



ANALYSIS

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Price \$6.00

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

(10 August 1998)

1. Short Title and commencement - (1) This Act may be cited as the Carriage of Goods Act 1998.

(2) This Act shall come into force on the 1st day of July 1998.

2. Interpretation - In this Act, unless the context otherwise requires -

"Actual carrier", in relation to the carriage of any goods, means every carrier who, at any material time, is or was in possession of the goods or of any container, package, pallet, item of baggage, or any other thing in or on which the goods are or were believed by him to be, for the purpose of performing the carriage or any stage of it or any incidental service; and includes the contracting carrier where he performs any part of the carriage;

"Carriage" includes any incidental service; and "carry" has a corresponding meaning;

"Carrier" means a person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person, whether or not as an incident of the carriage of passengers; and, except in sections 21 to 24 of this Act, includes a person who, in the ordinary course of his business, performs or procures to be performed any incidental service in respect of any such goods;

"Checked baggage" means baggage, personal effects, or other articles checked or registered with the carrier, or put in any place at the carrier's direction, or in any other way handed over to and accepted by the carrier (whether or not a check or form of receipt is issued) as baggage intended to be carried incidental to a contract for carriage of a passenger;

"Contracting carrier" in relation to a contract of carriage, means the carrier who, whether as a principal or as the agent of any other carrier, enters or has entered into the contract with the contracting party;

"Contracting party" in relation to a contract of carriage, means the consignor or (as the case may require) the consignee of the goods who enters or has entered into the contract with the contracting carrier;

"Contract of carriage" means a contract for the carriage of goods;

"Court" means the High Court of the Cook Islands;

"Goods" means goods, baggage and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value;

"Hand baggage" means baggage, personal effects, or other articles not being checked baggage;

"Incidental service" in relation to any goods, means any service (such as that performed by consolidators, packers, stevedores, and warehousemen) the performance of which is to be or is undertaken to facilitate the carriage of the goods pursuant to a contract of carriage;

"International carriage: -

- (a) In relation to the carriage of goods by air, means carriage in which, according to the contract of carriage, the place of departure and the place of destination (whether or not there is a break in the carriage or a transshipment) are within the territories of two countries, or within the territory of a single country if there is an agreed stopping place within the territory of another country;
- (b) In relation to the carriage of goods by sea, means carriage from any port in the Cook Islands to any port outside of the Cook Islands, or to any port in the Cook Islands from any port outside of the Cook Islands, commencing when the goods are loaded onto a ship and ending when they are discharged from a ship;

"Loss" in relation to any goods, includes the non-delivery or destruction of the goods;

"Passenger" means a person carried pursuant to a contract of carriage of that person;

"Ship" means any vessel used for the carriage of goods and or passengers by sea.

3. Meaning of "unit of goods" - (1) In this Act, unless the context otherwise requires, "unit of goods" or "unit" -

- (a) In relation to bulk cargo, means the customary freight unit; that is, the unit of bulk, weight, or measurement upon which the freight for that type of cargo is customarily computed or adjusted;

Provided that, where the freight payable under a contract of carriage is computed or adjusted upon a specified unit of bulk, weight, or measurement, references in this Act to "unit of goods" or "unit" shall be deemed, for the purposes of the carriage of goods pursuant to that contract, to be references to that specified unit;

- (b) In relation to goods contained in a container, means the container load of goods; and includes, where the container is provided by the contracting party, the container;

- (c) In relation to goods loaded on a pallet, means the pallet load of goods; and includes, where the pallet is provided by the contracting party, the pallet;
- (d) In relation to goods contained in a package that is not contained in a larger package or in a container, nor loaded on a pallet, means the package of goods;
- (e) In relation to goods that are unitised for the purposes of carriage in any manner not referred to in any of the preceding paragraphs of this subsection, means the unit of goods as so unitised;
- (f) In relation to goods (other than baggage) not referred to in any of the preceding paragraphs of this subsection, means each item of the goods.
- (g) In relation to baggage, means each item of baggage.

(2) For the purpose of determining the limit of the liability of any carrier, the limit of liability prescribed by section 15 of this Act in respect of each unit of goods relates to the unit of goods as accepted for carriage by the actual carrier or, where the carriage is undertaken by more than one carrier, by the first actual carrier, whether or not that unit is subsequently packed, recapped, or unpacked, or otherwise aggregated with or segregated from any other goods, at any stage of the carriage.

