El Bachir El Ibrahimi BBA

Email: khaled.bennoui@univ-bba.dz

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Introduction

The legal system for transport varies depending on the means of transport and the medium in which it is performed, such that a special legal system exists for each of land transport, maritime transport, and air transport. Furthermore, the difference in the subject matter of transport necessitated the application of a different legal system depending on whether the transport is of things or persons.

It is noted that maritime transport is subject to special rules contained in the Algerian Maritime Code and the Brussels Convention related to the Unification of Certain Rules of Law relating to Bills of Lading signed on 25/08/1924. However, the inability of this convention, in lived reality, to keep pace with economic development - since it served the interests of carrier nations more than shipping nations, especially in the field of exemption from liability - created a need to change this situation. This led to the appearance of the amending Protocol to the Brussels Convention in 1968, followed by the Protocol amending this Protocol in 1997, and before that, the Hamburg Convention was signed on 31/03/1978, from which the Algerian legislator derived most of his provisions regarding the liability of the sea carrier.

The liability of the sea carrier holds extreme importance among various topics of maritime law, thus occupying the forefront among transport topics due to the numerous disputes it raises before the judiciary because of the obstacles and problems that may encounter the process of transporting goods, which may lead to the damage of goods, potentially inflicting considerable harm on their owner, often substantial due to the large quantity transported across the sea.

The provisions of the sea carrier's liability are of great importance, which prompted the Algerian legislator to regulate them in the manner that will be elucidated.

Part I The Nature of the Sea Carrier's Liability and its Temporal Scope

The primary obligation of the carrier is to transport the goods and deliver them to the consignee intact at the specified time. Consequently, he is liable for loss if he does not deliver the goods to the consignee, for damage if he does not deliver them in a sound condition, and for delay if he does not deliver them at the specified time. The sea carrier's liability has a special system depending on the basis adopted, and it is only activated according to specific cases. This special system appears through determining the nature of this liability first, and the cases of its activation second.

Section 1 Nature of the Sea Carrier's Liability

The liability of the sea carrier for goods is considered a contractual liability stemming from the maritime transport contract. It arises from the carrier's breach of his contractual obligation towards

his contracting party. The carrier's obligation under the maritime transport contract for goods is an obligation to achieve a result, which is transporting the goods and delivering them to the consignee complete and intact at the specified time. Therefore, he is liable simply upon the loss, damage, or delay in delivery of the goods, and liability is not lifted from the carrier unless he proves that the non-execution is due to a foreign cause in which he played no part ⁽¹⁾. According to general rules, contractual liability is based on the idea of fault or harm and the causal relationship between them. If these three pillars are met, the carrier is questioned, but if one is missing, the contractual liability for the sea carrier for goods is negated. The implication is that if the carrier does not execute his obligation to transport the goods safely to the destination at the agreed time, his fault is presumed, and he is obliged to compensate the shipper for the harm caused thereby. It makes no difference whether the non-execution of the obligation is due to the sea carrier's personal fault or the faults of his land or sea subordinates. Thus, the sea carrier, according to general rules, commits to a specific result, which is delivering the goods safe to the destination. Therefore, he is liable for compensation if this result fails due to loss, damage, or delay in arrival, without burdening the shipper with proving the carrier's fault. Fault here is presumed. If the carrier wishes to deny this liability, he must prove the foreign cause. The Brussels Convention adopted these rules entirely in organizing the carrier's liability. Article 4, paragraph 2 of the Convention states that "Neither the carrier nor the ship shall be liable for loss or damage resulting or arising from any cause other than the act or fault of the carrier, or the act or fault of the carrier's agents or servants, not being in connection with the loss or damage." This text delineates the limits of the carrier's liability and establishes his liability for his fault and the faults of his subordinates. If he wishes to avoid liability, it is not sufficient to merely prove the absence of a causal relationship between his act or the acts of his subordinates and the harm that occurred, but he must attribute this harm to its true cause. This means that the mere occurrence of harm entails the carrier's liability until he proves the foreign cause that caused this harm. However, the Brussels Convention was not content with organizing the liability of the sea carrier for goods as established in general rules, but stipulated the exemption of the carrier from liability in several cases, such that it suffices for the carrier to prove that the harm suffered by the shipper was due to one of them to be exempt from liability ⁽²⁾. As for the Hamburg Convention, fault is presumed, and Article 5 of this Convention stipulates that "The carrier is liable for loss resulting from loss of or damage to the goods, as well as that resulting from delay in delivery, unless he proves that he, his agents, and subordinates took all reasonable measures to prevent the occurrence of the incident and avoid its consequences." Fault here is also presumed, and the carrier or his subordinates must prove that they took possible measures to prevent the incident to negate liability ⁽³⁾. Regarding the Algerian Maritime Code, it confirmed in Article 770 and Article 773 that the carrier's obligations are obligations of diligence. According to the text of Article 803, paragraph a-q, the carrier cannot escape fault except by proving

1 . Dr. Latif Jabr Komani, *Maritime Law (The Ship – Persons of Navigation – Transport – Sales – Insurance)*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 1996, p. 145.

Dr. Talib Hassan Mousa, *Maritime Law (The Ship, Persons of the Ship, Contract of Maritime Transport, Maritime Sales, Maritime Emergencies, Marine Insurance Contract, Auxiliary Maritime Contracts)*, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, First Edition, 2007, p. 130.

2 . Hani Dweikar, *Maritime and Air Transport*, Halabi Legal Publications, Beirut, Lebanon, First Edition, 2008, pp. 82–83.

