

## UNIT – V

**Carriage of goods – Carriage by land – classification of carrier – right, duties and liability of common carrier. Carriage by sea – Contract of Affreightment – Charter party – kinds – classes. Bill of lading – Characteristics. Carriage by air – meaning – documents of carriage.**

Carriage of goods refers to transportation of goods by land, sea, or air. The relevant law governs the rights, responsibilities and liabilities, of the carrier and of the persons employing the services of the carrier. In the commercial life of any country, the need for carrying goods from one place to another cannot be overemphasised. Also, goods have to be moved from one country to another. For these purposes, a contract of carriage is to be entered into. The persons, organisations or associations which carry goods are known as carriers. Goods may be carried by land (including inland waterways), sea or air.

Accordingly, the law relating to carrying of goods is contained in the following enactments:

1. Carriage of goods by land:

(i) The Carriers Act, 1865. (ii) The Indian Railways Act, 1989.

2. Carriage of goods by sea:

(i) The (Indian) Bills of Lading Act, 1856. (ii) The Carriage of Goods by Sea Act, 1925. (iii) The Merchant Shipping Act, 1958. (iv) The Marine Insurance Act, 1963.

3. Carriage of goods by air: (i) The Carriage by Air Act, 1972.

Wherever there is no specific provision for a particular matter in these statutes, then the Indian Courts resort to English Common Law.

**Definition of a Contract of Carriage:** A contract of carriage of goods is a contract of bailment for reward.

**Classification of Carriers:** Generally speaking carriers are classified into (i) common carriers, (ii) private carriers and (iii) gratuitous carriers.

**Common Carriers.** The Carriers Act, 1865 defines a common carrier as any individual, firm or company (other than the government, who or which transports goods as a business, for money, from place to place, over land or inland waterways, for all persons (consignors) without any discrimination. It is worth noting that the Carriers Act, 1865 covers only common carriers of goods and not passengers.

**Private Carrier:** A private carrier is one who does not transport goods from one place to another regularly; he may engage in some casual jobs of carrying goods for certain selected persons between certain terminals. In fact, he carries his own goods and that's why he is known as a private carrier and not a common carrier. Also, he does not make a general offer to carry goods for any one from one place to another for hire. However, he may enter into a contract with someone to carry goods on the terms agreed upon between them. In such a situation, it is a contract of bailment. Therefore, such transactions are not covered by the Common Carriers Act, 1865.

**Gratuitous Carrier:** When a person carries goods of another free of charge, he is a gratuitous carrier. Similarly a person may give lift in his vehicle to another person voluntarily without any compensation. Thus a gratuitous carrier may carry not only goods but persons also free of charge.

Distinction between a Common Carrier and a Private Carrier.

(i) A common carrier publicly undertakes to carry from place to place the goods of any person who chooses to employ him. A private carrier does not carry regularly from place to place but is an occasional carrier.

(ii) A common carrier is bound to carry the goods of any person provided certain conditions are satisfied. A private carrier is free to accept or reject the goods for carriage.

(iii) The liabilities of a common carrier are determined by the Common Carriers Act, 1865. A private carrier's liability is not determined by the Common Carriers Act, 1865. He is liable as a bailee as given in the Indian Contract Act, 1872.

### **Carriage of Goods by Land :**

#### **Rights of a Common Carrier.**

(i) He is entitled to the settled remuneration and in case no remuneration was settled, to a reasonable remuneration.

(ii) He has a right to refuse to carry goods under certain circumstances (as enumerated under the duties of a common carrier).

(iii) He has a lien on the goods for his remuneration. He can refuse to deliver them until his charges are paid.

(iv) If the consignee refuses to take delivery of the goods, when tendered, the common carrier has a right, to deal with the goods as he thinks reasonable and prudent under the circumstances.

(v) He has a right to recover reasonable expenses incurred by him as a result of the consignee's refusal to take delivery. After giving notice to the consignee, the common carrier may even sell perishable goods..

(vi) He can recover damages from the consignor if the goods are dangerous or are loosely packed and the carrier suffers injury therefrom.

(vii) He can limit his liability subject to the provisions of the Carriers Act.

