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## Understanding the concept of limitation of liability per package/unit under a bill of lading contracts globally in general and in Ethiopia in particular

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**UNDERSTANDING THE CONCEPT OF  
LIMITATION OF LIABILITY PER PACKAGE/UNIT  
UNDER A BILL OF LADING CONTRACTS  
GLOBALLY IN GENERAL AND IN ETHIOPIA IN  
PARTICULAR**

By

**Mitiku, Melaku Mekonnen**

**Ethiopia**

A dissertation submitted to the World Maritime University in partial  
Fulfillment of the requirement for the award of the degree of

**MASTER OF SCIENCE**

**In**

**MARITIME AFFAIRS**

**(MARITIME LAW AND POLICY)**

2019

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## **Declaration**

I certify that all the material in this dissertation that is not my own work, has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature):

A handwritten signature in black ink, consisting of several stylized, overlapping loops and a long horizontal stroke at the end.

(Date): 24 September 2019

Supervised by: Associate Professor Dr. Henning Jessen

Supervisor's affiliation: Maritime Law and Policy Specialization

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**Melaku Mekonnen Mitiku**

**24 September 2019**

## Abstract

Title of Dissertation: **understanding the concept of limitation of liability per package/unit under a bill of lading contracts globally in general and in Ethiopia in particular.**

Degree: **Master of Science**

The dissertation overviews the importance of the Carriage of goods by sea for the international trade on one hand and its challenges, in connection with the nature of liability of the carrier, on the other. It pinpoints "*Limitation of Liability of the carrier*" as one of the solution in striking the balance between the conflicting interests of the carrier and the cargo owners in case of damage to or loss of cargo while carriage of goods by sea is performed.

It elaborates the issues on the concept, essence, justification behind and development of limitation of liability the carrier would have under a bill of lading contracts while he is held liable by law. A particular emphasis has been given for the discussion of the concept of "*package*", *and/or* "*Unit*", *an important term that plays a pivotal role in the exercise of the right to limit liability*, as provided and defined by various authorities.

A brief look at is taken at relevant international conventions (Global and particular) that regulate inter alia, the issue of limitation of liability per package or unit. Selected national laws which regulates the subject matter are researched and discussed. Most of all, decisions passed by both foreign and National (Ethiopian) Courts of law on the issues of limitation of liability *per package/unit* have been scrutinized. It is shown how the concept is vague and susceptible to different comprehension and interpretations by different actors.

In the last chapter some concluding remarks are drawn on how a per package or a per unit limitation of liability is important but still continue to be controversial issue. It also suggests Some recommendations in improving the relevant laws of Ethiopia so that it can meet the standards of the day and, as a maritime nation, go in harmony with the rest of the world.

KEY WORDS: Package, Unit, Limitation, Liability, Bill of lading, Conventions, Carrier.

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## **List of Abbreviations**

CMI: Committee Maritime International

COGSA: Carriage of Goods by Sea Act of USA

ESLSE: Ethiopian Shipping and Logistics Services Enterprise

FDRE: Federal Democratic Republic of Ethiopia

ILA: International Law Association

IMO: International Maritime Organization

LC: Letter of credit

LLMC: Limitation of Liability for Maritime Claim

NIPE: New York Produce Exchange

SDR: Special Drawing Right

STC: Said to Contain

UNCTAD; United Nations Conference on Trade and Development

USD: United States of American Dollar

# Chapter One

## 1.1 Introduction

The significance of Shipping, as it is always called “a life blood of seaborne trade”, in the movement of goods worldwide is undeniable fact to anyone. Above and beyond carrying 80 per cent of global trade by volume, almost all the world’s population in one way or another are dependent on the shipping industry. Globalization, economic growth and merchandise trade expansion are the immediate consequence of the growth in sea borne trade. (UNCTAD/RMT/2018/1).<sup>1</sup>

Carriers and other actors in shipping and associated services, play major roles in leading and maintaining this industry. However, the shipping business is risky and vulnerable to various kinds of accidents and incidents that may result in huge economic losses by those actors. Due to this reason most carriers do not want to involve in this undertaking unless some kind of incentives, privileges and protections, by law, are being provided for them.

In order to harness such economic harms, systems for the distributions of losses have been adopted and /or adapted by the maritime community. General average contribution and the institution of marine insurance for example, are the main policies, among other mechanisms, which seem to have somehow ameliorated the ship owners’ situations (Martinez Gutierrez, 2011)

On top of that, whenever the carrier is held answerable for the damage to, loss of and delays in the delivery of cargo, *limiting his liability by law*, is a commonly accepted and

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<sup>1</sup> See the summary of A review of 2018 Marine transport, a publication issued by The United Nations Conference on trade and Tariff (UNCTAD).  
[https://unctad.org/en/PublicationsLibrary/rmt2018\\_en.pdf](https://unctad.org/en/PublicationsLibrary/rmt2018_en.pdf)

applicable system of protection, including a complete exoneration from liability as the case may be. As a result, the international community has become successful in adopting and devising both the global and particular limitation rules to that end. There are global and particular international conventions that regulate the issues of carrier's limitation liability.

Since the scope of the study is restricted to the idea of limiting the liability of the carrier to a certain amount against the cargo interest, the focus therefore, is on the International Conventions for the Unification of Certain Rules of Law relating to Bills of Lading, which are essentially the relevant laws. Hence, it is imperative to raise and discuss the pertinent provisions of these particular legal regimes.

The convention was first adopted in 1924 in Hague, The Netherlands, and have passed three amendments in different places and years.<sup>2</sup>In all the conventions the concept of limitation of liabilities in general , *per package/unit liability limitation* in particular ,which will be the core subject matter of this dissertation., have been incorporated as provided below.

**Hague, Article IV rule 5 reads as,**

*Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount **exceeding 100 Pounds Sterling per package or unit or the equivalent of that sum in other currency, unless the nature and***

---

<sup>2</sup> There are three Major International Conventions for the Unification of Certain Rules of Law relating to Bills of Lading. These are the 1924 Hague, the 1968 Visby (together Hague/Visby Rule), the 1979 Protocol it sometimes called the "Visby S.D.R. Protocol, the 1978 Hamburg and the 2008 Rotterdam rules, this in fact, is not yet entered into enforcement.

[https://docentes.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_31901.pdf](https://docentes.fd.unl.pt/docentes_docs/ma/wks_MA_31901.pdf)

[https://www.jus.uio.no/lm/sea\\_carriage\\_hague\\_visby\\_rules.1968/portrait.pdf](https://www.jus.uio.no/lm/sea_carriage_hague_visby_rules.1968/portrait.pdf)

<https://www.google.com/search?q=hamburg+rules+maritime+legislation+pdf&oq=Hamburg+rue+pdf&aqs=chrome.3.69i57j0l3.12706j0j9&sourceid=chrome&ie=UTF-8>

[https://www.uncitral.org/pdf/english/texts/transport/rotterdam\\_rules/Rotterdam-Rules-E.pdf](https://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf)

*value of such goods have been declared by the shipper before shipment and enters in the bill of lading. As per its Article IX gold value has been taken as a monetary unit.*

This declaration if embodied in the bill of lading shall be prima facie evidence but shall be binding or conclusive on the carrier.

**Hague-Visby,**

*It changes the amount of limitation. Article IV Rule 5 (a) reads as, ...to 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.*

New Article 5(c) is added and it provides,

*...where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or other shipping 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.*

**The SDR protocol that replaced Article 5 (a) of Hague Visby**

Article 4 provides...*of in an amount 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher.*

**Hamburg Rule, Article 6(1) reads as,**

(a)... *is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.*

## **Maritime code of Ethiopian, 1960<sup>3</sup>**

*Art.198 of the Maritime Code Provides that:*

- (1) In respect of loss of or damage to goods, the liability on the carrier shall not exceed 1000 Ethiopian Dollar<sup>4</sup>*
- (2) The statutory limitation shall be determined by package and in respect of goods loaded in bulk on the basis of the unit normally serving for the calculation of the freight.*
- (3) The statutory limitation may not be set up against the shipper where the nature and value of the goods have been declared by the shipper before shipment and such declaration has been inserted in the bill of lading.*

### **1.2 Problem Statement**

Despite the incorporation of the extent of liability to be limited per package/unit in a clear manner, the conditions mentioned in all the instruments are still ambiguous in many respects and has been remained as a bone of contention. For instance,

- What does package mean?*
- Which things are considered as package and which are not?*
- What is unit or shipping unit? Is it a physical unit for shipment or unit of measurement applied to calculate freight?*
- Which things are considered as a unit and which are not?*

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<sup>3</sup> Maritime Code of the Empire of Ethiopia, Proclamation No.164 of 1960, Nagarit Gazette 19th year No 1. The code has been enacted in 1960 and still active to regulate the unimodal (sea leg) transport despite there is a newly enacted Multimodal legislation.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82484/90337/F850032220/ETH82484.pdf>

<sup>4</sup> In 1960 1000(Thousand) Ethiopian Dollar was exactly equivalent amount to 100-pound Sterling of that time exchange rate. N.B. the version in the “AMHARIC”, (National language), which does have a final legal authority, provides only500 (five hundred) Ethiopian Dollar.

- When do we say “the nature and value of the goods have been declared”?
- What does “enumerated as packed” signify?

are some of the controversial and blurred areas that need discussion and clarification for both academic and practical purposes This fact has been witnessed in variety of decisions rendered by both national and foreign courts.

For instance, a container *considered as “package”* at one case *may not be* in another scenario. The following is a case in point.

### **1.2.1 Examples of related case Law from the UK and the USA**

#### **1.2.1.1 The USA case**

I)In the case Royal Typewriter Co. Vs M.V Kulmerland<sup>5</sup>, it was ruled by the court that a container was a “package”.

In the bill of lading issued by the carrier it was stated that one (1) container STC machinery has been loaded. 350 adding machines, *each covered with cartoons*, were contained in it. Both the lower and appellate courts held that, *it is the container that should be considered as a package* rather than taking each individual cartoons of adding machines as package.