3 . Adly Amir Khaled, *The Contract of Maritime Transport: Rules and Provisions in Light of the Maritime Commercial Law, International Conventions and Protocols, and Recent Judgments of the Court of Cassation and the Supreme Constitutional Court*, Dar Al-Jami'a Al-Jadida, Alexandria, 2006, pp. 70–71.

that he exercised due diligence. As for the obligation to deliver the goods, it is an obligation to achieve a result. To ward off liability, the carrier must prove the fault of others, force majeure, or a foreign cause. Regarding harm in the contractual liability borne by the sea carrier for goods, as we previously mentioned in the First Section, it consists of either the loss of the goods or their damage, as well as in the delay in their arrival, which is material harm. However, a causal relationship must link the presumed fault and the material harm for this liability to arise. From here, we can say that the liability of the sea carrier for goods in Algerian maritime law is a contractual liability based on the will of the parties, i.e., the principle of the sovereignty of will. However, this liability is of a special nature, as many of its provisions are mandatory rules related to public order. For example, Article 811 renders void and ineffective any contractual condition whose purpose and direct effect is to exclude or limit the liability related to transport arising from Articles 770, 780, 802, 803, 804. While Article 812, paragraph 1, states that it is possible to agree to exclude or limit liability contrary to the rule in the stage prior to loading and subsequent to unloading. Likewise, it is possible to agree on limiting and excluding liability in the case of transporting animals or goods on deck, due to the specificity of transport in this type of goods, because goods loaded on deck are exposed to multiple risks such as theft and wetting by seawater⁽¹⁾.

Section 2 The Temporal Scope of the Sea Carrier's Liability for Goods

Article 802 of the Algerian Maritime Code stipulates that the sea carrier's liability begins from the moment he takes charge of the goods at the port of loading and continues until the delivery of the goods at the port of arrival to the consignee. This is because the goods pass through multiple stages known as the maritime voyage, during which the sea carrier's liability exists. We will address these stages as follows:

Subsection 1 Receipt of Goods and Loading them onto the Ship by the Carrier

The sea carrier must receive the goods from the shipper. The act of receipt constitutes the beginning of the temporal scope of the maritime transport contract, and the carrier's obligations and liabilities begin once he receives the goods⁽²⁾. Goods are received from the port of loading at the agreed time, as stipulated in Article 772 of the Algerian Maritime Code: "The shipper or his representative must present the goods at the times and places specified by the contract concluded between the parties or according to custom at the port of loading. In case the shipper fails to present the goods at the specified times and places, he pays compensation to the carrier, estimating the losses incurred, provided they do not exceed the amount of the agreed freight." It is possible to receive goods outside the port limits, such as in the shipper's warehouses or the carrier's warehouses. The carrier remains responsible for completing the necessary procedures to transport the goods to the port quay, taking into account customs procedures. Receipt of goods is a legal fact that entails an obligation on the sea carrier. However, it is permissible to agree otherwise, which is the case of receiving goods while they are on the ship's deck, meaning the sea carrier's liability for goods only exists when they are on the ship's deck. After receiving the goods, the carrier loads them onto the ship, as stipulated in Article 773 of the Algerian Maritime Code. The intended meaning here is loading the goods onto the ship unless agreed otherwise. The sea carrier's obligation to load is not a matter of public order, which leads us to say that the burden of loading may be on the shipper, contrary to French law which makes the carrier's obligation to load a matter of public order. Through Article 773 of the Algerian Maritime

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . Dr. Talib Hassan Mousa, previous reference, p. 135.

Code, we note that the legislator took a middle stance, making the legal rule oblige the sea carrier to load, but intended it to be supplementary to the will of the parties, so the shipper may bear the burden of loading if agreed upon, and the shipper is notified of this in writing ⁽¹⁾. Legally, however, in practice, the sea carrier or the shipper does not undertake the physical loading; rather, it is undertaken by the maritime contractor, the loading and unloading contractor, or the port establishment, but under the supervision of the sea carrier. It may happen that the bill of lading contains a clause obliging the shipper to complete the loading of goods. This clause is usually associated with another agreement to authorize the sea carrier to contract with the maritime contractor. Consequently, the carrier can complete the loading in the manner he deems appropriate and under his supervision, transferring the risk of resulting damages, in addition to its financial burdens, to the shipper. Article 774 of the Maritime Code stipulates the obligation to inform the shipper in case of loading goods on the ship's deck.

Subsection 2 Delivery of Goods to the Consignee

Article 782 of the Maritime Code states: "The carrier or his representative is required to deliver the goods at the agreed place to the legal consignee or his representative who demands receipt based on a copy of the bill of lading..." ⁽²⁾. Therefore, the delivery process does not occur simply by the carrier unloading the goods at the port of arrival, but rather produces its effect upon the parties' acceptance of the documents. This is what the Supreme Court ruled in the decision issued on 30/06/1991 between the Algerian Transport Insurance Company against Elbal Lines Clipper Strat Belgium, one of whose grounds stated: "It is legally established that the maritime transport contract begins as soon as the carrier takes charge of the goods and ends with their delivery to the consignee. Consequently, ruling contrary to this principle is considered a violation of the law. Since it was established in the present case that the trial judges considered unloading the goods at the port as delivery and thereby exempted the carrier from liability, they erred in applying the law." The Supreme Court's jurisprudence has settled on this principle in several other decisions. It is also worth noting the necessity to distinguish between unloading goods and delivery. The former is a physical act consisting of removing the goods from the ship and placing them on the port quay or storing them in warehouses. Delivery, on the other hand, is a legal act; it is giving and granting them to the owner or his representative after unloading. Unloading may coincide with delivery, meaning unloading and delivery happen simultaneously. This is what the Supreme Court indicated in a decision issued on 22/07/1997, stating: "... Since it appeared in the present case that the Council judges confused delivery and unloading, as their decision stated that the unloading operation is the responsibility of the port establishment, forgetting that this does not mean the total or partial exemption of the carrier's liability until the goods are delivered to the consignee in a legal delivery, they thus violated the law and exposed their decision to cassation." Delivery has an important effect, as it transfers the risks and the burden of loss. Before it, the carrier is responsible for the goods, and after it, they transfer and pass to the owner of the right in the goods. It is a legal act involving offer and acceptance; the carrier directs his will to deliver the goods to their owner, and the maritime transport contract for goods ends when the owner accepts this delivery without reservation and notification to the carrier. If the owner accepts this delivery without reservation and notification to the carrier, this is a presumption of correct delivery and that he received

