

Contents lists available at Sjournals



Journal homepage: [www.Sjournals.com](http://www.Sjournals.com)



**Review article**

## The civiiiability for damage's caused to the goods from loading to discharge by sea carriage

**S. Kheradmandy<sup>a,\*</sup>, H.R. Rostami<sup>b</sup>**

<sup>a</sup>Department of Law, Kermanshah branch Islamic Azad University, Kermanshah, IRAN.

<sup>b</sup>PHD student in the private Law , Islamic Azad University, U.A.E Branch.

\*Corresponding author; Department of Law, Kermanshah branch Islamic Azad University, Kermanshah, IRAN.

### ARTICLE INFO

### ABSTRACT

*Article history:*

Received 31 July 2014

Accepted 22 August 2014

Available online 29 August 2014

*Keywords:*

Civil liability

Ship owner

Ship tenant

Incumbent carrier

Forwarder

Maritime transport, maritime law is an important issue, and a turning point in the study of the subjects of this type of transport, civil liability to compensate damages to the goods during transit is. Dispute about responsibility for maritime transport operators, technical developments in the various aspects that, in recent decades, formed in marine transport, and has led a variety of contracts, in addition to the transport operators, who spoke of the responsibility as a secondary transport operators, ship owner, tenant, ship, forwarder and drainage contractors, and the arise, so that the works of jurisprudence is visible, the various stages of transportation, and the responsibility of identifying persons involved in each of these steps, based on domestic and international jurisprudence, the objectives of this article.

© 2014 Sjournals. All rights reserved.

### 1. Introduction

The owners of the goods for carriage of goods by sea, the following two methods are used; chartering contracts, or contracts for marine transportation. Chartering contract, the contract between the ship owner and the charterer to the vessel for one or more trips, or is held for a certain period (Aalayi

fard, Mohammad Ali, 1999: 90), and most authors maritime transport law, according to this definition, there are three types of tenancy ship, identified put, lease or rent a vessel for a specific voyage (Voyage Charter), chartering contract to the clamp Demise Charter)), and the chartering contracts for a specified period, or lease time (time charter), in each responsible parties, the product is different than the damages. The first type of lease, the tenant is entitled to, your product will ship, but the ship handling, may not be transferred to him, but the owner of that ship, the commander and staff his sanction under the control and management of ships it is the responsibility. In this way, the ship owner full responsibility, liability for damages on the goods, will be responsible. (Ivami, Hardy, 2005: 25) The second type of lease, consignor, substitutes will ship owner, in this type of contract, all Supplies and travel facilities, such as food, fuel, etc., should be provided by the tenant. Also, in this contract, command ships, and consequently, to monitor the actions of employees, the tenant's responsibility, and in fact the Commander of the ship, is considered a tenant representative. The result of such an agreement, it is the owner of the ship, the Goods already loaded, so when the ship is in the tenant's rent, responsibility would be. (Ivami, Hardy, 2005: 26) Third, chartering contracts for a specified period or lease time (time charter), which in this type of contract, the tenant, the ship for a time, at its disposal, and after the expiration, it must be returned to its owners. Most books about maritime law, in explaining the different types of chartering three cases referred to above, of course contemplated in this division shows that only two types of chartering contract is identifiable; chartering, as chartering and voyage charter basis, the third type of lease, the law books, as the lease time it is called, not of the third kind, but acceded to rent one of the "kulaks", or "trip "it is. investigate contracts between shipping and chartering, chartering contracts that involve nature, a topic that is very controversial, and the subject is beyond the scope of this paper, nevertheless in general, the nature of chartering three there is a perspective view of the first, based on the motivation of the parties in the contract, it considers the contract of carriage, the second approach, we look at the contract (ship), rent, lease, rental, and a third ship, a special contract (indefinite contract) knows. Regardless of the theoretical arguments, the common law legal systems, and the Roman Germanic, has been proposed in this regard, it is said: "If the lease contract, the" charter "is achieved, in this case, the meaning of the lease contract civil Code, we are facing., but the rental and travel time differences of opinion dispersion is high, those who rent a ship, such as the contract of carriage, they have incentives to replace the subject, and those who consider chartering an indefinite agreement , unaware of the fact that, chartering, maritime law defined, and conditions are explained and it works. "(Mohammadi, Abbas, 2009: 359), in each of the two methods for shipping, through sea, different people are involved, to identify how, and the degree of responsibility of each of the various stages of transportation needs, and involved at every stage, and the duties and responsibilities of a legal, contractual or any of the individuals studied. placed.

## **2. In various stages of maritime transport and related parties at any stage**

### **2.1. Divided into various stages of transportation**

To the various stages of transport, marine transport stages. The reason stated is that, today, in addition to traditional transportation methods, combined shipping, or some other kind is generated from the two methods, the main differences with each other. The traditional transportation, there are basically three steps: transport of goods to the port of loading, shipping to the port of destination, and shipment to the final location. The combined shipping, cargo, without interruption, the state transport caused by different means of transport, under the responsibility of a single person, from one place to another, be pasted. (Mohammad Zadeh Vadqani, Ali Reza, 2002: 63).

#### **2.1.1. Loading phase**

Loading phase, defined in the Hague Convention does not, and is not mentioned. However, business practices and procedures for determining the loading and unloading process, the rule "Fork to Fork" is used pursuant to this rule, when the fork crane, goods for setting up the ship, he started the loading phase, and time of discharge is true that the goods from the ship's crane forks apart, and the quay or wharf or down to another vehicle. (John o. Honnold, ocean carrier and cargo, p: 81) the terms of the

starting responsibility, and termination liability charge transport is important. Moreover, the identification of the loading process, the responsibilities of persons who, prior to loading the cargo access is needed, and perhaps for this reason that the law of the sea, has defined loading. In paragraph 9 of Article 52 of the Law of the Sea, the loading is defined as "loading, typically starts when the fork, crane load, the transmitter is shipped ready to unload the ship, the pier or wharf, by means bearing that is used for this purpose, has long been ... "in fact, the Iranian legal system, when the loading stage, operations, transferring the load to the ship started. The legislature used the term "fork crane" not relevant, because today it is possible, other advanced devices, such as suction machines or conveyors for loading various commodities to be used. Diagnosis loading phase, in terms of determining responsibility important operator, in other words, the law of the Sea, responsible operator, loading time begins and ends at the time of discharge.

The Hamburg Convention, the load is not defined, and may not load as defined above, for this has been that, in the present Convention, essentially starting the responsibility of the operator, the separation point of the earth's goods (the port), the crane is not it is the responsibility of the operator of the moment, the consignor of the sender or his representative, or by a competent authority or other third party, according to the prevailing regulations at the port of loading, the goods must be consigned to send to him, delivered be.

### **2.1.2. Step transport**

The marine laws and regulations, as well as books about maritime law, such as the term "transport", has been studied. In accordance with paragraph 8 of Article 52 of the Law of the Sea "is the term carriage when the cargo ship loaded until it is unloaded from the ship." The Hague also, during transport is defined as: for transporting cargo, including some time ", the time of shipment of goods to ship until the evacuation of the ship", in other words, the stage is carried away when loading, was carried out until the evacuation is carried out, in fact, the distance between the loading and unloading to be included.

Usually goods, shipped by sea, a property that contains multiple components and continuous basis at a predetermined time interval, are loaded, when the shipment starts, the last piece goods the ship arrived, and the loading is finished, the stage until the last component of the unloading of goods, is still continuing. The Hague Convention of loading stage, with "loads" is indicated.

### **2.1.3. Step evacuation**

Law of the Sea, in accordance with paragraph 9 of Article 52, the discharge ends when the fork crane, load the waterfront or waterfront, with a cargo vehicles, used for this purpose, to land. Law of the sea, unlike the Hague Convention discharge is defined. Identification stage, discharge, and it is important that the complete discharge of the responsibilities incumbent carriers terminated. The Hamburg Convention, notwithstanding completion of discharge, is not equal to the responsibility incumbent, and perhaps for this reason that, in the Convention, Hamburg, on discharge, the definition is not enough. However, we should note that the identification stage of loading and unloading, the Hague Convention, and emphasis on introducing these steps, and specify a time range between loading and unloading (stage carriage), derived from the traditional method of transportation, the in the long sea transport, is of interest. on the other hand, traditionally, the senders of your goods, loading of the ship is ready to provide shipboard, and upon discharge of the receiver, it delivers was used, but with the development of trade, increased activity and crowded harbors them, bringing goods alongside the vessel for loading by the consignor and receives its ejection time, it was difficult for the receiver, so the senders of goods before ship loading, the goods at the port was handed over to the warehouse operators and transportation. Similarly, at the port of discharge, transport operators, to deliver to the recipient at the time of discharge, the goods are placed under his care, and in fact, in the period before loading and after unloading to delivery to the recipient, the goods were shipped under the responsibility of the operator, but this time, outside the provisions of the Hague Convention and the law of the sea. (Moradi Govareski, Mohsen, 2002: 21) Hamburg Convention, according to current practices, and responsibilities incumbent transportation, loading and emptying time was limited, and so is that, at this convention, loading and unloading is not defined. The Hamburg Convention, based on the transformation of the transportation industry, the incumbent carries responsibility, and before that, from loading to unloading included, has

