

Assignments maritime law

[Transportation](#)



**ASSIGN
BUSTER**

Question A

Advise The Theatre of Wine on any claim that they might have, and what level of limitation will apply to that claim that they might have. People to note are;

The Buyer/claimant: (The Theatre of Wine), in Greenwich London, UK

Shipowner/defendant: (Carry Carefully), South Africa

Copy of the bill of lading

My first advice is to ask The Theatre of Wine is that they need to know key important factors; The claimant need to prove when the defendant's period of responsibility for the goods begin, and what was the condition of the goods at the time. In establishing the condition and the quantity of the goods at the start of the defendant's period of responsibility, the claimant will be able to rely on the common law and statutory rules that governs the effect of the statements in shipping documents, such as bill of lading.

As to this case there are no information about the about the period when the wine were transported, date when the contract has taken place and delivery terms, no information about how the cargo was stowed and also no information from the claimant about how the documents would be issued such as the mate receipt, final and initial draft survey report of the vessel before loading the cargo and bill of lading.

Also, under every contract of carriage of goods by sea the carrier, in relation to loading, handling, stowage, carriage, custody, care and discharge of the goods shall be subject to the responsibilities and liabilities and entitle to the rights and immunities, also whether the cargo was in good condition or not,

the quantity or units of the consignment was not declared by the claimant before the cargo was loaded and have not been described on the bill of lading. In that case the carrier or the ship should not become liable for any loss or damage in connection with the consignment if the amount exceeding the equivalent of 10, 000 francs per package or unit 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher.

CARRIAGE OF GOODS BY SEA ACT 1 OF 1986

To amend the law with respect to the carriage of goods by sea and to provide for matters connected therewith.

Application of Hague Rules.—(1) Those Rules contained in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on 25 August 1924, as amended by the Protocol signed at Brussels on 23 February 1968, which are set out in the Schedule (hereinafter referred to as the Rules) shall, subject to the provisions of this Act, have the force of law and apply in respect of the Republic in relation to and in connection with:

(a) the carriage of goods by sea in ships where the port of shipment is a port in the Republic, whether or not the carriage is between ports in two different States within the meaning of Article X of the Rules; As in the current case between The Theatre of Wine the claimant and the shipowner Carry Carefully from South Africa to Greenwich London UK.

(b) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; In this case the bill of

lading has no detail as to weight and description of the consignment that were shipped.

(c) any receipt which is a non-negotiable document marked as such if the contract contained in it or evidenced by it or pursuant to which it is issued is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading, but subject to any necessary modifications and in particular with the omission in Article III of the Rules of the second sentence of paragraph 4 and paragraph 7;

Seaworthiness not to be implied. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply by virtue of this Act, any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Jurisdiction of courts. (1) Notwithstanding any purported ouster of jurisdiction, exclusive jurisdiction clause or agreement to refer any dispute to arbitration, and notwithstanding the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and of section 7 (1) (b) of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any person carrying on business in the Republic and the consignee under, or holder of, any bill of lading, waybill or like document for the carriage of goods to a destination in the Republic or to any port in the Republic, whether for final discharge or for discharge or for discharge for further carriage, may bring any action relating to the carriage of the said goods or any such bill of lading, waybill or document in a competent court in the Republic.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

The Carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- (a) make the ship seaworthy;
- (b) properly man, equip and supply the ship; and
- (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things. (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods:

The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection. (which is not the case)

After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates

of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading. (which is not the case)

Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability. (which is not the case)

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) act of God;
- (e) act of war;
- (f) act of public enemies;
- (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) act or omission of the shipper or owner of the goods, his agent or representative;
- (j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
- (n) insufficiency or inadequacy of marks;
- (o) insufficiency of packing;
- (p) latent defects not discoverable by due diligence; and
- (q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the

burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

(a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10 000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there is no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of

packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

Based on all above documents, clause and articles from Visby Amendments (the Brussels Protocol) and CARRIAGE OF GOODS BY SEA ACT NO. 1 OF 1986, I can strongly say the buyer "The Theatre of Wine" company has no chance to claim on the shipowner Carry Carefully, South Africa for damage the cargo.

B.

To What extent would you have advised parties to this type of carriage contract to include an arbitration clause into their contract? Buyer: The Theatre of Wine, in Greenwich, London, United Kingdom Shipowners/Shippers: Carry Carefully, South Africa we can introduce the following arbitration clause: " All disputes arising in connection with the present contract to be settled under the rules of Visby Amendments (the Brussels Protocol), CARRIAGE OF GOODS BY SEA ACT NO. 1 OF 1986 of South Africa and London Maritime Arbitrators Association by three arbitrators appointed in accordance with the rules. Arbitration shall be held in London. General Average. General Average shall be adjusted, stated and settled in London, according to the York Antwerp Rules 1974, as amended 1994 and subsequent amendments."

For sure the party exposed is „ The Theatre of Wine" from Greenwich, London, United Kingdom due to lack of cover of risk in his transportation contract