### **Duties of a Common Carrier:**

1. A common carrier is bound to carry goods of all persons who choose to employ him. He can, however, refuse to carry goods under the following circumstances:

(a) if there is no place in the carriage;

(b) if the person employing him is not willing to pay reasonable charges for the carriage of goods;

(c) if the goods are such which he is not accustomed to carry;

(d) if the goods are to be carried over a route which is not his regular route;

(e) if the goods are dangerous and as such subjecting him to extraordinary risk;

(f) if the consignor refuses to disclose the nature of the goods to be carried; and

(g) if the goods are not properly packed.

If a carrier refuses to carry the goods of a person for any reason other than those mentioned above, he may be held liable for damages.

2. He must carry the goods over the usual and customary route and take all reasonable precautions for their safe carriage. He must not deviate from the usual route unless rendered necessary by exceptional circumstances.

3. He must deliver the goods at the agreed time and if no time had been fixed, within a reasonable time.

4. At Common Law, he is an insurer of the goods in the sense that he warrants to carry the goods safely and securely.

**Liabilities of a Common Carrier :** The liability of a common carrier of goods is laid down in the Carriers Act, 1865. For this purpose, the Act has classified the goods into two categories:

(i) Scheduled goods and (ii) non-scheduled goods.

The scheduled goods are those which are enumerated in a Schedule to the Act. They are valuable articles like gold, silver, precious stones and pearls, bills and hundis, currency and bank notes, glass, china silk, articles of ivory, time pieces, musical and scientific instruments, etc. All other goods are non-scheduled.

For scheduled articles exceeding Rs. 100 in value, the carrier is liable for loss and damage only:

(i) if the value and the description of the goods are disclosed by the consignor to the carrier; or

(ii) if the loss or damage is due to a criminal act of the carrier, his agent or servant.

The carrier can charge extra for carrying scheduled articles, but he cannot limit his statutory liability by any special agreement.

As regards non-scheduled articles, a common carrier can limit his liability by special agreement with the consignor. But even in this Section case he will be liable under 8 of the Act . In case of loss or damage, the claimant must notify the carrier within six months of the date of knowledge of the loss or damage.

### **Carriage of Goods by Rail**

The carriage of goods by rail is regulated by the Railways Act, 1989. Some of the more important provisions contained in the Act are summarised below:

**1. Maintenance of rate books, etc:** for carriage of goods (Section 61). Every railway administration shall maintain, at each station and to such other places where goods are received for carriage, the rate books or other documents which shall contain the rate authorised for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without payment of any fee.

**2. Provision of rate risks :**Where any goods are entrusted to a railway administration for carriage, such carriage shall, except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

Any goods, for which owner's risk rate and railway risk rate are in force, may be entrusted for carriage at either of the rates and if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

**3. Forwarding note :**Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government. The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note. He shall indemnify the railway administration against any damage suffered by it by reason of the incorrectness or incompleteness of the particulars in the forwarding note.

**4. Railway receipt :** A railway administration shall issue a railway receipt in such form as may be specified by the Central Government:

(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or

(b) in any other case, on the acceptance of the goods by it.

A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein.

**5. Carriage of dangerous or offensive goods :**No person shall take with him on a railway or require a railway administration to carry such dangerous or offensive goods, unless (i) he gives a notice in writing of their dangerous or offensive nature to the railway servant authorised in this behalf; and (ii) he distinctly marks on the outside of the package containing such goods their dangerous or offensive nature.

**6. Liability of railway administration for wrong delivery** Where a railway administration delivers the consignment to the person who produces the railway receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that endorsement on the railway receipt is forged or otherwise defective.

### **Carriage of Goods by Sea:**

Contract of Affreightment\* A contract to carry goods by sea is called the “contract of affreightment” and the consideration or charges paid for the carriage is called the “freight”. A contract of affreightment may take either of the two forms, namely—

(i) a charter party, where an entire ship, or a principal part of a ship is placed at the disposal of merchant (known as a charterer); or

(ii) a bill of lading where the goods are to be carried in a general ship and the person consigning the goods is known as a shipper.

In both these contracts, the ship owner (the carrier) undertakes the responsibility of carrying the goods of a consignor (i.e., either the charterer or the shipper) safely and securely to the destination.

### **Conditions in a Contract of Carriage by Sea:**

The terms included in a contract of carriage by sea are of two kinds.

(i) Express terms, and (ii) Implied terms.

Express terms are those which the parties have specifically agreed to and included in the contract.

Implied terms are those which law implies in every contract of carriage by sea unless excluded specifically.