been developed. Basically according to the Hamburg Convention, loading and unloading, the beginning and end of the responsibilities incumbent rule, is not. However, due to the fact that Iran has not ratified the Convention, Hamburg, and the Law of the Sea, has been developed on the basis of the Hague Convention, therefore, the old standard, the start and end remains the responsibility of the operator, is used. Yet, despite this rule does not prevent the operator of the consignor, so private contract, contrary to the contract, and the responsibilities attendant to his satisfaction, can develop. F. After emptying and delivery terms with independent means, and with different legal nature, unloading of goods, a physical act, but delivers with its own legal work, in other words, the discharge As the responsibility of the operator, it is important, and not rights per se, but to deliver or surrender, Per se is a legal charge, so that, if the contract of transportation or sea waybill, the term «Taking in charge to delivery», is used, the operator is required to transport, import into the client or his legal representative, to deliver. Thus, the mere discharge of the ship, and even submit it to the port authorities, transport operators and is not responsible for Ablative unless prove, despite the announcement of the recipient of goods, he did not go for it, in which case , in charge of transportation of goods at the port of destination, shall be discharged. (Aalayi fard, Mohammad Ali, ibid: p 162).

## **2.2. Related entities in various stages of transportation**

### **2.2.1. loading phase**

#### **2.2.1.1. Consignor (shipper)**

Understanding the consignor, as one of the parties to the contract of transportation, is important, a supplier, buyer or seller may, or others that are the subject sales contract or any other contract that may be concluded between the parties is, it depends. (Taghi Zadeh, Ebrahim, 2005: 59) of the Hague Regulations, the consignor is not defined, the legislature of Iran, in paragraph 5 of Article 52 of the Law of the Sea, once the sender has defined "once the sender is a person who, with the attendant load bearing shall be provided for the contract, and cargo carrying ships will be delivered. "

Hamburg Convention, in Article 1, paragraph 3, offers a more complete definition. The material, provides: "consignor, any person who, by or in the name of his or her account, the contract of carriage of goods by sea shall be signed by incumbent carriers, and also includes any person is , by his or her name or her account, the contract of carriage of goods, virtually the incumbent carriers will be delivered. "The transmitter defined in this Article, including the transportation contract is signed, and also includes any person who has, the goods will be delivered to the operator. By this definition, a side issue some legal systems that provide for the delivery of goods, works other than give it to the sender, are eliminated, and on the other hand, facilitate trade leads, because of the fact , operator, or agent, he no longer would consider whether the party that has delivered the goods, the contractor or his representative, is or not. (Karkon, Mohammad Reza, 1992: 32) Nevertheless, it must be said: In cases where the freight forwarder, is the contracting action, because this action on behalf of the owner of the goods is carried cargo owner, the sender is. (Taghi Zadeh, Ebrahim, The: p 59).

#### **2.2.1.2. Forwarder**

Forwarder is the infinitive forward, forward, meaning "to send, convey, tote, forward, forward throw, helping, being forward" is. (Arianpoor, Abbas, 1997: 220).

Forwarding Agent, the word "transport factor" has been translated. Legal definition of the term forwarder, international laws and conventions on the less seen. According to some, is the forwarder, the goods of a person who, on behalf of its customers to design, without the carrier's role is. Forwarder, in fact, planning transport chain, and the sender will attempt to deliver the goods, and has signed a contract to carry with him, and the appropriate bill of lading shall issue. Forwarder, means of transportation is considered the mastermind behind the design, and his work can be a great effect on increasing transport speed, and cost-cutting have. (Rabiee, Frank, 2001: 157)

The set of internal regulations, ordinances, establishing, and operating companies, international cargo transportation, transport arrangement approved by the High Council meeting of 61 countries, which was approved in November 1998, to complete the definition forwarder, forwarders paid activities, in addition, Articles 20 and 21 of the regulations, the forwarder is concerned with rights and responsibilities.

According to the "L", Article 1 This Law Forwarder "legal person (company) that contracts with clients nationwide carrier to be awarded. Firms, are contracted directly with the client, forwarder are." The According to the "J", the agent forwarder, is defined as "forwarders is the practice of harmony and order of goods, to different forms of land, air, sea, or a combination of them, and also, service, and responsibility under the bill of lading issued, and signed contracts. "Given the foregoing, it is the traditional role Forwarder mediated transport operations, and commitment to goods, were not personally responsible. Today, a new forwarder services, including tenure and commitment to the transport of goods, in the form of a bill of lading issued nationwide, and can also be combined bill, in which case, all the responsibilities incumbent upon them will be applied.

### **2.2.1.3. Contractual and actual operator transport**

The person in charge of transport, as the person in charge of the whole process has to be identified, and in a division known, the charge carrier contract is divided into real and that, in this connection, according to the researchers, lawyers, detail spoken, briefly "will refer to the relevant points. within a generic definition of the transport operators, 377 of the Commercial Code provides:" no one is in charge of transport, against remuneration, is responsible for carrying objects be. "law of the Sea, Article 52, in charge of defining such a bearing has" general cargo operator, owner or renter of the ship, the cargo sender once the contract is signed, is defined. "that the definition of paragraph (a) of Article 1 of the Hague Convention has been adopted.

Transport operators recognize contractual terms of the responsibilities noticed goods than he is important. Consignor, as one party to the transportation contract with transit operator contract is a contract, and he knows it. Under the Hague Convention and the law of the sea, transport operators and contractors, it can only be a vessel owner or tenant, or someone other than the two individuals can not be regarded as a contract carriage operators. The Hamburg Convention, due to the difficulties in establishing the freight was tried to a broader definition of contract carriage operator providing the Forwarder as possible so that, in it. Therefore, in the first paragraph of Article 1 of the Convention, Hamburg, freight operators, have defined "means any person that is in charge of transport, contract of carriage of goods by sea by his or her name the sender has been concluded is ", and also mentioned in Article 15 of the Convention to determine the name of the incumbent carriers have been specified in the bill of lading. But civil rights in Iran, since Iran has not acceded to the Convention in Hamburg, transport operators detect problems continues, and so, of jurisprudence, diagnosed by incumbent carriers to bill a high value, respect it is. (Class file number 64/968, Branch 29 of the Court Legal of A Tehran)

The Hague Convention and the law of the sea, the actual shipping charge is not defined. But Hamburg Convention, the actual transportation, identification, and in paragraph 2 of Article 1 of the Convention in charge actual shipping (secondary), this defines "Transport operators in real terms, which refers to a person, goods or any part of it, the shipping agent, the responsibility has been transferred to him, the term also includes any other person, he is assigned to transport operations, as well. "

### **2.2.2. Step transport**

At this point, many people are present, perhaps the most important in terms of responsibility, which is in charge of transport, although we have spoken in the past about him. Others, are involved in the transport, including the crew, the ship's commanding officers of ships, and sailors, in this section we will introduce them.

#### **2.2.2.1. The commander of the ship**

Law of the Sea, adopted in 1954, commander of the ship, is not defined, but based on modifications made in 2012, the law reform bill "passed by the Iranian Navy in 1954", adopted on 16.08.2012, for the first time as commander ship was found in Iranian law, according to Article 80 of the Marine Act of repeated reform bill, passed in the year 2012, the commander of the ship "is a person who, as the ship is the highest authority, and in accordance with the provisions of this chapter, the responsibility for the administration of and steer the ship, the various technical aspects, sailing, staff and crew, cargo and passengers, and perform other legal duties, is responsible. "

According to the legal definition of the commander of the ship, it can be said that "the ship's commander, the highest decision-making authority, the ship, he is not only responsible for maintaining the ship, the cruise, is responsible, but the ship owner's representative for goods and delivery, the sender is, the commander of the ship, the cargo owner's representative, in some cases, can be considered. "(Aalayifard, Mohammad Ali, vivid: p 62).

Primarily Ship Commander, the ship owner's representative, on behalf of the ship owner, is responsible for transporting the goods to the destination, and the ship owner, as previously mentioned, is a transport operator, if the operator carries a ship is not provided, cargo attempted to enter into a contract to rent a boat, in this case, if chartering a "charter" is done, select the commander and staff generally ship by the transport operator (lessee vessel) is done. In this situation, the commander of the ship represented the tenant. But sometimes, the lease of the "journey", or "time" is concluded, operators and transport ships, including the commander and staff can rent. In such a case, given that the operator, has signed a lease agreement with the owner of the ship, the ship is not directly related to the commander. Recognizing this relationship, and obligations which may command ship, the charge transport, ship owner or the ship owner shall determine the legal and contractual responsibilities of the commander, the relationship of damage to the goods, in some cases, responsibility understand commands.

#### **2.2.2.2. The crew and ship staff**

The shipping company with many crew and staff is the case in offices, dealers, and also worked on the ship are generally the crew and staff of the Marine Institute, can be divided into two categories: his agents and employees earthly vessel (of the Sea).