II)In another case (Cameco, Inc. Vs American Legions)<sup>6</sup> where Tins of ham packed in a corrugated cartoon and palates, which number was mentioned in the bill of lading, were

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<sup>5</sup> see 483 F.2d 645 (1973) ROYAL TYPEWRITER CO., DIVISION LITTON BUSINESS SYSTEMS, INC., Plaintiff-Appellant, v. M/V KULMERLAND, v. HAMBURG-AMERIKA LINIE, Defendant-Appellee. No. 446, Docket 72-2067. United States Court of Appeals, Second Circuit. Argued April 2, 1973. Decided August 13, 1973  
See <https://www.courtlistener.com › opinion › royal-typewriter-co-division-lit>

<sup>6</sup>JF Murphy - Wash. & Lee L. Rev., 1978 See below  
[https://scholar.google.se/scholar?q=JF+Murphy++Wash.+%26+Lee+L.+Rev.,+1978/&hl=en&as\\_sdt=0&as\\_vis=1&oi=scholart](https://scholar.google.se/scholar?q=JF+Murphy++Wash.+%26+Lee+L.+Rev.,+1978/&hl=en&as_sdt=0&as_vis=1&oi=scholart)

shipped in a refrigerated container, the appellate court, by changing the lower court decision, ruled that each of the pallets were considered as package.

### 1.2.1.2 The UK case

I) In 2016, in the case *Vinnlustodin HF & Another VS Sea Tank Shipping (The Aquasia)*<sup>7</sup>, Queens bench division of the Commercial bench of England court *had an issue to decide on if “bulk Cargo “was to be covered under Article IV rule 5 of Hague rule?”. Despite the said provision is talking about cargoes in “package or as a form of Units”, in other words despite it overlooked the bulk cargo, considering the term “Unit” as “a freight Unit”, the Judge found it appropriate to apply it for the Bulk cargo as well to which the writer disagrees.*

*II) Very recently, in March 17, 2017, a UK commercial court passed a remarkable verdict which was also upheld by the appellate court, on a case held between KYAKUYO CO LTD Vs AP MOLLER MAERSK A/S TRADING AS ‘MAERSK LINE’<sup>8</sup>*

The facts of the case showed that the carrier (defendant) agreed to carry the cargo owner’s (claimant’s) goods consists of *6,448 unpacked pieces of tuna loin* stuffed into three of defendant’s ‘super freezer’ containers of which one of them contained additional *460 bags of other type of tuna meat.*

Due to the raised temperature that caused the failure of the refrigerator, all the cargoes (Tuna loins) in the three refrigerated containers sustained damage. Having heard the

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<sup>7</sup> see the Lloyd journal [2018] LLOYD'S LAW REPORTS [ 2016] VOL 2, EWCA CIV 2514. <https://maritimeintelligence.informa.com/content/lloyds-law-reports>

<sup>8</sup> see the Lloyd journal [2018] LLOYD'S LAW REPORTS [ 2018] VOL 2, EWCA CIV 778. <https://maritimeintelligence.informa.com/content/lloyds-law-reports>

litigations of both parties, the court decided on three important issues. for the purpose of this study however, only the relevant issues are dealt here.

1. *What elements should be fulfilled in order to apply the term “unit” for the purpose of limitation under Article IV Rule 5 of Hague rule and Hague – Visby rules?*
2. When does and in what circumstances a carriage of good by sea way bill (not Bill of lading) governed by Hague Visby rules?
3. It Changed the present-day prevailing and authoritative decision on what constitutes a package or a unit for containerized cargo under Hague/Visby rules, namely the Full Federal court of Australia decision in *EL Greco V MSC*, from 2004.<sup>9</sup>

With regard to the first issue, it was contended by the defendant that since, the pieces of tuna need consolidation and stuffing in a container, they should not be considered as ‘units’ in the conventional meaning of ‘units. He argues that, in the previous court decision’s the term “unit” has been attached to goods *such as cars, large pieces of timber, tractors and generating sets not items like tuna, that can only be contained in a container which itself is a package.*

It was debated by the claimant that there is no mandatory provision that makes only cars and timbers as “Unit” and packed tunas as “not units”. Though the tunas are not wrapped with some kind of wrapper, this by itself does not make them that “they are not Units by themselves” for Hague rules purposes.

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<sup>9</sup> In this decision the word “unit” was interpreted as a unit of measurement for the purpose of freight rate and to associate the good with the term unit, it must be something that can be loaded without the help of any container. Cars, large piece of timber, tractors and generator sets.  
See [https://archive.onlinedmc.co.uk/el\\_greco\\_v\\_msc.htm](https://archive.onlinedmc.co.uk/el_greco_v_msc.htm)

The judge decides in favor of the claimant. In his holding he explained that there is no any prerequisite in Hague rules as to how goods to be shipped if not containerized. He regarded that as long as each tuna (the packed and the unitized) was distinguishable as a separate article for transportation within the container, no matter how they are packed. *What matters most for him was the distinguishability of each item one from another and he concluded that the container in this case is only a receptacle /protector not a package for the purpose of Hague rule.*

To put the analysis and conclusion of the court in a nutshell,

- The large pieces of tuna were considered as ‘units’ for the purpose of both definitions of ‘Unit’ in Hague Rules or Hague-Visby Rules and,
- As long as the physical items of cargo are accurately mentioned in the transport document, Article IV, Rule 5(c) of Hague –Visby Rules doesn’t require any other requirements to qualify as package or unit.

So, this court, as opposed to the earlier Australian court, ruled that “Unit” is not something related with freight unit, it is only referring the physical items, the phrase “as packed” doesn’t necessarily mean it must be packed, *it is only enough to enumerate it in the bill of lading.* It further elaborates that, carriers, if they wish to limit their liability, they should take a precaution on the contents of the descriptions *on* the bill of lading as much as possible.

From the above decisions one can evidently witness that how much the term package and /or unit is deceptive one. Therefore, the study has a general objective of elaborating the concept, exploring the justification behind it, highlighting the nature, extent and development of limitation of liability and *specifically it does have an objective of understanding of these terms together with some delicate words and phrases mentioned in the problem statement.*

### 1.3 Scope of the study

The study mainly concentrates on the concept of the right of a sea carrier to limit his liability per package/unit against cargo interests whenever damages to or loss of goods occurs in his custody and while the carriage operation is performed under bill of lading contracts. *Basis of liability in which conditions the carrier would fully be liable<sup>10</sup> or fully exonerated<sup>11</sup>, the period of limitation of actions<sup>12</sup> which deters or prohibits the cargo owner from instituting its claim against the carrier, when the responsibility of the carrier starts and it ends<sup>13</sup> and many other issues incorporated in those legal instruments are not within the ambit of this dissertation..*

Therefore, the writer advises and encourages interested students or scholars to research other areas of the aforementioned laws and contributes something in the making of the law up to date, modern and all-encompassing in all respects.

### 1.4 Structure of the study

The research is organized in Five Chapters. The first Chapter will be exclusively introductory, where problem statement and scope of the study are discussed. The Second Chapter reviews the relevant literatures written on the issue for the better and general understanding of limitation of liability coupled with global limitation convention. The particular legal regimes for the unification of certain rules of law under bill of lading contracts is the main focus of Chapter Three. The Fourth Chapter attempts to discuss the

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<sup>10</sup> See for example the contrary reading of Article Art 5 (a) of Hague/Visby, *tells as that if the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, the carrier or shall be liable in full. No limitation of liability privilege could be raised.*

<sup>11</sup> See for example Article IV rule number 2 of Hague Rule provides the causes of damages by which the carrier will not be responsible

<sup>12</sup> It is 1 year, see Article 3 rule 6 of Hague/Visby but it is 2 years in Hamburg (see Article 20 sub 1) and Rotterdam Rules (see Article 62 sub 1).

<sup>13</sup> It is *tackle to tackle (see Article 1(e)), port to port (see Article 4) and door to door (see Article 12) is the time of start and end of responsibility respectively Ibid 2.*

issue from the Ethiopian laws perspective. It explores the provisions which are dealing with package limitation of the relevant legislations. It also discusses Court decisions in relation to the concept and its understanding and implementation in Ethiopia. The research is wound up in Chapter Five which comprises the conclusion and recommendation parts.

## Chapter Two - Literature review

### 2.1 General Understanding of Limitation of Liability

Different scholars at different times have tried to explain the concept, reason behind and development of Limitation of liability. For example, (Brice, 1987) defined it as a right given by law for certain group of actors of some kind of business to limit their liability in compensating the one who sustained damage *in full* provided however, that circumstances contributing to the liability has to be prescribed and well defined. According to this principle the cargo owners are under legal obligations to share economical losses they inflict upon others either directly by themselves or indirectly through their insurers irrespective of their fault. (Astle, 1981).

The debate whether a ship owner [carrier] must be liable in part or in full for the loss of or damage to the goods his ship carries has been argumentative issue for a long time. The concern was the long standing appreciation that a carrier would be liable in full as long as the goods suffer damage while under his care. (Martinez Gutierrez, 2011)

According to the proponents of this idea, one who has suffered material losses should be fully compensated as long as there is no fault on his part. For them, allowing the ship owner to limit its liability is against the principle of *adequate compensation* to marine accidents. They extend their argument by saying that, the limited liability approach is unable to prevent potentially liable parties from engaging in careless activities It also reduces the expected liability of ship owners and consequently their optimal precaution. In short, it encourages negligent navigation. (Mohammed, 2006). Therefore this should not be allowed.

In relation to the justification behind the concept of limitation of liability (Martinez Gutierrez, 2011) explains that, a consideration has to be made by the interested groups to

strike a balance amid the perilous nature of the shipping industry with its possible catastrophic consequences, on one hand and the importance of the industry to the international trade on the other.

In respect of its historical background, it is believed Italy was the first country ,between 454 A.D( during the fall of the western empire) and 1291 A.D(the end of the crusade), who developed The concept of limitation of ship owners' liability first and then to have spread to Spain and France (J Donovan, 1978).

It also serves another purpose. Penalty discourages negligent parties from being careless in their commission or omission. It is common knowledge that a reasonable man always compares the pros and cons of his action. He or she becomes reluctant and negligent to take utmost care or precaution whenever she or he thinks the cost of causing the expected harm is less than the cost of the precaution. (Bilhah, 2006).

Risk (liability) distribution as between the carrier and the cargo owner is not a recent phenomenon rather it is of an almost 100 years' agenda (1924 the first international convention made, which will be dealt in the coming chapters) and has undergone different changes and developments. One of the mechanisms of distribution of risk is limiting the liability of the carrier towards the cargo owners. (Astle, 1981).