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . The Algerian Maritime Code was issued by Ordinance No. 76-80 of 23 October 1976, Official Gazette No. 29, as amended and supplemented.

the goods as they were. The physical work in delivery consists of presenting the goods by the carrier to the consignee or his agent. Here, delivery differs from unloading, because the latter is a physical fact proven by all means and means removing the goods from the ship's side to land at the port of arrival. Thus, unloading may accompany the delivery process directly or precede it. Consequently, it extends to the sea carrier's liability for goods because the maritime transport contract does not end with the unloading operation carried out by loading and unloading companies in ports, but ends with the delivery operation. Our judiciary in Algeria deviated from this, as some Judicial Councils considered that losses subsequent to goods during the unloading operation from the ship are part of the responsibility of the Port Establishment as it is responsible for unloading and storing goods pursuant to Article 873 of the Algerian Maritime Code, and thus the sea carrier is considered exempt from liability. In our view, the sea carrier for goods remains fully responsible for the goods subject to maritime transport during the unloading operation carried out by unloading and loading companies, because the maritime transport contract does not end with unloading, but with correct delivery to the consignee specified in the bill of lading. This was confirmed by several decisions of the Supreme Court that the maritime transport contract does not end until after the delivery of goods to the consignee and that the unloading operation falls within the execution of the maritime transport contract regardless of its executor pursuant to the provisions of Articles 780 and 875 of the Algerian Law ⁽¹⁾.

Part II Cases of Liability and Exemption for the Sea Carrier for Goods

There are several causes leading to the establishment of the sea carrier's liability towards the shipper if he does not transport the goods at all, which is the main obligation arising from the maritime transport contract on the carrier. The carrier is also liable in case of loss of goods or their damage. Finally, he is liable to the shipper if he delays in delivering the goods to the port of arrival ⁽²⁾. In addition, most legislations have specified cases of exemption for the sea carrier from liability.

Section 1 Cases of Liability of the Carrier of Goods

The Algerian legislator stipulated in Article 802 of the Maritime Code that "The sea carrier is liable for losses or damages befalling the goods from the time he takes charge of them until their delivery to the consignee or his legal representative, excluding the cases listed in the following article." If the sea carrier's liability is proven, he must compensate for the extent of damages resulting from his fault; therefore, it must be proven that non-execution is due to a foreign cause in which he had no hand. Through this article, it becomes clear to us that the carrier's liability for goods is realized in:

Subsection 1 Non-execution of the Transport Contract

Undoubtedly, the carrier's primary obligation is to transport goods from the port of loading to the port of discharge ⁽³⁾. If he refuses to receive or transport them without a legitimate reason for this refusal, he is considered reneging on his essential obligation to transport the goods agreed to be transported with their owner, the shipper. In that case, his liability towards the latter arises, and he becomes responsible for all harm suffered by the shipper due to his refusal to receive or transport the goods. He is not exempt from this liability unless he proves that his refusal was due to a foreign cause not

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . Dr. Adel Ali Al-Maqdadi, *Maritime Law (The Ship – Persons of Navigation – Maritime Transport – Maritime Sales – Maritime Accidents – Insurance)*, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 1998, p. 128.

3 . Latif Jabr Komani, previous reference, p. 115.

attributable to him or his subordinates, or that the reason for refusal is attributable to the shipper himself, such as bringing goods other than those agreed upon or presenting goods containing dangerous materials that he cannot transport ⁽¹⁾.

Subsection 2 Liability for Loss of Goods

The carrier's liability arises in the case of loss of goods, whether the loss is total or partial. Total loss of goods occurs when the carrier cannot deliver the goods at the port of arrival to the consignee without proving their existence in another place where the consignee can receive them ⁽²⁾. This loss does not require actual realization, i.e., the destruction and disappearance of the thing like burning or sinking. The loss can be constructive, when none of those accidents happen, and the required period expires beyond the delivery date, and it becomes impossible for the carrier to find the thing to deliver to the consignee. This can be inferred from paragraph 2 of Article 788 of the Algerian Maritime Code, which states: "... and in cases of actual or presumed loss or damage...". As for the carrier's liability for partial loss, it arises if the goods arrive at the port of arrival and have suffered a decrease in weight, quantity, or number. However, the carrier is not liable for the customary shortage that affects goods during transport due to a cause related to their nature or the transport process, known as "shortage in transit," as if the goods were liquid materials and part evaporated due to weather factors, or the goods were grains and a quantity fell during loading ⁽³⁾. The carrier is obligated, pursuant to Article 782 of the Maritime Code, to deliver the goods to the legal consignee or his representative. In case of non-delivery of goods to the rightful owner, they are considered lost due to the impossibility of delivery ⁽⁴⁾. As we previously addressed Article 802 of the Maritime Code, "The sea carrier is liable for losses and damages befalling the goods." The intended meaning of loss here is disappearance or loss. However, it is worth mentioning that the Algerian legislator did not differentiate between total or partial loss of goods, as the wording of Article 802 mentioned above came in a general wording regarding losses and damages. Loss of goods is proven by proving the fact of delivery of goods to the carrier and the fact of non-receipt by the consignee. The claimant for compensation must present the bill of lading to prove the fact of the carrier's receipt of goods. As for the shortage or loss of goods, it is proven by recording reservations by the consignee or his legal representative.