Ships based on the number of people who, in their work, are classified. Accordingly, ships are divided into several groups. Ships of Group A, including General Cargo ships and personnel are Handy Size of 27 ships, Group B, consisting of ships multi purpose, handy max and pana max and , the ships of Group C, consisting of container ships that have 23 employees. those who work on the ship, and have legal status, and are subject to special regulations, these people ship groups a, B, C, there are three parts: the deck department, including the chief or master, first officer or chief officer, second officer, second officer, third officer and third officer. Bosun technical and professional licenses, and they work under the supervision of the ship's commander. Engine parts, including the chief engineer or chief engineer, second engineer, third, and fourth is the sailor. Sector, consists of three parts, to be divided as: sailor deck that encompasses President sailor or Bosum, sailor facilities, or carpenter, sailor or seaman first class aboard capable (able seaman), a simple sailor's deck or Ordinary seaman. (IRISL's Office, a comprehensive convention on maritime labor, 2006: 37), even in the same room, group sailors work which includes charge pump (pomp man), and seaman oiler or oiler, and sailors simple motor or wiper is. (Gilmore and black, The law of admiralty, Sweet & Maxwell, London, 1957, p: 256.) about how people work and working hours, on ships, offshore work of the Convention, which was adopted in 2006, has enacted special provisions, the Assembly, in May 1389, Iran's joining the endorsed and approved by the Guardian Council, and has been notified by the president. As a sailor, in a general sense, for all of the above is used, the sailor is one who, in the equipping of the ship, or his deputy, is committed to working on ships. Chaired by the commander of the ship's sailors act, and are obligated to enforce his orders. Usually sailors, officers and engineers of the ship, in the loading and unloading any role to not only work to pay shipping, and that is why, after the arrival of the vessel to the port of destination, sailors, ship stores open doors do the storage vessel and port workers, and many are empty. repeated in Article 80 of the Marine Act reform bill, enacted in 2012, the definition of the ship crew and staff reads: "any person who performs the duties of the ship, in connection labor or services, ship hired for voyages, and his name is cited in the crew list.

#### **2.2.3. Exhaust**

At this point, the ship docked at the port of destination, and will be deployed. At discharge, we are faced with two groups, the first Morsel layer or transferee, has examined the goods, then the destination port workers, evacuation is generally done by them, we will.



### **2.2.3.1. Consignee**

Including those that are involved in transportation related contracts, and an ongoing civil liability, cargo damage, the injured role to play, Sends the layer or recipient of goods, the Hague Regulations definition of receiving the goods, providing it is not, but the law of the sea, in paragraph 6 of Article 520 of goods maker, is defined as follows: "is a person who, under the bill, the time is right." Hamburg Convention of the fourth paragraph of Article I, defined similarly, the receiver has to offer, this Article provides: "the term cargo receptor, which refers to a person, has the right to take delivery of the goods." not mentioned in the definition of "commodity receiver", the Hague Convention, it is because the provisions of the Hague-only contracts covered by the bill of lading shipping is included, and the holder of the bill of lading, whether The program his name is mentioned, or the document with the endorser must have been given to him, has the right to take delivery of the goods to Therefore, the definition of goods maker, is not necessary. (Samadi Ahari, Mohammad Hashem, 1991: 22).

### **2.2.3.2. The destination port workers**

The commander of the ship and personnel under his responsibility not to unload the ships, and this action by port workers, is being carried out, but this fact does not mean that the transport operator has no responsibility in this matter, but based on what previously mentioned, transport operators are responsible for damage to the goods during transport, and during transport, including loading cargo to ship until the evacuation of the ship. The shipping charge is required, the vessel approached the port of destination, to provide a preliminary discharge, which is usually done by workers in the port of destination, in this case, the workers are placed under the charge, and the charge against operation shall be responsible, however, important to note that the relationship with the worker in charge, subject to the provisions of the labor law.

## **3. Civil liability with respect to losses incurred in the various stages of transportation**

In Iranian law, the Hague Convention, therefore, responsible for the beginning of loading, the beginning and the end of the discharge. Therefore, the operation after delivery and before loading and after unloading operations until delivery to the recipient, including the scope of civil liability, the shipping is out. Accordance with paragraph 2 of Article 54 Maritime Law Iran, the stevedoring operations, the operator is responsible, while the Hamburg Convention, the task of loading and unloading, is not necessarily laid over the incumbent, and the incumbent can contract this task, the sender, or extreme Morsel said. In this case, the responsibility of the delivery time and the start time of loading, and the responsibility of the operator, the actual delivery of goods begins before the said time, the operator has no responsibility. In summary it can be said that the Hamburg Convention, the responsibility starts at the time of delivery, if delivered goods before shipment, the responsibility starts since then, and it has been delivered on board the vessel at the time of responsibility of the operator begins. According to paragraph 2 of Article 23 of the Convention in Hamburg, the operator can own a responsibility, under the contract will extend until after the delivery.

### **3.1. The loading**

#### **3.1.1. Responsibility consignor (author)**

Transportation contract between the consignor and operator transportation, contract, and this contract, consignor "Retailers him", and charge transport "committed" is considered, in accordance with the general rules and principles of legal certainty, when you commit squashing (Author), intentional or the result of carelessness or carelessness prevented by implementing the commitments undertaken (transport operators) to undertake any responsibility for his failure to execute the contract, or application is incomplete, it. In this regard, it is not necessary that the promise attempt to commit, or non-shedding is unpredictable, but according to rule "action" harms committed against the crush, is imposed. (Katoozian, Naser, 2001: p 794)

Under Articles 386 and 380 (damage caused by packing defects) of the Commercial Code, the absence or delay or fault or defective product, the result of a fault, the sender will be liable. The rule of

maritime law, is taken into consideration, and lawmakers in some cases, the consignor has the responsibility for compensation, and the operator does not carry responsibility for compensation, the law on the "T" in the second paragraph of Article 55 of Law Iranian navy, provides: charge carriers responsible for damages caused by "an act or omission of the sender's time, or the time, or their agents", not the rule in paragraph 2 of Article 4 of the Hague regulations, as expected, but the Hamburg Convention, a material that is clearly the responsibility of the sender to understand the situation, no. Of course, no mention of this, would not that, in the case of a person other than the consignor, is responsible for knowing. Hamburg Convention on Article 5 explicitly the responsibility of the transport operator, is based upon his fault. According to the first paragraph of the article, "The transport is responsible for loss, waste, damage to goods, and the delivery is delayed, the event causing loss, damage or delay, during which time, according to Article 4, the product under protection of transport has occurred. shall, unless fixed shipping, and representatives of all his actions, reasonably to avoid the trauma and its consequences are necessary, are taken. "also based on section 7 of the same article, "when the fault or negligence of transportation, representatives or agents with him because of another loss, damage or delay in delivery, the shipping agent is not liable, except to the extent that the loss, damage or delay attributable to the fault or neglect him, provided that the transport rate of loss, damage or delay in delivery, which is attributable to prove. "Based on the above-mentioned legal texts in Hamburg Convention, the fault is assumed that the operator, the operator can not prove his guilt, should be exempted from responsibility, and the concept is that, if the damage is the result of a fault, the Author is responsible.

The "N" in the second paragraph of Article 55 Maritime Law, which Adapted the Hague Regulations, the damages caused by "defects in goods package", including those who have taken responsibility for its own notice of, or the cargo owner , 379,380 and 386 of the Commercial Code of the subject matter, has been addressed, based on the "S", the second paragraph of Article 55 Maritime Law, which Adapted of paragraph 2 of Article 4 of the Hague regulations, the damages resulting from any defect or incomplete marks and product specifications, the operator does not carry Therefore, in paragraph 5 of Article 54 of the Law of the Sea, "The transmission time, compared to the accuracy of the marks, number, quantity and weight so that, when carrying has stated, the transport operator, is responsible, and is bound to make compensation to the operator load, against any loss, damage or expense resulting from the lack of accuracy of these statements, pay. "Moreover, Article 379 of the Commercial Code, provides: "Author, transport operators will need the following information: the correct address Morsel layer, yielding place to belong, some bales or packages, and the way in baling, bale weight, and content of, the period the property must Delivery time is it, the way it seems to be the carriage, price precious objects. damage caused by lack of the above points, or set them incorrectly, you will be sending. " Paragraph 1 of Article 17 of the Hamburg Rules, liability for damages arising from incomplete or false statements made by a user, concerning general characteristics, marks, number, quantity and weight of goods, which are provided for insertion in the bill of lading, the sender is responsible knows, but went on to provide that, can not carry a charge, other than the sender against third parties, to refer to it. On the other hand, paragraph "M", the second paragraph of Article 55 of the Iranian maritime law, following the paragraph "M", the second paragraph of Article 4 of the Hague Convention, one of the things that's responsible for damage to the goods, the sender knowledge, and to exempt the operator from liability when the fraction of low weight or volume of the goods and any other damages, defects, hidden defects inherent nature, is related goods.

