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# OBLIGATION TO DELIVERY OF GOODS TRANSPORTED BY SEA

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By delivery we mean the legal operation in accordance with which we place the goods at the disposal of the consignee or his deputy at the port of delivery. Delivery is the last stage of obligation that falls upon the transporter; by its performance his responsibility for goods comes to an end, and the contract for maritime transportation terminates. At the moment of delivery starts the time of modification the consignee has to address to the transporter if the goods are destroyed or deteriorated. The period of limitations also comes into force.

The obligation to delivery falls to the transporter (Article 3/2 Brussels, 215 /1 Egyptian Maritime Law). The established practice assumes that the shipmaster carries out the process of delivery as a deputy of the transporter; but custom passed as the ship purser as a representative of the transporter - receives the goods and undertakes their distribution to their owners; so that the ship is not detained in the port for a long time waiting for the consignees.

We mean by delivery the actual delivery of the goods to whom who has the right of their ownership or his deputy, in order to convey its possession to him and become capable of examining them and recognize their status and amount. The mere discharge

of the goods from the ship and entrusting them to the customs circle is not counted delivery; because the discharge of the goods from the ship by the consignee according to a pervious accord in the contract between the two parties is not indicating that the consignee has actually received them before discharge, examined them and verified their status, in the manner that considers the shortage or deterioration discovered after discharge has occurred in the process of discharge and by its means .

Thus, if discharge means the materialized process in accordance with which goods are discharged from the ship, delivery means the legal process in accordance with which goods are placed at the disposal of the consignee or his deputy, so that he can verify and examine them to make sure of their quantity, and good condition, or to identify their status, shortage or deterioration of they arrived short. This examination will be useful in calculating the freight fees if they agreed on calculating them in proportion to the discharged quantity. The established practice assumes that examining and verifying the goods take place after discharge: on the dock, at the customs stores or at the public stores, if the goods must be deposited to stores before they are released. But maritime navigational companies sometimes stipulate that delivery must take place under cranes, wherein goods that are not to be deposited to stores should be examined on board the ship before discharge.

However, examination takes place in the presence of both parties of the transportation contract or their representatives or at least after the call of one party to the other to assign a representative of his own.

There is no doubt, that the Egyptian justice interpretation of delivery as such, conformers with the legal basis of the responsibility of the maritime transporter in the Egyptian Maritime Law; wherein Article 227 / 1 states that the maritime transporter is obliged to transport goods safely from the port of departure to the port of delivery at the time agreed on or at the suitable time if they did not fix a certain time.

There fore, the obligation of the maritime transporter to transport the goods, according to the Egyptian law ; is an obligation of bringing forth a result; provided that the transporter becomes responsible for not realizing the destined results , I. e , the destruction, the deterioration or the delay in delivery . He will never be exempted from this responsibility unless he proves that the destruction or deterioration of the goods or the delay in their delivery is due to some alien cause out of action for him, his deputy or his subordinates (Art. 229); such as the compelling power, the consigner's mistake, the defect of the goods or others error.

Consequently, the Egyptian maritime law pursues the same route of Brussels convention 1924, as the convention imposes obligations upon the transporter signifying that the loading of the goods, the storage, the stowage, the transportation, the preservation and the discharge must be performed with great care and accuracy (Art., 3/2).

Yet, it diminished the responsibility of the maritime transporter - affected by the Anglo-Saxon system - as it assumed neither the transporter nor the ship responsible for the destruction or the deterioration of the goods if this destruction or that deterioration caused by one of the seventeen causes depicted by the treatment in its Article 4/2, that exempts the transporter from the responsibility.

The negligence of the convention the legal basis of the transporter responsibility and the vagueness of the principle of responsibility on applying the above - mentioned two articles, led some jurisprudence opinions to hesitation the basis of the public law, in the light of this convention, about the transporter's responsibility-between the assumed error and the assumed responsibility. Yet, we are supporting another jurisprudence concept: that is the basis of the public law concerning the maritime transporter responsibility, in the light of Brussels convention, deals with the assumed responsibility not the assumed error. The transporter obligation of transporting the goods and their delivery to whom

who has the right for them is an obligation to achieve a result, not an obligation to exert care; so that the transporter cannot escape the responsibility for the destruction or the deterioration of the goods, unless he gives the evidence about the existence of any the seventeen exemptions enrolled in the list of exemptions stated in article 4/2 of the convention.

Therefore, Hamburg convention did not also declare the legal basis of the maritime transporter responsibility and the jurists are divided in interpreting the assumed responsibility and the assumed error.