From 16th c until the 19th c ship owners had much power than cargo owners in determining their rights of limiting liability under the guise of freedom of contract during that time. In the late 19th and early 20th, however, the distribution of risk changes to the advantage of cargo owners except the USA who enacted its own legislation, Harter Act

1893<sup>14</sup>, which is now replaced by COGSA<sup>15</sup>, gives even more freedom to ship owners to insert some exemptions and exceptions clauses in the bill of lading which obviously were detrimental to the cargo owners. It was this time the international community started to think about how to unify these different rules of law applicable in different countries and strike a balance between the interests of these groups.

Following this concept, different kinds of International and national legal regimes were made for its regulation. The international Conventions can be categorized as LLMC and the Particular Liability Regimes which are many in number and be applicable for specific scenario. Each of them is presented as below.

## **2.2. Legal Foundations**

Although, the very essence of the study is to discuss on the concept of package limitation which is regulated under one of the particular legal regimes called *International convention for carriage of goods by sea under bill of lading contract*, it is worthwhile to see briefly Some aspects of the *LLMC* since it has some kind of linkage in some ways.

### **2.2.1. LLMC**

LLMC is the legal concept by which the ship owner is legally protected from being fully liable for *any maritime claims* whenever he inflicted damage on others' right. From single accident or incident many claimants may be appearing for compensation. The ship owner, at a time, may be held liable to the cargo owner if cargo is damaged or lost, to the

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<sup>14</sup> The Act was enacted in 1893 and contains no package limitation provision. It applies to voyages between US ports and voyages between US and foreign ports.  
[http://www.trans-form-conseil.com/wp-content/uploads/2015/09/Harter\\_Act-1893.pdf](http://www.trans-form-conseil.com/wp-content/uploads/2015/09/Harter_Act-1893.pdf)

<sup>15</sup> USA lately *adopted* Hague rule. See Article 1304 [5.] Except adding the phrase... lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency ...It is the same as The Maritime code of Ethiopia.  
<http://www.cargolaw.com/cogsa.html#rights>

passenger if luggage is lost, to personal claim if bodily injury or death followed from the accident, to the coastal state when pollution and wreck removal arises. (Martinez Gutierrez, 2011).

In such circumstances, it may be very difficult even impossible to make the ship owner liable and make satisfy in full to all these claims. Limiting his liability become inevitable. This can be done through different mechanisms. If we see the USA ship owners practice, they are allowed by the Act, to establish a fund from which all the above and other claimants (if any, depending on the accident, the nature of the claim whether emanates from contract or extra contract) to satisfy their limited claim from it. (Martinez Gutierrez, 2011).

### **2.2.2. Types of systems of calculations in LLMC**

In limiting liability, the Global regime uses *systems of monetary and ship values*, which was at first followed by Countries of the Civil law legal systems. In the ship value system two approaches were followed which both in general provided a ship owner would be liable for no greater than the value of the ship and the accrued freight.

If the ship-owner wants to use the ship value system, he has two options. One was the execution system in which the claimants can only execute their claims against the ship itself (in rem) not against an individual or Corporation (in Personam). The second one is opting to the abandonment of the ship itself to the claimants so that they can exercise their claims on it. (Slevich, 1986) .

The second System was developed in England then in USA. Primarily, the monetary limit, based on the ship's tonnage, was recognized by law although it merely used for calculation purposes. The other important thing to be mentioned here is that, the limitation is only restricted and applicable against claims emanating from one particular incident. It does not serve to all the accrued claims resulted from different or simultaneous occasion over the year. (Xu, 2000) .

In spite of the existence of particular liability regimes for each of the above and other claims, they share the international arena with global limitation conventions (Martinez Gutierrez, 2011). Based on the above principles different LLLM at different times have been adopted. Since the very purpose of the study is not dealing with these convention readers are advised see the 1924, the 1957, the 1976 and the 1996 Protocol<sup>16</sup>. It is worth note in mind that The 1960 Maritime code of Ethiopia<sup>17</sup> has also incorporated the LLMC concept in some of its provisions.<sup>18</sup>

In the next chapter one of those particular legal regimes called a Convention for the Unification of Certain Rules Relating to Bills of Lading will be dealt.

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<sup>16</sup> The 1924 Convention, unlike the previous systems, it gives an option, this is why some writers mentions it as the option-system, to the ship owner to opt for limiting his liability either the value of ship and freight or to an amount of £8 per ton when found liable.

<https://www.google.com/search?q=LLMc+1924+pdf&spell=1&sa=X&ved=0ahUKewjnjeDvxLzkAhUGEVAKHc0CCbsQBQgtKAA&biw=1366>

See (Griggs, P,1997, as cited by, Qing Yue Xu,2018).), how the 1957 Convention allows the ship owner to limit its liability against all type and all claimants.

*See how the liability arises from the noxious and hazardous substances related with the 1976 Convention.*  
<https://treaties.un.org/doc/Publication/UNTS/Volume%201456/volume-1456-I-24635-English.pdf>

<sup>17</sup> See Supra 3

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82484/90337/F850032220/ETH82484.pdf>

<sup>18</sup> From the cumulative readings of Article 80,81 and 86 we can see that the ship owner's liability is limited to an aggregate amount of 516 Ethiopian dollar for personal claim for each ton of the ship tonnage when the happening resulted in only personal claim. On the other hand, when it is resulted in property claim, an aggregate amount of Eth. \$516 for each ton of the ship's tonnage, of which a first portion amounting to Ethiopian Dollar 336 for each ton of the Ships tonnage shall be exclusively appropriated to the payment of personal claim and of which a second portion amounting to 160 Ethiopian Dollar for each ton of the ship tonnage.

## **Chapter Three - Particular Liability Regime related to Carriage of goods by sea under Bill of lading contracts**

Of the many particular legal regimes that govern limitation of liability of the carrier, International convention for carriage of goods by sea under bill of lading contract, is the one and basic instrument which is the central point of discussion in this study.

For many years, contracting parties were at liberty to un limited freedom of contract. The terms and conditions which they choose and employ in their contracts where the main sources of law for resolving dispute arising from damages of goods (Gilmor, 1975).

It is crystal clear that, this principle always does favor the party with greater and upper hand in the negotiation process and disfavors the other who does not. Due to this truth, those who have the stronger position in most cases are free to choose their favorable forums of jurisdictions, without considering its convenience to the other party. (Ainuson, 2006) .

A contractual relationship based on bills of lading might be subjected to different laws and thus, triggers conflict of laws, lack of uniformity and unfairness in the area of liability limitation. (Tetley W. , 1995). Because of this problem, major shipping nations felt that uniformity of laws may be achieved through multilateral treaties and not through individual or separate acts of states. The earliest agreement in this regard was the Liverpool Conference, which was adopted by the ILA at Liverpool in 1882 and promulgated by NIPE with some amendments in 1883. One of the Issues settled in the conference was package limitation which the instrument put the limitation of liability at £ 100 per package (Wada, 2007) .

The quest for uniformity continued and as a result, C.M.I which was originally a Committee of the ILA, was formed in 1896 for the purpose of promoting worldwide uniformity of maritime law. After strong struggle between ship owning and cargo interests coupled with a relentless effort made by the committee in search of uniformity, in 1924 it finally culminated in the adoption of a Convention for the Unification of Certain Rules Relating to Bills of Lading, called Hague Rules.

Therefore, 25th August, 1924, when the first International convention in relation to unifying certain rules of laws in conjunction with bill of lading was made, can be considered as a historical event day for the jurisprudence of Maritime law. It is for the first time wherein the obligations and the rights of the carrier has been incorporated together in international legal regime. (Astle, 1981). One of the major reasons behind this convention, among others, was unifying certain rules of laws particularly harmonization of the limits of liability per package of the carriers.

It is important to bear in mind that the convention, unlike Charter party contracts, is only applicable to bill of lading contracts which binds not only a shipper and a ship owner, that is the immediate contracting parties, but also the consignee abroad, his assignee, as well as to a certain extent banker who takes up such documents as securities for loans granted to their customers. (Gaskell, 1993) as cited by (Wada, 2007)). The convention will be discussed next.

### **3.1. Hague Rules**

Hague Convention (Rule) was first drawn and adopted by ILA in 1921. It was amended at the diplomatic conference in Brussels in 1922. Another third conference was prepared in 1923 and finally in 1924 the final text called the 1924 Hague Rule came into play. This is the first rule in the internal arena that ends the undue influence of carriers against the cargo interests using freedom of contract as a pretext. (Astle, 1981)

The relevant provision, Article 4(5) reads as,

... the carrier is liable in an amount exceeding *100 Pounds Sterling per package or unit or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and enters in the bill of lading.*

This declaration if embodied in the bill of lading shall be prima facie evidence but shall be binding or conclusive on the carrier. *As per its Article IX gold value has been taken as a monetary unit.*

Moreover, the convention allows parties to agree any maximum amount from the threshold mentioned therein and it also totally releases the carrier from any liability arising out of damage or loss of goods or in connection with goods *if the nature and value thereof has been knowingly misstated by the shipper in the bill of lading.*

Hague Rules entered into force in 1931 and have been referred to as one of the most The rule is considered as one of the successful maritime laws of all time. For a considerable length of time, This Rule served in regulating the international sea transport in a way balancing the interests of the cargo owners and the carriers as well.(Palmer, 1978).

Nonetheless, it was not perfect and free from criticism. To mention some of the weaknesses, it lacks to provide any units of account that allows to convert into the concerned country's currency easily. Moreover, even if the rule recognizes per package or per unit limitation, no definition and of application for the term package and or/unit has been conferred by it which is the source of considerable controversy. (Tetley, 1978).

This idea has also been highlighted as ‘...the major limitation of this Convention were, *inter alia*; the erosion of the value of the Pound Sterling and the absence of a clear definition of the term "Package" that reflects the technological development of the time.’ (Wada, 2007)

This is why the idea was reemphasized by (Ainuson, 2006) ...as a result of worldwide rapid commercial changes in the operation of carriage of goods by sea, after 40 years' service ...however, key amendments of the rule were inevitably needed.” Therefore, these two blurred areas, inter alia, led to the development and adoption of another convention called Hague/Visby rule which will be discussed below.