Iranian trade law, lawmakers stated in general terms of transportation, in Article 386 In cases where the incumbent carriers, lost or missing merchandise, "sex related merchandise" to be exempt from compensation and responsibility understand the consignor, or the sender knows. sea, and to resolve disputes between parties to the contract, including transportation, efforts have been made in Iran's internal rules, can be an agreement between the Minister of Trade, Finance and Economic Affairs, Agriculture and former head of the Planning Department, the approved its main goal, disputes between cargo owners, shipping, Islamic Republic of Iran, and Iranian customs were mentioned. as "allowable loss" is mentioned. (Vahedzadeh, Moosa, 2002: 105) the loss of virtual goods, precedent Iranian courts is significant in the case of ships "of Iran," Iranian shipping company, carrying some meal Soybean, Argentina to the Iranian port of Nicosia, was undertaken. State Livestock Affairs Logistics Company, as owner of the goods, according to a deficit exists in the product, filed a lawsuit against the operator can



carry. The third branch of the Tehran General Court, by filing under classes 76/717 issue, refer to the naval expert, and an expert with reference to the provisions of the directive, customs, and proceedings set among the Ministries of Economy and Finance, Agriculture and Commerce, and the Planning and Budget, the weight loss of bulk goods, at the rate approved by the thousands, and explains that according to international customary law, the amount of five thousand grain weight loss has been determined that, due to the inherent variability of grain, including Demanding that. (Vahedzadeh, Moosa, 2002: 106) In another case, the Sixth Branch of the Supreme Court, the petition 114/6 dated 03/19/2000, with a knowing objection to the appeal, in terms of loss not allowed in the court of first instance, commented that that one in a thousand of the goods, as permitted loss is acceptable, and therefore should fall between law and damages are calculated ejection fraction basis., in case the ship "Astor", case classes 77/667, branches allowed under Iranian customs directive, this amount will be treated as commonplace, and in the discharge proceedings, referred to this subject, and hence to the amount of charge carriers is not responsible. "wrestlers on file" Newportoma "case classes 76/66 presented at the third branch of the general court of Tehran, Expert Choice of Court has stated: "According to Article 55 of Chapter IV of the Law of the Sea, part of the deficit can be made good as a result of inherent moisture, resulting in loss of weight and destination of the goods, and when they will be discharged, and this is not considered a component called responsibilities. "Experts have noted that in their opinion, corn is a commodity component, carrying the weight loss, so the mass, the amount of damages ejection fraction should be considered in order to weight loss, according to the amount of Circular No. 20633/507/382/74, dated 9/15/1998 Iranian customs, a "one in a thousand "is. court on the basis of international customary law, and the use of Article 194 of the Law of the Sea, based on expert opinion, and considering the above-mentioned Circular, No. 826, dated 07/23/2000 Petition proceed judgment will be. (Poornoori, Mansoor., 2004: 83).

### **3.1.2. Civil liability forwarder**

Today forwarder, most contracts are signed with ship owner, diverse activities, including warehousing, packaging charge, insurance, loading, unloading, etc do. Of course, in some cases, proceed to conclude a contract of carriage with the consignor shall, if the forwarder that person may apply to the transportation contract, known as the charge carrier, and even in most cases, the scope of his responsibilities, the responsibility of the shipping charge will be wider because the forwarder usually warehousing, packaging, insurance, loading and transportation of the goods, the transportation contract takes the form of the sum of these obligations is far more extensive than responsibility is incumbent carriers. In such cases, the scope of his responsibilities, taking charge of the goods at the origin, start and end time of delivery at the destination, and the forwarder responsible for any actions or omissions of its employees and agents, ranging from duty them. course forwarder responsibility, as the incumbent carrier, in such cases, including during transport (when the cargo is loaded until it is unloaded from the ship) is, and the time before loading, and After discharge, the trustee was entitled as a whole, and in the event of infringement or going, the goods will be liable for damages. The legal responsibilities forwarder, Iranian law, the law of the establishment and activities of international goods transport companies, approved by the Transportation Coordination meeting of the Supreme Council of 161, dated November, 1998, is widely referred to these responsibilities. Such, under Article 21, Article 20 of the Act: "forwarder, the act or omission individuals to perform functions on our commitment, are embedded is used, exactly like that, the act or omission of its She is intrusive. "According to Section 25 of the same article:" Forwarder is responsible for expensive goods, unless expressly provided in this agreement shall be. " On Insurance, too, would be in accordance with general principles, and adapt to paragraph 14 of Article 20 of the aforementioned Act "insurance is not forwarder tasks, unless the contract expressly please, and pay a premium, apart from the cost of freight transportation, customer commitment is made."

#### **3.1.2.1. Forwarder, broker or representative office of a client (AGENT)**

Forwarder in the commitment to the care and maintenance duties, specially chosen by the customer, agents, and contractors, transportation, etc. is limited, except in the area, responsible for an act of omission of third parties; Nothing. other words, in this case, the forwarder, only "as brokerage customers, who acted as his representative in charge of transport, contract, and contractors may choose

to carry., in this case, the transport operator Product is not responsible. regulations established under paragraph 13 of Article 21, and the activities of international goods transport companies, transport arrangement approved by the High Council of 161 meeting, dated November 1998: "The duties of a forwarder, the agent (RA), The extent of the collaboration agreement, including border formalities, delivery and customs transformation and transport of goods, in other cases at common law or by contract is the main forwarder."

### **3.1.2.2. Forwarder, as the main operator (principal)**

In this assumption, the forwarder acted as transport operators, and to accept responsibility for goods. In such a situation, what's virtually forwarder with their devices, which sells goods or transport operations of the contract is made, and what issuing a transport document, accept responsibility, and the responsibility he has been found liable is known, given the wide range of services forwarder, forwarder, legal responsibility, according to the type of service varies. Forwarder, to the extent that the service is acceptable, be liable to compensate the damages. If the forwarder, as the executive agent to carry the venture, the contract shall transport or bill of lading is issued, the provisions relating to the responsibilities incumbent carriers will be applied at the time the goods on him, and the third party act or omission that is, to execute a contract of transportation or other services are employed, but the forwarder, not to act as executive agent transport operations, responsibility for actions or omissions of third parties, such as shipping agent, warehousing, factor loading, unloading, transport operators, etc. will not.

The establishment of regulations and activities of international goods transport companies, transport arrangement approved by the High Council of 161 meeting, dated November 1998, as the internal regulations of the forwarder, such as "Law Forwarder" to investigate, and to some He has exemptions under regulations established by paragraph 6 of Article 21, and the activities of international goods transport companies, approved by the Transportation Coordination meeting of the Supreme Council of 161, dated November, 1998, the customer is required upon delivery of goods to forwarder, the accuracy specifications the nature, weight and volume of goods, and in terms of the nature and characteristics of dangerous goods, and expensive to determine the forwarder, and in accordance with paragraph 1 of Article 21: "forwarder liable for any loss or damage in an accident due to misinformation or customer negligence or his representatives, and to be on the receiving product, the customer is exempted from liability. mutually customer needs, the forwarder losses, in this case to compensate. " The provisions above, a written notice of the damage or loss of goods by the recipient or a person, is entitled to the goods, the goods and the non-visible defects, within 6 days after taking delivery of the goods to Forwarder not given forwarder, is exempted from responsibility. Unless the customer, providing evidence of positive otherwise, prove. (Paragraph 2 of Article 21) and Clause 3, Article 21: "moratorium for the class action lawsuit against the forwarder 90 days after the date of delivery or the date that, your products It was delivered (if the lack of it), or by historical or customary conditions of the contract or document that has been able to carry the receptor, the product is considered to be missing. " And also in accordance with paragraph 5 of Article 21 regulations establish, and operate transport companies international commodity enacted Session 161 High Council of Coordination Transportation State, dated November 1998: "If the barriers, issues or factors are unavoidable, and he is fit and suitable drainage, and much of the cargo owner to declare., in such circumstances, definite delivery and transport operations, shall be considered terminated. forwarder is entitled, freight, or fees or extra costs made , in connection with its services that involve the interests of the client is, he may require."

### **3.1.3. Civil liability of transport operators and contractors**

No doubt, the first person on arrival of the cargo damage in shipping, is subject to liability, charge transport contract. For this reason, books, theses and dissertations, which, so far, about the damage to the cargo, sea transport has been developed in-charge transportation contract, and the responsibilities of transport, the highest Topics to be dedicated, responsible for transport operators and contractors in all three stages of loading, transporting and unloading are taken into consideration, here's the responsibility of the loading process, we'll briefly., the goods must be secure, the total of these characteristics, "capable of sailing vessels" is called.