We hope, like others, to establish the responsibility upon the basis of the assumed responsibility; but others go farther that the basis of responsibility in the public law - in the light of Hamburg convention - lies in the assumed error, not in the assumed responsibility.

The obligation of the transporter to care for the goods unto their delivery - according to the convention-is an obligation to exert care, not an obligation go achieving result, on the ground that Article 5/1 of the convention determines not to exempt the transporter from the responsibility, unless he proves that he and his subordinates had taken all reasonable precautions to avoid damages. Appendix II attached to the agreement also, sates that: " it is conceivable that the transporter's responsibility - according to this agreement - rests on the basis of the supposed error or negligence".

The Egyptian maritime law, in this respect, prefers to conform to the Brussels convention 1924, and to shun the Hamburg Convention 1978; as Brussels convention in better than Hamburg convention in establishing the maritime transport responsibility on the basis of the assumed responsibility, not the assumed error, which the Hamburg convention adjudicates. The transporter's obligation of transporting and delivery of the goods, is considered obligation of achieving result, and the transporter bears the burden

of confirming the causes that led to the damage - as Brussels convention depicts - then, this will be in favor of the consigners and the consignees . On the contrary, Hamburg convention determines that the transport's obligation to transfer and deliver goods is an obligation to exert care, and the transporter escapes the responsibility if he proves that he, his subordinates and his agents, have taken all considerable precautions to avoid danger; the act that is considered easy for the transporter, but does not provide enough protection for the consigners and the consigners in the manner Brussels convention determines.

therefore , Hamburg convention did not fulfill , in this respect , the expectations . of the consigners in their long struggle for achieving more equivalence and balance between their interests and the transporters' interests .

Coping with this concept about the legal basis for the maritime transporter's responsibility in the light of the Egyptian maritime law and both treaties of Brussels 1924 and Hamburg 1978 , the interpretation of the Egyptian justice of the obligation to delivery as an actual delivery of goods to whom who has the right thereof, conforms with the text of article 3/2 , Brussels convention , that imposes on the transporter the obligation of bearing the responsibility of loading and discharging until the goods are delivered to whom who has the right thereof .

This is the lest element provided by Brussels convention in the field of protecting the interests of the consigners and the consignees.

In this respect , he Egyptian maritime law does not conform to the provisions of Hamburg convention 1978 . When this convention defines the concept of delivery that gives an end to the maritime transporter's responsibility , it permits the transporter to escape from the responsibility in the cases wherein the goods are no more in his charge , even though the consignee does not actually receive them .

**Here are examples :** the case wherein the transporter places the goods at the disposal of the consignee without actually delivering them to him , according to what the parties of the contract agreed upon ; and the case wherein the goods are delivered to an authority or a third party , according to the laws and regulations of the part of discharge (Art . 4/2). This situation , no doubt , affects the interests of the consigners and the consignees; for Hamburg convention does not include any text about the definition of the limits of freedom left to the parties in this respect .

In conclusion , these considerations have led the Egyptian legislator in the Egyptian maritime law , not to adopt the provision set , in this respect , in Hamburg convention . Consequently , the law , contradicting homburg convention , does not refer to the persons to whom the goods are to be delivered at the port of discharge , on the one side . On the other , the delivery , that in the Egyptian law and jurisprudence terminates the maritime contract and vindicates the transporter , should be actual delivery of the goods to the consignee or his deputy , who can examine and recognize them as we mentioned above .

**Who has the right to receive the goods ?**

The consigner may send goods to himself , such as a project providing one of his branches or exhibitions in a foreign country . But in most cases the transportation is carried out in favor of another person , other than the consigner , known as the consignee , the legal holder of the Bill of lading . The shipmaster ought to deliver the goods at the arrival to the port of delivery to the legal holder of the Bill of lading or his substitute (Art . 233 Maritime) .

The legal holder of the Bill of lading or the consignee is identified order or to whom it is endorsed after being certain of the series of endorsements written upon it ; if the Bill of lading is to its holder , the shipmaster should deliver the goods to its holder , without

regarding the way it is transferred to him . In all cases the shipmaster should make sure of the identity of the goods receiver .

**Delivering the Goods to the cargo Trustee**

An agent called " Cargo Agent" or " Cargo trustee" may substitute for the consignee in receiving the goods . This trustee may ask the shipmaster to deliver him the goods , provided he is restricted to the rights and obligations of his principal .

It is conventional that , in the case of numerous consignees , concerning one big shipment , a cargo trustee is appointed to represent them in receiving the goods from the shipmaster , then he distributes them .

The delivery should run legally , vindicating the transporter , as the trustee is the holder of the Bill of lading and the deputy of the consignees .

