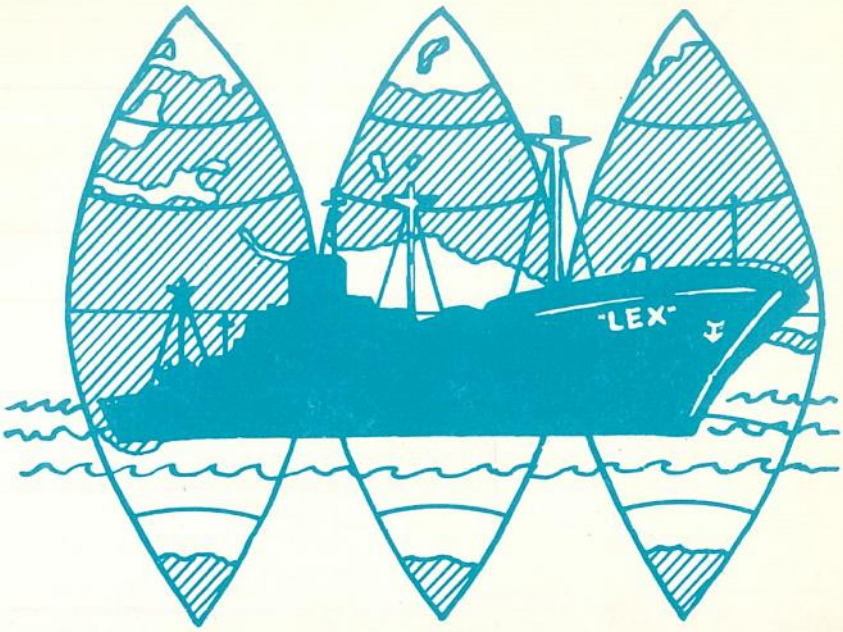
JOURNAL OF
Maritime Law and Commerce

P.O. Box 1936, Cincinnati OH 45201

Second Class Postage
Paid at Cincinnati, Ohio
& additional Mailing Offices

VOL. 19 NO. 3 JULY 1988



A REPRINT FROM

JOURNAL OF Maritime Law and Commerce

PUBLISHED BY JEFFERSON LAW BOOK COMPANY

A DIVISION OF ANDERSON PUBLISHING CO.

JOURNAL OF

VOL. 19 NO. 3 JULY 1988

Maritime Law and Commerce

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Library of Congress Catalog No: LC 79-15190

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Journal of Maritime Law and Commerce, Vol. 19, No. 3, July, 1988

Limitation of the Carrier's Liability under the Iraqi Transport Law

Riyadh A. M. Al-Kabban*

The Iraqi Transport Law deals with the issue of limitation of the carrier's liability in Article 150(1) and (2), which provides that the carrier is entitled to limit his liability for damages resulting from loss of, or damage to cargo, as well as for delay in delivery, as under the Hamburg Rules. Three conditions are specified in the Iraqi Law for application of the provisions concerning limitation of liability, as follows:

1. The transportation must have been between Iraq and a foreign country;
2. The value of the goods must not have been declared in the bill of lading;
3. Neither the carrier nor his servants or agents must have been guilty of willful misconduct[1] or gross negligence.

The purpose of the provisions for limitation of liability which are set forth in the Iraqi Law is to protect foreign carriers from unlimited liability in respect of a particular package or packages of unexpectedly high value, and to preclude carriers from lessening their liability otherwise than as stated in this law.

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*Judge, Basrah Court of First Instance, Basrah, Iraq.

[1] Article 150 of the Iraqi Transport Law provides:

1. The limitation of the liability of the carrier for loss, damage, or delay in delivery in carriage between Iraq and abroad is to be in accordance with the provisions of the rules as set out in the schedule to this law.
2. The carrier shall not be entitled to the benefit of the limitation of liability in the following cases:
   (a) When the value of the goods has been declared in the bill of lading;
   (b) When it is proved that he, or his auxiliaries, committed willful misconduct or gross negligence.

See [1961] DDECC (The Digest of The Decisions of the Egyptian Court of Cassation), 12th Year, p. 557, where the Egyptian Court of Cassation held:

The carrier is not entitled to avail himself of the limitation of liability when he personally committed fraud or gross negligence. The carrier shall avail himself of the limitation provisions even though his servants or agents committed fraud or gross negligence.

Therefore, in order to clarify the general principles concerning limitation of liability, the following points will be discussed:

I. The concept of "per package or unit";
II. The dual system of limitation;
III. Special drawing rights.

I
THE CONCEPT OF "PER PACKAGE OR UNIT"

The Iraqi Law does not define the term "package" as set out in the Schedule to the Law, but it does give an explanation of the term by providing, in Article 2[a] of the Schedule to the Law: ". . . per package or other shipping unit".

"Package" would include all goods which are made up for facilitating their handling during transportation. The shape, size, or weight of the cargo has no effect on the determination of whether or not the goods constitute a package. For example, railway wagons, containers, and pallets have all been held to be "packages". If, however, the lost or damaged cargo does not constitute a "package", then the limitation of liability is based on the "other shipping unit", which has a wider meaning than "package" and may be extended to any cargo which is not shipped in packages, e.g., a yacht, or it may refer to a "freight unit" or "commercial unit".

The Iraqi Transport Law has taken into account the new technological advances in the transportation industry by providing specific rules for a "container or a similar article of transport", e.g., a pallet.