### **3.2. Hague /Visby Rules**

The C.M.I. Conference of 1963 in Stockholm, Sweden, which formally adopted the Rules in the ancient town of Visby, on the Swedish island of Gotland, was fruitful in reaching the Visby Protocol. The Visby Rules since they are amendments to its predecessor, they cannot stand by themselves. This is the reason why they commonly known as the “Hague/Visby Rules”. One of the major area, among others, where the amendment was made is a *per package limitation*.

The relevant provision Art 5 (a) reads as,

*...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.*

Article 5(c) reads as;

*where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or other shipping 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.*

Article 5(d) reads as,

franc is also defined as ... a unit consisting of 65.5 milligrams of gold millesimal fineness 900...

As can be seen above, the Rule has made substantial changes on carrier/shipper relationships in general and package limitation in particular. Accordingly, the £ 100 limitations was substituted by 100,000-franc, the unit of account become gold that was believed at the time, to be more stable. It also allows the cargo owner to opt for using

either package/unit or weight in order to get higher compensation. Moreover, the Rules expanded the definition of packages so as to include articles of transport used to merge goods and included weight of goods as an alternative method of calculating package limitation; (Wada, 2007). In this regard the main problem in Hague specially in relation to container has been addressed by this convention (Tetley, 1978). After serving one decade and so, some amendments were still necessary and an additional protocol was signed.

### **3.3. Hague/Visby protocol**

In December 21, 1979 Hague/Visby Rule was again amended and adopted at Brussels, Belgium by additional protocol that basically changed the unit of account of old regime that is “Poincare gold francs” to S.D.R. which is done by I.M.F. For this reason, it is sometimes called the “Visby S.D.R. Protocol”. Following is a discussion on how this rule considerer the package limitation. Here are the relevant rules.

Article II states that,

... in an amount 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher.

Article 6, further provided the unit of Special SDR is defined by the international monetary fund and it shall be converted into national currency of any country on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

Not only the issue of package but also the pervasive use of containers in the shipping industry following the emergence of containerization, inflation of currencies and other major related changes in the international arena led to the development of another convention called Hamburg rule which will be discussed below.

### 3.4. Hamburg Rules

The Hamburg Conference on the Carriage of Goods by Sea was initiated in 1972 in an effort to resolve problems which had arisen in fifty years of experience under Hague Rules, and to propose solutions which would not hinder the growth and development of international trade. (Donovan, 1979) . It was adopted on March 30, 1978 with full name United Nations Convention on the Carriage of goods by Sea 1978.

It is with much more detailed provision (consists of 26 Article) than Hague Rule (as amended), which had only 10 Articles. The relevant provisions are discussed here under. Article 6(1) of the convention reads as,

(a)... an amount equivalent to 835 units of *account per package or other shipping unit* or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(2) for the purpose of calculating which amount is higher in accordance with paragraph 1(a) of this Article the following rules apply,

a) Where a container, pallet or similar article of transport is used to consolidate goods the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea as packed in such article of transport are deemed one shipping unit.

(b) in cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

This rule has brought about important changes on the topic of the limitation of liability and has been serving for many years. There are, however, still areas of uncertainty and incoherence that again triggered the need for a new regime and *The Rotterdam rule was born in 2008.*

The fact that this rule was not welcomed by the maritime community and be in short of the minimum number of the contracting States (signatories), it is not still enforceable and does not have a binding effect. Because of this, the writer does not want to discuss it here. But, it is worth mentioning that despite significant differences <sup>19</sup>from its predecessors, it is akin to all the three former rules which all had tried in fulfilling almost similar purposes, that is maintaining the uniformity in providing the minimum protection to parties to the contract of carriage. (Ozdel, 2010) .

### 3.5. Section summary

From the foregoing discussion it can easily be concluded that, a relentless effort has been made by the international community in harmonizing and unifying certain rules of law relating to bill of lading contract in general, limitation of liability in particular and *specifically a per package*. Still effort is being made by the interested groups.

The first rule (Hague rule) except using the term, it did not give any definition or even a clue to guess what package/unit mean or which things constitute package/unit. With all its weaknesses the meaning of package has been elaborated in the Visby rule and continues the same description in its successors Hamburg and Rotterdam as well. Of course the Hamburg rule used the phrase “*shipping unit*”, which is a physical item, unlike its predecessors “Unit” that was abstract. (Gebremedehn, 2008) , as cited by (Gaskell, 1993).

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<sup>19</sup> The formal name of the Rotterdam Rules is the United Nations Convention for the International Carriage of Goods Wholly or Partly by Sea, 2008.

See for example Scope of application has been widened (see Article 3), unlike the previous conventions that followed the tackle to tackle and port to port, the period of responsibility has been extended to door to door (multimodal mode of transport) (see Article 12), it has increased the amount of limitation to 835 SDR per package or 3 SDR per Kilogram whichever is the higher (see Article 59(1)),

The meaning of package is more elaborated in Article 59(2). From its predecessor mentioned above it includes “*goods carried in or on vehicle*” are also considered to be package.

See, [https://www.uncitral.org/pdf/english/texts/transport/rotterdam\\_rules/Rotterdam-Rules-E.pdf](https://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf)

If we compare the *limits* under each rules ,Hague-Visby Rules have been increased in the Hamburg Rules and the Hamburg rule itself have been again increased in the Rotterdam Rules, which is a 31.25% for the package limit and of 50% for the per kilogram increment, as respects Hague-Visby Rules. (Berlingeri, 2009).

In respect of the unit of account, a significant change has been made which was really a challenge in most jurisdictions. The SDR units of account is a very stable, convenient and less tiring method in converting one's countries currency to another.

As one writer put it in a paragraph... when the first international convention, especially regarding limitation of liability rules, was adopted, the traditional maritime nations took into account boxes, bales or bags (not modern containers) by which they consolidate. This means the rules were not suited for containerized cargo. In addition, Following the international economic changes specifically the highest inflation rate, the formulae of limitation were greatly impacted. Moreover, the method of determining the unit of limitation was subject to different interpretations in different jurisdictions. Problems have also arisen with respect to the statute of limitations, transshipment and agency situations ... (Palmer, 1978).

It is important, however, to note that it doesn't mean that all countries adopt and ratify one and same convention and applied in their jurisdiction similarly. It does not also mean that the later law prevails over the former (for example, the Hamburg over Hague-Visby), rather countries can ratify and apply the one which they think appropriate and useful for them. Thus, all of them have the effect where they are ratified and co-exist together. (Myburgh, 2000). Another writer (Gebremedehn, 2008) also reaffirms this fact by saying...today there are three parallel international conventions, different regional and even many national laws are active in governing the international carriage of sea by sea...

As (Ainuson, 2006) mentions, most of the commercially relevant states are still incorporating either the first rule or the amendments or the last rule or a mix from all in their domestic laws in a way they like. He mentions some examples like The Canadian Carriage of Goods by Water Act 1993 adopting Hague-Visby Rules. The 1925 Indian Carriage of Goods by Sea Act was amended substantially in 1992 to adopt Hague-Visby Rules. In Japan, Hague Rules has been adopted.

In Ethiopia despite party to neither of the conventions mentioned above, its Maritime code is almost the verbatim of Hague rule in relation to package limitation<sup>20</sup> while its multimodal transport law<sup>21</sup> is resembling to Hamburg rules in the issue discussed.

But then again, these conventions do not plainly address important questions asked in the statement of the problem of this study that that in effect plays important role in determining and exercising the package limitation right.

As a result, it has been become vulnerable for different meaning and interpretation by carriers, shippers, judges, scholars and other stakeholders. It still remains as bone of contention and hence, the problem has to be addressed.

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<sup>20</sup> See Art.198(1) of Supra 3 that Provides ... the liability on the carrier shall not exceed 1000 Ethiopian Dollars. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82484/90337/F850032220/ETH82484.pdf>

<sup>21</sup> See Carriage of goods by Multimodal transport in Ethiopia, Proclamation No 548 of 2007, Negarit gazette 13th year No 59

[http://www.mor.gov.et/images/Documents/Proclamation/Custom/Proc\\_No\\_548\\_Multimodal\\_Transport.pdf](http://www.mor.gov.et/images/Documents/Proclamation/Custom/Proc_No_548_Multimodal_Transport.pdf)

Article 20 provides ... where a multimodal transport operator becomes liable for any loss of, or damage to, any goods, the nature and value where of have not been. declared by the consignor before such consignment have been taken in charge by the multimodal transport operator the liability of the multimodal transport operator to pay compensation shall not exceed special drawing rights 835 per package or other shipping unit, or special drawing rights 2.5 per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

As it is the case in foreign courts, the same problem holds true in Ethiopian courts' too. which discussion will be presented in chapter three. But before that it is prudent to see first the concept and development of the term package/Unit/Shipping Unit.

### **3.6. The meaning of Package /Unit**

As witnessed in the previous discussion, the terms package/ unit is an important term in all the conventions. It seems an indispensable yard stick in deciding the amount of liability to be limited. Nevertheless, all the laws have not defined it in a vivid manner ever. As a result, the law making body failed to articulate its plain meaning which in turn opens a lacuna for dispute and controversies among the interested groups. *Because of this, in most cases, it can be boldly said its meaning has been emanating from the law interpreter than the law maker.*

Following this, it has been tried by different authorities in defining, explaining and interpreting it. For the purpose of a full-fledged understanding let us see some definitions given by some authorities.

#### **3.6.1. Package**

The word has been defined by the Oxford English Dictionary as "the whole or mass of things packed together; a cargo.... A bundle of things packed up, whether in a box or other receptacle, or merely compactly tied up".

Webster's New Twentieth Century Dictionary on its part provides the meaning of "package" both "a wrapped or boxed thing or group of things; a parcel; a bundle" and "a box, case, etc. in which things are packed".

Black's Law Dictionary where the famous law terminologies are defined, states "package" as "[a] bundle put up for transportation or commercial handling; a thing in form to become, as such, an article of merchandise or delivery from hand to hand. ... As ordinarily understood in the commercial world, it means a shipping package".

A very simple definition has been forwarded by (Tetley, 1978) as, a package is wrapper, carton, case or other container in which cargo has been placed for carriage. There must be a packaging.

In common law legal systems, where judge made laws are sources of law, like that of the USA the meaning of package is emanating from the decisions of the competent courts. For example, in the case in the Hartford Fire Insurance Co. v. Pacific Far East Line case<sup>22</sup>, the judge stated that *...the word "package" does not have any specialized or technical meaning, it is neither the term of Art.* He argued a plain ordinary meaning for it and even the parties' characterization of the word is immaterial: an article will not become a package merely because the parties have chosen to call it one.