4. Act to bind Crown - (1) Subject to subsection (2) of this section, this Act binds the Crown.

(2) Nothing in this Act applies to -

- (a) The carriage of goods by any employee or agent of the Ministry of Foreign Affairs in pursuance of any diplomatic or official functions;
- (b) The carriage of goods by the postal services of Telecom Cook Islands as constituted by the Telecommunications Act 1989, whether by its agents or otherwise.

5. Application of Act - Subject to subsection (4) of this section and to section 4 of this Act, this Act applies to every carriage of goods, not being international carriage, performed or to be performed by a carrier pursuant to a contract entered into after the commencement of this Act, whether the carriage is by land, water, or air, or by more than one of those modes.

(2) Subject to subsection (1) of this section, this Act applies to every carriage of goods whether the carriage is or is not incidental to the carriage of passengers.

(3) Subject to subsection (1) of this section, this Act applies to every carriage by air or by water whether or not the aircraft or ship by which the carriage takes place is at the same time also engaged in international carriage.

6. Other remedies affected - Notwithstanding any rule of law to the contrary, no carrier shall be liable as such, whether in tort or otherwise, and whether personally or vicariously, for the loss of or damage to any goods carried by him except -

- (a) In accordance with the terms of the contract of carriage and the provisions of this Act; or
- (b) Where he intentionally causes the loss or damage.

7. Contracting out - The parties to a contract of carriage are free to make their own terms in respect of any matter to which any of sections 10, and 18 to 27 of this Act apply; and where they do so, the relevant section or sections shall, in relation to that matter, have effect subject to those express terms.

8. Kinds of contract of carriage - (1) For the purpose of determining upon whom liability for the loss of or damage to any goods is to fall, every contract of carriage shall be one of the following kinds -

- (a) A contract for carriage "at owner's risk", under which the carrier shall not be liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier;
- (b) A contract for carriage "at limited carrier's risk", under which the carrier shall be liable for the loss of or damage to any goods in accordance with sections 9, 14, 15 of this Act;
- (c) A contract for carriage "at declared value risk", under which the carrier shall be liable for the loss of or damage to any goods up to an amount specified in the contract and otherwise in accordance with sections 9, 14, and 15 of this Act;
- (d) A contract for carriage "on declared terms", under which the carrier shall be liable for the loss of or damage to any goods in accordance with the the specific terms of the contract.

(2) Subject to the succeeding provisions of this section, where in any contract of carriage the term "at owner's risk" or the term "at limited carrier's risk" or the term "at declared value risk" or the term "on declared terms" is used, the contract shall be deemed for the purposes of this Act to be one to which paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) (as the case may require) of subsection (1) of this section applies.

(3) Subject to the provisions of this section, the kind of contract of carriage to be entered into in a particular case is a matter for agreement between the parties.

(4) Where the contract does not purport to be of a particular kind, it shall be deemed for the purposes of this Act to be a contract for carriage "at limited carrier's risk".

(5) No contract of carriage purporting to be a contract for carriage "at owner's risk" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless -

- (a) The contract is -
 - (i) In writing; and
 - (ii) Expressed to be "at owner's risk"; and
 - (iii) Signed by the parties or their agents; or

- (b) Before, or at the time when, the goods are accepted for carriage, the contracting party or his agent signs a statement in the following terms;
"These goods are to be carried at "owner's risk". This means that the carrier will pay no compensation if the goods are lost or damaged, unless he intentionally loses or damages them."

For the purposes of this paragraph, that statement may be included in the consignment note or any other document relating to the carriage, but in that case the statement shall be conspicuous and shall be separately signed by the contracting party or his agent.

(6) No contract of carriage purporting to be a contract "at declared value risk" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless the contract is in writing.

(7) No contract of carriage purporting to be a contract for carriage "on declared terms" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless the contract is -

- (a) Freely negotiated between the parties; and
- (b) In writing; and
- (c) Signed by the parties or their agents.

(8) Where in any proceeding the question of whether any contract of carriage was or was not freely negotiated is in issue, the Court in determining that question shall have regard to the following matters:

- (a) The respective bargaining strengths of the parties;
- (b) The course of dealing between the parties in respect of the particular transaction in question, and any other transactions between them;
- (c) The value of the transaction;
- (d) Any extraordinary features of the goods to be carried or the route over which they are to be carried;
- (e) Any other matters that the Court considers may properly be taken into account, -

and either party may adduce evidence relating to any such matter.

