

## **Let us examine a quick comparison of the rules:**

### **1. Which Voyages are Covered?**

**Hague Rules-** Rules are silent

### **Hague - Visby Rules-- Art. 10:**

Bill of Lading is issued in a Contracting State ;or,  
Carriage is from a port in a Contracting State; or,  
Regardless of the nationality of the ship, the carrier, the shipper, the consignee or any other interested person, the contract of carriage expressly applies the rules of the "Intl. Conv. For the Unification of Certain Rules of Law relating to Bills of Lading".

### **Hamburg Rules-- Art. 2:**

- (a) Bill of Lading is issued in a Contracting State ;or,
- (b) Port of loading as per the contract of carriage by sea is from a port in a Contracting State; or,
- (c) Regardless of the nationality of the ship, the carrier, the actual career, the shipper, the consignee or any other interested person, the contract of carriage expressly applies the rules of the "United Nations Conv. On Carriage of Goods by Sea, 1978".
- (d) The port of discharge as provided for in the contract of carriage by sea is located in a Contracting State.
- (e) The provisions of this Convention are not applicable to charter parties. However, where a bill of lading is issued pursuant to a charter party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

Which Contracts are Covered?

**Hague Rules-- Art. 1(b):** Only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to carriage of goods by sea, including any bill of lading or any similar document, issued pursuant to a charter party, from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules-- Art. 1.6:** Any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of "United Nations Conv. On Carriage of Goods by Sea, 1978"; only in so far as it relates to the carriage by sea.

Geographical application?

**Hague Rules-- Art. 1(e):** Covers the period from the time when the goods are loaded on to the time they are discharged from the ship

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules--- Art. 4:** Carrier is responsible, while being "in charge" of the goods at the port of loading, during the carriage, and at the port of discharge, i.e. normally from the time taken over from the shipper to the time delivered to the consignee, subject to the regulations of the local port.

Who is the Carrier?

**Hague Rules--- Art. 1(a):** Includes the owner or the charterer who enters into a contract of carriage with a shipper

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules-- Art. 1.1, Art. 10, Art. 11:** Any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper. Covers requirements related to "actual" and "contractual" carriers.

Contract and Tort Claims

**Hague Rules--** Rules are silent. May apply to just contract claims.

**Hague - Visby Rules-- Art. 4 bis:** Applies to contract and tort claims

**Hamburg Rules-- Art. 7:** Applies to contract and tort claims

Carrier's general duty of care

**Hague Rules-- Art. 3:**

1. Carrier must exercise due diligence before and at the beginning of the voyage :

(a) make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds etc. fit and safe for reception, carriage and preservation of cargo.

(2) Carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

**Hague - Visby Rules---** Same as Hague rule

**Hamburg Rules-- Art. 5.1:** Carrier, his servants and agents, must take all the measures that could reasonably be required to avoid the event causing loss and its consequences.

## Carrier's defences

### **Hague Rules---- Art. 4:**

1. Un-seaworthiness – only defence is for carrier to show he exercised “due diligence” to ensure that the vessel is seaworthy, before and at the beginning of the voyage.
2. Properly and carefully load etc:-

The following defences apply:-

- (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 lock-outs, 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 goods;
- (n) Insufficiency of packing;
- (o) Insufficiency or inadequacy of marks;
- (p) Latent defects not discoverable by due diligence;
- (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 contribute to the loss or damage.

### **Hague - Visby Rules—**Same as Hague rule

**Hamburg Rules---** **Art. 5.1:** The carrier must prove that he, his servants or agents, took all measures that could reasonably be required to avoid the occurrence and its consequences.

## Burden of Proof

**Hague Rules--** The Rules are not quite clear, other than as indicated under **Art. 4(2)(a)**, mentioned above.

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules----** The carrier must prove that reasonable steps to avoid loss, were taken unless, damage is caused by fire

## Fire

**Hague Rules-- Arts. 3 and 4:** If due to e.g. poor stowage, carrier only liable if caused by his actual fault or privity. If caused by un-seaworthiness, carrier liable unless he

exercised due diligence to ensure vessel seaworthy, before and at the beginning of the voyage.

**Hague - Visby Rules-- Arts. 3 and 4:** Same as Hague rule

**Hamburg Rules-- Art. 5.4:** Carrier liable if the claimant proves fire arose from fault or neglect ( failing to take measures) on the part of the carrier, his servants or agents.

Live animals

**Hague Rules---- Art 1(c):** Not included in the rules

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules--- Arts. 1.5 and 5.5:** The rules apply, but carrier is not liable for the inherent "special risks". If the carrier proves that he has complied with the shipper's instructions, he will be presumed not to be liable.

