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Time for suit to maritime carrier liability claims in the convention on contracts for the international carriage of goods wholly or partly by sea

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Abstract

This research paper examines the rules governing the extinguishment of actions for the liability of the maritime carrier for goods under the Rotterdam Rules 2009. It does so by identifying the period within which an action must be brought, the types of actions covered by extinguishment, the permissibility of extending this period, and whether it may be shortened. The study further addresses shortening of the period whether initiated by the carrier or the shipper, and the permissibility for each. The paper, also, employs a descriptive-analytical methodology by extracting and analyzing the provisions that regulate the extinguishment of actions for the liability of the maritime carrier under the said Convention, with the aim of clarifying the substantive rules governing the extinguishment of liability actions. The study reaches several conclusions, including that the period for bringing an action for the liability of the maritime carrier is characterized as a period of extinguishment, with the consequence that it is not subject to suspension or interruption; that extinguishment covers all actions arising out of the contract of carriage, whether judicial or arbitral; and that the delivery from which the extinguishment period begins to run is actual delivery, namely placing the goods under the control and possession of the person entitled to them, rather than symbolic or constructive delivery. The study considers that characterizing the period as one of extinguishment does not afford substantial protection to shippers, given that the period is not subject to suspension or interruption.

Keywords: Statute of limitations of the maritime carrier's liability, Rotterdam rules, Carriage of goods, Maritime carriage

Introduction

For a long time, conflicting interests in maritime transport have been a primary factor shaping policies and legislation governing maritime transport. There has always been a clash of interests between carriers and shippers. Therefore, anyone examining agreements regulating maritime transport in general, and the maritime carrier's liability in particular, will clearly see the interest that each agreement seeks to protect: either the interests of carriers or those of shippers.

The international community has historically favored carriers in the Brussels Convention and its amendments, while the Hamburg Rules of 1978 have favored shippers. The Rotterdam Rules of 2009 have emerged, attempting to establish a balance in the relationship between carriers and shippers. An international agreement cannot be designed to protect the interests of one party while neglecting the other; otherwise, it would not be considered truly international, given the reluctance of many countries to ratify its provisions.

There is no doubt that maritime transport is one of the most dangerous areas of investment due to the risks surrounding this area of investment, in addition to the large costs it requires, whether for building a ship, maintaining it, operating it, or equipping it. Therefore, international agreements regulating maritime transport, especially for goods, have sought to provide the maritime carrier with a set of privileges that enable him to find a balance in his relationship with the shipper in light of the risks that control the sea voyage. Among these privileges, the Rotterdam Rules stipulated a period during which the shipper must file his claim against the carrier if he wants to sue him. If he does not file the claim during this period, his right to claim is forfeited. In this way, the maritime carrier is guaranteed that no claims arising from the maritime transport contract may be filed after a specific period known to him or the shipper.

Research paper questions

This paper seeks to answer the following questions:

-What is the time limit within which a shipper must

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file a liability claim against the maritime carrier?

-Is the time limit for filing a liability claim the same as the time limit for the carrier to seek recourse against any of the maritime parties involved in any stage of the maritime transport process?

-What claims are subject to statute of limitations?

-What are the differences between prescription and statute of limitations?

Research problem

The research problem lies in determining the temporal and substantive limits for filing a liability claim against the maritime carrier. What is the time limit within which a claim must be filed against the carrier? What claims are subject to statute of limitations? Who benefits from statute of limitations? Is it only the carrier or the maritime party involved? Do they have the same statute of limitations, or different periods?

Research Methodology

The research topic will be addressed using a descriptive analytical approach. The texts regulating the statute of limitations for maritime carrier liability claims will be examined and analyzed to determine the legal framework applicable to the parties involved in the maritime transport relationship.