(9) No contract of carriage "at owner's risk" or "at declared value risk" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless the amount by which the freight charged by the contracting carrier under the contract differs from the amount that he would have charged for the same carriage "at limited carrier's risk" is fair and reasonable, having regard to the difference in the risk actually undertaken by the carrier and the risk that he would have undertaken if the carriage had been "at limited carrier's risk".

(10) For the purposes of subsection (9) of this section, any rate of freight prescribed by or under any enactment in respect of any mode of carriage pursuant to any kind of contract of carriage shall be deemed to be a fair and reasonable rate to charge for such carriage.

(11) Any contract of carriage entered into by a contracting carrier with an actual carrier, or between actual carriers, may be of any kind, regardless of the kind of contract that subsists between the contracting carrier and the contracting party; but subsections (5) to (8) of this section shall not apply in respect of any such contract.

(12) The provisions of sections 9, 14, and 15 of this Act apply to contracts for carriage "at limited carrier's risk" and to contracts for carriage "at declared value risk".

(13) Sections 9(1), 14, and 15 of this Act do not apply to contracts for carriage "at owner's risk" or to contracts for carriage "on declared terms".

(14) Notwithstanding anything in section 7 of this Act, the provisions of subsections (2) to (7) of section 9 of this Act apply to contracts for carriage "at owner's risk" and to contracts for carriage "on declared terms", subject to any express term in the contract.

Liability of Carriers

9. Liability of contracting carrier - (1) Subject to the other provisions of this Act, a contracting carrier is liable as such to the contracting party for the loss of or damage to any goods occurring while he is responsible for the goods in accordance with the succeeding provisions of this section, whether or not the loss or damage is caused wholly or partly by him or by any actual carrier.

(2) The responsibility of the contracting carrier for goods begins when the goods are accepted for carriage in accordance with the contract.

(3) Subject to subsection (4) of this section, the responsibility of the contracting carrier for goods ends -

(a) In a case where the goods are to be delivered to the consignee -

(i) When they are tendered to the consignee in the manner expressed or implied in the contract; or

(ii) Where any amount by way of freight is due and payable to or on behalf of the contracting carrier at any time before, or at the time at which, the goods are to be tendered to the consignee under the contract and that amount has not been paid in full, when the contracting carrier or (as the case may require) the last actual carrier is capable of tendering the goods to the consignee in accordance with the contract and gives notice to any person liable to pay the amount or (as the case may require) the balance of the amount for which he is so liable;

(b) In a case where the goods are to be collected by the consignee -

(i) When the goods are collected by the consignee; or

(ii) On the expiry of the 5th day (excluding any day on which the carrier's premises are not open for the collection of goods) after the date on which the contracting carrier or (as the case may require) the last actual carrier notifies the

consignee that the goods are available for collection.

(4) Notwithstanding any of the foregoing provisions of this section, and for the purposes of subsection (3) of this section, in the case of carriage of goods by sea from Rarotonga to any of the outer islands and from any of the outer islands to Rarotonga,

- (a) the goods are capable of being delivered or tendered to the consignee in accordance with section 3(a) only after they have been safely landed ashore; and
- (b) the goods are capable of being collected by the consignee in accordance with section 3(b)(i) only after they have been safely landed ashore.

(5) In any case where, at the time when the contracting carrier or (as the case may require) the last actual carrier is able to tender the goods to the consignee in accordance with the contract, the consignee's whereabouts are unknown to that carrier, the responsibility of the contracting carrier for the goods ends when he or (as the case may require) the last actual carrier has taken reasonable steps to find the consignee and notify him of the matters referred to in paragraph (a) (ii) or (as the case may require) paragraph (b) (ii) of subsection (3) of this section.

(6) No notice referred to in subsection (3) (a) (ii) of this section shall take effect until it is received by the person liable to pay the freight.

(7) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods to a destination outside the Cook Islands ends for the purposes of this Act at the time when the international carriage of those goods begins.

(8) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods from a destination outside of the Cook Islands to a destination in the Cook Islands begins for the purposes of this Act at the time when the international carriage of those goods ends.

10. Liability of actual carrier - (1) The provisions of this section apply, subject to the other provisions of this Act, where a contract of carriage is to be or is performed wholly or partly by one or more actual carriers other than the contracting carrier (whether or not the contracting carrier himself performs part of the carriage.)