Subsection 3 Liability for Damage to Goods

Damage to goods means the arrival of the goods complete in weight and quantity but damaged or defective, such as devices arriving smashed, flowers arriving withered, or glass and mirrors arriving broken, whether the defect covers all or part of them. The carrier is liable in this case for the damage and defects that affected the goods. However, he is not liable for the defect existing in the goods if this defect was proven by the carrier in the bill of lading. But if the bill of lading is clean, i.e., free of reservations, he is liable for every defect or damage affecting the goods, as it is presumed that he received them in good condition ⁽⁵⁾. Article 802 of the Algerian Maritime Code mentioned losses and damages, thus including damage or defect affecting the transported goods.

Subsection 4 Liability for Delay in Delivery of Goods

1 . Dr. Adel Ali Al-Maqdadi, same reference, p. 128.

2 . Chetouane Hayat, *The Contract of Maritime Transport of Goods: A Study within the Framework of the 1924 Brussels Convention and the Algerian Maritime Code*, Master's Thesis, Mouloud Mammeri University of Tizi Ouzou, Faculty of Law, n.d., p. 111.

3 . Dr. Adel Ali Al-Maqdadi, previous reference, p. 129.

4 . Chetouane Hayat, previous reference, p. 112.

5 . Dr. Adel Ali Al-Maqdadi, previous reference, p. 130.

The sea carrier for goods is liable for the harm resulting from the delay in delivering goods. Regardless of whether there is loss or damage to the goods, the sea carrier is liable for delay, provided that evidence is provided for the harm resulting from the delay in arrival. Unlike loss or damage, which inherently includes the harm befalling the consignee represented in the diminution of the value of things, delay in itself does not imply harm befalling the recipient of the transport service. In other words, delay may not result in any harm, so the sea carrier's liability for goods does not arise. However, if the delay causes harm to the recipient of the transport service, the carrier becomes liable to compensate for this harm ⁽¹⁾. The carrier is liable for delay if the goods arrive after the agreed arrival time. The agreement may be explicit or implied from the schedules of regular ship voyages. The carrier is also liable for delay if he exceeds the time normally taken by an ordinary carrier in similar circumstances, in the case where no arrival time was agreed upon ⁽²⁾. The Algerian legislator took into account the economic damage resulting from the delay in delivering goods transported by sea to the consignee within its rules. This is evident through the legal texts in Articles 771, 775, and 805 of the Maritime Code. Article 771 of Law No. 80 of 1976 stipulated the case of delay in delivering goods when the carrier substitutes the ship with another during the execution of the transport contract. It is clear from the text that the carrier is liable for every delay in delivering goods and that if the carrier substitutes the ship specified in the contract with another, this must not affect the time agreed upon between the parties for delivery. To clarify the phrase "without delay" in Article 775, which states that "Goods must be transported within a suitable period," the suitable period is the same as the "reasonable period" in which a diligent carrier delivers the goods to the consignee ⁽³⁾. To distinguish between the specified agreed time between the parties to the maritime transport contract for delivery and the reasonable time required for a diligent carrier to deliver goods, Article 805 of the Algerian Maritime Code stipulated: "If the shipper or his representative did not declare the nature or value of the goods before loading them onto the ship and this declaration was not recorded in the bill of lading or any other similar transport document, the carrier is not liable for the delayed goods that were not delivered at the agreed time or in the reasonable time required from a diligent carrier to deliver the goods therein." It is clear from this text that the Algerian legislator subjected the delay in delivering goods transported by sea to the consignee to the rules of maritime law, with the possibility of delivering goods in two cases: either at the time agreed between the parties or in the reasonable or suitable time. The reasonable or suitable time for delivery is measured by the standard of the diligent man, and the sea carrier is not measured by the diligent carrier unless the latter is placed in the same circumstances surrounding the transport. It should be noted that the consignee must not only prove the sea carrier's liability for delay but must also prove the harm he suffered due to this delay. This proof is by all means of evidence, but without waiting for the arrival of the goods to conduct the inspection. However, the sea carrier can exempt himself from liability due to delay in delivering goods if he proves that the harm is due to one of the legal exemption cases stipulated in Article 803 of the Maritime Code. It should also be noted that conditions for exemption from liability due to delay in delivering goods are considered void under the law pursuant to paragraph (b) of Article 811, which

1 . Talib Hassan Mousa, previous reference, pp. 141–142.

2 . Ezz El-Din El-Dinnasouri and Counselor Abdel Hamid El-Shawarbi, *Civil Liability in Light of Jurisprudence and Case Law*, Fifth Edition, Alexandria, 1996, p. 1488.