Sometimes , the ship purser performs the same role of the cargo trustee according to a text in the Bill of lading . In this case , he carries out the discharge of the goods from the ship as representative of the transporter , then he delivers and transports them to the consignee stores as representative of the latter . This act facilitates and quickens the processes of discharge and delivery .

**Delivery Orders**

Sometimes a great quantity of goods are sent at one Bill of lading , and its owner sells them in retail . As it is difficult to divide the Bill of lading , the maritime legislator allowed all of whom who has the right to receive goods according to the Bill of lading to ask the transporter to issue a delivery order concerning quantities of them , provided the Bill of lading contains a text on that act ( Art . 212/1 Maritime ) .

This means that the delivery order is a covenant issued by the transporter or his representative and bearing his signature and the signature of the order claimer ( Art . 212 / 2 Maritime ) ; its holder is legally allowed to receive the goods listed in it ( Art . 212 / 4 Maritime ) .

The delivery order is equivalent to the Bill of lading , including ; the signatures of the transporter and its claimer and the data of his share of goods loaded , according to the Bill of lading issued for the whole shipment , concerning the quantity , the weight , the sort , and the distinguishing marks . Delivery orders are issued in the name of a certain person , to his order or to its holder . ( Art . 212 / 2 Maritime ) .

It is worth noting , that if the Bill of lading issued for the whole shipment is apt to circulation , the transporter should mention in it a list of the delivery orders issued by him and the goods listed therein .

If the whole shipment is divided into many delivery orders , the transporter should retrieve the Bill of lading ( Art . 212 / 3 Maritime ) .

The delivery orders , we are concerned with , differ from the delivery orders issued by the consigner . In this case of transporting a big shipment - according to a Bill of lading and selling it in retail en route , the consigner may issue delivery orders to whom who have the right of the goods , addressed to his agent at the port of delivery , ordering him to deliver the beneficiaries of these orders the quantities of goods enlisted therein . The delivery orders , issued by the consigner are not considered as Bill of lading and do not convey to their possessors any right on the goods . The shipmaster has no obligation towards them , as he did not sign them ; but their force is only limited to the responsibility of the consigner who issued them and his agent who is ablized to perform them.

## Delivery of Goods to the customs Authority

The delivery of goods to the customs authority is not a legal delivery to the consignee or his deputy , that terminates the transporter's responsibility and brings to an end the maritime contract of transportation . The customs authority is not considered an agent of the consignee in receiving the goods ; but it receives them as the law authorizes it to perform a special service , i.e. the payment of the duties due on them . The maritime transporter is still responsible for the loaded cargo and its security , until it is delivered to whom who has the right to receive them .

## Delivery of Goods according to the System of Delivery to the Owner

This system means the agreement on delivering the goods by the transporter directly to their owner or his deputy , without depositing them to the customs stores .

Herein also , the goods remain guarded by the transporter , who is still responsible for them until he actually delivers them to the consignee or his deputy . The customs system has no effect upon the responsibility of the transporter towards the consignee . This system has nothing to do with the spontaneous termination of the transporter's responsibility when the ship arrives and the goods started to be unloaded , or when the unloading ended and the goods are placed on the deck . But the goods are still in the possession of the transporter , under his control , and his responsibility on them does not terminate , unless he actually delivers them to the consignee as is above - mentioned .

## The Banking letter of Guarantee in the Absence of the Bill of lading

The consignee may ask the transporter to receive the goods without presenting the Bill of lading , as the goods , for example , has arrived , before the documents . In this case , the transporter may deliver the consignee the goods if the latter presents to him a

banking letter of guarantee with the estimated value of the goods . This banking letter of guarantee is an evidence that guarantees to the transporter that the consignee will deliver him the documents when he receives them , and that the bank pledges to pay all the sums due on the delivery of the goods to the consignee ; in order that the transporter may avoid the of delivering the goods without the Bill of lading .

It is conventional that , if the consignee presents a banking letter of guarantee to release his goods , the transporter or his agent communicates with the consigner asking for his recommendations ,to avoid any problems that may arise if the consignee (the buyer) did not pay for the goods to the consigner ( the seller ) . However ,the transporter can never be vindicated without delivering the goods to the real consignee or the legal holder of the Bill of lading or his deputy .

**The Legal Basis of the Consignee's Right in Receiving the Goods**

If the receiver of the goods is the consigner himself or his agent , there is no doubt that the legal basis of his right to receive the goods is inherent in the maritime contract of transportation , on the ground that he is a party of the contract , enjoying his rights and bearing his obligations . But , if the receiver of the goods or the consignee is a person other than the consigner , there is no doubt , also , that he does not claim the goods utilizing the consigner's right or his entity as an agent of the consigner .