(2) In any case to which this section applies where one actual carrier is involved, that carrier is, subject to the terms of his contract with the contracting carrier, liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carrier is separately responsible for the goods in accordance with subsection (6) of this section, whether or not the loss or damage is caused wholly or partly by the actual carrier.

(3) In any case to which this section applies where more than one actual carrier is involved -

- (a) Subject to subsection (4) of this section, the actual carriers are, subject to the terms of their respective contracts, jointly liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carriers are jointly responsible for the goods

in accordance with subsection (5) of this section, whether or not the loss or damage is caused wholly or partly by the actual carriers or any of them;

- (b) Each actual carrier is, subject to the terms of his contract, separately liable as such to the contracting carrier for the loss of or damage to any goods occurring while he is separately responsible for the goods in accordance with subsection (6) of this section, whether or not the loss or damage is caused wholly or partly by the actual carrier.

(4) No actual carrier is liable under subsection (3) (a) of this section if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6) of this section.

(5) For the purposes of subsection (3) (a) of this section, the actual carriers are jointly responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted for carriage until the time when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 9 of this Act.

(6) For the purposes of subsections (2) to (4) of this section, each actual carrier is separately responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted by him for carriage until the time -

- (a) When they are duly tendered by him to the next actual carrier in accordance with the contract of carriage; or
- (b) In the case of the last actual carrier, when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 9 of this Act.

(7) For the purposes of subsection (3) (a) of this section, the actual carriers shall be liable in proportion to the amount of freight or other consideration payable to each of the actual carriers for the carriage performed by him.

(8) For the purposes of subsection (7) of this section, where the contracting carrier himself performs any part of the carriage, the amount of freight or other consideration payable to him shall be the difference between the total amount payable under the contract of carriage and the aggregate amount payable to the actual carriers.

(9) For the purposes of subsections (7) and (8) of this section, where any actual carrier (in this subsection referred to as the secondary actual carrier) performs any part of the carriage pursuant to a contract with any other actual carrier (in this subsection referred to as the primary actual carrier) (and not pursuant to a contract with the contracting carrier), the amount of the freight or other consideration payable to the primary actual carrier shall be the difference between the amount actually payable to him and the amount payable by him to the secondary actual carrier.

11. Rights of contracting party where contracting carrier insolvent or cannot be found - (1) Notwithstanding anything in section 10 of this Act, where the

contracting carrier is liable to the contracting party for the loss of or damage to any goods but the contracting carrier is insolvent or cannot with reasonable diligence be found, the contracting party shall be entitled to the same rights (if any) against the actual carrier as the contracting carrier has under section 10 (3) (b) of this Act.

(2) Where the liquidator or assignee in bankruptcy of an insolvent contracting carrier brings any proceeding against an actual carrier in respect of any right referred to in subsection (1) of this section, the sum recovered from the actual carrier, less all costs and expenses reasonably incurred by the liquidator or assignee in bringing and prosecuting the proceeding and not recovered by him from the actual carrier, shall be held by the liquidator or assignee upon the following trusts:

- (a) For or towards the payment of the whole of the sum payable by the contracting carrier to the contracting party in respect of the loss of or damage to the goods;
- (b) Subject to that payment, as an asset in liquidation or bankruptcy.

(3) Where the contracting party brings any proceeding against an actual carrier in respect of any right referred to in subsection (1) of this section -

- (a) The actual carrier shall have the same rights (if any) against the contracting party (including the right of set-off) as he would have had under the contract if the proceeding had been brought against him by the contracting carrier;
- (b) If judgment in the proceeding is awarded against the actual carrier, that judgment shall be an absolute bar to the bringing by the contracting carrier, or by any person claiming through the contracting carrier, of any proceeding to enforce the same right.

(4) This section applies notwithstanding anything in the Companies Act 1970-71 or any other enactment.

12. Special rules relating to liability of carrier in respect of baggage - (1) A carrier is not liable as such with respect to baggage that is left in his custody pending his acceptance of it for carriage, or pending its collection from him after the completion of the carriage.

(2) Nothing in section 8, or in subsections (1) to (5) of section 9, or in sections 10, 11, and 13 of this Act shall apply to the carriage of hand baggage.

(3) Subject to subsection (2) of this section, in respect of the carriage of hand baggage and checked baggage, the provisions of this Act shall apply, with the necessary modifications, as if that carriage were or were to be performed pursuant to a contract of carriage of goods.

(4) A carrier is liable as such for the loss of or damage to any hand baggage occurring during the period in which the passenger is on board the mode of transport or in the course of any of the operations of embarking or disembarking, if the loss or damage is caused wholly or partly by the negligence or wilful default of the carrier.

