

# **BUSINESS LAW**

## **International contracts related to transportation of goods**

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# Introduction

several modalities of international transport of goods

- railway
- road
- air
- sea
- multimodal transportation

# Contract for the carriage of goods by rail

- Convention concerning International Carriage by Rail, **COTIF**
- established the Intergovernmental Organization for International Carriage by Rail, the OTIF and the primary aim of the organization is the **harmonization** of the regulation related to the contract of international carriage of goods, technical standards, rules and procedures.
- COTIF elaborated Uniform Rules concerning the Contract of International Carriage of Goods by Rail, **CIM**
- CIM applies to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are situated in two different member states of the COTIF convention, irrespective of the place of business and the nationality of the parties to the contract of carriage (also apply when the place of taking over of the goods and the place designated for delivery are situated in two different states, of which at least one is a member state, and the parties to the contract agree that the contract is subject to the Uniform Rules)

# Contract for the carriage of goods by rail

seller of the goods, who dispatches the goods and who concludes the contract of carriage with the railway is called **consignor**

railway company is the **carrier**, by the contract of carriage, the carrier undertakes to carry the goods for reward to the place of destination and to deliver them there to the

**consignee** (it is usually the buyer)

the contract of carriage must be confirmed by a ***consignment note*** for which there is a uniform model

carrier has the right to examine at any time whether the conditions of carriage have been complied with, and whether the consignment corresponds with the entries in the consignment note made by the consignor

*consignment note* is a prima facie evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier

consignor and the carrier can agree who is responsible for the loading and unloading of the goods

in the absence, for the loading and unloading of the goods is responsible the carrier, whereas for full wagon loads loading is responsible the



# Contract for the carriage of goods by rail

carrier is **liable for** the following damages that occur between the time of taking over of the goods and the time of delivery:

- (1) loss of goods
- (2) damage to the goods
- (3) late delivery

this **liability** is:

- joint and several (all the carriers who took part in the carriage are liable),
- objective (liable for late delivery, loss and damage), and
- limited (the carrier is relieved of liability if he or she could not avoid or was unable to prevent damages).

carrier is also relieved of liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- carriage in open wagons,
- absence or inadequacy of packaging,
- loading of the goods by the consignor or unloading by the consignee,
- the nature of certain goods is such that they break, decay easier, etc.,
- irregular, incorrect or incomplete description or numbering of packages,
- carriage of live animals,
- goods are accompanied by an attendant

In the before mentioned cases the presumption is that the carrier is not liable

# Contract for the carriage of goods by rail

- **compensation**, in case of loss the carrier should pay the
  - market price of the goods, but
  - maximum 17 SDR/kg
- presumption is that 30 days after the deadline for delivery, if there is no successful delivery, the goods are lost
- in case of damage, the compensation is proportional to the value of the goods
- if there is late delivery, the compensation may not exceed four times the carriage charge, and the damage should be proven
- if the consignor declared in the consignment note a value for the goods, this amount will be the limit for the compensation

# Contract for the carriage of goods by road

regulated by the Convention on the Contract for the International Carriage of Goods by Road, **CMR**

lot of similarities with the COTIF convention

CMR convention applies to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties

contract of carriage should be confirmed by issuing **consignment note**

# Contract for the carriage of goods by road

carrier is liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery

carrier is relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, or through circumstances which the carrier could not avoid and the consequences of which he or she was unable to prevent

carrier is also relieved of liability when the loss or damage arises from special circumstances, already mentioned for rail carriage, like carriage in open wagons and so on

**compensation**, there are similar provisions in this convention as already mentioned for rail carriage, with the difference, that the maximum payable compensation for lost goods is 8 SDR/kg.

Convention on International Transport of Goods under Cover of **TIR** Carnets (TIR Convention)>> goods in sealed vehicles are not checked in all transit countries on the way, but only in the country of destination



# Contract for the carriage of goods by air

regulated by the **Montreal Convention**, the full title of which is Convention for the Unification of Certain Rules for International Carriage by Air

**applies** to all international carriage of persons, baggage or cargo performed by aircraft for reward

air **waybill** is issued by the carrier, which proves the conclusion of the contract and the taking over of the goods

carrier is liable for damage like destruction, loss or damage to the goods only if that happened during the carriage by air

carrier is not liable if proves that the destruction, or loss of, or damage to the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo,
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents,
- (c) an act of war or an armed conflict,
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo

**compensation** maximum is 17 SDR/kg, except if the consignor declared the value of the goods

# Contract for the carriage of goods by sea

cheapest way, but riskiest

contract between a shipowner and a trader for the hire of a ship and the delivery of cargo is called **charter party**

- time charter, when the ship is hired for certain number of days, and
- voyage charter, when it is hired for a voyage between two or more ports, and it does not matter how long is the journey

**Hague-Visby Rules** apply to every bill of lading related to the carriage of goods between ports in two different states if the bill of lading is issued in a contracting state, or the carriage is from a port in a contracting state, or the contract contained in or evidenced by the bill of lading provides that these rules or legislation of any state giving effect to them are to govern the contract, whatever the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person