He claims them according to his direct right over the transporter , due to which right he can claim to receive the goods in his specific name , despite the characteristics entailed at this exception of the rule of the proportionate effects of the contract ; where in the consignee acquires some rights and bears some obligations arising from the transportation contract , though he is not a party . These rights comprise the right to claim the goods , the right to bring him to action if they are destroyed , deteriorated

or delayed , and the obligation to pay freight fees , if they agreed in the contract that they are due at the port of delivery .

So , the argument has arisen about the legal basis to this direct right of the consignee towards the transporter .

**Here are some viewpoints :**

One lays the foundation of the consignee right of receiving the goods on the stipulation in favor of the other . The maritime contract of transportation comprises conditions in favor of the other , due to which the transporter pledges to delivery the goods to the consignee ( the beneficiary of the transportation contract ) , who acquires , respectively , direct right on the transporter ( the pledger ) , as asking him to fulfill his promise of the goods delivery .

The disadvantage of this opinion is that it contradicts the provisions stipulating the benefit of the other , which may bestow right upon the beneficiary ; but it is not permissible to entail obligation to him , where the consignee is sometimes obliged to pay the transportation fees . If we also apply the rules of stipulation - in favor of the other - to the contract of transportation , it will provide the transporter ( the pledger ) with the possibility to protest against the consignee ( the beneficiary ) conforming to the rebuttals apt to be adhered to in the face of the consigner ( the stipulator ) himself , coping with the transportation contract ( Art . 154 / 2 ) .

This contradicts the right of the consignee , concerning the goods ,and weakens the trust in dealing with the Bill of lading in the maritime trip .

*Another view lays the foundation of the consignee's right to receive the goods on the transportation contract , as the contract is tripartite ; the consigner being the third party , while the other parties are the consigner and the transporter . The Bill of lading

holder then , is rendered a considerable party in the transportation contract , as he has an interest in the process of transportation equivalent - when he claims the enforcement of the transportation contract - to that of the consigner , and is connected with the Bill of lading, since the consigner is connected with it . This is an exception from the principle of the proportionate effect of the contract justified by the economic function of the transportation contract .

The disadvantage of this view is that it rests on a mere economic basis without any legal basis . The maritime transportation contract - as is above - mentioned - is a dipartite contract ; its parties are the transporter and the consigner ; where as the consignee is considered another than those in the contract of transportation , and in the Bill of lading if he is another person besides the consigner on his agent .

*A third opinion lays the foundation of the consignee's right to receive the goods on the idea of the incomplete deputation , as the consigner in his contracting with the transporter is considered a deputy of the consignee , to whom the effects of the contract shifts for being the principal party of this deputation . This is an incomplete deputation , as the consigner is still a party of the transportation contract and is still obliged to pay the freight fees to the transporter until the consignee accepts the goods . The consigner as such , is considered the surety of the consignee .

The disadvantage of this opinion is that it does not attract the intention of the parties ; for the consigner does not intend to be principal or deputy of the consignee in the same time , and the consignee does not intend to be party in the contract of transportation . This critique is clear in the circulation of the Bill of lading ; because , if we assume the deputation of the consigner to the consignee or the holder of the policy in all cases , it will be difficult to assume this deputation at the circulation of the policy en route of the trip and its falling in the hand of another person who has no relations at all with the consigner . This opinion also contradicts the legal effects that ensue from the incomplete

deputation and according to which the replacement of the consignee for the consigner extends to all obligations , not only to the obligation of paying the fees . This act contradicts what is actually practiced in the maritime transportation contract .

*The last point of view lays the foundation of the consignee's right to receive the goods on the Bill of lading itself ; as consignee with his possession of the Bill of lading is considered the owner of the goods or at least the possessor thereof . The Bill of lading is considered representative of the goods and an evidence of its possession , or consequently , represents the nominal possession of the goods , according to the Article ( 954 / 1 civic ) that states that : " the delivery of the documents of the goods rendered to the ship purser or deposited to the stores stands for the delivery of the goods themselves" .

The shipmaster has to delivery the Bill of lading holder , as he owns it . The consigner's delivery of the Bill of lading to the consignee is considered delivery of the goods themselves ; for the Bill of lading represents the goods . If the shipmaster has the right to abstain from delivering the goods to the consignee , who did not pay the freight fees , and practice the right of the transporter to detain them , the consignee cannot receive the goods unless he frees them of the costs due , without the transporters losing his right to bring the consigner to action , because it is he who had contracted with him .