(5) Without limiting section 14 of this Act, if, in respect of the loss of or damage to any hand baggage, the carrier proves that the loss or damage was

contributed to by the negligence or wilful default of the passenger, the Court may exonerate the carrier from any part of his liability.

13. Contracts of successive carriage by air - (1) In this section the term "contract of successive carriage" means a contract or contracts for the carriage of any goods exclusively by air, where the carriage -

- (a) Is or is to be performed by 2 or more carriers in successive stages; and
- (b) Is regarded by the parties as a single operation; -

and the term "successive carrier" has a corresponding meaning.

(2) Nothing in sections 8 to 12 of this Act applies in respect of a contract of successive carriage.

(3) Subject to subsection (4) of this section and to the other provisions of this Act, the successive carriers under a contract of successive carriage are jointly and severally liable as such to the contracting party for the loss of or damage to any goods occurring while the carriers are jointly responsible for the goods in accordance with subsection (5) of this section, whether or not the loss or damage is caused wholly or partly by the carriers or any of them.

(4) No successive carrier is liable under subsection (3) of this section if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6) of this section.

(5) The successive carriers are jointly responsible for the goods from the time when the goods are accepted by the first successive carrier for carriage in accordance with the contract until the time when, if the contract were not a contract of successive carriage, the contracting carrier's responsibility would have ended in accordance with subsection (3) or subsection (4) of section 9 of this Act.

(6) Each successive carrier is separately responsible for the goods from the time when the goods are tendered to him in accordance with the contract until the time -

- (a) When they are duly tendered by him to the next successive carrier in accordance with the contract of carriage; or
- (b) In the case of the last successive carrier, when, if the contract were not a contract of successive carriage and he were the contracting carrier, his responsibility would have ended in accordance with subsection (3) or subsection (4) of section 9 of this Act.

14. Carrier not liable in certain circumstances - Notwithstanding any of the other provisions of this Act, a carrier is not liable as such for the loss of or damage to goods occurring while he is responsible for them under a contract of carriage to the extent that he proves that the loss or damage resulted directly and without fault on his part from -

- (a) Inherent vice; or
- (b) Any breach of either of the terms implied in the contract by section 17 of this Act; or
- (c) Seizure under legal process; or
- (d) Saving or attempting to save life or property in peril.

15. Limitation of amount of carrier's liability - (1) For the purposes of this Act, -

- (a) The liability of the contracting carrier to the contracting party; and
- (b) The separate liability of any actual carrier to the contracting carrier; and
- (c) The joint liability of any actual carriers (where there are more than 1) to the contracting carrier; and
- (d) The joint and several liability of every successive carrier under a contract to which section 13 of this Act applies -

is limited in amount in each case to the sum of \$1500 for each unit of goods lost or damaged or, in the case of a contract "at declared value risk", the amount specified in the contract.

(2) The limitation of amount for the time being specified in subsection (1) of this section does not apply to -

- (a) Any liability for the loss of or damage to any goods intentionally caused by the carrier; or
- (b) Any liability arising out of the terms of the contract for damages other than for the loss of or damage to the goods; or
- (c) Any liability arising out of the terms of the contract for damages consequential upon the loss of or damage to the goods.

Liability of Employees

16. Liability of carrier's employee - (1) Every employee of a carrier who, in the course of his employment, intentionally causes the loss of or damage to any goods being carried by the carrier shall be liable to the owner of the goods for that loss or damage.

(2) Subject to subsection (1) of this section, no employee of a carrier shall be liable as such, whether under this Act or otherwise, to the owner of any goods being carried by the carrier for the loss of or damage to any of those goods.

Warranty by Contracting Parties

17. Contracting party to warrant condition of goods, etc. - (1) In every contract of carriage there shall be implied on the part of the contracting party a term -

- (a) That, except as disclosed in accordance with subsection (2) of this section, the goods are fit to be carried and stored in accordance with the contract in the condition and packed in the manner in which they are tendered for carriage;
- (b) That, except as disclosed in accordance with subsection (2) of this section, the provisions of every other

enactment (if any) that he is required to comply with relating to the consignment for carriage of the goods to be carried pursuant to the contract have been complied with.