The Ethiopian case is different for it is following the Continental (civil law) legal system, whereby law is made by the legislative branch of the government (House of people representative) is the main. perhaps, the only source of law.

### **3.6.2. Unit**

Alike “Package”, “Unit” is an important terminology employed in the above mentioned legal regimes. Yet, it’s meaning is of a controversial nature and have remained for many years. According to (UNCTAD,1971, p. 45, mentioned by (Astle, 1981)), the term has been identified as blatantly confusing in that whether it is meant to a physical Shipping unit (for instance, car, machinery with no box) or it meant the unit used to calculate the freight.

Although the rules are unclear, by induction it may be possible to categorize all kinds of cargo other than packed and bulk, as unit. (TrietelG.H, 2011). In this regard the Hamburg

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<sup>22</sup> [https://scholar.google.com/scholar\\_case?case=6681431169055977835&hl=en&as\\_sdt=2006](https://scholar.google.com/scholar_case?case=6681431169055977835&hl=en&as_sdt=2006)

rule is better in explaining it. it employed a phrase “shipping unit” which is less ambiguous than the former rules.

As the rationale behind why involvement of courts in explaining the meaning of limitation of liability is becoming vital and relevant in the concept of liability and its limitation in connection with maritime industry, the role of judges is of vital importance. Generally speaking, courts of law follow three types of approaches or tests in deciding what thing is a package/unit and which is not. (Tighilt, 2006)

- *Intention test*: it has something to do with who consolidate or stuff the goods in the container. If it is done by the carrier, courts tilt to favor the shipper. This means the carrier will be denied to limit its liability.
- *The functional packing test*: while using this approaches judges asked “are the smaller packages packed together in another bigger box, for example CONTAINER, capable of shipped on the ship by themselves? “If they answer it to the affirmation, then they call the bigger container as “not package”
- *The simple test*: in this test the court gives more emphasis to the content of the bill of lading. If the bill of lading describes clearly the cargo as “package”, then this test helps the judge to decided it as “package.”

In light of this fact, various decisions have been passed in various courts as to what constitutes package/unit and what doesn't. In some jurisdictions apart from the role of the courts in the interpretation of law pertaining to limitation of liability, Law making bodies also have key role in the drafting and making of plain provisions. In this regard, discussion of the Ethiopian case, will be made in the following chapter.

## Chapter Four – The Case in Ethiopia

### 4.1. General overview of Ethiopian laws and Shipping Activity

FDRE is a country located generally in East and specifically in the Horn of Africa with a total area 1,104,300 sq.km of which only less than 10% is covered by water. According to (World Atlas, 2018; as cited by (kasahun, 2018))the number of population of Ethiopia is around 100 Million plus.

Before, the existing 1994 FDRE Constitution, Ethiopia was a coastal state and had had its own access to and from the sea via Assab and Massawa ports. However, after Eritrea's liberation and secession from Ethiopia<sup>23</sup> (together with the above only two ports) (Gebremedehn, 2008) in 1993, particularly after 1998, when the bloody war broke out <sup>24</sup> between the two sisterly nations, *Ethiopia became a land locked country since then.*

Despite land locked, Ethiopia, being one of the most populous countries in Africa, owning (as Public enterprise) more than 11 liners (9 general cargos 2 tanker) vessels flying its flag and other chartered vessels, developing and administering more than 7 dry ports, employing more than 3000 on and off shore employees, licensing numerous actors in shipping related activities and engaging in high import –export trade via the above mentioned ports, makes it a true Maritime nation. Thus, as a maritime nation it inevitably needs to have maritime laws and regulations.

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<sup>23</sup> The Eritrean independence movement began a political and military campaign of resistance against Ethiopian rule that lasted for 30 years, culminated in 1993 to becoming an independent state after defeating the then Ethiopian government. see Iyob, R. (1997). *The Eritrean struggle for independence: domination, resistance, nationalism, 1941-1993* (Vol. 82). Cambridge University Press.

<https://www.worldcat.org/title/eritrean-struggle-for-independence-domination-resistance-nationalism-1941-1993/oclc/1025639502>

<sup>24</sup> Ibid 23

To this end, besides its old Maritime code which was enacted in 1960<sup>25</sup>, Ethiopia has enacted Proclamation no 547/2007<sup>26</sup>, a Proclamation to amend carriage of goods by land and Multimodal Proclamation no 548/2007<sup>27</sup> that regulates the combined mode of (Multimodal) transport. In all these laws the concept of “*The right to Limit Liability by the carrier under the Bill of Lading Contract*” in general, and “*per package/Unit*” limitation in particular, are incorporated. In the next section the relevant provisions will be dealt.

## **4.2. Limitation of Liability Under Relevant Ethiopian Laws**

### **4.2.1. Maritime Code of Ethiopia**

Ethiopia has never ratified those conventions mentioned above and is still party to none of them. But, in its Maritime code of 1960, it incorporates the provisions of Hague rule *almost verbatim* including those rules governing the per package/unit limitation of liability of the carrier.

If we see for instance, Articles 180-209 of the Code<sup>28</sup>, which deal with bill of lading contracts are most probably taken from Hague Rules. Even some articles of the Code like Article 197 (lists of conditions on which the carrier is fully exonerated), Article 200 (about dangerous goods)<sup>29</sup> are identical with Article 2 and 6 of the Rules respectively. This is because, Hague Rules, before being amended by Hague-Visby Rules in 1968, was the prominent convention in 1960s when the Maritime Code of Ethiopia was enacted. (Wada, 2007).

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<sup>25</sup> Supra 3

<sup>26</sup> Carriage of goods by land in Ethiopia, Proclamation No 547 of 2007, Negarit gazette 13<sup>th</sup> year No 58 ADDIS ABABA 4<sup>th</sup> September. 2007

[https://www.lawethiopia.com/images/federal\\_proclamation/proclamations\\_by\\_number/547.ae.pdf](https://www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/547.ae.pdf)

<sup>27</sup>. See Supra 21

<https://chilot.me/wp-content/uploads/2011/01/proc-588-proclamation-defining-the-liability.pdf>

<sup>28</sup>. See Supra 3

<sup>29</sup>. See Supra 3

Art.198 of the Maritime Code Provides that:

(1) ... the liability on the carrier shall not exceed **1000 Ethiopian Dollars** <sup>30</sup>.

Here, it is prudent to pay attention that the version in the Ethiopian language, “AMHARIC”, which does have a final legal authority, provides **only five hundred (500) Ethiopian Dollar**. As one scholar said, the discrepancy between the two versions of the Code, Whether or not this is a deliberate act or a slip of the pen is unknown for it was impossible to find any background materials (Wada, 2007).

(2) ... limitation shall be *determined by package and in respect of goods loaded in bulk, on the basis of the unit normally serving for the calculation of the freight.*

(3) ... limitation may not be set up against the shipper where *the nature and value of the goods have been declared by the shipper before shipment, and such declaration has been inserted in the bill of lading.*

From the wordings of the provision, the following peculiar features can be drawn,

- Alike Hague convention, it does not define the word “package or Unit” it even does not give a clue like that of Hague/Visby or Hamburg rules,
- Unlike Hague/Visby or Hamburg rules, it uses the term ‘Unit’ as fright unit which only works for bulk cargoes.
- It presupposes all the goods, except bulk cargo, are always in packaged form. It does not consider a “unitized” items. As it stands now it would be very difficult to settle if a dispute on un “packed” (un containerized) vehicle,

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<sup>30</sup> 1000 Ethiopian Dollar at that time was exactly equals to 100-pound Sterling. Here, it is wise to pay attention that the version in the Ethiopian language, “AMHARIC”, which is the one which does have a final legal authority, provides only five hundred (500) Ethiopian Dollar.

generator and other heavy items arises since these items are *neither bulk nor packaged*.

- The amount of money to be limited per package is only 500 Ethiopian dollar<sup>31</sup>

Except this difference, it is possible to say Art. 198 of the Code is *much closer* to the provision of COGSA<sup>32</sup> of the USA than Hague Rules.

#### **4.2.2. carriage of goods by Land Proclamation No 547/2007 and Multimodal Proclamation No 548/2007.**

##### **4.2.2.1. Proclamation No 547/2007**

Ethiopia has enacted a new proclamation No 547/2007 that repealed and replaced part of carriage of goods by land provisions from its commercial code of the 1960<sup>33</sup>. The amendment was considered as a prerequisite in avoiding any contradictions and for the proper implementation of Multimodal transport in Ethiopia.<sup>34</sup> This was why both proclamations were enacted in a row.

As clearly seen in this proclamation, it has made a lot of changes from the old one in many respects. For the purpose of this study only the relevant provisions, i.e., the package limitation is considered.

For example, Article 27(2) stipulates that,

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<sup>31</sup> In 1960's 1 USD was equivalent to 1 Ethiopian Dollar. But now it is almost 1USD:30 Eth Dollar(Birr).

<sup>32</sup> See Article 1304(5) ...the carrier is not liable in an amount exceeding **\$500** *per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit*, unless the nature and value of such goods have been declared **by** the shipper.

<sup>33</sup> See the amended Carriage of goods by land provisions (Book 3 Title 1, from Art 561 to 603) of Commercial Code of the Empire of Ethiopia, Proclamation No.164 of 1960, Nagarit Gazette 19th year No 1.

See also Article 43 of Supra 17. <https://www.wipo.int/edocs/lexdocs/laws/en/et/et014en.pdf>

<sup>34</sup> See the preamble of the proclamation Supra 21.

*... shall not exceed special drawing rights 835 per package or other shipping unit, or special drawing rights 2.5 per kilogram of gross weight of the goods lost or damaged, whichever is the higher.*

*As per sub Article (3), the nature and value of the goods have to be declared and made an integral part of the contract.*

One additional and special provision (Article 27(4)) that has to be mentioned here is that this proclamation has made the carrier liable *for the delay it caused but the amount is limited to the freight multiplied by 2 ½ (2.5)*. However, such payment shall not exceed the total freight payable.