Discussions And Results

1. The definition of contract of carriage in the convention

We can consider the carriage of goods by sea is one of the most important tools for the implementation of international trade. same as all contracts, a maritime transport contract is based on the agreement between the two parties the carrier on side and the shipper on other side, to agree what duties they should undertake, and what objectives they then wish the covenants were meant to be used for. The implications may be carried over as regards roles and obligations of the contracting parties. (Gandomkar & Al-abboodi, 2025)

As we deals with the topic related to the goods contract of carriage and the responsibility of carrier under the Rotterdam Rules, so its mandatory to know the convention point of view regarding the contract of carriage, the Rotterdam rules define the contract of carriage in the first article of the convention Which states that " "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage". (Rotterdam Rules, article 1)

The primary definition, in defining the carrier as a party who "undertakes to carry goods", follows the traditional position. What, in the first place, is alluded to is a contractual bailment in relation to sea carriage, the kind of contracts associated with liner trades and which in contemporary shipping practice are described as bill of lading and sea waybill contracts. The second sentence of the definition makes it clear that other modes of transport may be added to the sea carriage without affecting the category. This extension lays down the foundation to the application of the Rules beyond port-to-port contracts to include place-to-place contracts with a sea leg, in other words multimodal contracts with a sea leg (Thomas, 2017).

so, Rotterdam Rules describe the 'contract of carriage' as a contract in which a carrier undertakes to carry goods from 'one place to another' rather than "from one port to another", that's mean the carrier's responsibility under the Rotterdam Rules will be extended rather than other maritime conventions (Zhou, 2014).

2. The borders of the carrier's responsibility based on the convention

the Rotterdam Rules, in order to meet the requirements of set up a door-to-door period of responsibility which begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered. However, this period is not necessary to be door-to-door. It is closely tied to the contract of carriage concluded between the carrier and shipper. (Article 12, 1).

the Rotterdam Rules accepted the desire of the parties to amend the carrier responsability even by extending or limiting the carrier's responsibility.

Under a port-to-port contract, the carrier's period of responsibility is only port-to-port while if the carrier contracts to provide a door-to-door carriage, his period of liability runs from door-to-door. However, the Convention also sets up limits to this freedom of contract, which requires that the parties may not agree on a 'time of receipt' subsequent to the beginning of their initial loading under the contract of carriage and the 'time of delivery' cannot prior to the completion of their final unloading under the contract of carriage (Zhou, 2014).

As the article 12 from the convention entitled "Period of responsibility of the carrier" Which states that "3. For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or (b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

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(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or (b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage". (Rotterdam Rules, Article 12,3)

This means that in a pure sea carriage, the shortest period of responsibility which can be agreed on by the parties is tackle-to-tackle. And in a multimodal carriage of goods with sea leg, the carrier must be at least responsible for the period when the goods are loaded on to the ship for the first voyage until the goods are discharged from the last voyage, not matter how many kinds of other transportations have been employed between. Furthermore, the Rotterdam Rules provide rules addressing the special situation when local law or regulations require the goods to be handed over to an authority or other third party. In these cases, the period of carrier's responsibility begins when the carrier collects the goods from the authority or other third party and ends when the carrier hands the goods over to the authority or other third party (Zhou, 2014).

3. The scope of application of limitation rules

In this section of the study, we will examine the basis for the statute of limitations on claims subject to it, in light of the provisions of the 2009 Rotterdam Convention, and the duration of this limitation period, as detailed below:

3.1 Basis of the statute of limitations for liability claims of maritime carriers under the 2009 rotterdam convention

The statute of limitations is generally based on several considerations, including those related to the public interest, represented by the stability of transactions (Al-Sanhuri, N/D). The silence of the right holder regarding their claim for a certain period indicates that they have either received their due, or have waived it to their debtor, or that they are negligent, in which case the debtor's well-being takes precedence (Morqos, 1964). This releases the debtor from the obligation to preserve evidence proving their discharge of the debt after that period, as it is not possible to require a person to retain evidence proving their discharge indefinitely (Al-Jabouri, 2011).

The basis for the statute of limitations on the liability of the maritime carrier in the Rotterdam Convention is to protect the public interest and achieve the public interest in the form of the speed with which the maritime transport process must be completed. In this way, it is a real statute of limitations that was legislated to protect the maritime carrier from late claims regarding the delivery of goods, with the legislator's desire to end disputes arising from the maritime employment contract so that claims and lawsuits do not accumulate against the maritime carrier, which would prevent him from making optimal use of his maritime operation. This statute of limitations is not subject to proof to the contrary, as it does not allow for the direction of the

supplementary oath (Hosni,1998).