(2) If, before the goods are accepted for carriage, the contracting party notifies the contracting carrier or the first actual carrier of any material particular that would otherwise constitute a breach of either of the terms specified in subsection (1) of this section, the carrier may refuse to carry the goods, or undertake to carry them subject to such reasonable terms and conditions as he may require having regard to the circumstances of the case.

(3) Notwithstanding anything in section 7 of this Act, the provisions of this section apply, with the necessary modifications, to contracts of carriage between contracting carriers and actual carriers, and between actual carriers, subject to any express term in the contract.

Actions Against Carriers

18. Notice of claim on damage or partial loss to be given within 30 days -

(1) Subject to the succeeding provisions of this section, and except in the case of fraud by the carrier, no action may be brought against a contracting carrier for damage to or partial loss of goods occurring while he is responsible for them under this Act unless written notice giving reasonable particulars of the alleged damage or partial loss is given, in accordance with subsection (3) of this section, within 30 days after the date on which, in accordance with section 9 of this Act, the carrier's responsibility for the goods ceased.

(2) Subject to the succeeding provisions of this section, and except in the case of fraud by the actual carrier, no action may be brought by the contracting carrier against an actual carrier for damage to or partial loss of goods occurring while the actual carrier is responsible for them under this Act unless the contracting carrier, within 10 days after receiving notice of a claim under subsection (1) of this section, notifies the actual carrier of that claim.

(3) No notice is required if it is apparent from all the circumstances of the case that the carrier is or ought to be aware of the damage or partial loss.

(4) Notice for the purpose of subsection (1) of this section shall be given -

- (a) Where the contract was performed entirely by the contracting carrier, to that carrier; or
- (b) Where the contract was not performed entirely by the contracting carrier to -
 - (i) The actual carrier or, as the case may require, the last actual carrier; and
 - (ii) The contracting carrier, unless (where notice of the claim is to be given by the consignee) the identity of the contracting carrier is unknown to the consignee.

(5) A carrier may consent to an action being brought against him notwithstanding that notice of the claim was not properly given.

(6) Where the carrier does not consent, application may be made to the Court, after notice to the carrier, for leave to bring the action at any time before the expiration of the period prescribed by subsection (1) or (as the case may require) subsection (2) of section 19 of this Act.

(7) On an application under subsection (6) of this section, the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the failure to give notice was occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the intended defendant was not materially prejudiced in his defence or otherwise by the failure to give proper notice.

19. Limitation of actions - (1) Subject to subsections (2) to (5) of this section, and except in the case of fraud by the carrier, no action may be brought against a carrier for the loss of any goods occurring while he is responsible for them under this Act after the expiration of a period of 12 months from the date on which the carriage should have been completed in accordance with the contract.

(2) Subject to subsections (3) to (5) of this section, and except in the case of fraud by the carrier, no action may be brought against a carrier for damage to or partial loss of any goods occurring while he is responsible for them under this Act after the expiration of a period of 12 months from -

(a) The date on which notice is served on the carrier under subsection (1) or (as the case may require) subsection (2) of section 18 of this Act; or

(b) Where no such notice is served in proper reliance on subsection (3) of that section, the date on which, in accordance with section 9 of this Act, the contracting carrier's responsibility for the goods ceased.

(3) A carrier may consent to an action being brought against him notwithstanding that the period specified in subsection (1) or subsection (2) of this section has expired.

(4) Where the carrier does not consent, application may be made to the Court, after notice to the carrier, for leave to bring the action at any time within 6 years after the relevant date referred to in subsection (1) or subsection (2) of this section.

(5) On an application under subsection (4) of this section, the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.

20. Actions by consignee if not contracting party - (1) Notwithstanding anything in this Act or any rule of law to the contrary, an action against a contracting carrier in respect of the loss of or damage to any goods occurring while he is responsible for the goods in accordance with section 9 of this Act may, if the property

in the goods has passed to the consignee and he is not the contracting party, be brought by the consignee.

(2) Where the consignee brings an action in accordance with subsection (1) of this section:-

- (a) He shall be deemed to be the contracting party and be entitled to sue and recover under the contract accordingly;
- (b) The contracting carrier shall be entitled to raise the same defences and to make the same counterclaims as he would have been entitled to raise or make if the action had been brought against him by the contracting party.

Rights of Carriers

21. Right to sue for freight - (1) The right to sue for the recovery of freight payable under a contract of carriage arises -

- (a) In the case of a contracting carrier, when he ceases to be responsible for the goods in accordance with section 9 of this Act;
- (b) In the case of an actual carrier, when he ceases to be separately responsible for the goods in accordance with section 10 of this Act.