English word "Seaworthy", the legal texts (paragraph 1 of Article 54 of Maritime Law) has come, and the "ability to sailing vessels," has been translated. (Rene de kerchove, international maritime dictionary, dvan Nostrand company publication, New york, 1948, p: 321), is equivalent to the specific concept of law. (Farmanfarmaian, Abolbashar, 1970: 116), the term can be said when Maritime vessels are capable of, in terms of the technical aspects, navigation (employees), and the commercial sea travel was flawless, and in terms of strength and resistance, ability to start and continue the voyage, and also deal With the usual hazards of the sea is. (Eshmitov, Klaivam, 1999: 116) In other words, when the ship is entitled navigation capability, all aspects of the loading, transportation and unloading was assured, and the type of product and type of travel, duration of travel and convenient , and detection of this suit is incumbent carrier contract.

It is noteworthy that the loading operation in the port of origin, usually by a special group, called "brokers loading" takes place, and the staff are not part of the ship's personnel, and generally supervised by their employer are not in charge. Question that arises is that, if the operator liable for damage to goods that may be imported by loading agents, is responsible or not?

port is. Regarding this petition No. 1111 of 1112, issued by the third branch of the general court of Tehran, is remarkable. In the discussed case, demand for their goods shipped, and delivered to the Iranian shipping company, and the company is also the contractor attempted to unload the cargo and the loading operation, damage to the product. Want to participate capacity IRISL, has filed a lawsuit, and read for the part of his attempt to win the party (contractor), and as Exotic party contractor, as the case may be attracted, and ultimately the court issuing such a vote "The company wants to fight, the capacity of the Islamic Republic of Iran shipping company, wishes to claim damages, and claims the shipping company IRI capacity contractor wishes to appeal, the court, on the basis of description calls him her goods Read the company (IRISL), for carrying the Bandar Abbas delivered to the contractor during the loading of cargo damage is read as defending his party is attempting to draw, and also damages to accept responsibility Exotic party notice that the Agreement has been the contractor knows. Third Exotic, Defense responded that the damage was not caused by his carelessness. The court appeared to accept responsibility for loading, from to suit HOME, with respect to paragraphs 2 and 5 of Article 3 of the Code of Ports and Shipping Organization, and the certificate of approval damage to the goods, document, paragraph 2 of Article 54 of the Law of the Sea, and Articles 1 and 2 of the Law Civil Liability Act 1960, a lawsuit seeking to prove the diagnosis, and the judge read the sentence (company IRISL), has issued a call for a right to compensation, terms and contractual relationship between the parties Exotic interesting, and considering mutual agreement, paragraph 13, which indicates Exotic party liability is absolute and non-argues his defense appears to the court document, the Article 10 of the Civil Code, the sentencing judge by the contractor, the amount to be requested. (Poornoori, Mansoor, 2004: 74) Exotic party protested the decision, the Supreme Court considered, and eventually will be approved. Documentation of legal judgment, paragraph 2 of Article 54 of the Law of the Sea, based on the task of loading the incumbent carriers, as determined by the Contractor to carry out this obligation, the responsibility, he will not, and the court could not in principle, against the contractor uploaded demand (cargo owner or insurer) may be charged because the contractor loading, there is no contractual relationship with the owner of the goods.

Before answering this question, it must be said, there are the shipping bill, known as FIOS. Under the bill, all expenses of the loading, transportation and unloading time, the goods will be the responsibility of the owner and operator of bearing any responsibility, evidence of these costs will be paid. Spite of this bill, appear to spend they were issued, the operator of the loading operation will not cause Disclaimer, because this kind of bill of lading, the operator simply downloaded free of charge is not responsible for loading the goods. This however, complies with the provisions of the Hague Convention as well. Second assumption, along with the bill of lading FIOS, a separate agreement regarding Disclaimer operator, be concluded that the loading operation, it seems that, according to Article 58 of the Iranian maritime law, the parties may, by separate agreement, and or during transportation contract, under certain conditions to predict that, according to the responsibility incumbent cargo, and the ship's loss or damage relating to the Conservation and relocating times before loading and after unloading a ship carrying a load determined that, in such cases, liability for damages resulting from personal responsibility is loaded, the loading operation is performed, and the liability of the operator for not realizing. Some legal scholars believe that such an agreement contrary to the Hague Convention. According to the group, the

responsibility of loading, handling and discharge the consignor, the carrier part of the assignment operator is denied, and the matter of the Hague Regulations is revoked. Argument of this group is based on the belief that, transport operators, the rights and benefits that will always be, under this Act, has been predicted for him, and ignore contrary to their agreement. "(Taqizadeh, Ebrahim, 2005: 54), but the operator could not, with Posted contract and consider their liability, or responsibility, to a lesser degree than in the Hague Regulations, decreased.

One of the responsibilities incumbent on the loading phase, "setting item" that is, in this respect, it must be said: picking the wrong product, simply due to the fault of incumbent employees, and the fault caused the loss of the ability to avoid sailing vessels; liability for damages incoming incumbent will be responsible. But picking the wrong goods, caused the loss of the capability of sailing vessels, even if picking the wrong goods, caused by the fault of the staff, the incumbent is responsible again. The operator in any case, than the ship is capable of navigation, is responsible.

#### **3.1.4. Civil liability charge actual shipping**

Transport operators and contractors may perform all or part of the goods, may delegate to another person, in which case the second charge, the actual shipping charge (Actual carrier), is called. The actual transport operator is a person who actually performs the task of carrying cargo and freight operators employed by the contractor, and usually charge actual shipping, no contract, no consignor. Business Law and the Law of the Sea, and the Hague Convention on the actual shipping charge, and he was given the responsibility to goods that are quiet, but based on the Hamburg Convention if the contract of carriage, explicitly stated which has been part of transport operations by a third party, other than the incumbent carrier contract will be executed, in this case, transport operators, contractors responsible for damage, accidents during transport of charge carriers by secondary has been created will not. The charge carries a secondary responsibility, in this case, the owner of the goods is conditional on first, second freight operator named in the contract of transportation, is explicitly mentioned. Secondly, conventional transport operators, prove that the damage occurred when that is, the goods have been delivered to the secondary transport operators. Should be careful to note that the responsibility for secondary transport operators, there is a contractual responsibility, and the goods according to the contract can, to fight against the plan. Course of judicial procedure, essentially "actual shipping charge against the ship owner knows, because, basically," no contractual relationship with the owner of the cargo, and the cargo owner, operators and carriers to provide their shipment contract has, therefore, incumbent carriers true, the cargo owner is not responsible. But the relationship established between incumbent carriers and contract carriers charge actual freight operator can see the basis for a contract, the actual shipping charge will be considered.

Here are a few questions that must be responded to clarify the issue. The first question is whether the principle of charge carriers (contract) can process all or part of the goods, whether or not assigned to another? Second, if transferring all or part of the goods transport operations by incumbent carriers contract operators portable secondary damage to the goods to be entered, whether the goods can be shipped to the incumbent contract to see whether the third question, in what situations transportation operator contract (initial) Disclaimer to be self-and responsibility for damage to the goods, he may charge carries a secondary?

In response to the first question, should the operator default rule, allocate all or part of the contract, except, it must be in accordance with contract provisions permitting the transfer. The license is usually included in the terms of the contract of carriage way. However, assuming the existence of such a license, the incumbent contract, and the assignment of all or part of the work to another, the real transport operators, transport operators and the contract is considered as an agent, and thus answer the second question, it will be positive. In other words, major and minor transportation services for all those who do, the judge in charge of the crew are contracted, and the crew of the damage to the goods, the incumbent will be responsible. According to Article 388 of the Commercial Code "transport operator is responsible for accidents and Fault, located within the transportation, including transportation to the bailiwick of itself, or another carrier, the agent must have. Obviously, in the latter case, he has recourse to the transport operator, on behalf of his officers have been reserved. "Therefore, the law of trade, transport operators and the incumbent contract, and other individuals, even carrying his crew are real. The

interpretation of a contract with the incumbent carriers, than the actual shipping charge applies and crew personnel, will be responsible for.

In response to the third question, it must be said, if the contract of carriage, is expressly stipulated that part of transport operations by a third party, other than the incumbent carrier contract will be executed, in this case, the charge carriers responsible for contract damages, the secondary accidents during transport by transport operators, has been created, it will not. The charge carries a secondary responsibility, in this case, the owner of the goods is conditional on first, second freight operator named in the contract of transportation, is explicitly mentioned. Secondly, conventional transport operators, prove that the damage occurred, when that is the goods have been delivered to the secondary transport operators. This point must be careful, responsible for further shipping charge, here is a contractual responsibility, and the goods according to the contract, it can not fight against the plan.

