Charter Party contains detailed terms and conditions that are concluded on the basis of standard chartered party forms duly supplemented, in case of private CPs, by additional clauses. The main clauses usually relate to description of the vessel, description of the ports of loading and discharging, loading and cancelling time, nature and value of cargo to be carried, notice of readiness, laytime, freight and other expenses, liabilities of the charterer and the shipowner, payment of hire charges, arbitration etc.

12.7 KEY WORDS

Bareboat Charter : Letting out the bare ship for a period of time with full rights and responsibilities of operating the ship with the charterer.

Bill of Lading : Document issued by the carrier, or by someone on his behalf, which is in the form of (i) a receipt of goods, (ii) an evidence of the contract of affreightment, and (iii) a title to goods.

Charter Party : Document of agreement made between a charterer and a shipowner containing all terms and conditions of carriage/charter.

Customary Despatch : It means that the charterer must load and /or despatch as fast as possible in the circumstances prevailing at the hire of loading or discharging.

Despatch Money : It means the money payable of by the owner if the ship completes loading or discharging before the laytime has expired.

Free In and Gross Out : Freight rates inclusive of discharging expenses but exclusive of loading expenses.

Free In and Out : Freight rates exclusive of stevedoring expenses. Also known as 'Free Terms'.

Gross In and Free Out : Freight rates inclusive of loading expenses charges but exclusive discharging expenses.

Laytime : The time period agreed between shipowner and charter during which the vessel is available for loading/discharging without extra payment by the charterer.

Time Charter : Engagement of a ship for a fixed period of time for operation within the defined territories or between safe ports.

Notice of Readiness (NOR) : A notice to the charterer, shipper, receiver or any other person as required under the charter party about arrival of the vessel at the agreed port/berth and its readiness to load/discharge.

Voyage Charter : Engagement of a ship for either a single voyage or for consecutive/round voyages for shipment of an agreed quantity of cargo.

12.8 ANSWERS TO CHECK YOUR PROGRESS

A 3	(i)	False	(ii)	True	(iii)	False	(iv)	True	(v)	True
B 3	(i)	vessel	(ii)	charterer	(iii)	stevedoring	(iv)	fifteen/thirty		
	(v)	arbitration								

12.9 TERMINAL QUESTIONS

1 What are the various ways in which a tramp may be chartered? Explain fully.
2 Describe the responsibilities of shipowners and the charterers under different forms of chartering arrangements.
3 Discuss the main clauses of voyage charter party and time charter party.

UNIT 13 LEGAL ASPECTS OF CARRIAGE OF GOODS

Structure

13.0 Objectives
13.1 Introduction
13.2 Carriage of Goods by Sea
- 13.2.1 Charter Party
- 13.2.2 Bill of Lading : Maritime Law
- 13.2.3 Difference between Bill of Lading and Charter Party
- 13.2.4 Liabilities of a Carrier by Sea
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13.3 Carriage of Goods by Air
- 13.3.1 Liability of the Carrier
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13.4 Carriage of Goods by Land and Rail
13.5 Carriage of Goods by Multi-Modal Transport
13.6 Let Us Sum Up
13.7 Key Words
13.8 Answers to Check Your Progress
13.9 Terminal Questions

13.0 OBJECTIVES

After studying this unit you should be able to :

- define contract of affreightment
- explain rules applicable to carriage of goods by sea
- describe the implied undertakings by shipowners and charterers
- distinguish between charter party and bill of lading
- explain rules applicable to carriage of goods by air
- describe the legal aspects of carriage of goods by land and rail
- explain the nature of multi-modal transport document
- outline the liabilities of the multi-modal transport operator and the position of the consignor in that context.

13.1 INTRODUCTION

You have learnt that the carriage of goods across the countries may take place by sea, by air, by road and rail or through multi-modal transportation. The nature and content of contract of carriage of goods also depend upon the mode of transport used. By contract of carriage of goods we mean a contract whereby a person agrees to carry goods from one place to another in return for a payment. The party who undertakes to carry the goods for payment e.g., the shipping company or the airways, is called the 'carrier', and the person who delivers the goods for carriage is known as the 'consignor' or the 'shipper'. Specific contracts between the carriers and the shippers are mostly based upon international conventions which are duly incorporated in the national laws. In many cases, however, contracts acquire legal entity when concluded on the basis of mutually accepted terms provided these terms do not go against any specific legal requirement in the concerned countries. In this unit, you will learn about all the international conventions and the relevant provisions of the Indian Acts governing the international carriage of goods by sea, by air, by road and rail and through multi-modal transportation.

13.2 CARRIAGE OF GOODS BY SEA

A contract for the carriage of goods by sea is known as 'Contract of Affreightment'. It is a

contract between the shipper (consignor) and the shipowner (shipping company) by which the shipowner undertakes to carry the goods of another (shipper) in consideration of a price called 'freights'. A contract of affreightment contains all the terms and conditions of carriage of goods. It may take the form of a charter party or a bill of lading as the contractual obligations of the parties are governed by the nature of carriage. Where a tramp is chartered, the contract of affreightment between the charterer and the shipowner takes the form of a Charter Party (CP). On the other hand, where cargo is carried by a liner, the contract of affreightment takes the form of a Bill of Lading (BL) which operates as a receipt of goods, a document of title and a contract of carriage. Let us now learn about these two forms in detail.

13.2.1 Charter Party

There is no specific Convention for charter party. Not only that, in most of the countries no specific legal provisions exist for concluding charter party on the basis of any minimum requirements. Consequently, contracts can be concluded on mutually acceptable terms and conditions provided these do not violate any national law. Like any other contract, charter party may be concluded either orally or in writing. In practice, however, for minimizing conflict between the parties, charter parties are concluded in writing and, in order to facilitate the contract conclusion, the standard formats evolved overtime may be used.