3.2 Claims subject to the statute of limitations stipulated in the 2009 Rotterdam convention

It is understood from the text of paragraph 1 of Article 62 of the Convention that claims subject to the statute of limitations stipulated in the Rotterdam Convention are all judicial or arbitral proceedings relating to claims or disputes arising from a breach of the obligations stipulated in the Convention. Paragraph 1 of Article 62 states that "No judicial or arbitral proceedings may be instituted in respect of claims or disputes arising from a breach of any of the obligations provided for in this Convention after the expiry of a period of two years."

An important issue that should be mentioned is that the time for suit has been extended in the Rotterdam Rules as compared to The Hague-Visby Rules. It is now 2 years instead of 1 and the time limits in the Rotterdam Rules encompass all claims under the convention. The time is calculated from the delivery day or in case of no or partial delivery, from the day intended as the last delivery day. The effect of this is that a claimant has one more year to instigate proceedings and it is therefore a quiet “cargo friendly” change. (Adamsson, 2011)

Accordingly, the statute of limitations applies to any claim related to the performance of an obligation in a contract of carriage subject to the Convention, which is incumbent upon one of the parties, such as a claim of the carrier's liability and a claim of the maritime performing party's liability against the shipper or consignee for loss, damage, or delay in delivery of goods. It also applies to a claim by the shipper or consignee against whoever acts on behalf of the carrier in performing the contract or any obligation undertaken in its place, as well as a claim by the carrier against the shipper or documentary shipper for substitution or failure to provide the necessary information regarding the goods. The dangerous or breaching changes the obligations imposed on him (Hatoum, 2011).

3.3 Statute of limitations and commencement

Based on paragraph 2 of Article 62 of the Convention, judicial or arbitral proceedings relating to claims or disputes arising from a breach of any of the obligations stipulated in the Rotterdam Convention expire two years from the date of delivery, i.e., the delivery of the goods to the consignee, or from the last day on which the goods should have been delivered if they were not delivered or only part of them were delivered. This period begins from the day following the completion of delivery; the day on which delivery took place is not counted towards the statute of limitations. Therefore, the commencement of the statute of limitations for claims under the Convention differs depending on whether the goods were delivered to the consignee or the person entitled to receive them, or whether such delivery did not occur, as detailed below:

3.3.1 Commencement of the statute of limitations in the case of delivery of goods

The two-year period begins from the day on which the goods were delivered in the case of a claim for liability for damage or delay. The delivery referred to here is actual delivery, i.e., delivery that enables the recipient to inspect the goods and determine their condition to identify any defects (Beriri, 1999). However, symbolic delivery, whereby the carrier provides the consignee with a delivery note after... If the goods were obtained from the customs warehouses by virtue of a delivery order, this does not constitute delivery for the purpose of calculating the statute of limitations, as detailed previously regarding the moment of delivery in the Maritime Trade Law.

3.3.2 the commencement of the statute of limitations in the event of non-delivery of goods

This applies in the event of total or partial loss of the goods, whether the total loss is actual or constructive (i.e., the goods did not arrive on the specified date). In this case, the statute of limitations begins from the last day on which delivery should have been made. The day on which the goods should have been delivered is not included in this period. To determine the day on which the goods should have been delivered, reference must be made to Article 43, which stipulates that delivery must be made on the date agreed upon in the contract of carriage. If no such date is agreed upon, the date is the time at which delivery can reasonably be expected, taking into account the customs, traditions, and practices

followed in the relevant profession and the circumstances of the transport.

It is worth noting that the second paragraph of Article 62 equates the case of total loss of goods with the case of partial loss of goods in terms of the start of the limitation period for the claim, as its text reads: "2- The period referred to in paragraph 1 of this Article begins on the day on which the carrier delivered the goods or, in cases where the goods were not delivered or only part of them were delivered, on the last day on which the goods should have been delivered. The day on which it begins is not counted within this period." It is clear from the text that the agreement made the limitation period in these two cases begin from the last day on which the goods should have been delivered.