(2) Nothing in subsection (1) of this section shall limit or affect the right of any carrier to refuse to accept any goods for carriage unless the freight is prepaid.

22. Actions for recovery of freight - (1) Notwithstanding anything in this Act or any rule of law to the contrary, an action for the recovery of freight may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought against the consignee.

(2) Where the action is brought against the consignee in accordance with subsection (1) of this section -

- (a) He shall be deemed to be the contracting party and be liable for the payment of freight under the contract accordingly;
- (b) He shall be entitled to raise the same defences and to make the same counterclaims as the contracting party would have been entitled to raise or make if the action had been brought against him.

23. Carrier's liens - (1) In this section -

"Owner", in relation to any goods, means the person whom, under any contract of carriage or in accordance with section 22 of this Act, the carrier is entitled to sue for recovery of freight due in respect of the carriage of those goods:

"Recoverable expenses", means all expenses and charges that the carrier, in accordance with subsection (6) (b) of this section, is entitled to recover from the owner of any goods in respect of which the carrier is exercising or has exercised a lien in accordance with this section.

(2) As from the time when, in accordance with section 21(1) of this Act, a carrier's right to sue for the recovery of freight arises, the carrier is entitled to an active and particular lien over the goods, which may be exercised in accordance with this section.

(3) Every carrier claiming a lien over any goods under this section shall give notice of his claim to the owner of the goods, specifying the amount and particulars of his claim, and requiring the owner to pay or secure to the carrier the amount of the freight claimed and all recoverable expenses.

(4) Pending settlement of the claim, -

(a) The carrier may remove the goods to any suitable premises for storage (such premises being reasonably convenient to enable the owner of the goods, or any other person entitled to the goods, to collect them on payment of all freight owing and recoverable expenses so far incurred), and shall notify the owner of the goods of the address of the premises;

(b) The carrier shall take all reasonable steps to preserve the goods.

(5) If within 2 months after the date on which the carrier serves notice of his claim on the owner of the goods in accordance with subsection (3) of this section, payment in full of all freight owing and recoverable expenses so far incurred has not been tendered to the carrier, he shall be entitled to sell the goods by public auction.

(6) From the proceeds of such sale, the carrier shall be entitled to deduct -

(a) The amount of freight owing to him in respect of the carriage of the goods; and

(b) All expenses reasonably incurred by him in removing, preserving, and storing the goods pending settlement of his claim, and in arranging and conducting the sale of the goods, -

and shall pay the balance (if any) to the owner of the goods.

(7) Where the amount of the proceeds is less than the amount of freight owing to the carrier and all recoverable expenses, the deficiency constitutes a debt due to the carrier by the owner of the goods.

(8) Nothing in this section shall limit or affect the right to have and enforce a general lien over any goods to which a carrier may be entitled by virtue of any provision expressed or implied in the contract of carriage.

24. Storage and disposal of unclaimed or rejected goods - (1) Where, under any contract of carriage, -

(a) Any goods are to be collected by the consignee and they are not collected by him forthwith after the

responsibility of the contracting carrier for the goods ends in accordance with section 9 of this Act; or

- (b) Any goods are to be delivered to the consignee and he cannot be found or (otherwise than because of any default by the carrier) he refuses to accept the goods, -

the carrier is entitled to remove the goods, at the consignee's expense, to suitable premises for storage.

(2) In respect of any goods held by the carrier under this section, the carrier is entitled to an active and particular lien over the goods, which may be exercised in the same manner and to the same extent as if it were a lien to which section 23 of this Act applies, and the provisions of that section, so far as they are applicable and with the necessary modifications, shall apply accordingly.

(3) Notwithstanding any of the foregoing provisions of this section, before selling any goods to which this section applies, the carrier shall offer to carry the goods to, or to the order of, the consignor, at the cost in all things of the consignor.

25. Disposal of perishable goods - (1) Notwithstanding any of the other provisions of this Act, if, at any time while any perishable goods are subject to a contract of carriage (including any time while they are held under section 23 or section 24 of this Act), the goods appear to be deteriorating and likely to become offensive, the carrier may -

- (a) Sell the goods to the best advantage; or
(b) If sale is not reasonably practicable, destroy or otherwise dispose of the goods.

(2) If the goods are sold, the carrier may deduct from the proceeds of sale the amount of freight or other consideration owing to him in respect of the carriage of the goods and all reasonable expenses incurred by him in holding the goods and in conducting the sale, and shall tender the balance (if any) to the consignee.