**carrier** includes the owner or the charterer of the ship who enters into a contract of carriage with the **shipper** (the one who dispatches the goods, the same as consignor with rail carriage)

carriage of goods covers the period from the time when the goods are loaded on the ship to the time they are discharged from the ship

# Contract for the carriage of goods by sea

Related to the carriage of goods by sea contract, the carrier has certain obligations: is bound to **exercise due diligence** to:

- make the ship seaworthy,
- properly man, equip and supply the ship,
- make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

if the carrier exercises due diligence he or she is not liable for damage also not liable in case of fire, perils, dangers and accidents of the sea, act of God, war, etc.

shipper who claims that the ship was not seaworthy or properly equipped has to prove this

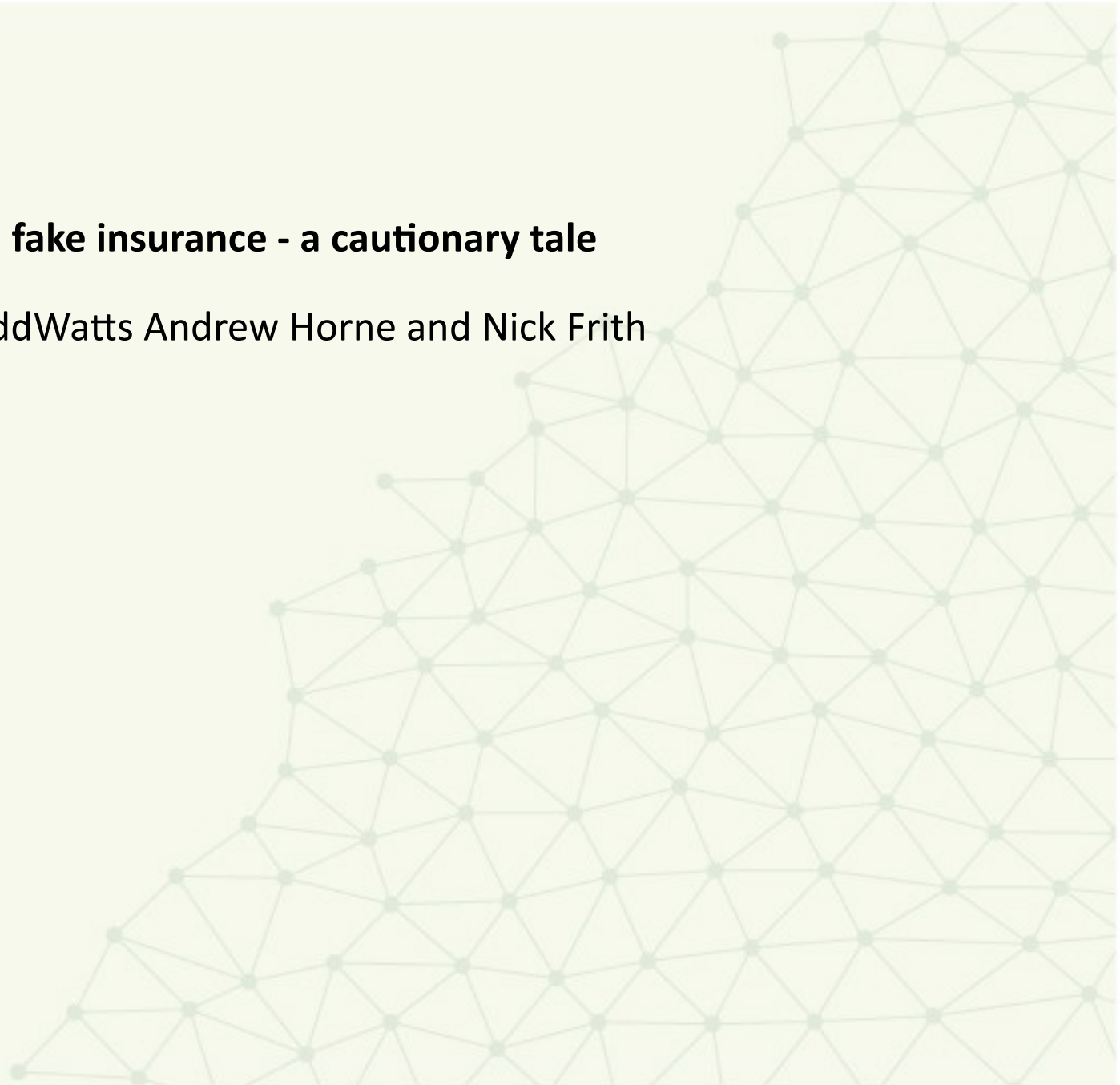
**compensation**, it is the market price of the lost goods, but cannot exceed 666 SDR/package or 2 SDR/kg (except if the value of the goods is indicated on the bill of lading)

no upper limit if the carrier caused the damage recklessly or intentionally

# Reading

## **Fake copper and fake insurance - a cautionary tale**

MinterEllisonRuddWatts Andrew Horne and Nick Frith





# Thank you!



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