3 . See Ordinance No. 76-80 of 23 October 1976 containing the Algerian Maritime Code, Official Gazette No. 29, as amended and supplemented by Law No. 98-05 of 28 June 1998, Official Gazette No. 47.

stipulates: "Any contractual condition whose purpose or direct or indirect effect is to limit the carrier's liability to an amount less than that specified in Article 805 is void and of no effect." No text in the Brussels Convention of 1924 indicated the application of the sea carrier's delay in delivering goods transported by sea to the consignee on its texts. All that was mentioned in the Convention are the expressions "loss or damages" and "damage or injury" in Article 3, paragraph 6, and Article 4, paragraphs 1, 2, 3, and 4, without being followed by any phrase indicating or suggesting the application of this harm to its texts. However, some phrases in the articles of this Convention aroused much controversy, including the phrase "... relating to the goods..." which followed the phrase "loss or damage," which aroused much controversy about the intended meaning: do they indicate the application of delay in delivering goods transported by sea to the texts of the Convention or not? All this led to differences in viewpoints among jurists and even a division in judicial positions. However, the conclusion of the above is that delay in delivering goods transported by sea applies to the texts of the Brussels Convention, although it did not include texts on this case. Regarding the Hamburg Convention for the Transport of Goods of 1978, paragraph 2 of Article 5 stipulated regarding the carrier's liability for delay that delay in delivery entails that liability when the goods are not delivered at the port of discharge stipulated in the transport contract within the specified or agreed period in the contract. In the absence of such an agreement in the contract, the criterion for delay in delivery is the non-delivery of goods within the period required from a diligent carrier, taking into account the circumstances of reality. In fact, this provision in the second paragraph was met with many difficulties in interpretation when applied regarding the criterion of delay in the absence of an agreement on it. The phrase "the period required from a diligent carrier" contains much fluidity in its content; how can the interpreter set a standard for diligence in this regard, especially since the mentioned paragraph stipulated the necessity of taking into account the circumstances of reality regarding the determination of the delivery period required from a diligent carrier. Thus, international conventions differed on the issue of including the subject of delay in delivering goods transported by sea within their texts, as we saw previously. Hence, the national legislations derived from them, such as the Algerian Maritime Code, differed in the extent of applying the economic damage resulting from delay in delivering goods to the consignee ⁽¹⁾.

Section 2 Cases of Exemption of the Sea Carrier for Goods from Liability

The carrier cannot deny his liability by proving that he did not commit a fault in executing the transport contract, as contractual breach is realized simply by the non-realization of the result represented by the arrival of goods complete and sound. However, the carrier may deny his liability by negating the causal link between the non-realization of the result and the harm suffered by the sender or consignee ⁽²⁾. The carrier cannot negate the causal link except by proving that the non-realization of the result is due to a foreign cause, i.e., a cause in which the carrier had no role whatsoever ⁽³⁾.

Subsection 1 Exemption Cases Specified in Article 803

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>

2 . Dr. Hani Dweikar, previous reference, pp. 91–92.

3 . Abdel Razzaq Al-Sanhouri, Al-Wasit in the Explanation of Civil Law: The Theory of Obligation in General, Part I, Sources of Obligation, Dar Ihya Al-Turath Al-Arabi, Beirut, para. 585 et seq.

Thus, due to the dangers of maritime navigation and following international legislations and emulating the Brussels Convention of 1924, the legislator provided several cases for exemption from liability. Article 803 of the Algerian Maritime Code enumerated these cases.

First: The case of unseaworthiness of the ship when the carrier provides proof that he performed his duties. According to general rules, the carrier is obliged to provide a seaworthy ship capable of delivering the goods safely to the port of arrival, which is an obligation to achieve a specific result. If this is not achieved, the carrier is liable for the harm suffered by the shipper, unless the carrier can attribute this harm to a foreign cause. There is no room to speak of a foreign cause if the harm resulted from a defect in the ship, even if this defect was hidden. This entails the carrier's obligation to provide a seaworthy ship from the beginning of the voyage until its end. However, the Algerian legislator took the same direction as the Brussels Convention related to the Unification of Certain Rules of Law relating to Bills of Lading of 1924, which sufficed by imposing on the carrier the obligation of due diligence before the voyage or at its beginning to make the ship seaworthy, considering that the carrier has no authority over the ship after that. If he proves that he fulfilled his obligation and exercised due diligence to make the ship seaworthy, the situation is not free from either being due to a hidden defect the carrier could not discover before the voyage or being due to a breakdown that occurred to the ship after the start of the voyage. As for apparent defects that can be discovered by reasonable vigilance, the carrier is liable for them, such as the aging of ship parts and the damage to its machines like refrigeration machines due to poor maintenance or long use. The burden of proof regarding the exercise of due diligence lies with the sea carrier or any other person invoking the exemption, such as the charterer. The carrier may seek assistance in this proof from certificates issued by administrative authorities and supervisory bodies. These certificates do not establish a presumption of the ship's seaworthiness and freedom from defects, but are simple presumptions subject to rebuttal⁽¹⁾.

Second: The case of nautical errors committed by the master, pilot, or other maritime delegates. The sea carrier is exempted from liability for a fault in navigation, which is the technical fault committed in steering and navigating the ship, as if the master violated sailing rules at sea and the ship collided, damaging the cargo loaded on it. The exemption from nautical errors is justified by the fact that the carrier does not actually or legally intervene in the navigation and sailing of the ship, as the master has wide authority in disposition. The carrier remains liable for his commercial faults represented in exploiting the ship's activity in trade, as the carrier is liable for defective packing and error in using refrigeration machines for the elements of goods because the primary purpose of using these machines is to preserve goods. Maritime management consists of equipping the ship with what it needs and doing what is required of maintenance, repairs, and operating its devices and steering it; it is a technical function. Errors in ship management are errors in works related to the ship itself without entering into its movement and navigation, but they indirectly affect its cargo, such as not closing one of the ship's openings tightly, resulting in seawater entering and damaging the goods, and the fault and negligence in filling the ship's water tank to achieve its balance⁽²⁾. The carrier's exemption from liability for fault in navigation or ship management does not cover intentional faults, which are akin to fraud or quasi-fraud. The carrier invoking the exemption from liability bears the burden of proving

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . Dr. Talib Hassan Mousa, previous reference, pp. 146–147.

that the harm to the goods arose from the fault of one of the maritime subordinates in navigation or ship management.