When the Bill of lading is an undivided unit , the consignee has not the right to adhere to his right based on the Bill of lading, i.e. to receive the goods and to escape from his obligations to the policy with the payment of the freight fees as one of them .

**The proof of Receiving the Goods**

The delivery of a copy of the Bill of lading is an evidence of the delivery of the goods to whom who has the right of receiving them . It is a simple presumption that what contradicts it may be

proved ( Art . 224 Maritime ) with all means of proof ; yet it is a difficult proof , as the original is the setting of the presumption in the favor of the transporter.

If the transporter issues delivery orders concerning quantities of goods he has received at one Bill of lading , including a text about authorizing him to issue such orders , the transporter's retrieval of the delivery orders , previously issued by him who has the right to receive the goods , is an evidence proving that the transporter has delivered the goods listed in these orders .

At last , if he who has the right to receive the goods did not arrive or arrived and abstained from receiving them , and upon the judge's decision , the transporter deposited them to a trustee ; the receipt issued by the trustee against receiving the goods . is a proof that the transporter had delivered the goods with the specifications stated in the receipt .

**Thronging with the Bearers of copies of the Bill of lading**

We have demonstrated that it is possible to issue - at the request of the consigner - many copies of the Bill of lading, each of which is signed and has the number of the copies issued . Each copy may replace the others , and the delivery of goods by one cancels the others to the transporter . ( Art . 202 / 3 Maritime ) . If this happens , and the copies of the Bill of lading are endorsed to various persons , the copy holders multiply , and consequently multiply the persons who have the right to receive the goods . Here , arises the enquiry about identifying the holder who has the right to receive the goods from the transporter among the multiple holders of the Bill of lading holders .

The answer to this enquiry about this thronging is to assume. hypotheses: thronging before the delivery of goods and thronging after their delivery :

**The First Hypothesis : Thronging before the Delivery of Goods**

If many persons holding copies of the Bill of lading that is apt to circulation present applications to receive the goods , the holder of the earliest copy in the date of endorsing should be preferred ( Art . 225 / 1 Maritime ) . By endorsing one of the copies first , the endorser conveys the ownership of the goods to the endorsee , and the delivery of the Bill of lading stands for the delivery of the goods themselves . The first endorsement , consequently , depletes his right of the goods , so that his following endorsement is one of goods that are not owned to him ; so , he has no more right to convey them to others .

It many holders of Bill of lading whose endorsements have the same date , asked the shipmaster to deliver them the same goods , he will be confused to decide to give them to anyone , and will deposit the goods to a trustee and will ask them to resort to the judiciary to divide them the division of adversaries without any preference of one to the others .

**The second Hypothesis : thronging after the Delivery of Goods**

If the thronging takes place after the delivery of goods , we are acting between two matters :

**First** , if the person who had received the goods is the holder of the earliest date of endorsement , there is no difficulty , as the receiver of the goods is the person who has the right to receive them and keep them in his possession .

**Second** , if the person who had received the goods is another than the person who holds the earliest date of endorsement , we will be in the face of two possessions of the goods : an actual possession on the part of whom who has received the goods , though he is not the holder of the Bill of lading that has the earliest endorsement ; and a nominal possession on the part of whom who has the Bill of

lading with the earliest endorsement . We suppose that both possessors are benevolent . To settle this thronging , we assume that if the actual possessor of the goods is a benevolent holder of one of the Bill of lading copies , he will have the priority to the holders of the other copies , even though their endorsements came earlier ( Art . 225 / 2 Maritime ) , i.e. the actual possession is preferable to the nominal one .

The disadvantage of this judgment lies in the fact that , though the consigner does not have the right to dispose of goods after having disposed of them , his next disposition is one without ownership , and his disposition is thus considered right in the field of ownership or possession , when we add the conditions of possession and benevolence .

It the shipmaster possesses the goods in favor of the beneficiary of the Bill of lading with the earliest endorsement , and this possession gets out of his control , the first holder of the Bill of lading becomes no more possessor , and in a weaker status than the later holder who has actually received the goods . This decision , though seemingly right from the viewpoint of justice , weakens the trust value of the Bill of lading and helps rising fraud

**Refraining from Delivering the Goods or the Absence of a claimer thereof**

If he who has the right to receive the goods does not come ,
or comes and refrains from receiving them or paying the freight fees or other sums concerning transportation , the transporter may ask the judge of the temporary matters to allow him to deposit them to a trustee , whom the judge assigns . The transporter may ask for a permit to sell all the goods or some of them to recover the sums above - mentioned and be distinguished from others (Art.226 Maritime).

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