Most importantly Article 28(1), it provides that,

... where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the contract document as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in such article of transport are deemed one shipping unit;

#### **4.2.2.2. Multimodal Proclamation No 548/2007**

For a land locked country, like Ethiopia, the implementation of a multimodal transportation system is very crucial because of many reasons. First and for most, it allows the shipper or cargo owner to enter into only one contract of carriage with the multimodal operator unlike the unimodal which normally requires two and more contracts, (with the carrier, the freight forwarder, the customs clearance officer...), it improves the inefficiency of cargo handling system. From cost wise, it helps the country to save its limited hard currency from paying to the coastal state's port authority as port dues, demurrage and storage as in the unimodal cases. It does also have a significant benefit from the security and safety perspective as well. The longer

the cargo stays in another country the more severe the risk of theft, lost and accident. Moreover, if we see it from the forum and applicable law perspective, it is difficult to litigate in another country's jurisdiction.

Owing to these and other related operational, economical and legal reasons, Ethiopia in 18/11/2006 had signed a bilateral agreement with Djibouti and ratified it by its parliament via proclamation No 520/2007<sup>35</sup>. Since then Multimodal transport system has been in place and implemented.

Having seen this brief note about the law, now let us see it in relation to the issue of package limitation.

*Article 20 stipulates that,*

*... the liability shall not exceed special drawing rights 835 per package or other shipping unit, or special drawing rights 2.5 per kilogram of gross weight of the goods lost or damaged, whichever is the higher.*

Most importantly in sub Article 2, it provides that,

... For the purposes of calculating which amount is higher in accordance with Sub-Article 1(a) where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the bill of lading as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in such article of transport are deemed one shipping unit.

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<sup>35</sup> The Ethio-Dijbuti Multimodal Transport System Agreement Ratification Proclamation no520/2007, 13<sup>th</sup> year, no 20, ADDIS ABABA, 24<sup>th</sup> April, 2007.  
<https://www.google.com/search?q=proclamation+No.+520%2F2007+of+Ethiopia&oq=proclamation+No.+520%2F2007++of+Ethiopia&aqs=chrome..69i57j33.7056j0j7&sourceid=chrome&ie=UTF-8>

One important provision to be referred here is that Article 20 (3). To explain the idea with example, let us say while the good is transported by a multimodal transport contract, the damage happened in the land leg part in respect of which the applicable law provides a compensation 1000SDR per package. In this scenario the carrier cannot raise the 835 SDR package defense and shall be obliged to pay 1000SDR. On opposite scenario if the Compensation in that particular law is 700SDR/package, the carrier cannot again raise the defense to pay this amount. According to this provision, When the loss of or damage to the goods *occurred during one particular stage* (be it on sea, on land, or on air), the cargo owner is always entitled to a higher compensation and by no means less than the amount mentioned in the multimodal proclamation (835 /2.5 SDR per package or per kg respectively.)

*To sum up, it is quite easy to see that the provisions of the above twin proclamations are almost verbatim of the Hamburg rule in case of limitation issue at hand, otherwise the rest provisions are taken from the UN Convention on Multimodal transportation, 1980.*

In these proclamations

- the concept of package/Unit, has been clarified in a better technique/way than the Maritime code, At least the issue of container whether it is a package or not has been solved.
- the amount of limitation has been raised up and harmonized with the latest International Conventions,
- both proclamations allow the shipper to declare his goods in package or in kilogram so that he can get as higher as possible compensation.
- both proclamation employ the phrase “shipping unit” to address goods other than “packed” goods.

- One peculiar nature they show in contrary to the previous law is that they don't regulate "bulk cargo"
- Particularly Article 20(3) of the multimodal transport proclamation even allows the shipper/cargo owner to choose the highest limited liability. Generally, *in both laws the cargo owner seems more privileged and protected than the carrier.*

Nonetheless, like the rest of the world, the issue of the per package /unit limitation of liability is controversial in Ethiopian jurisdiction as well. In the next section an attempt is made discuss some court cases of Ethiopia in context.

#### **4.3 Discussion of Ethiopian Courts' decisions**

Before discussing the decisions of the courts in relation to the said subject matter, it is worthwhile first to see in a bird's eye view, the structure and the power vested to the judicial organ of Ethiopia. The FDRE constitution<sup>36</sup> established an independent judiciary where all judicial power is exclusively vested to Courts.<sup>37</sup> Unlike many countries there is no special Maritime /admiralty court in Ethiopia to adjudicate over the maritime related cases.

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<sup>36</sup> In 1995 Ethiopia has adopted a new Federally Structured Constitution. See a *Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia*. (Proclamation No. 1/1995).

[https://www.google.com/search?q=Proclamation+to+Pronounce+the+Coming+into+Effect+of+the+Constitution+of+the+Federal+Democratic+Republic+of+Ethiopia.++\(Proclamation+No.+1%2F1995&oq=Proclamation+to+Pronounce+the+Coming+into+Effect+of+the+Constitution+of+the+Federal+Democratic+Republic+of+Ethiopia.++\(Proclamation+No.+1%2F1995&aqs=chrome..69i57j1886j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Proclamation+to+Pronounce+the+Coming+into+Effect+of+the+Constitution+of+the+Federal+Democratic+Republic+of+Ethiopia.++(Proclamation+No.+1%2F1995&oq=Proclamation+to+Pronounce+the+Coming+into+Effect+of+the+Constitution+of+the+Federal+Democratic+Republic+of+Ethiopia.++(Proclamation+No.+1%2F1995&aqs=chrome..69i57j1886j0j7&sourceid=chrome&ie=UTF-8)

<sup>37</sup> See Chapter 9 Article 78 and 79 of the Ibid 36.

PROCLAMATION NO. 454/2005 A PROCLAMATION TO REAMEND THE FEDERAL COURTS  
 PROCLAMATION NUMBER 25/1996 ADDIS ABABA-14th June.2005 11<sup>th</sup> year no 42.  
<https://www.abysinnialaw.com/uploads/454.pdf>

In Federal courts structure, there are three tiers, namely, First Instance, High and Supreme courts. Any justiciable matter which falls under the jurisdiction of the Federal courts is distributed to each court based on the nature of the case and the amount of money involved in the dispute by a proclamation.<sup>38</sup> *The Supreme court has the power to adjudicate cases in its appellate jurisdiction and correcting any fundamental error of law (via its special division called the Cassation Division) made by any courts of jurisdiction in their decision.*<sup>39</sup>

Having seen this, it is now the proper place and time to discuss the controversial decision of the Cassation division of the supreme court of Ethiopia on issues related to package limitation.

#### 4.3.1 Case 1

In December 21, 2010, the Federal Supreme Court, Cassation Bench, of FDRE, passed a decision which is final and *with a precedence effect* in future similar cases and issues at all levels of courts in Ethiopia.<sup>40</sup>

The court has given an important guidance on when to say *“the nature and value of the goods has been mentioned in the bill of lading”* which is important and compulsory element(prerequisite) to the carrier in the exercise of his right to limit his liability per package.

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<sup>38</sup> See Ethiopia has promulgated a proclamation to the Federal Courts Proclamation number 25/1996 <http://www.fsc.gov.et/content/Negarit%20Gazeta/Gazeta-1988/Proc%20No.%2025-1996%20Federal%20Courts.pdf>

<sup>39</sup> See PROCLAMATION NO. 454/2005 A PROCLAMATION TO REAMEND THE FEDERAL COURTS PROCLAMATION NUMBER 25/1996 ADDIS ABABA-14th June.2005 11<sup>th</sup> year no 42. <http://www.fsc.gov.et/content/Negarit%20Gazeta/Gazeta-1997/Proc%20No.%20454-2005%20Federal%20Courts%20Proclamation%20Reamendment%20.pdf>

<sup>40</sup> There is no a system of online means to find the decision even possible the language is local. Therefore, the writer opts to attach the decision with its English translation.

The case was brought before the Court by the applicant (Nyala Insurance S.C.) on the grounds that the High Court in its decision, which says “liability of the respondent (Ethiopian Shipping Lines S.C.) had to be limited per package,” had made a *fundamental error of law* and shall be corrected. The theme of the litigation was revolving around on the issue of package and how the compensation should be calculated.

#### **4.3.1.1 Facts of the case**

The respondent had concluded a sea carriage contract with the applicant’s client to transport *50 boxes of glasses, contained in a container*, belonging to the applicant’s client, from China to Djibouti Port. In connection with problems arising from loading however, 10 boxes of glasses had sustained damage. Due to this the applicant had paid to its client birr 101,465 (One Hundred One Thousands Four Hundred Sixty-Five ETB) as compensation. Hence, the applicant submitted its statement of claim against the transporter (the respondent) for reimbursement of the money it had paid to its client.

The respondent on his side argued that, loading operation was not carrier’s responsibility and hence, the carrier should not be liable at all for the damage resulting from loading process. If the court found it liable, alternatively, *since the price of the goods was not known, the liability should be limited to 500 ETB for each box (package)*.

The First Instance Court, based on the survey report which proved that the damage occurred as a result of mishandling of the container, had ruled that the carrier was liable for the damage. Regarding the amount of damages, since the unit price of the goods in question was not known and not seen “in figure” in the bill of lading, it is difficult to conclude that the carrier(respondent) knows the “**the value**” of the goods.

If that is case, the carrier has the legal right to limit its liability. Therefore, as per sub Article 1 of Article 198 of the maritime code only birr 500 (Five Hundred) be paid per one box. The total payable for the ten boxes so be birr 5,000 (Five thousand Ethiopian birr).

The applicant, who was discontented by this decision, submitted its petition of appeal to the federal High court. The high court, having heard the litigation of the parties, it affirmed (upheld) the lower court's decision. The applicant once again did not agree by the decision of the high court and submitted its final petition to the Supreme Court's cassation division *on the basis of "erecting the fundamental error of law"* (not a normal appeal) as a final resort. In its petition, submitted on 15, 2010, it mentioned that the applicant's client had given shipping instructions to the respondent together with the LC that specifies the actual price of the good. Moreover, LC No. NIB/HGB/04/2007/ was incorporated in the Bill of Lading issued by the respondent, which showed the respondent knew the price of the goods. Hence, the respondent was already informed and knew before shipment that how much foreign currency had been paid for each good. Due to this, the carrier does have no right to raise he package limitation defense. Therefore, the relevant provision of the law for this case was Article 198 sub 3 not sub 2 and hence the two lower courts had made a "fundamental error of law" in their decision which should be then rectified.