Third: The case of fire, unless caused by the act or fault of the carrier. The exemption in these cases is not limited to liability arising from fire but also includes damages caused by smoke or water that extinguished the fire. The carrier is exempt from liability if he proves a causal relationship between the harm to the goods and the fire that occurred. However, there is no room for exempting the carrier from liability if the fire occurred by his act or fault.

Fourth: The case of perils and accidents of the sea or other navigable waters. This refers to the dangers to which the ship is exposed due to travel in seas or rivers connected to them, such as winds, fog, rocks, and others that obstruct the ship during its voyage and cause loss or damage to goods. For the carrier to be exempt from liability, it suffices to prove that the harm to the goods was due to one of the mentioned dangers. However, the carrier remains liable to compensate for the harm if the shipper proves that the occurrence of the danger was due to his fault.

Fifth: The case of disturbances and the closure of warehouses or factories in the face of labor and the obstruction of its work, totally or partially, whatever the causes. Strike, lockout, or stoppage are considered different types of obstacles that prevent the carrier from executing his obligation to the shipper or delay this obligation, as the execution of the obligation becomes impossible, and he cannot avoid delaying the execution of the contract. This is provided that the delay was not prior to the event so that he evades his obligation due for execution before the strike, for example, and that the cause of the strike is not from the carrier, although the sixth case of Article 803 mentioned the exemption whatever the cause leading to the strike, but the actions issued by the carrier leading to the strike cannot be considered exempt from liability ⁽¹⁾.

Sixth: The case of force majeure. Force majeure is an accident that cannot be foreseen or avoided, and the carrier has no hand in its occurrence. It includes sudden natural accidents like volcanoes and earthquakes. Regarding climatic conditions, the origin, with the possibility of obtaining weather reports, is that they do not constitute force majeure. However, if these conditions reach an exceptional degree that was not expected, they become, in this case, an application of force majeure. Also considered as force majeure are the acts of the prince (Act of Prince), such as the forced seizure of means of transport, carts, or boats by public authorities. Likewise, the concept of force majeure includes, in the view of some, sudden accidents such as the explosion of the vehicle engine without fault of the driver of the means of transport, which led to harming the goods, as well as the outbreak of war, security disturbances, or strike ⁽²⁾.

Seventh: The case of hidden defect, special nature, or inherent vice of the goods or shortage of goods during the voyage. The Brussels Convention of 1924 stipulated in its Article 4/2: "Deficiency in volume or weight and shortage of goods in volume or weight during the way arising from the special goods or a special defect therein," known as "shortage in transit." It usually applies to goods that dry out over time like meat and grains or evaporate like liquids. Shortage in transit varies according to the nature of the goods, the length of the sea voyage, and the extent of weather changes during the way, as well as the method used in loading and unloading goods. The same applies in the case of insufficient packaging or insufficiency or imperfection of marks placed on the goods ⁽³⁾.

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . Dr. Hani Dweikar, previous reference, pp. 92–93.

3 . Dr. Talib Hassan Mousa, previous reference, pp. 146–147.

Eighth: The case of saving the lives of persons or property at sea or attempting to do so. Navigation obliges the master, according to circumstances, to provide assistance to property as it imposes on him the duty to provide assistance to persons found at sea in danger of perishing. The performance of this duty may result in the destruction of some goods loaded on the ship providing assistance. Therefore, the sea carrier for goods is exempt from liability for harm to goods, as this was due to the master performing a humanitarian duty whose performance is imposed on him or attributed to him ⁽¹⁾. This is also stipulated by the Brussels Convention. As for the Hamburg Convention, it distinguished between saving lives, which is a duty to perform and cannot be hesitated upon due to humanitarian considerations, and saving goods, which does not obligate the carrier to perform it, as it is not reasonable for the carrier to risk his ship and cargo to save the cargo of others ⁽²⁾.

Subsection 2 Special Cases of Exemption

There are special cases of exemption stipulated by the Algerian legislator; if they are realized, the sea carrier for goods is also exempt from liability. We will attempt to mention them as follows:

First - The case of the concurrence of the carrier's fault or his delegates with another contributing cause to the losses incurred by the goods: This is what Article 804 of the Algerian Maritime Code stipulated, which discussed the carrier's liability, his fault, and the fault of his delegate, and his non-liability for other errors. In this case, the sea carrier is liable only proportionally and for his fault or the fault of his delegates. The carrier must prove that he is not responsible for the remaining damages incurred by the goods, and the burden of proving non-liability for the remaining losses and other damages falls on him.

Second - The case of not mentioning correct data by the shipper: This is what Article 805 of the Algerian Maritime Code stipulated, by exempting the sea carrier from liability if the shipper mentioned incorrect data. Thus, if the shipper or his representative did not declare the nature and value of the goods before loading them onto the ship, and this declaration was not recorded in the bill of lading or any other similar transport document, the carrier is not liable except within the limits decided by the law, i.e., 10,000 units of account per package or other shipping unit.

Third - The case of the shipper's false declaration: This is what Article 810 of the Maritime Code stipulated, stating: "The carrier is not liable for loss or damage caused to the goods or what follows them if the shipper deliberately made a false declaration regarding their type or value in the bill of lading or another document supporting transport." Likewise, the negligence clause is a clause that exempts the carrier himself from liability for nautical errors from maritime or land subordinates or both if he wishes ⁽³⁾.