Article 2[1] of the Schedule to the Law has imposed some restrictions on considering a particular container or "similar article of transport" as a separate shipping unit, as follows:

1. When packages or other shipping units are enumerated in the bill of lading;
2. When a container or "similar article of transport" is owned or supplied by a carrier, even if it has not been enumerated in the bill of lading.

Otherwise, the container or any "similar article of transport", including its contents, will be considered as one package or shipping unit.[2]

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[2] Article 2[a] of the Schedule to the Iraqi Transport Law provides:

1. Where a container or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading are deemed packages or shipping units; otherwise, the container, including its contents, is deemed one package.

II
THE DUAL SYSTEM OF LIMITATION

The Iraqi Transport Law has adopted a mixed system of limitation, which is based on either "per package or other shipping unit" or on a certain amount "per kilo of gross weight", by providing in Article 2[a] of the Schedule to the Law:

> The liability of the carrier for carriage of goods by sea is limited to an amount equivalent to ½50 Dinar per kilogramme or 35‰ Dinar per package or other shipping unit, whichever is the higher.

This system is considered a flexible one for solving the dilemma of the carrier's limitation of liability, especially when the weight of the cargo is unknown, or the cargo is not packed in a container or other "article of tranport", e.g., oil or grain. The trend of the Iraqi Law, however, favours the shipper, by including the phrase, "whichever is the "higher", so that the claimant may recover the higher amount of the limit of liability for lost or damaged goods, i.e., the limit based on the weight of the goods or the limit based on the package or other shipping unit.

The method of calculating the limit of liability for lost or damaged cargo is different from the method of calculating the limit of the carrier's liability for delay in delivery. As stated, limitation of liability concerning lost or damaged cargo is based upon a mixed system which is equivalent to ½50 Dinar per kilogramme or 35‰ Dinar per package or other shipping unit.[3] On the other hand, the limitation on the amount of the carrier's liability for delay in delivery is based on the amount of the freight, i.e., an amount equivalent to two and a half times the freight payable for carriage of the delayed goods,[4] but compensation for the delay in delivery of the goods must not exceed the total freight payable under the contract of carriage of the goods by sea.[5] Under the Iraqi Transport Law, however, the contracting parties have a right to conclude any agreement for limiting the carrier's liability to an amount exceeding the amounts provided for in the Schedule to the Law.[6]

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2. Where the carrier supplies a container or similar article of transport used to consolidate goods, the package or other shipping units, even when not enumerated in the bill of lading, are considered separate shipping units.

[3] Article 2[a] of the Schedule to the Iraqi Transport Law.

[4] Article 2[b] of the Schedule to the Iraqi Transport Law.

[5] Id.

[6] Article 3 of the Schedule to the Iraqi Transport Law.

The validity of a limitation agreement is governed by the following conditions:

1. The claimant must have suffered some lose of, or damage to the cargo;[7]
2. The court may reduce the amount when,
   (a) The amount fixed was grossly exaggerated;
   (b) The principal obligation has been partially performed.[8]
3. Where the loss of, or damage to the cargo exceeds the amount of the limitation of liability fixed by the contract, the claimant cannot recover the amount of any loss or damage in excess of the limitation amount, unless it is proved that the carrier has committed fraud or has been guilty of gross negligence.[9]

However, Iraqi jurisprudence will apply a limitation clause when it is stated in the bill of lading in quite clear language in a form which is different from the rest of the bill of lading.[10] It is not to be applied when there is any ambiguity or lack of clarity in the limitation clause.[11]

III
SPECIAL DRAWING RULES

The Iraqi Transport Law has adopted the Special Drawing Right (SDR) as the monetary unit for calculating the limits of liability, in order to achieve uniformity and avoid problems of fluctuation and devaluation in currencies which might result from having the limits expressed in terms of any national currency dependent upon rates of exchange with gold, the franc, or the dollar.

Article 4 of the Schedule to the Iraqi Transport Law explains in more detail the calculation of the value of the Special Drawing Right in terms of the Iraqi Dinar, by stating:

> The Iraqi Dinar equals two and a ninth (2⅑) times the value of the Special Drawing Right which is certified by the International Monetary Fund. Reevaluation of the amounts of limitation in case of the difference between the exchange rate of these Special Drawing Rights and

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[7] Article 224 of the Egyptian Civil Code.

[8] Id.

[9] Article 225 of the Egyptian Civil Code; Majid H. Al-Anbaki, Iraqi Transport Law: The Rules and Principles, 1984, p. 276.

[10] Iraqi Court of Cassation, Administrative Committee, Case 283/Transport/83/84 of 4 January 1984 [unpublished].

[11] Iraqi Court of Cassation, Administrative Committee, Case 753/Transport/83/84 of 18 January 1984 [unpublished].

the Iraqi Dinar exceeding the percentage of 25% [shall be effected] by issuing a regulation of the Central Bank of Iraq and publishing it in the Iraqi Gazette.

It can be concluded from the technical analysis of this article that it is considered redundant, because the rates of exchange with the Special Drawing Right fluctuate up and down, depending on the valuation of the currencies which are considered the basis for calculation of the value of the Special Drawing Right.

It can therefore be said that the Iraqi draftsmen could provide, in Article 2[a] of the Schedule to the Iraqi Transport Law, that the Special Drawing Right should be the basis for calculating the limitation of liability, with a reference to the Central Bank of Iraq, which is responsible for issuing regulations for calculating the value of the Special Drawing Right in terms of the Iraqi Dinar. Those regulations could then be published in the Iraqi Gazette, with a reference to the position of the International Monetary Fund concerning Special Drawing Rights.

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