4. Extension of the statute of limitations

The two-year period stipulated in paragraph one of Article 62 for the expiry of judicial or arbitral proceedings concerning claims and disputes arising from a breach of an obligation stipulated in the Rotterdam Convention is a statute of limitations, not a limitation period. The statute of limitations is not subject to suspension or interruption. The reason the Convention adopted statute of limitations, rather than limitation, as the legal framework for the expiry of claims is the desire of international law to resolve transport voyages subject to the Convention's provisions as quickly as possible. Article 63 explicitly states that this period is not subject to suspension or interruption, thus eliminating any doubt as to whether it is a limitation period or a statute of limitations. This characteristic—the ability to suspend or interrupt—is unique to limitation periods; the statute of limitations is not.

The treaty enabled the parties to the transport contract to extend the statute of limitations by the party in whose favor the limitation applies, at any time during its term, provided that notification is given to the other party. The period may be extended more than once in the same manner, as explicitly stipulated in Article 63, entitled "Extension of the Time Limit for Filing a Claim".

However, while Article 63 addresses the extension of the time limit for filing a claim, it does not address the possibility of shortening this period. This issue can be divided into two scenarios:

a) Shortening the statute of limitations for a claim of the carrier's liability brought by the shipper or the owner of the goods. In this scenario, it is definitively ruled impermissible based on clause (b) of paragraph 1 of Article 79, because any agreement to shorten this period is invalid as it violates the provisions of this convention. Such shortening constitutes a form of reducing the carrier's liability, and the convention stipulates that any conditions resulting in this reduction are invalid.

b) Shortening the statute of limitations for the shipper's liability claim; This is the claim brought by the carrier against the shipper, raising the shipper's liability for breach or failure to provide necessary information regarding dangerous goods or for breaching other obligations imposed upon them. This breach, due to the shipper's fault, resulted in damages for which the carrier is liable to the owners of the goods damaged by the shipper's fault. In this agreement, the parties to the transport contract agree to shorten the statute of limitations for the shipper's liability claim. This is permissible based on the principle of contravention of clause (b) of paragraph 1 of Article 79, in conjunction with clause (b) of paragraph 2 of the same article. Furthermore, the statute of limitations, like the limitation period, may be waived by the party for whose benefit it was established, provided there is no interest that the legislator intended and therefore prohibited from agreeing to amend it. Here, the party waving from the protection provided by the agreement is the carrier, who is not a weak party that the agreement seeks to protect and prevent from being subjected to arbitrary conditions. Consequently, when the carrier reduces the statute of limitations for the shipper's liability claim, this constitutes a waiver by the party entitled to waive it, and this is permissible. It is in the shipper's interest that his liability claim be dismissed in a shorter period than specified in the agreement, and this is one of the agreements permissible under paragraph one of Article 79.

However, the Rotterdam Convention introduced a completely different provision in this regard, allowing a claimant (creditor) whose right to claim has lapsed to assert this lapsed right as a defense

against the opponent's claims, or to propose a set-off between what is owed to him and what is owed by him (Hammad, 2019). This is stipulated in paragraph three of Article 63. The meaning is that if the shipper's right to pursue a liability claim against the carrier lapses after the two-year period, and this shipper had entered into another transport contract with this carrier that resulted in the shipper's liability for damages incurred by the carrier due to, for example, the carrier's failure to disclose the hazardous nature of his goods, and the carrier subsequently filed a liability claim against the shipper to seek compensation for the damages resulting from the shipper's failure to disclose this information, then, based on paragraph three of Article 63, the shipper has the right to raise his old debt, which was extinguished by the lapse, against the carrier. Therefore, the lapse, according to the philosophy of the Rotterdam Convention, only applies if a new claim is filed after the two-year period has elapsed. Invoking this right against the carrier is not permissible. The fall is permissible and without specifying a period, and therefore the fallee returns in the Rotterdam Convention 2009, even though the principle is that the fallee does not return.

5.Provisions for recourse claims

The execution of a maritime transport contract is not limited to the carrier alone executing the contract. The carrier may employ a maritime contractor, or one or more contractors, to complete parts of the contract. Therefore, if a claim is filed against the carrier for compensation due to damage to the goods, and this damage is the responsibility of one of the contractors to whom the carrier delegated the execution, the carrier has the right to file a claim for compensation against the contractor or the maritime contractor who caused the damage warranting compensation during their possession of the goods. A claim for recourse presupposes that a claim for compensation has been filed primarily against the party filing the claim for recourse. The lesser party may voluntarily pay the claimed compensation, in which case they may still seek recourse against the party responsible for the damages that necessitated their payment. The claim for recourse must be filed within a specific timeframe stipulated by the agreement; if this timeframe is exceeded, the party wishing to file the claim for recourse forfeits their right to recourse (Hassan, 2004).