Another question that arises here is that, if there is no contract between cargo owners and transport operators and second, any possibility of a lawsuit by the owner of the goods, against the incumbent carriers are real or not? To answer this question, we investigated two different assumptions: First, the secondary transport operator liability, as a contracting authority considers that this assumption is not acceptable, and the Supreme Court, in a vote of no uniformity 29 dated 23.08.1984 claim made against the business representative of the transport operator, incurable hearing has said: "According to Article 386 of the Commercial Code, in case of lost or missing merchandise, charge transport except where specified, the price of goods and Article 387 of the aforementioned law, the yield losses caused by delay or failure or damage Nautical (clastic) merchandise, about the matter before held responsible, and that the records proposed, instead of the insurance company, the insured surrogate, his lawsuit to claim damages which the owner paid for the goods, against the transport operator has filed a lawsuit against the agency in charge of transporting commercial real responsibility and commitment agency under documents and medical records and proven to have no plan, hearing and therefore, the quality has not been written authorization. Obviously, if the court is clear and evident that the business representative in charge of transport, powers and obligations with which he is responsible and can be placed litigant claim damages, claims acceptable to the capacity he has Smooth , and in this respect the votes branch thirteenth and eighteenth branch of the Supreme Court means that couples agree on the criteria for diagnosis, and the result is confirmed. "uniformity judgment based on the above mentioned issue conflicting decisions in the cases, differences in maritime transport, the cargo owner (or insurer), and charge transport was created. In one case the trial court the goods against transport operators (business representative or charge actual shipping) accepted, and at trial, the trial court because there is no contractual relationship between the owner of goods transport operators against the real (secondary) accepted, and ultimately the Supreme Court will confirm this view. But the Supreme Court went on to note stipulated that "if the court is clear and evident that the business representative in charge of transport, authority and commitment, he has been in charge, they can demand sides be damaged. " In answer to the latter question, the operator carries the responsibility for the realization of secondary, another hypothesis may be introduced, and that responsibility for transport operators and the second based on non-contractual liability (coercive), we explained, with the explanation that, in any case product damage, and the damage to the actual shipping charge, or at a time that he has been in the cargo hold. Therefore, the actual shipping charge, or loss of door causation, and documenting the general rules of liability, compensation will be committed., Some lawyers, the officials responsible for justifying coercive operators carrying case, have expressed the opinion that "The incumbent carries responsibility transport (Article 388 BC. (d)), which is due to non-verbal, non-conflict responsibility (blame) does, and responsibilities of these two different bases, which are retractable. "(Katoozian, Naser, 2005: 295) concludes, as we should say, of maritime law and the Hague Convention on the civil liability of secondary transport (true), no explicit rule, but it can be said that the real transport may be in the form of contract or non-contract transportation and, in the case of acquisitions, the merchandise becomes liable for damages.

### **3.2. The carrying**

The most important step in maritime transport, cargo damage that may occur during the phase of the carrier. Long sea voyage, unpredictable nature of the sea, and the ship moves on a moving surface, all



are issues, the possibility of damage to the goods, the carrier phase, the stronger will. The stage of completion time loading begins and continues until completion of discharge.

### **3.2.1. Operators carry civil liability**

During the sea voyage, the primary obligation incumbent upon the carrier transport goods from the port of origin to port of destination communities, practice their wears, carries obligations that operators must perform them. Failure to carry out these obligations, however, leading to damage to the goods, it could be the responsibility of the operator.

Obligations of the operator, during transport, can be divided into four as follows:

- 1 - Commitment to the capability of sailing vessels
- 2 - Transportation of goods with caution
- 3 - Commitment to transport goods, expeditious
- 4 - Commit to not deviate from the path specified

This commitment is based on contract, which is concluded between the operator and the owner of the goods, which are formed, the obligations of lawyers, has been studied and discussed in detail. (Damarchili, Mohammad, 2004: PhD thesis)

### **3.2.2. Civil liability ship commander**

When the download is finished, and the ship's anchor from the water, which can guide the ship, the ship's commander initiates. The commander of the vessel, the highest decision-making authority, the vessel is considered to be, in other words, the ship's guidance and leadership, has full authority. Indeed, if say, the ship's commanding role in maritime transport, the role of the pilot the airplane is in the air transport, have not said a word to bounce.

According to maritime law reforms in 2012, the provisions relating to the responsibilities and duties of the commander of the ship was changed on the basis of some of these materials, including the amendment of Article 80 Repeated (2) "command ship, the individual is responsible, on behalf of owner is appointed to this position. "And" The commander must always be present on the ship, and to engage in the exercise of command, except in emergency situations where the ship stops at a port or harbor is safe. "We also repeated in Article 80 (3)," the commander responsible for the navigation and management of the ship, and the ship with the necessary skills and techniques, navigation, and local laws and regulations, and international treaties that Iran, in Join them, and also accept custom shipping, will lead the international level. Commander, before entering the waters and ports of other countries, to the extent possible and necessary, with military and binding rules for the country to know the shipping. "Based on Article 80 Repeated (4)" command before starting the journey, from the sailing ship, particularly the aspects of adequate technical equipment, qualified staff and crew, valid certificate of legal existence of needed items ship, and conditions for delivery, handling and storage of cargo on the ship, to make sure. The commander must be arranged properly delivered goods, Harness goods, no additional downloads required to achieve the balance and stability of the ship, enough fuel and the case is closed barn doors, and all on board to ensure pores. If not sure of any of the above, the commander is required to stop the motion of the ship, and shall inform the owner. During the trip, the commander must take action to sustain the sailing ship, to carried out. "In accordance with Article 81 and amendment," the commander of the time, as he is delivered, it is required to issue a bill of lading. Commander of the owner, the duty to take care of the delivered goods, transportation and delivery, by convention, is the port of destination. "

Regardless of the reforms carried out in accordance with Part "A", the second paragraph of Article 55 of the Law of the Sea, and the "A" in paragraph 2 of Article 4 of the Hague Regulations, the damage to the goods caused by negligence or failure to act or commander, and staff and tips, or an authorized officer in charge of transport, and the Maritime Administration vessel, the persons specified in, or considered to be responsible for, and does not charge freight operators., if negligence or fault committed, the commander and staff about operations that pertain to the maintenance of healthy and deliver the goods to the destination, the operations of examples of "good governance", and incumbent carriers charge compensation due to it. But if the fault or negligence of the commander and staff on the operation, maintenance and safety of the ship, this kind of operation, gross negligence in the handling of the ship taken, and the commander of the ship's staff and will be responsible for the damages.



### **3.2.3. Civil liability ship owner**

If shipping via the conclusion of chartering (charter party), therefore, the ship's owner or landlord and tenant may ship is liable for damages to the product, be held accountable. When the bill of lading, signed by the commander of the vessel or on his behalf is the owner of the vessel, the chief of his works, are obligate, unless the commander directly by the tenant, if the ship charter or bare (Demise charter) to lease, rent, and instructed him to act for him and (Mohammadi, Abbas, 2009: 361) Even when the tenant vessel, the bill of lading is signed on behalf of and as agent of the ship's commander, ship owner, remains committed, because the commander is employed by the ship owner, and indeed his representative, and a representative of the person's original will commit. In this situation, even when the tenant's name printed at the top of the bill as it is now. (Taghizadeh, Ebrahim, 2005: 234) as well as sample contracts, leases are classified primarily as the commander of the ship, allowing the owner, a marine bill of lading is issued. In this case, where the lease agreement, or when traveling, the courts of England and this country's jurisprudence, it is inferred that the principle of this paragraph, the commander of the ship, vessel charterer or his representatives have the right of lading issued by the ship owner, and in the case of damage to goods to be imported, the ship owner against the cargo owner, shall be liable to compensate the damages. The tenant on behalf of the owner, has attempted to issue a bill of lading.

### **3.2.4. Civil liability tenant ship**

In some cases, the tenant's name (not the commander and the owner's name), acting independently of lading is signed, it is considered as transport operators, transport operators and the responsibilities noticed about him. The tenant can, insert a clause in the contract of carriage (bill of lading), the responsibilities incumbent on the carrier, the ship owner is found. In this condition, the condition of "Dimas" It is well known that, today, the bill of lading and shipping companies, to be seen. Course about chartering contract, either completely bare, it is different. In this case, the tenant will sign a bill, is primarily a transport operator, the charterer of the ship is in full control and supervision of staff and his work. For this reason, the tenant is responsible. It seems that, if the lease is entered into bare, giving effect to the clause "Dimas", will be difficult. In the case of ships "Angelica", subject classification 2025/75 raised on the third branch of the Tehran General Court, the company's insurer, according to the Vice-President, claims for compensation against the shipping company "Pearl of the Gulf", raised and claim damages had read the Question seeks fast the ship's charterer, cargo vessels and all liability deficit desired, the ship, or in other words, it is the responsibility of the owner of the vessel, according to the bill of lading forms, as opposed to inferring the meaning of Article 74 maritime law, confirm this claim. The court accepted this, the petition No. 1725 dated 27.11.1997, has commented: "In view of lading, contracts, chartering citation, which indicates complete acceptance, administration, and management responsibilities of ship owners, as well as bill of lading is issued on behalf of them ... and this is signified by Article 74 of the law of the Sea, the ship's lease liability only if the ship handling, navigation and personnel from the premises, and we party, renter, no power is delivered to the ship management, the lack of hearing is issued." (Vahedzadeh, Moosa, 1996: 144) in case of another ship, called Snow, the firm support of the animal, carrying 8 tons of corn from source to destination, Bandar Imam Khomeini Argentina, the company "IRISL" company (Bilbero) is granted. After carrying out transport operations, it becomes clear that some of the corn and usability do so against the incumbent carrier (the company), has filed a lawsuit. Shipping company Islamic Republic of Iran, in his defense, citing that this problem, the company, according to plan, FOB, simply through chartering of that, the trip would have been rented, and it is not his responsibility. Court to sentence defendants to be tried, condemned the appeal of the case to the Sixth Branch of the Supreme Court, has been re-examined, and in arguing that the authority to enter into this problem demands a revision petition that is, the area of a document demanding company, implying a commitment to assume the shipping company may call upon the Islamic Republic, and his tenure in fixed shipping does not express, plus shipping company Islamic Republic, apparently, his tenant, not the landlord knowingly ship the need to research the company, the company IRISL intervened, associated with chartering is specified, the verdict is in violation. (Vahedzadeh, Moosa, 1996: 143)

