

From Loading to Delivery: The Scope of the Carrier's Duty of Care in Containerised Carriages and Protective Clauses in Practice

In container carriage, the scope of the carrier's duty of care and custody, as well as the period between discharge and actual delivery, are among the issues frequently giving rise to disputes and judicial decisions. This study outlines the core principles governing the carrier's period of responsibility and summarises the legal effect of protective clauses on potential claims that may be brought by cargo interests.



I. Commencement and Termination of the Carrier's Period of Responsibility

The carrier's liability arising from the duty of care and diligence over the cargo is, in principle, governed by the legal regimes incorporated into the bill of lading, which typically refer to the Hague Rules or the Hague-Visby Rules. To determine the commencement and termination of the carrier's responsibility, the core period defined under these regimes must be examined.

Commencement: The carrier's obligations of due diligence and proper care under the contract of carriage and the bill of lading generally commence at the moment the cargo is loaded on board the vessel (time of loading). Such obligations include exercising due diligence to make the vessel seaworthy, implementing an adequate and careful system to prevent loss of or damage to the cargo during the voyage, and ensuring proper delivery. The carrier's duty of care encompasses all operations relating to loading, handling, stowage, carriage, preservation, protection, and discharge.

Termination: The carrier's liability under the bill of lading typically ceases once the cargo is discharged from the vessel (time of discharge). The period between discharge and the consignee's actual taking delivery does not ordinarily extend the carrier's responsibility or duty of care under the Hague Rules.

II. The Interval Between Discharge and Delivery: Storage and Delay

Although the carrier's liability formally ends upon discharge, situations may arise where actual delivery to the consignee is delayed. Prolonged intervals between discharge and physical delivery—often due to disputes regarding storage fees or demurrage—create uncertainty as to who bears the risk of damage during this period.



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- a) **Completion of Delivery:** Under a standard bill of lading, the carrier's responsibility ends once the cargo is delivered to the merchant or placed under the custody of customs or any other competent authority. The carrier is entitled to deliver the cargo alongside the vessel, into a customs shed, on a quay, or at any other place or manner permitted by the bill of lading. It must be emphasized, however, that to bind third-party bill of lading holders, any delivery arrangements agreed under the charterparty must be properly incorporated into the bill of lading, irrespective of the governing law of the charterparty.
- b) **Storage and the Carrier's Potential Liability:** If the carrier retains actual control or custody of the container or cargo during the interval between discharge and delivery—for instance, where the terminal operator acts as the carrier's agent or servants—a claim based on bailment may arise. In legal systems recognizing joint and several liability, a terminal operator providing storage services may be considered as a servant of the carrier, potentially extending the carrier's duty of care beyond discharge. In the absence of limiting clauses, free-time periods in liner tariffs are sometimes interpreted as continued custody (bailment), exposing the carrier to additional risk.

III. Delay in Delivery due to Disputes regarding Storage Fees, Original Document Issues, Sale and Purchase Contract, and Bailment Claims

- c) **Bailment Claims:** As noted above, storing the cargo or container in a terminal after discharge may lead to allegations that the carrier remains a bailee. Delays caused by issues relating to original documents, disputes between shipper/charterer and consignee, or demurrage claims may render such bailment-based allegations more fragile for the carrier to defend against, unless protective clauses are expressly incorporated into the bill of lading or relevant tariff.
- d) **Consignee's Duty of Care:** Where delay arises from demurrage or storage fees, the consignee is expected to mitigate delay—by paying such charges under protest or secure them—and to take delivery at the earliest opportunity. Such conduct is regarded as part of the consignee's own duty of care and relieves the carrier from liability for any damage arising during the extended waiting period, in principle.
- e) **JB Cocoa SDN BHD & Ors v Maersk Line AS:** In this judgment, the English High Court held that mould and moisture damage to containerized cocoa beans resulted from prolonged post-discharge storage, falling outside the carrier's contractual period of responsibility, and that the relevant risk had



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passed to the consignee. The Court found that the carrier had no possessory status during the six-week storage period following discharge, confirming once again that delays in delivery, waiting time in storage areas, and documentation issues fall within the consignee's sphere of risk and management.

IV. Recommended Clauses/Provisions to be Incorporated into Bills of Lading

In order to optimise risk management in container transport and minimise any grey areas that may arise depending on the applicable law, it would be advisable to include the following clauses in the bills of lading and/or in the tariff provisions to be dully incorporated into the bill of lading.

1) Paramount Clause:

Its purpose is to define the liability regime governing the contract of carriage. It provides that the Hague-Visby Rules shall apply—first as compulsorily in force at the place of shipment, failing which at the place of discharge, and otherwise the Hague Rules; if neither applies compulsorily, the Hague-Visby Rules apply contractually. The clause further excludes the carrier's liability for loss or damage before loading, after discharge, while in the custody of another carrier, and in respect of deck cargo and live animals.

2) Himalaya Clause

Extends to all subcontractors (terminal operators, stevedores, etc.) the same rights, defences, exemptions, and limitations of liability available to the carrier. This provides protection in the event of direct claims brought against such subcontractors.

3) Delivery Clause

Clearly stipulates that the carrier's responsibility ends irrevocably once the cargo is delivered to the merchant, inland carriers, or the custody of authorities such as Customs. This reinforces the legal principle that liability ceases at the time of discharge.

4) Delay Clause

Clarifies that the carrier does not guarantee arrival at any particular time and is not liable for direct or consequential losses resulting from delay.



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