(3) If the goods are destroyed or otherwise disposed of, the reasonable expenses incurred by the carrier shall be recoverable by him from the contracting party.

26. Disposal of dangerous goods - (1) Notwithstanding any of the other provisions of this Act, if, at any time while any goods are subject to a contract of carriage (including any time while they are held under section 23 or section 24 of this Act), the carrier believes on reasonable grounds that the goods are in or are about to enter a dangerous state and that it is necessary, in order to avoid the threat of harm to any persons or property, to destroy or otherwise dispose of the goods forthwith, he may do so.

(2) In any such case, the reasonable expenses incurred by the carrier in destroying or otherwise disposing of the goods shall be recoverable by him from the contracting party.

27. Liability of carrier extinguished - Notwithstanding any of the other provisions of this Act, where any goods are sold or destroyed or otherwise disposed of under and in accordance with any of sections 23 to 26 of this Act, neither the contracting carrier nor any actual carrier shall be under any liability (whether under

this Act or otherwise) in respect of that sale, destruction, or other disposition; but that sale, destruction, or other disposition shall not affect any liability for any loss or damage that had already occurred in respect of the goods before the sale, destruction, or other disposition.

Miscellaneous Provisions

28. Common carrier of goods abolished - (1) Notwithstanding any rule of law, but subject to the provisions of any enactment and of any contract entered into by the carrier, no carrier is under any duty or obligation to accept or carry goods that are offered to him for carriage.

(2) Every reference in any other enactment to the liability of common carriers as such shall be deemed to be a reference to the liability of carriers under this Act.

29. Proceedings against Cook Islands agent of overseas carrier - Subject, in the case of a contract for carriage by sea, to section 11 of the Sea Carriage of Goods Act 1940, proceedings arising out of a contract of carriage may be brought in accordance with the provisions of this Act against a Cook Islands agent, whether acting under general or special authority, of an overseas contracting carrier if -

- (a) The contract is or is to be performed wholly or partly in the Cook Islands; and
- (b) The agent plays some part in relation to the contract.

30. Certain other Acts not affected - Nothing in this Act shall limit or affect any of the provisions of the Dangerous Goods Act 1984 or any other enactment relating to goods of a particular nature or class; and in any case where any of the provisions of this Act are inconsistent with any of the provisions of any such other enactment, the provisions of that other enactment shall prevail.

31. Amendments and repeals - (1) The Carriage by Air Act 1967 is hereby amended in the manner indicated in the First Schedule.

(2) The enactments specified in the Second Schedule to this Act are hereby repealed.

This Act is administered by the Ministry of Tourism and Transport

SCHEDULES

Section 31 (1)

FIRST SCHEDULE

AMENDMENTS TO THE CARRIAGE BY AIR ACT 1967

By omitting from subsection (1) of section 18 the definition by Air Act 1967 of the term "air transport service", and substituting the following definition:

"'Air transport service' means any service by aircraft, whether regular or casual, for the carriage of passengers for hire or reward.";

By omitting from that subsection the definitions of the terms "animal", "baggage", "cargo", and "checked baggage";

By omitting from the definition of the term "contracting carrier" in that subsection the words "or consignor" in both places where they occur;

By omitting from section 19 (1) the words "or cargo";

By omitting from paragraph (a) of section 20 the words "or consignor";

By omitting from paragraph (d) of that section the words "or any special declaration of the nature and value of checked baggage or cargo contemplated by subsection (2) of section 28 of this Act";

By omitting from paragraph (a) of section 21 the words "or of damage to or loss of baggage other than checked baggage";

By repealing paragraph (b) of that section;

By repealing sections 23 and 24;

By omitting from section 25 (1) the words "baggage, or cargo";

By omitting from section 27 the words "the consignor, or the consignee,";

By repealing subsections (2) and (3) of section 28;

By repealing subsection (2) of section 30;

By repealing section 38;

By repealing the proviso to section 40;

By repealing sections 41 to 43;

By omitting from paragraph (a) of section 44 the words ", consignors"; and also by omitting from that paragraph the words ", baggage, and cargo";

By omitting from paragraph (b) of that section the words ", baggage, or cargo".

Section 31 (2)

SECOND SCHEDULE

ENACTMENTS REPEALED

1940, No. 31 – The Sea Carriage of Goods Act 1940

1948, No. 66 – The Carriers Act 1948