Article 64 of the Rotterdam Convention stipulates that "a person held liable may bring an action for damages after the expiry of the period provided for in Article 62, provided that the action is brought within the later of the following two periods:

(a) The time permitted by the applicable law in the jurisdiction where the action is brought; or

(b) ninety days from the date on which the person bringing the action for damages has settled the claim or been notified of the proceedings against him, whichever is earlier."

The Convention, in the aforementioned text, established the provisions for recourse claims and their lapse. It is understood from this text that a party bearing liability may file a claim for compensation (a recourse claim) even after the expiry of the statute of limitations stipulated in Article 62 (estimated at two years), provided that the claim is filed within the period permitted by the law of the country where the proceedings are taking place. This permitted period must not be less than ninety days, commencing from the day on which the party bearing liability settled the claim amicably with the claimant, or ninety days from the day on which the party was notified of the claim if they had not settled the claim amicably (Hassan, 2004).

If the permitted period in the country where the recourse proceedings are taking place exceeds ninety days, the longer period shall apply. However, if the period for filing a recourse claim in the country where the proceedings are taking place is less than ninety days, the ninety-day period shall apply, regardless of whether the original claim has lapsed or become time-barred (Hatoum, 2011).

Conclusion

This research paper addressed a delicate and important topic within the framework of regulating transactions in general and maritime transactions in particular. Setting a time limit for debt claims is essential for the stability of transactions between individuals, especially when one or both parties are merchants with frequent business dealings. Given the speed inherent in commercial activity, merchants

cannot maintain documentation of debts for extended periods, nor can they withstand the threat of endless legal claims. Therefore, the Rotterdam Rules of 2009, concerning the carriage of goods wholly or partly by sea, established the time limit for filing claims against the maritime carrier or any maritime operator. Articles 62 to 64 address the statute of limitations for claims against the maritime carrier or maritime operator if filed after two years. The study also examined the mechanism for determining this two-year period, whether the goods have been delivered or not.

The paper, also, addressed the legal basis for the extinguishment of claims arising from compensation claims against the maritime carrier or the maritime performing party. It further examined the claims covered by this extinguishment, noting that all claims, whether judicial or arbitral, are subject to this extinguishment as long as they arise from any obligation stipulated in the rules.

In addition, this paper addressed the possibility of extending the extinguishment period, allowing the party in whose favor the extinguishment is established to extend it by notifying the other party. This extension is permissible more than once. Finally, the study addressed the provisions governing the extinguishment of recourse claims, which pertain to those employed by the carrier to execute stages of the carriage contract, commonly referred to as the maritime performing party.

The study reached several conclusions, including:

- The time limit for filing claims against a maritime carrier is a statute of limitations, not a prescription period, and therefore, it is not subject to suspension or interruption.

-The statute of limitations applies to all claims as long as they relate to an obligation arising from a contract of carriage governed by the Rotterdam Rules, regardless of whether the claim is judicial or arbitral.

-The delivery from which the statute of limitations begins to be calculated is actual delivery, which means placing the goods at the disposal and in the possession of the rightful owner. Symbolic or constructive delivery is not considered in calculating the statute of limitations.

-Reducing the period of liability for the maritime carrier is not permissible under the Rotterdam Rules because it constitutes a reduction of the carrier's liability, which is invalid under the Rotterdam Convention. However, reducing the period of liability for the shipper is permissible because it provides greater protection for the shipper, who is considered the weaker party in the transport relationship.

The study recommends the following:

- Adopting the Rotterdam Rules would negatively impact shippers' claims because the time limit for filing claims against the carrier is a statute of limitations, not a prescription period. Therefore, it is not subject to suspension or interruption, which does not provide shippers with maximum protection.

- The rules regarding the statute of limitations for recourse actions offer an advantage to the party seeking recourse by giving them the option of choosing between two time limits: one stipulated in the applicable national law, or the period specified in the Convention if it is less than ninety days in the applicable national law.

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