There are four implied terms:

(i) **Implied warranty of seaworthiness:** The ship owner, when he enters into a charter — party for a voyage impliedly warrants that the ship is seaworthy. This is an

assurance by the ship owner, at the time of entering into the charter party, that (a) the ship is fit to encounter the ordinary perils of navigation during voyage and (b) to carry the specific cargo.

This warranty of seaworthiness extends only to (a) seaworthiness at the time of sailing and (b) 'fitness at the time of loading the cargo. Once the ship has sailed or the goods are on board, this warranty ceases to operate. But in case the voyage is divided into stages, the ship must be seaworthy at the commencement of each voyage.

(ii) **Implied warranty of commencement of voyage:** Another implied warranty is that the ship shall be ready to commence the voyage and shall carry out the same with all reasonable dispatch and diligence.

(iii) **Non-deviation of voyage:** Also there is an implied condition that there shall be no unnecessary deviation. Deviation means the going off from the settled or the usual or customary course of voyage between the two termini.

(iv) **Shipper not to ship dangerous goods.** The shipper (i.e., the consignor of goods in case the charterer undertakes to carry goods of others under bills of lading) shall not ship dangerous goods. If the shipper ships dangerous goods and if on account of it the charterer suffers any damage, he can recover it from the shipper.

### **Charter party:**

Charter party, contract by which the owner of a ship lets it to others for use in transporting a cargo.

A charter party (sometimes charter-party) is a maritime contract between a ship owner and a "charterer" for the hire of either a ship for the carriage of passengers or cargo, or a yacht for pleasure purposes.

### **Types of charter parties:**

There are three main types of charter parties : voyage charter parties, time charter parties, bareboat or demise charter parties.

1. **Voyage charter** : is the hiring of a vessel and crew for a voyage between a load port and a discharge port. The charterer pays the vessel owner on a per-ton or lump-sum basis. The payment for the use of the vessel is known as freight. A voyage charter specifies a period, known as lay time, for loading and unloading the cargo. If lay time is exceeded, the charterer must pay demurrage.

2. **Time charter** : is the hiring of a vessel for a specific period of time; the owner still manages the vessel but the charterer selects the ports and directs the vessel where to go. The charterer pays for fuel, port charges, commissions, and a daily hire to the owner of the vessel.

**3. Demise charter, or Bareboat charter:** is an arrangement for the hiring of a vessel whereby no administration or technical maintenance is included as part of the agreement. The charterer pays for all operating expenses, including fuel, crew, port expenses and hull insurance. In commercial demise chartering, a subtype of bareboat chartering, the charter period may last for many years and may end with the charterer acquiring title (ownership) of the ship. In this case, a demise charter is a form of hire-purchase from the owners, who may well have been the shipbuilders. Demise chartering is common for tankers and bulk-carriers.

**Bill of Lading :** A bill of lading is a document acknowledging the shipment of goods, signed by or on behalf of the carrier and containing the terms and conditions on which it has been agreed to carry the goods. It is a document of title and can be transferred by endorsement and delivery. It is generally used for the carriage of goods on a general ship.

**Negotiable and Non-negotiable bill of lading:**

**Negotiable bill of lading:** In this type of bill, clear instruction is provided to make the delivery of the goods to anyone having the possession of the original copy of the bill, which itself signifies the title and control of the freight.

**Non-negotiable bill:** This type of bill of lading fixes a specific consignee/name of the receiver to whom the freights will be shipped and delivered. Under this type of bill, the assigned receiver/ buyers can claim the cargo by confirming their identity.

**Types of Bill of Lading:**

The bill of lading can be classified on the basis of “how it is executed” and “Method of operation”-

On the basis of execution:

1. Straight bill of lading : it reveals that the goods are consigned to a specified person and it is not negotiable free from existing equities. It means any endorsee acquires no better rights than those held by the endorser. This type of bill is also known as a non-negotiable bill of lading, and from the banker’s point of view, this type of bill of lading is not safe. This type of bill is prominently used for military cargo.
2. Open bill of lading – This is a negotiable bill of lading where the name of Consignee can be changed with consignees’ signature and thus transferred. This can be transferred multiple times. Switch bill of lading is a type of open bill of lading.
3. Bearer bill of lading is a bill that states that delivery shall be made to whosoever holds the bill. Such bill may be created explicitly or it is an order bill that fails to nominate the consignee whether in its original form or through an endorsement in blank. A bearer bill can be negotiated by physical delivery. They are used for bulk cargo that is turned over in small amounts.