Deck Cargo

**Hague Rules---- Art 1(c):** Not included in the rules, unless the contract of carriage states that cargo ought to be carried on deck, and is so actually carried.

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules-- Art.9:** Rules do not exclude the carriage of deck cargo. If the carrier and shipper agreed that the goods shall or may be carried on deck (or with the usage of the particular trade or is required by statutory rules / regulations), the carrier must include a statement in the bill of lading or other document evidencing the contract of carriage by sea (failing which, the carrier will become liable for damage, loss or delay, resulting solely from carriage on deck).

The carrier can not limit liability when deck carriage is in breach of an express agreement for carrying below deck.

Dangerous Cargo

**Hague Rules---- Art. 4 Rule 6:** Inflammable, explosive or dangerous goods if loaded without the knowledge of the master(or carrier's agent) may be discharged, rendered harmless or destroyed at the shipper's expense\*(i.e. shipper of such goods shall be liable for all damages and expenses, directly or indirectly arising out of or resulting from such shipment) . If the carrier knows of their nature but they prove to be dangerous, these may still be discharged, rendered harmless or destroyed without liability on the part of the carrier, save in general average.

**Hague - Visby Rules—** Same as Hague rule

**Hamburg Rules—**Similar rule apply, and the shipper is obliged to mark and label dangerous goods in a suitable manner.

Limits of liability

**Hague Rules----** Please refer to Article 4 and rule 5

**Hague - Visby Rules---** Please refer to Article 4 and rule 5

**Hamburg Rules---** Please refer to Articles 5 and 6

Loss of right to Limit Liability

**Hague Rules----** No special provisions, but the carrier's liability may be unlimited if there is unjustified deviation or deck-carriage.

**Hague - Visby Rules---** **Art. 4, Rule 5(e):** Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for. If it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

**Hamburg Rules-----** **Art.8:** Carrier will only lose right to limit liability if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier(or servant or agent) done with the intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay, would probably result. Deck carriage where expressly prohibited will result in loss of right to limit liability.

Lower Limits by agreement?

**Hague Rules----** **Art. 6:** Only permitted where not an ordinary shipment, and reasonable in special circumstances.

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules--** No specific right to agree to lower limits.

Higher Limits by agreement?

**Hague Rules----** **Art. 5:** Permitted if recorded in the bill of lading.

**Hague - Visby Rules—** Same as Hague rule

**Hamburg Rules--** **Art. 6.4, Art. 15:** Permitted if agreed between the carrier and the shipper. Should be recorded in the bill of lading.

Deviation

**Hague Rules----** Deviating carrier might lose right to rely on defences in the Rules and lose right to limit liability.

**Art. 4, Rule 4:** Provides, "any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of the Convention or contract of carriage".

**Hague - Visby Rules---** Same as Hague rule

**Hamburg Rules--** No special provisions. Deviation if it caused loss is subject to general test of the carrier's liability.

**Art. 5.6** Exempts a carrier from liability (other than from general average) where he attempts to save life, or, "reasonable measures" are taken to save property. This would apply to deviation as much as any other cause of loss.

What information must the Bill of Lading contain?

**Hague Rules---- Art.3 Rule 3:**

(a) Leading marks necessary for identifying the goods.

(b) No. of packages or pieces, or the quantity or weight, as the case may be, as furnished by the shipper.

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

**Hague - Visby Rules—** Same as Hague rule

**Hamburg Rules-- Art. 15:**

(a) The general nature of the goods; the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper. *If the carrier is unable to state any of these matters, he should express his omission in the bill of lading.*

(b) The apparent condition of the goods.

(c) The name and principal place of business of the carrier.

(d) The name of the shipper.

(e) The consignee if so named by the shipper.

(f) The port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading.

(g) The port of discharge under the contract of carriage by sea.

(h) The number of originals of the bill of lading, if more than one.

(i) The place of issuance of the bill of lading.

(j) The signature of the carrier or a person acting on his behalf.

(k) Freight, to the extent payable by the consignee.

(l) Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a "statement" that the carriage is subject to the provisions of this Convention, which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

(m) A statement if applicable, that the goods shall or may be carried on deck.

(n) The date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties.

(o) Any increased limit or limits of liability where agreed.

What is the effect of "statements" in the bill?

**Hague Rules----** **Art.3 Rule 4:** Prima facie evidence of their accuracy

**Hague - Visby Rules---** **Art.3 Rule 4:** Prima facie evidence in hands of the shipper, conclusive in hands of the third party; e.g. consignee to whom bill is transferred in good faith

**Hamburg Rules---** **Art. 16:** Prima facie evidence of statement in hands of the shipper (whether shipped or received bill of lading). Conclusive in hand of the third party who relies on statements. However, if the freight is payable by the holder of bill of lading, failure to state this is evidence that no freight is payable.