The respondent on his part asserted and argued that the issuance of LC has nothing to do with the carrier. *It governs the relationship between the client and its bank.* The relationship between the respondent and the applicant's client is only contract of carriage not LC. The carrier even did not see the so called L/C. The LC no is *inserted as per the request of the shipper for the purpose of bank transaction between them.* *Not only that the insertion doesn't clearly show the value (price) of the goods except "L/C no"* Therefore, there is no room to say the respondent knew the value of the

goods as provided in the law and hence, the lower courts had made no fundamental error of law and should be affirmed.

The Cassation division, in the Supreme Court, which has vested with the power of adjudicating on cases which it thinks fundamental error of law has been made by the lower courts, after reviewing all the litigations, evidences presented and the provisions of the law, has reached on the conclusion that “*a fundamental error of law has been made by the lower courts*”.

#### **Reasoning of the Cassation division**

1. The respondent did not clearly and unequivocally deny that it did not receive the LC document from the shipper. It should have been denied in a clear manner, not evasively. According to Article 234(1) (e) of the Civil Procedure Code, evasive denial tantamount to acceptance of legal responsibility. Therefore, the argument raised by the respondent that the unit price of each glass of box was unknown by him is not a valid argument.
2. If the respondent had the knowledge about the documents by which the payment was effected in foreign currency *and as long as the number of this document was mentioned on the bill of lading, it is enough to conclude the respondent knows the value of the goods. Then, the appropriate provision of the law for this case would not have been sub article 1 of Article 198 of the Maritime Code. Instead sub Article 3 is relevant.* Thus, a fundamental error of law had been made by the decisions of the lower courts.
3. Therefore, the decision of the first instance court which also upheld by the high court, referring to Article 198 sub Article 1 of the Maritime code that for each box of mirror Birr 500.00 should be paid to the applicant is found to have

a fundamental error of law and hence, the decisions of the federal First Instance and High Courts are hereby revised. *The amount of compensation therefore, should be the actual price of the damaged mirrors not limited to 500 Ethiopian birr per package or box.*

From the Supreme court decision, we can generally infer that ...*if the carrier receives the shipping documents and particularly the LC and insert it's no (not even the Value or price) in the bill of lading, it is a prima facie evidence to conclude that the carrier knows the actual price of the goods. As a result, the carrier shall not have the right to exercise package limitation as per the above mentioned provisions.*

#### **4.3.1.2 Critique**

Before taking a position as pro or against the decision, it is better to have a close look at Article 198 of the maritime code that provides as follow,

(3) The statutory limitation may not be set up against the shipper where the nature and value of the goods have been declared by the shipper before shipment, and such declaration has been inserted in the bill of lading.

*The key issue to be addressed here, in my opinion, is that when do we really say that the nature and value of the goods have been declared by the shipper? and such declaration has been inserted in the bill of lading.?*

*Is not the provision plain enough and applied as it is? Or it is vague and needs interpretation? is the basic question that needs to be answered.*

The court reached on the conclusion that the provision needs interpretation. Accordingly, even if, it is true and the respondent argued that the bill of lading did not mention the actual price (“value”, as per the law) of the goods, this fact per se

could not prove that the respondent did not know the value of the goods. *If this is so, there is no need of inserting the exact price(value) of the goods in the bill of lading. Only receiving the LC documents and insert “the LC no only” in the bill of lading suffice the requirement of the provision that states... the nature and value of the goods have been declared by the shipper before shipment, and such declaration has been inserted in the bill of lading...*

#### **4.3.1.3 Personal Opinion**

In my opinion the provision of the law is crystal clear that does not need any interpretation or construction, unless one can argue that “Value” is different from “price”. In my view there is no difference between them. Most of all the Amharic version of the law clearly use the term “**Waga**” which exactly means “**price**”. If the provision is plain this much, then, the rule of interpretation to be adhered and applied by the Court should have been “**Apply as it is when the law is plain**”. In my view the phrase... nature and value of the goods have been declared by the shipper before shipment, and ***such declaration has been inserted in the bill of lading*** ... is plain enough to be applied as it is without further construction or interpretation.

In fact, the researcher agrees with the holding of the court in that the insertion of the LC no in the bill of lading, at least indirectly, witnessed that the carrier had the knowledge of the price of the goods. *but I strongly disagree in that “the insertion of the LC no only” tantamount to the insertion of the value of the goods.* As enshrined in the law this declaration has to be inserted in the bill of lading for the law requires the fulfillment of both ***cumulatively***. Otherwise it seems, under the guise of interpretation, indirectly snatching the powers and duties of the law making body.

Moreover, the court did not consider the terms of the contracts in the back of the bill of lading that allows the carrier to limit its liability, specifically Article 5(B)-v that

talks about the Ad Valorem-declaration of value. Under this rule it is stated that...the liability of the carrier, if any, shall not exceed prescribed in ***any applicable national laws*** or international conventions unless the nature and value of the good has been declared by the merchant before shipment and inserted in the bill of ***lading and extra freight paid on such declared*** value. Although the court over looked it, *During the litigation the carrier argued that it did not receive any additional freight with the intention of the package is the container itself not each bags in the container.*

*In conclusion, as per the code, the international conventions and the terms of the Bill of Lading each box is no doubt considered as a Package and the insertion of the L/C no might also show the carrier has seen the document, perhaps the price of the goods. However, in this particular case the value of the goods had never clearly inserted in the bill of lading as required by the law. For this reason, I am against the decision of the court that denied the carrier's right to limit its liability*

#### **4.3.2 Case 2**

In another older case held between Melese Asfaw v Ethiopian Shipping Line Corporation, <sup>41</sup>under File No. 1709 and Appealed File No. 17721, The court in May 2000 decided that...*A car was considered as a package and allowed the carrier to limit its liability to 500 Ethiopian Birr that relieved the carrier from paying its actual price.*

##### **4.3.2.1 The Facts of The case**

The carrier agrees to carry one car from abroad to Assab port of Eritrea. However, before the owner receives the car a war broke out between the two countries and the car was damaged. Following this event, the owner of the car claims the price of the

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<sup>41</sup> Since this case is older and the system of finding court decisions is difficult it is not possible to attach any link to the case.

car (40,000 Ethiopian Dollar) as compensation. The Carrier in his statement of defense opposes that he has already delivered the car to the port authority safely and is not under any legal obligation, if he held liable however, his liability shall not be more than 500 Ethiopian Birr as per Article 198 (2) of the Maritime code of Ethiopia.

The court framed two issues

1. *Is the carrier liable for the loss?*
2. *If so, should his liability be limited?*

After examining the case, it ruled that;

1. As per their contract of carriage, delivering the car to port authority doesn't show that he delivers the car to the owner or its agent. Therefore, it is liable for the damage.
2. Regarding the limitation, the court considered the car as "package" and the liability of the carrier should be only 500 Ethiopian Dollar. No 40000 Ethiopian Dollar.

The case was appealed by both of them, but the appellate court Reserved/confirmed the lower court decision. In fact, the appellate court explains the reason how it considers the car as a package. In the justification *it says that.... although Article 198(2) requires the good to be packed, the car by its nature is not of such kind. Therefore, even if not packed the car should be considered as "a package"*

#### **4.3.2.2 Critique**

As discussed above Article 198 (2) of the Ethiopian Maritime code *doesn't employ the term "UNIT" that can help in designating some items like that of cars. The provision clearly used "unit" as a freight unit and it is applicable only for bulk cargo.*

The researcher agrees on the final conclusion of the courts in that the liability of the carrier should be limited, but not with the reasoning. The court tried to categorize an unenclosed car as “package” in which I do not agree upon. The provision is crystal clear in that it is not possible to consider a car with no some kind of container as packaged good and bulk cargo neither. The court should opt to other convincing justifications.

In the opinion of the researcher, the Court should have looked on the provisions (rules) of the back of the bill of lading. One of the provisions of the rule provides... in lieu of national law to settle the case, Hague rule shall be applied. And in Article IV rule 5 of Hague rule it is stated that the liability of the carrier *shall not exceed 100-pound sterling per package or per Unit.*

*Therefore, the Court could have justified its decision by taking the car as a “unit” (not as package) to limit the liability of the carrier.*

### **4.3.3 CASE 3**

It is quite relevant to discuss another recent verdict of the Federal First Instance Court of Ethiopia, in Case No 229928, dated 24/03/2017 <sup>42</sup>at Lideta division 15<sup>th</sup> Civil Bench as between Nib Insurance Share Company Vs ESLSE .

The court has decided on two important issues. These are,

1. what constitutes a package? a container or bags contained in the container? for the purpose of Article 20 of the Multimodal Transport proclamation of Ethiopia?

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<sup>42</sup> There is no a system of online means to find the decision, even so, the language is local. Therefore, the writer opts to attach the decision with its English translation.

2. How the calculation of the compensation be made?

#### **4.3.3.1 Facts of the Case.**

The defendant agreed to carry the claimant's customer (Amdeyehun General Trading P.L.C) cargo of bagged Raisin (into defendant's container), by the mode of multimodal transport system from Egypt to Ethiopian dry port via Port of Djibouti. The defendant prepared and gave a bill of lading covering the said container. In the bill of lading it was stated that,

1 container said to contain ,6800 cartoon or 68000 kg.

The plaintiff, agreed with its customer to compensate whenever the cargo sustain damage or lost while it is in transit.

Based on the contract, to move the cargo from Djibouti port to Ethiopian dry port, the defendant has deployed a truck, plate no code 3-652060, which encountered an accident. Upon delivery 121 cartoons of raisin within the container was found to have suffered damage allegedly due to the subsiding of the Truck.

As a result, it has paid birr 58,524.22 as compensation to its client and prayed the court for reimbursement of this amount including its legal interest, costs and expenses from the defendant.

The defendant argued that the damage was not the result of the accident, even it be true, the Multimodal transport operator (defendant) has done everything expected from him and thus, is not responsible for the damage and shall be set free (exonerated) from paying any compensation. Alternatively, if held liable, according to the multimodal Transport Proclamation no 548/1999 Article 20, the liability of the transporter should not be exceeded from 835 S.D.R per container (package).

The court, based on the statements of claim, defense and the evidences attached therewith has framed the following two issues.