4. Order bill of lading is the bill uses express words to make the bill negotiable. This means that delivery is to be made to the further order of the consignee using words such as “delivery to A Ltd. or to order or assigns. The cargo is only delivered to the bonafide holder of the bill of lading, and it has to be verified by an agent who issues delivery order and the verified bill of lading. The order bill of lading: is the most modern type bill which is widely used all over the world

ON the basis of Method of Operation:

1. Received for shipment bill of lading—This bill is sent from agent charterer or shipper. The endorsement of this bill ensures that the carrier has received goods but does not confirm it is onboard of the assigned vessel

2. Shipped B/L – This bill of lading is Issued when cargo is loaded on board. It binds the shipowner and the shipper directly

3. A clean bill of lading is one which states that the cargo has been loaded on board the ship in apparent good order and condition. Such a bill of lading will not bear a clause or notation which expressively declares a defective condition of goods and/or the packaging. The opposite term is a soiled bill of lading. It reflects that the goods were received by the carrier in anything but good condition.

4. Through B/L – This bill of lading is a legal document that allows for direct delivery of cargo from point A to point B. The bill allows transportation of goods both within domestic borders and through international shipment as it serves as a receipt of the cargo, a contract of carriage, and sometimes title for the products as well

5. Combined transport B/L – This bill gives information about cargo being transported in large containers by sea and land, i.e. through multi-modal transport

6. Dirty bill of lading: If the shipowner raises an objection about “the condition of the cargo is in good order”, he/she can include a clause thereby causing the bill of lading to be “claused or dirty” along with the remarks as per the finding of the cargo condition. E.g. torn packing, broken cargo, shortage in the quantity of the goods etc.

## **CARRIAGE BY AIR**

The carriage of goods by air is generally performed by a consignor, who makes a carriage contract with a carrier and the carrier must send the goods to a consignee. The carrier can be an airline company or international carriage company.

The law relating to carriage by air in India was based upon a draft convention drawn up in the international conference held in Warsaw in 1929. The Warsaw Convention was given effect to in India by the enactment of the Indian Carriage by Air Act, 1934. The provisions of that Act were extended to domestic, carriage, subject to certain exceptions, adaptations and modifications, issued by a notification on 1st March, 1964.

## Hague Protocol

A diplomatic conference under the auspices of International Civil Aviation Organization was held at Hague in September, 1955 which adopted a protocol to amend the provisions of the Warsaw Convention. The Hague Protocol was opened for signature on 28th September, 1955, and came into force between the ratifying States on 1st August, 1963.

**The Documents Of Carriage:** The Act of 1972 provides that certain documents are to be issued when goods and passengers are carried by air. They are as follows:

### 1.The Passenger Ticket:

Whenever a passenger is carried, he must be given a ticket and the ticket must contain the following particulars ; the place and date of issue; the names of the places of departure and destination ; the agreed stopping places and their changes; the name and address of the carrier, and a statement that the carriage is subject to the provisions of the Act of 1972 and to its Schedules.

### 2.The Luggage Ticket or Baggage Check:

For all luggage other than personal goods in charge of the passenger, a luggage ticket must be issued. The luggage ticket must contain all the particulars necessary to be included in a passenger ticket and in addition must mention the number and weight of the packages and a statement that the luggage shall be delivered to the holder of the luggage ticket.

### 3.The Air Consignment Note or Air Waybill

Whenever goods are carried, the carrier can insist upon the consignor making out three copies of a Note or Waybill containing the following particulars; the place and date of its issue ; the places of departure, destination and stoppages ; the names and addresses of carriers ; the names and addresses of the consignor and the consignee ; the nature of the goods, including a statement of the number of packages, the method of packing, their weight, quantity, volume and dimensions and the apparent condition of the goods ; the amount of the freight and the persons liable to pay it ; the period of the carriage and the route ; and a statement that the carriage is subject to the rules contained in the Act.

The Air Consignment Note or Air Waybill to be issued in triplicate. One copy is to be kept by the carrier; one copy signed by both the carrier and the consignor is to accompany the goods; and the third copy is to be kept by the consignor. The consignor is responsible for the correctness of the particulars in the Note and is liable to pay all damages, if any, arising from incorrect statements.

"The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