Effectiveness of Letter of Indemnity issued by the shipper for carrier not clausung bill

**Hague Rules----**No specific provision

**Hague - Visby Rules—**No specific provision

**Hamburg Rules---** **Art. 17:** Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to the particulars furnished by the shipper, for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

Such a letter of guarantee or agreement is valid as against the shipper, unless the carrier or the person acting on his behalf, by omitting the reservation as stated above, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. If the reservation omitted relates to particulars as furnished by the shipper, for insertion in the bill of lading, the carrier has no right of indemnity from the shipper, as is usually the case(please refer to this column under sr. No. 20).

Notification of Damage

**Hague Rules----** **Art. 3 Rule 6:** Notice of loss or damage must be given in writing to the carrier or to his agent:- On the day of delivery, or, Within 3 days of the delivery of the goods, where damage is latent

**Hague - Visby Rules—** Same as Hague rule

**Hamburg Rules-- Art. 19:** Notice of loss or damage is to be given in writing to carrier:-

- (i) By working day following delivery to consignee, or,
- (ii) Within 15 days of delivery where damage is latent.

Notice of delay must be given to the carrier, within 60 days of delivery of the goods to the consignee.

Carrier must give notice of loss or damage, to the shipper within 90 days of, delivery of the goods, or, occurrence of loss or damage, whichever is later.

Consequences of failing to notify the carrier of loss, damage or delay, as mentioned above

**Hague Rules---- Art. 3 Rule 6:** It would imply, prima facie evidence of delivery of goods in the condition described in the bill of lading

**Hague - Visby Rules—** Same as Hague rule

**Hamburg Rules--Art 19:** It would imply, prima facie evidence of delivery of goods in the condition described in the bill of lading. If the goods are delayed and yet complaint is not made within 60 days of the goods having been handed over to the consignee, the carrier is exempted from liability.

Limitation of Action

**Hague Rules---- Art. 3 Rule 6:** "Suit" must be brought within one year of the delivery or date delivery should have taken place. This period may, however, be extended, if the parties so agree,

**Hague - Visby Rules---** Same as Hague rule -- **Art. 3 Rule 6 bis:** An action for indemnity against a third person may be brought even after the expiration of the year provided for in the column to the left, if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than 3 months, commencing from the day, when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

**Hamburg Rules---- Art 20:** Litigation or arbitration to be commenced within 2 years from the date of delivery of the goods or the last day upon which the goods should have been delivered. Otherwise, it would be time-barred.

Indemnity proceedings may be commenced after this period ( at least 90 days from the date of commencement of action against carrier must be allowed).

Where can the cargo owner commence proceedings?

**Hague Rules-----**Rules are silent

**Hague - Visby Rules--** Same as Hague rule

**Hamburg Rules-- Art. 21:** May sue in court of:-

- a) Principal place of business of carrier;



- b) The place where the contract; was made, provided that the defendant has there a place of business. Branch or agency, through which the contract was made, or,
- c) Port of Loading; or,
- d) Port of Discharge; or,
- e) Any Place designated by the contract of carriage;

Place of arrest of the vessel, may be challenged by the carrier, if he submits to one of the other jurisdictions and provides security for the claim.

Arbitration

**Hague Rules----** Rules are silent

**Hague - Visby Rules-** Same as Hague rule

**Hamburg Rules----** **Art 22:** Arbitration agreement is permitted. If incorporating Charterparty arbitration clause, it must be included in the bill of lading as "special annotation". Claimant may choose, where to commence arbitration from:-

- (a) Place where defendant has principal place of business;
- (b) Place where the contract; was made.
- (c) Port of loading;
- (d) Port of discharge;
- (e) Place specified in the arbitration clause.

General Average

**Hague Rules----** **Art. 5:** "Nothing in these rules shall be held **to** prevent the insertion in a bill of lading, of any lawful position, regarding general average.

**Hague - Visby Rules--** **Art. 5:** The carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be indicated in the bill of lading, issued to the shipper.

The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this Convention. The bill of lading could always be inserted with any lawful provision, regarding general average.

**Hamburg Rules---** **Art 24:** This Convention does not prevent the application of provisions in the contract of carriage by sea or national law, regarding the adjustment of general average.

The provisions of this Convention (excluding that as mentioned against sr. no. 24 above) relating to the liability of the carrier for loss of or damage to the goods also determine, whether the consignee may refuse contribution in general average and, the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid. "

Provisions which conflict with the Rules:-

**Hague Rules----**Void

### **Hague - Visby Rules-- Void**

**Hamburg Rules-- Art 23.1:** Any stipulation in a contract of carriage by sea, in a bill of lading, is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning the benefit of insurance of goods in favour of the carrier, or any similar clause, is null and void.