Fourth - The case of transporting live animals on the ship's deck: The Maritime Code did not mention this case, but it can be inferred through the conditions of the sea bill of lading "... The carrier and the ship's master are not subject to any liability for the transport operation of live animals and are not liable for diseases or accidents or for the killing of one of them during the voyage whatever the reasons, and are not obliged to give them water, food, or anything else except within the limits of reason." It is clear that this reverts to the special risks resulting from the transport of these live animals by virtue of their nature. However, this case began to require attention after the conclusion of the Brussels Convention of 1924 and in the preparatory work for the Hamburg Convention of 1978.

1 . Dr. Adly Amir Khaled, previous reference, p. 79.

2 . Dr. Talib Hassan Mousa, same reference, p. 151.

3 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

However, the matter ended for the Hamburg Convention of 1978 with a compromise regarding this case, as is clear from the text of paragraph 5 of Article 5 of that Convention ⁽¹⁾. This is what Article 812, paragraph 2, of the Maritime Code stipulated, which states: "Contrary to the previous article, all conditions related to limiting liability or compensation are permitted as follows... in the transport of animals and the transport of goods on the ship's deck."

Fifth - The case of transporting goods on the ship's deck: As an exception to the general principle of not transporting goods on the ship's deck, the issue of the non-liability of the sea carrier for goods may arise despite his transport of them on the ship's deck and in places not designated for them. This is if the loading occurred by agreement with the shipper, which is what paragraph 2 of Article 774 of the Algerian Maritime Code stipulated ⁽²⁾.

Part III Special Provisions for Claiming Compensation

Once the carrier's liability is proven, the injured party has the right to claim compensation. Since the matter relates to raising the carrier's contractual liability, the right to file a liability lawsuit is established for the sender or the consignee; the former as a contracting party in the transport contract, and the latter based on the direct lawsuit established for him. Regarding claiming compensation in the field of goods transport, the issue arises of determining how to estimate compensation on one hand, and examining the special rule for the statute of limitations for the lawsuit on the other.

Section 1 Legal Limitation of the Sea Carrier's Liability and Excluded Cases

In consideration of the circumstances surrounding the sea carrier, and in exchange for depriving the sea carrier of including exemption conditions from liability in the bill of lading, the carrier was allowed to limit his liability for damages befalling the shipper to a maximum ceiling for his liability. The reason for this is so that he does not fall under heavy burdens for the huge damages caused by maritime transport and thus becomes unable to bear them, which may lead to the discontinuation of maritime exploitation, harming his country's economy. The legal limitation of the sea carrier's liability is intended to set a maximum limit for the amount of compensation that the carrier commits to if his liability arises. He cannot be obligated to more than that, even if the damages suffered by the shipper were greater. However, this limitation was not absolute but oscillated between the principle represented in the cases of legal limitation and the exception, which are the cases excluded from the legal limitation. Therefore, we will attempt to address both points in the following two Sections:

Subsection 1 Cases Subject to Legal Limitation

Before addressing the position of the Algerian legislator regarding the legal limitation of the sea carrier's liability for goods, we must address the provisions of the Brussels Convention related to bills of lading regarding this subject. Referring to the text of Article 4, paragraph 5 of the Brussels Convention, we find that it set a maximum limit for the sea carrier's liability in case of loss or damage to goods at one hundred English pounds per package or unit. Accordingly, if the amount of harm to one of the packages exceeds one hundred pounds, the shipper receives only one hundred pounds. This judgment does not change if the harm equals one hundred pounds. If the harm to one of the packages is less than one hundred pounds, the shipper is entitled only to compensation for the harm he suffered and cannot claim the one hundred pounds so as not to be enriched at the carrier's expense without cause. Article 9, paragraph 1 of the Convention stipulates that the monetary units referred to in this

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

2 . Dr. Adly Amir Khaled, same reference, p. 77.

Convention are the gold value. This means that the shipper receives compensation in paper currency calculated based on the gold value of the Pound Sterling on the day the ship arrives at the port of discharge. The purpose of this judgment is to protect the shipper from fluctuations in the value of paper money and to achieve equality between carriers in different countries by imposing fixed and specified compensation. This is the same position taken by the Algerian legislator in the text of Article 805 of the Maritime Code, which stipulated: "If the shipper or his representative did not declare the nature and value of the goods before loading them onto the ship, and did not present this declaration in the bill of lading or any similar document, the carrier is not liable for losses or damages befalling the goods related thereto in an amount exceeding 10,000 Algerian dinars as a unit of account per package or other shipping unit, and 30 units of account per kilogram or suffers losses or damages from the total weight of the goods for the applicable minimum, and in an amount equivalent to two and a half times the freight due for the delayed goods that were not delivered at the agreed time, or in the time required from a diligent carrier to deliver the goods therein, but not exceeding the total freight due under the maritime transport contract." The text of this article shows that the extent of the carrier's liability to compensate for the harm suffered by the shipper varies according to whether the bill of lading contains or does not contain a statement of the genus of the goods and their value. If nothing is mentioned about the statement of the genus of the goods and their value in the bill of lading, the carrier is not liable to compensate for all the harm suffered by the shipper if it exceeds a certain limit, because the carrier did not know the real value of the shipped goods to take the necessary precautions to place them in the proper place in the ship or to intensify surveillance or preserve them if their value or nature required that, such as if they were jewelry or perishable materials. Therefore, the Algerian legislator specified in the text of Article 805 of the Maritime Code in this case, due to loss or damage befalling the goods or related to them, an amount not exceeding 10,000 dinars as a unit of account per package or shipping unit. The intended meaning of the shipping unit in this context is the unit of weight, measurement, or volume usually adopted as a basis for determining freight, whether a metric ton, kilogram, volumetric ton, or cubic meter. The unit here is specific to goods loaded in bulk without packaging where only their weight, measurement, or volume is known without their number, such as grains, timber, coal, petroleum, and wine. Seeking to keep pace with what is internationally accepted, and after decreeing the invalidity of any condition that might exempt or mitigate the carrier's liability which is of public order, our legislator decided to limit the carrier's liability to a specific ceiling regardless of the actual harm. Article 805 of the Algerian Maritime Code, after its amendment in 1998, stipulates the following: "... the carrier is not liable for losses or damages befalling the goods or related to them in an amount exceeding 10,000 units of account (1) per package or other shipping unit or 30 units of account per kilogram suffering losses or damages from the total weight of the goods for the applicable minimum..."⁽¹⁾.