### **3.3. Stage discharge**

Responsibilities of persons involved in the transport of the infinite is not the responsibility of the person receiving the goods at the port of origin and begin loading and unloading, and submit it to the extreme ends Morsel. Responsibility for the period, is the time, beginning with the responsibility of the operator product can be shipped, and its end, the responsibility ends. Pursuant to paragraph 8 of Article 52 of the Law of the Sea "since time loaded on the ship until the ship is discharging, transport time is. "and under section 9 of the same article:

"Normally when loading begins, fork crane loading cargo sender is ready to ship loading dock or wharf, or a cargo vehicle that is used for this purpose, has been long and draining when it ends, fork crane time in the dock, or the dock or cargo vehicles, used in order to land. "

#### **3.3.1. Operator responsible for carrying**

Law of the sea, unlike the Hague Convention discharge is defined. Identification stage, discharge, and it is important that, with the completion of the discharge of the responsibilities incumbent carriers also terminated. The Hamburg Convention, notwithstanding completion of discharge, is not equal to the responsibility incumbent, and perhaps for this reason that, in Hamburg Convention, the definition is not enough drainage. Of maritime law and the Hague Convention, the responsibility of the operator to carry to completion the discharge continues, and if the product is damage during unloading, the operator will be responsible for compensation. According to paragraph 2 of Article 54 of the Law of the Sea, a cargo operator tasks, has decreed: "According to the provisions of Article 55, the operator is required to load, carefully, and desirably, cargo loading, transport, transportation, protection, care and "discharge" shall. "in this case, the petition No. 80/1258 dated 02.12.2001, issued by the third branch of the general court of Tehran, is significant:" the fight "Trading Company nectar warriors", the capacity "transport Company Dena", a claim asked for damages to goods, with expert attention to this summary, the applicant described the lawsuit, explained that the clarification requested, the "Sharjeh company" in Dubai, attempting to Order 16,250 tons of raw sugar were called by the "ship of soldiers", destined to Iran, Bandar Imam Khomeini was carrying. ship was being evacuated, dated 9/25/2000 due to rain in the afternoon, and the lack of response when the commander and staff of the ship, the cargo ship of 3,650 tones of residue was left, was damaged. therefore demand compensation for damage to the goods, the supply of which is positive Claim' expert opinion, is recorded in a file. Defense counsel responded that read, moisture from rain will not cause product spoilage and damage yet, but the goods are loaded the same way, we quarrel about Is begging rejected. The court, citing official expert opinion in matters of food that Bill No. 4340, dated 18/11/2000 has been filed and remained immune to the protest effectively, and not inconsistent with the circumstances of the case, and compliance Tests indicated that the loss of part of the cargo ship, the influence of water and 917 tons of waste is collected, and consider that, damage and corruption of parts of the shipment, due to staff negligence read (incumbent transportation), and explaining the terms of paragraph 2 of Article 54 of the Law of the Sea, was obliged to read carefully, and desirably cargo loading, transport, transportation, protection, care and may emptying, and in terms of section 7 Article 52 of the aforementioned law, duty, charge transport, in addition to unloading of the goods is delivered to the recipient, the Where we are, the defective product and the loss of part of it took place during the evacuation, and the time Read liability period, is located in this document, "paragraph 7 of Article 52, and paragraph 2 of Article 54 of the Law of the Sea, Article 1 and 2 of the Civil liability Act, and 198 of the Civil Procedure Code, the judgment of conviction .... read issue is ..... "(Poornoori, Moosa, 2004: 74) in another case," Iran Insurance Company "to capacity" shipping company argued, "demands £ 370/887/66 claim, damages product was introduced, called the claims a device by crane to Dubai from source to destination, Bandar Abbas, under the bill of lading number 003/BA/DU, dated 02.15.1995 has been shipped, but due to lack of care during evacuation read the ship's crane had fallen into the sea, and damage to the insured amount requested (ship owner), came calling with its payment, the owner of the goods to his successor, has demanded compensation from read. In the current investigation, the defense will respond to, the failure of the area has been done, and the damage is not attributable to him. Finally, "the court that such a vote," according to the court office goods, called by the implications Documentation assertiveness, and the responsibilities incumbent transport Where we are, according to

paragraph 2 of Article 54 of the Law of the Sea, adopted in 1954, in the discharge absolute, and the damage, lack of care incumbent transport is assumed, and proof of compliance with the necessary care to He is responsible, and try to apply reason and effort, the discharge is not expressed, thus relying on expert opinion ... still want to claim recognition and document "the material 377, and 386 of the Commercial Code, and paragraph 2 of Article 54 maritime Law, insurance Law and Article 30, and 357 and 375 of the Civil Procedure Code, the judge read the sentence (charge transport), the amount ... shall be issued .... "(Poornoori, Moosa., 2004 90)

Furthermore, according to Article 81 amendment, in 2012, as the cargo has been developed, it says: "The commander must realize and verify the operation of unloading and loading, harness bar and cruising speed due ensure. »

### **3.3.2. Contractors responsible for discharging**

Contractors unloading of goods, generally "are independent companies that, at the port of destination, to perform evacuation. These companies deal with the transport operators independent of Transportation has signed a contract, under the charge of the goods on the ship. Drain. basis of maritime law and the Hague Convention, the incumbent is responsible for unloading the goods, even if the damage to the goods, it can refer to drainage contractors, and to receive compensation., in this regard , petition No. 765 issued by the third branch of the general court of Tehran, is remarkable. filed in the case, demand for their goods shipped to the shipping company Alborz delivered, and the company at the port of destination, the contractor (company Kian Port) , to discharge, and during the evacuation, damage to the product. wants to capacity Alborz shipping company, has filed a lawsuit, and to participate in, to defend himself, attempting to win a third (Kian Port company ) , and Kian port companies, as Exotic party, will win the lawsuit, and ultimately the court issuing such decisions, "the company wants to fight, the capacity of the Alborz shipping company, wishes to claim damages, and claims Alborz, the company's capacity Kian port, called attention to the demands of justice, based on the description called for him to read his item (Alborz), for carrying the Bandar Abbas delivered to the Contractor, to the discharge of cargo damage can be read as defending his party is attempting to draw, and while admitting the damage, third party liability Exotic notice that the contract has been a contractor, he knows. Third Exotic, Defense responded that the damage was not caused by his carelessness. The court appeared to accept responsibility discharge from to suit the original with respect to paragraphs 2 and 5 of Article 3 of the Code of Ports and Shipping Organization, and the certificate of approval damage to the product, document, paragraph 2 of Article 54 of the Law of the Sea, and Articles 1 and 2 of the Law of Responsibility civil Act of 1960, a lawsuit seeking to prove the diagnosis, and the judge read the sentence (company IRISL), has issued a call for a right to compensation, terms and contractual relationship between the parties Exotic interesting, and in accordance with paragraph 11 mutual agreement, which indicates Exotic party liability is absolute and non-argues his defense appears to the court document, Article 10 of the Civil Code, the sentencing judge by the contractor, the amount required to be. "( Poornoori, Moosa, 2004: 75) the legal judgment, paragraph 2 of Article 54 of the Law of the sea, on which the duty is discharged, the charge carriers, and identify the contractor to perform this obligation, the responsibility, he will not, and the court could not in principle, contractor of the drainage of the call (ship owner or insurer) may be charged, because the contractor from discharging any contractual relationship, not the cargo owner. However, some of the contracts between buyer and seller as the goods may be concluded, that responsibility must be borne by the buyer or the seller, in this case, the responsibility of the operator or contractor, the discharge was not related to him.