1. *Is the defendant liable for the damage or not?*

2. *If it is so, how much compensation should it pay and on what basis?*

With regard to the first issue, "...the defendant did not argue in clear denial that no accident happened on the truck. Its argument is simply saying the damage was not the result of the accident. However, the Minute prepared, on the presence of the defendant's representative, has witnessed that 121 cartoon of risen has found damaged when it was unloaded from the truck at Modjo dry port. From this situation, it is easy to understand the damage of the 121 cartoons of risen was resulted from the accident the truck had encountered. The evidence given from Awesi Zone, Mille police office, has proven that the truck was fall down. On the contrary, the defendant had failed to prove those measures which relieved it from liability. *Hence, the argument by the defendant that it has no liability for the damage, was not with any legal ground and in deed, it is the Multimodal transport operator that should take the responsibility*".

Concerning the second issue, in light of Article 20 of Multimodal transport proclamation, the value of the goods damaged while under the custody of the multimodal transporter, can be calculated in two ways. If the value of the good is mentioned in the bill of lading (Bill of lading), it will be taken as value of the good, if not, the second method of calculation is 835 S.D.R. per package or 2.5 SDR per Kg whichever is the higher.

On the case at hand, since the value of the good has not been mentioned in the transport document, it is necessary to use the second method of calculation. From the Bill of lading is understood that the total cargo carried was 6800 cartoon or 68000 kg. If the compensation is to be calculated on the basis of the package, the damaged 121 cartoon (package) multiplied by 835 SDR, the value become 101'035 SDR. If it is calculated on the basis of Kg ,1210 Kg (121 Cartoon) multiplied by 2.5 SDR the value will be [2541] SDR. (it has to be 3025)

As per Article 20(1) of the Proclamation, it is, therefore, appropriate to take the value of 121 cartoon (package) as 101,035 SDR. Although, the meaning of package can be applied differently for different goods, since Article 20(2)(a) of the proclamation states that if the package is mentioned in the bill of lading, this package can be taken as a package, so, *each cartoon should be taken as package*. The court found that “cartoon” has been mentioned in the multimodal transport document (Bill of lading).

Based on the above conclusion the liability of the defendant for the 121 package of risen should be 101,035 SDR and according to the exchange rate set by the National Bank of Ethiopia or International Monetary Fund (IMF) one (1) SDR is equivalent to 30 Ethiopian birr, the total liability therefore, is 3,031,050(Three Million Thirty-one Thousand and Fifty birr).

Taking this into account Article 20 of the Multimodal Transport proclamation, even though the liability of the defendant is 3,031,050(Three Million Thirty-one Thousand and Fifty birr), since the plaintiff did not ask for this amount, only the amount sought in this claim birr 58,524.22 and its 9% legal interest and additional 700 Birr cost and expenses shall be paid.

#### **4.3.3.2 Critiques**

From the contrary reading of the decision, it is understandable that the value of the goods have not been mentioned in the bill of lading, and hence, the carrier have the right to limit his liability per package. The court ruled the case this way on which the writer completely agree. For the law allows the cargo owner to use the highest compensation, it is correct that the court opt for the alternative 2.5 SDR per kilo gram as well. Above all I definitely agree on the stand of the court that each bag is a package not the container itself, for the law is vivid in this regard.

So generally, In the opinion of the writer the decision of the court is based on the law.

## Chapter Five – Conclusion and Recommendation

### 5.1 Conclusion

Carriage of goods by sea is the back bone of the international trade. Perhaps, without the active involvement of the shipping industry in general, the carrier in particular, the movement of goods to and from different parts of the world is unthinkable. Nonetheless, it is not an easy business that anyone could easily dive into it for many reasons.

One of the reason, among others, is its risky and perilous nature. Due to this, carriers have been struggling for many years to have a limited liability regardless of their fault and accountability for the loss of, damage to and delay in the delivery of cargo under their custody. *LIMITATION OF LIABILITY PER PACKAGE/UNIT* is the most important achievement in this regard.

Currently there are three international legal regimes, namely Hague (with its two amendments), the Hamburg and the Rotterdam Rules regulating this issue. In fact, the latest one has not yet come into force for the lack of enough signatories to it. The first despite the term package/unit has remained controversial since its inception, these rules have shown many progresses in clarifying what package or unit means, increasing the amount of limited liability, considering the international changes in the shipping industry, etc.

The issue of package /unit which *plays a vital role in the determination of the amount of compensation to be paid*, has been subjected to different understandings and interpretations till today. Many courts of law in different times have passed varied decisions on this same issue.

Although, the number of rules or Articles are very few, they are full of ambiguous legal /operational terminologies. Packages, Shipping unit, “enumerated in the bill of lading as packed”, “nature and value of the goods have been declared” for example are still ambiguous words and phrases appealing the involvement of courts of law in interpreting them.

As witnessed in the statement problem and discussions,

- a “package” for some courts may be “a unit” for other.
- A container considered as “*a receptacle*” which is only used for easing and facilitating the cargo handling, by one judge may be considered as “package” by another.
- The contents in the bill of lading that suffice to carrier may not be satisfactory and convincing the cargo owner.
- Some courts may use the term Package and Unit *interchangeably* but, others see them *distinctly*.
- A unit considered as “a freight unit” by one authority may be rejected by another and might be considered only *as “a physical item”*
- The way of how “the nature and value” of the goods has been followed by the lower court may not be acceptable by the appellate court.
- Some Courts take the “Payment of additional freight” as a material for their decision but for others it may be immaterial.
- The applicable law chosen by one judge may rejected by other judge.

There are many countries who *adopt and/or adapt* these rules of law in their domestic laws. Ethiopia is one of them who *adapt* most of the provisions of the rules. Presently it has three important active laws in this regard. Namely the 1960 Maritime code of Ethiopia a proclamation to regulate the sea leg transport, Proclamation no 547/2007

a proclamation to regulate carriage of goods by the land leg and a Proclamation no 548/2007 to regulate carriage of goods performed by two and more mode of transport (Sea-Land-Rail -Air) called, Multimodal Transport.

All of them incorporate provisions addressing many issues together with Limitation of liability in general and per package/Unit limitation in particular. While these provisions of Maritime code are almost similar to Hague rule, the latter two proclamations are more or less the same with the Hamburg rules and capable of regulating the modern situations. *All of them are adapted not adopted.*

The understanding of the concept is no different and special to Ethiopian courts as well. As discussed in this study courts of different level have different understanding on the issue. This is why the case has been reached to the cassation division, even the decision of the cassation division itself is not free from critiques. This really shows how the issue of limitation of liability per package/unit still is a boiling, un settled and controversial issue which needs further discussions.

## **5.2. Recommendation**

Even if land locked, as a big, populous and maritime country, the need for an up to date maritime laws and regulations is inevitable for Ethiopia for the proper implementation and regulation of all maritime related transactions including carriage of goods by sea under bill of lading contracts where the per package /Unit limitation.

In light of this premises, if we see the 1960 Maritime Code of Ethiopia, in General it is very old (almost 60 years old) and full of obsolete and dormant provisions which in the opinion of the writer, has to be changed from its entirety without any further delay since it is incompatible with the existing international practices, realities and inventions.

Since this study is restricted to the discussion of limitation of liability per package/unit, the recommendation is also limited to these particular provisions of the laws.

The following inter alia, are some of the specific areas that require revision.

- First and foremost, the meaning of Packages and/or Unit has to be made clear in Ethiopian laws. It is necessary at least to adopt or adapt the meaning enshrined in Hague/Visby and /or Hamburg Rules or even the Rotterdam rules.
- The amount of the per package limitation is very meager (500 Ethiopian Birr, (according to the authoritative text which is the national language) which this date is equivalent to about 15-16 SDR.) amount which is unrealistic and never considered the inflation and/or devaluation of money for the last 60 years. Thus, it is highly recommended that the amount of limitation per package /unit has to be changed to Hague/Visby (666.6 SDR per package) or Hamburg (835 SDR per package) or Rotterdam Rules (875 SDR per Package) together with a due care in the translation task as well.
- This code used a fixed amount of currency of Ethiopia, which is even worse than the old Hague/Visby rule which used gold value, that by itself, ever changing and unstable, as a unit of account. So the recent unit of account the international community is using, including Ethiopia in her two proclamations discussed above. i.e. SDR, has to be in place and serve as a unit of account.
- Notwithstanding that the Multimodal proclamation employed better provision (similar to Hamburg Rules) to address the limitation of liability issues, it lacks defining the term package or unit in a very plain manner.

Ethiopia, as a civil law legal system following country, the law making body has to enact law as comprehensive, unequivocal and unambiguous as possible. Some argues and considers the decision of Cassation division for itself is law making task. But it is not. The court only erects laws which it thinks a fundamental error of law has been made by the courts below it, *in deed the phrase “Fundamental error of Law” itself is so controversial that needs an interpretation.* Ethiopia judges, as opposed to common law judges, are not allowed to make laws rather to interpret.

- Since the shippers, cargo owners and insurers are not happy with the lowest compensation ever, Ethiopia has to adopt the Hamburg/Rotterdam Rules since its economy is highly dependent on Maritime sector and particularly in the shipping sector.
- Contracting parties shall also give due attention to the terms and conditions that are to be inserted in the bill of lading for it is from where their intention is found on which most judges based on for their decision.
- Unlike the common law legal system where judge made laws are dominant and the main sources of law, the civil law legal system, like Ethiopia, where the main sources of law are coming from the law making branch of the government, with the help of experts on the field, has a responsibility in making comprehensive and plain provisions as much as possible.
- For some prominent scholars like Palmier Egger the term package, when employed that time it, had taken the conditions and shipping practice of that time and today it is unworkable one. So different terms, which fit the current situations and shipping practice should be employed.
- After the cassation decision on the above mentioned case, the Carrier was compelled to change its standard terms of bill of lading by inserting a clear declaration that says *“The L/C no inserted in the bill of lading is upon the request of the shipper for its commercial purpose only. The carrier is not*

*a privy to it and doesn't preclude him to use its limited liability".* Even with this new improvement, the courts from the first instance to the cassation division (in another similar cases) did not accept this argument and unanimously rejected it. They justified it by mentioning the law does not have any room to allow contracting parties to agree in such a manner (even in some similar laws like Multimodal proclamation it is clearly prohibited to make an agreement which reduces the legal liability of the carrier). Therefore, the carrier should know this and must be conscious on the terms, conditions and even information to be mentioned and /or enumerated in the bill of lading so that it can enjoy the right to limit his liability.

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