It should be noted that, in reality, this was not a limitation of liability but a determination of the value of compensation for resulting harm. The delegates of the sea carrier benefit from this limitation by virtue of Article 814 of the Algerian Maritime Code. Article 815 of the Algerian Maritime Code confirms what was previously mentioned by stipulating that the total amounts of compensation owed by the carrier and his delegates cannot exceed the limits stipulated in Article 617 above. It is noted in this article that the reference was to Article 617, and this is an error because the correct one is Article

1 . Liability of the Maritime Carrier for Goods, available at: <http://www.djelfa.info/vb/showthread.php?t=260977>.

805 of the same law. Article 808 adds that the carrier is not a debtor towards a foreign person whose country has set liability limits lower than those imposed in Article 805 of the Algerian Maritime Code except for the lesser amount.

Section 2 Cases Excluded from Legal Limitation of Liability

Just as the texts granted the carrier the possibility of benefiting from limitations, they prevented him from this possibility in specific cases, which are:

Subsection 1 Declaration by the Shipper of the Type and Value of Goods

If the shipper declares the type and value of the goods before loading, and this declaration is included in the bill of lading, the mentioned declaration deprives the transport of benefiting from the principle of limitation of liability decided by the law ⁽¹⁾. Thus, any loss or damage to these goods is compensated in full, i.e., according to the declared value of the goods. This judgment is inferred by reading the text contrary to the meaning of Article 805 of the Algerian Maritime Code, which stipulates: "If the shipper did not declare the type and value of the goods before transporting them..." It should be noted that if the shipper makes an incorrect declaration about the nature of the goods or their value, and this statement is included in the bill of lading, the carrier is not liable for the loss or damage to the goods if he proves the inaccuracy of this statement ⁽²⁾.

Subsection 2 The Subject of Fraud

The legal limitation of the sea carrier's liability is based on the idea of balance between the carrier's interest and the shipper's interest, and primarily presumes the good faith of the carrier in executing his obligations. If the carrier, his deputy, or one of his subordinates commits voluntary bad behavior, i.e., shameful behavior that disrupts this balance, the carrier loses the right to invoke the limitation of his liability ⁽³⁾. Thus, the carrier loses his right to benefit from the limitations if the goods suffer harm or loss resulting from an act of neglect with intent, or if he consciously performed an act and the harm occurred. This is what Article 809 of the Algerian Maritime Code explicitly stipulates ⁽⁴⁾, a text that can be considered a literal translation of Article 6 of the Hamburg Rules. He is then obliged to provide full compensation.

Subsection 3 The Stage Prior to Loading and Post-Discharge

The parties possess the freedom to agree on limiting liability without that being contrary to legal texts⁽⁵⁾.

Subsection 4 In Case of Transport on the Ship's Deck or Transport of Live Animals

In this case, the carrier is not bound by the limitations because here the matter is left to the agreement of the parties, meaning that the limitation of liability is contractual. Although benefiting from legal limitations of liability is a departure from the norm, they also extend to the carrier's delegates, and the same provisions regarding exceptions apply to them.

1 . Dr. Latif Jabr Komani, previous reference, p. 133.

2 . Dr. Adly Amir Khaled, previous reference.

3 . Dr. Mohamed Kamal Hamdi, Maritime Law (The Ship – Persons of Maritime Navigation), Dar Al-Maaref Establishment, Alexandria, 1998, p. 87.

4 . Article 809 of the Algerian Maritime Code provides as follows:

“The carrier shall not be entitled to benefit from the limits of liability referred to in Article 805 above if it is proven that the loss or damage sustained by the goods resulted from an act or omission by the carrier committed either with intent to cause such damage or recklessly and with knowledge that damage would probably result.”

5 . Chetouane Hayat, previous reference, p. 125.

Conclusion

In conclusion, we point out that the Algerian legislator did not ratify the two Protocols amending the Brussels Convention of 1924 related to the Unification of Bills of Lading, despite taking many of their provisions in the Algerian Maritime Code. Also, the importance of the beginning of the sea carrier's liability for goods must always be noted; it begins from the date of his receipt of the goods and ends with their delivery to the consignee, not with the unloading of goods at the port of arrival. Also, through our study of the liability of the sea carrier for goods, we find that the Algerian legislator established contractual balance by exempting the carrier in the twelve cases of liability stipulated in Article 803 of the Maritime Code. Thus, there is no strong party and weak party in the maritime transport contract. The legislator also established privileges for the shipper and obligations, and also gave privileges to the carrier and specialized him with obligations. We also supported this topic with a group of judicial decisions issued by the Commercial and Maritime Chamber of the Supreme Court, in order to unify legal concepts among Judicial Councils and Courts, especially in light of the development of maritime activity resulting from the development of economic activity in Algeria.

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