### **4. Civil liability cargo owner (the norm free in-free out)**

Rule OUT FREE IN - FREE, agreed upon, all risks and costs of loading, once the Chinese and Image setter, the home port of the vendor, and all risks and costs of unloading at the port of destination, the owner of the goods. the internal regulations of Iran, based on the "plan" FOB ", approved by the transportation coordination meeting of the Supreme Council of 101, dated 30.05.1980" and its Implementing Regulations, entitled "procedure governmental plan to purchase commodities, the FOB and freight by IRISL, Transport coordination Act of the session of the Supreme Council of 121, dated

10.24.1991 "now, all ministries, organizations, institutions and public companies and national companies, or affiliated with the public Administration, centers preparation and distribution of goods and all institutions and companies affiliated to Islamic institutions, as "good owners" obligated, to export and import goods, the company IRISL and its affiliated companies, according to recent regulations have Latter act . According to these regulations, the shipping company is obliged, as a charge transport, cargo ships, appropriate, and timely shipment than acting. Noteworthy that, according to Article 3 "procedure, the government plans to purchase commodities, the fob and shipped by IRISL, Transport Coordination Act of the session of the Supreme Council of 121, dated 24.10.1991" contracts signed between cargo owners (persons mentioned in Article 1 plan "FOB", approved by the Transportation coordination meeting of the Supreme Council of 101, dated 05.30.1990) should be, OUT FREE IN - FREE, which, in this case, all the risk and expense loading, load Image setter Chinese port of origin, the vendor and all risks and costs of unloading at the port of destination shall be the responsibility of the owner of the goods. examine the regulations mentioned above, this is important because the firm IRISL, currently, the largest port operator in the maritime transport activities, and a major part of the exports and imports of goods by sea, by public and legal entities mentioned in Article 1 plan "FOB" approved session 101, the Supreme Council for coordination of transportation, shall be in accordance with Article 8 procedure design buy government as FOB, or carry it by IRISL: "responsibility for damages to goods caused by aging and wear on the ship, and or neglect, and personnel of the ship's captain, the ship owners, and shipping vessel as the renter, and on behalf of the owners of the goods, is responsible and obligated, to receive compensation from the owners of the ship, or consequential insurance based on international regulations, and payments to the owners of the goods, after deducting the costs of acting. "Regarding this matter, the company IRISL, to form their responsibilities, as the operator has limited transportation, and compensation is subject to receiving it, the owner of the ship has. went on to some claims that the capacity of company IRISL Ira, a raised and ultimately "to invoke rule Free In Free Out lead to a right call, and no responsibility for said company, liable for damages has been dealt with. fight Iran Insurance Company, the company IRISL capacity, the demands of a claim for damages to the goods ..... want declares that the recited goods transport operators was insured, that during his tenure, compensation equal to the demands of the imported goods, and the payment thereof to the owner of the goods, the loss of his successor to take charge read as defense answered the responsibility of loading and discharging cargo, the cargo owner is responsible to (charge transport), is responsible for it. Finally, the court "the vote:" The terms of the agreement item (insured), the incumbent carrier (read), set up on the implementation of the rule (Free In Free Out (, indicating acceptance of responsibility, and loading and unloading by owner commodity, and the resulting damage to the certificate as most Port houses ", due to be discharged, and the operators in charge of Transport (shipping company) is not assigned, so the quarrel, non-stationary and document recognition", paragraph "d" the second part of Article 55 of the Law of the Sea, and Article 356 of the Civil Procedure Code, no right to seek injunction is issued. "(Islamic Republic of Iran shipping" way of dealing with marine issues, and how damage documentation, to be submitted to insurance agencies International ", 2000: 221)

Indeed, the Court's paragraph "T", the second part of Article 55 of the Law of the Sea, which has decreed: "2 - Wrestling and bartender responsible for loss or damage from causes not mentioned below:

I - the act or omission of the sender time, or the time, or their agents "responsible for the damage, the product has been realized.

In another trial, Iran Insurance Company, the capacity of the Islamic Republic of Iran shipping company, has introduced a similar trial, which read as his defense stated that he merely "leasing of the vessel, to travel contracts, and He is not responsible for the ejection fraction. court despite the fact that read the defense, failed to recognize (because Read appointment to carry, and his apparent falling within the definition of Article 377 of the Commercial Code, and paragraph 1 of Article 52 of the Law of the Sea knows ), but according to the agreement, the owner of the goods, the goods transport operator, as (Free In Free Out (respectively, and indicate the responsibility of the owner of the goods, is involved in loading and unloading, and the resulting damage, in the discharge happened, and the responsibility for the transport operator is not, therefore, document the "paragraph" T ", the second part of Article 55 of the Law of the Sea, no right to demand the ruling is issued.

## **5. Conclusion**

Today, the complexity of the contracts to carry goods by sea is such that, in connection with the imposition of the traditional theory, all damage during shipping, the incumbent contractor should be contemplating. Various entities involved in the transport stream into a contractual responsibilities between these entities, new ways to compensate for the damage, before being injured, and it not only facilitates redress, and the distribution of compensation among the persons involved to be effective. In civil law, precedent and legislative branches, since they tend to issuing similar decisions related laws, the identification and distribution of responsibility between the persons involved in the preparation must carry the same rules.

## **References**

- Aalayifard, M.A., 2008. Maritime law (international maritime transport). Printing. Tehran. Publicat. Nakhli Danesh.
- AUSA., 1893. carrier's act, February 13, (Harter act)
- Bazgir, Y., 1999. Trading rights, the Supreme Court decisions, first edition, Tehran. publicat. Ganj Danesh.
- Damarchili, M., 2004. civil liability for marine transport operators, (A Comparative Study of Law, England and Hamburg Convention), PhD thesis, Private Law. Facul. Law Polit. Sci., Tehran University
- Eli m.Noam., Liability for harm to content, common carriers
- Eshmitov, K., 1999. International trade law, ethics translates doctor Behrooz Akhlaghi and others, Volume I and II. Printing. Tehran. publisher Samt.
- Farmanfarmaian, A., 1970. maritime law, no place, no name.
- International Convention for the unification of Certain rules of Law relating To bill of lading Brussels, 1924. (Hague Rules).
- Iranian Committee of the International Chamber of Commerce., 2005. The forwarder, international transportation, printing. Tehran. Iran. Comm. Internat. Chamber of Commer.
- Ivami, H., 2005. Rights maritime transport of goods, translating Moosa Poornoori, Tehran. Publicat. Mahd Hoghoogh.
- John. F.W., 2010. carriage of good by sea, seventh edition. Longman publicat.
- John. O., Hon, n., 1993. Ocean carrier in cargo. J. Contr. Law., vol. 24.no1.
- Karkon, M.R., 1992. responsible for maritime transport operators, according to the Brussels Convention, Hamburg and the Law of the Sea, MA thesis Private Law, Faculty of Law. Shah. Beheshti Univ.
- Katoozian, N., 2001. General rules for contracts., Volume IV. Fifth edition, Tehran. Publish. Corporat.
- Katoozian, N., 2005. civil rights committals out of contract, Volume 1, Fifth Edition Tehran: Publications Inc. Publish. Corporat.
- Mashhadi, H., 1997. Sea transport operator exemption in the Convention of Brussels and Hamburg, MSc thesis of Private Law, Faculty of Law. Shah. Beheshti Univ.
- Mohammadi, A., 2009. The nature of chartering contract. J. Facul. Law Polit. Sci., Tehran University, the Thirty-Nine, No. IV.
- Omid, H., 1974. Maritime law, Volumes I and II, first edition, Tehran: College of Insurance.
- Paul Todd, C., 2003. Materials on international trade Law, Sweet & Maxwell, London, first Edition.
- Poornoori, M., 1992. Maritime law, the Court of Admiralty, first edition, Tehran. publicat. Mahd Hoghoogh.
- Protocol to Amend the International Convention for the unification of certain rules of Law relating to bill of Lading February, 23, 1968. (Visby Rules).
- Rabie, F., 2001. Air transport and maritime law. Printing. Tehran: Arian publicat.
- Rene de kerchove., 1948. international maritime dictionary. d-van Nostrand comp. publicat., New york.
- Restrictions Islamic Republic of Iran., 2001. A review of marine casualties and incidents (how exposure to marine issues, and how documentation of damage, to provide international insurance companies), the first volume printing. Tehran: Publication of the sea. 21
- Restrictions Islamic Republic of Iran., 2001. Categories related to maritime transport regulations.
- Samadi Ahari, M.H., 1991. Attendant civil liability for marine transportation, printing, Tehran. office. j.

- Taghizadeh, E., 2005. Rights, maritime shipping, first edition, Tehran. Majd publicat.
- Tavazonizadeh., A., 1992. chartering contract, MSc thesis of Private Law. Facul. Law Polit. Sci. Tehran Univ.
- United National Convention on the Carriage of Goods by sea., 1978. (Hamburg Rules).
- Vadqani, M.Z., A., 1372. some kind of transportation, and the failure of internal law. J. Facul. Law Polit. Sci., . J. Facul. Law Polit. Sci., Tehran University, No. III.
- Vadqani, M.Z., A., 2001. responsible for maritime transport operators. J. Facul. Law Polit. Sci., Tehran University, No. Fifty-fifth.
- Vadqani, M.Z., A., 2002. Rights, Responsibilities and forwarding agent combined, the Geneva Conventions, adopted in 1980. J. Facul. Law Polit. Sci., Tehran University, No. fifty.
- Vahedzadeh, M., 1996. civil liability for marine transport operators, relying on jurisprudence, MSc thesis, Faculty of Law. Azad Univ. Centr. Tehran Branch.