Charter Party contains all terms and conditions of carriage which may also include rights and obligations of the parties and the provisions for settlement of disputes. Since it operates with reference to the Common Law, the shipowners' liability in receiving, carrying and discharging cargo is an absolute one, unless otherwise restricted by incorporation of specific clauses. Absolute liability means that when loss takes place the ship-owner cannot takes recourse to any exception, other than (i) Act of God, (ii) Act of Enemy, and (iii) Act of charterers and their representatives. However as a matter of practice, the shipowners agree to carry cargo by limiting their liability by including Exception Clauses. Similarly, the admissible loss i.e., compensation to be paid by the shipowners when loss, due to events within their control, is limited to an agreed amount. This is done by making charter party subject to the same International Conventions which govern liner bill of lading. The commonly accepted practice is to incorporate the Hague Rules or a variant of the same.

Though charter party as a contract contains all terms and conditions, it is also governed by certain ***Implied Undertakings***. These undertakings are implied by law to be part of the contract unless specifically negated in the contract charter party itself. For example, it is implied that the ship-owner shall provide a seaworthy carrier and the charterer will provide lawful cargo. Such undertakings by the shipowners and the charterers are summarised as follows :

13.2.1.1 Undertakings by Shipowners

Shipowners, under voyage charter, impliedly undertake to provide to the charterers a seaworthy ship, and that it shall proceed with reasonable despatch and proceed without unjustifiable deviation. However, in the case of time charter, the only implied undertaking of the shipowners is that the ship is seaworthy at the commencement of the period of hiring.

Seaworthiness of Ship : Seaworthiness of a ship is to be viewed in respect of the contracted voyage(s) and the cargo to be carried. Under the Charter Party contract, the shipowners are to guarantee absolute seaworthiness and, therefore, they undertake that not only have they have taken every precaution but in fact it is seaworthy. In the event of a dispute, therefore, they have no defence that they did not know of the existence of defects. It may be noted that the shipowners' responsibility relates to ordinary perils likely to be encountered during the voyage, and they can exempt themselves from any liability if extraordinary perils like Act of God are encountered.

Seaworthiness is related to the contracted voyage and the nature of cargo carried. Thus, a ship will be considered unseaworthy if it (i) carries insufficient bunker oil for the voyage and (ii) lacks equipment of receiving and carrying cargo safely. For example, a ship with defective refrigerating machinery was held unseaworthy for a cargo of frozen meat.
In reality, the seaworthiness of the ship is judged at the time of loading of cargo and at the

time of its sailing. Any defect arising after these two stages is not considered to be a breach of its undertaking. Unless otherwise specified in the charter party, if the charterers find the ship to be unseaworthy before sailing and the defect cannot be rectified within a reasonable time period (reasonably is not a question of law but a matter of fact) the charterers may rescind the contract. But, they cannot claim damages unless there is specific provision to this effect in the charter party.

It has been accepted under Common Law that the shipowners can insert a clause in the charter party to exempt themselves for a liability arising out of unseaworthiness of the vessel. But, such clause should be absolutely clear and unambiguous. In one case, the shipowners had contracted to carry animals on the condition that they would not be liable for death or injury to animals on the condition that they would not be liable for death or injury to animals by disease. They, however, did not disinfect the ship after the previous voyage and consequently the cattle were infected with mouth-and-foot disease. In this case, the shipowners were held liable because the infection was caused by the uncargo-worthiness which disentitled them from relying upon the exception clause.

Reasonable Despatch : This implied undertaking means that the shipowners ensure the carrier to be ready to commence the voyage and load the cargo to be carried and proceed upon and complete the voyage with all reasonable despatch. This undertaking, in fact, emphasises the importance of time as by delay the object of the voyage is defeated. While for loading and discharging of cargo, the time limits are usually prescribed in the charter party but the dispute may rise regarding reasonable despatch related to commencing and completing the voyage. Unless specifically mentioned in the charter party, the time taken should be reasonable. The reasonableness of time, in turn, is related to trade in which the parties are engaged and, therefore, it differs from the trade to trade.

No Undue Deviation : If the route is not prescribed in the charter party, the shipowners are to follow the customary route which is usually followed. Any departure from such a route is considered a deviation and this may mean a breach of contract. This undertaking is to prevent the shipowners from voluntarily substituting the voyage for the contracted voyage.

Under the Common Law, deviation is accepted to save human lives and not to save property. Saving human life is paramount and, therefore, a deviation for assisting any voyage in distress is justified provided it is necessary to save human life. In one case when a chartered vessel was on her voyage, she sighted and went to the assistance of a vessel in distress. The Master agreed to tow her into nearest port. It was out of the direct course. While doing so, the chartered vessel stranded and ultimately her cargo was a total loss. The jury found that toeing was in distress. Though it was necessary to save the ship and the cargo, it was not necessary to save human life. The shipowners of the chartered vessel were accordingly held liable.

13.2.1.2 Undertakings by Charterers

In case of voyage charter there is an implied undertaking by the charterer not to load the ship with dangerous cargo or cargo which is likely to cause delay to the ship. The charterers are to ensure that the voyage(s) is/are legal. The charterers also undertake that the ports of loading and discharge are safe ports and the ship will not be exposed to undue dangers.

In case of time charter also the charterers undertake that no dangerous goods will be shipped and that the ship will be used only between good and safe ports.

Check Your Progress A

1) What is a contract of affreightment?

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2) What do you mean by Implied Undertakings?

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3) Fill in the blanks :

i) The status of liability of the shipowners under charter party is that of an ..... liability.

ii) Charter Party is a contract and not merely an evidence of contract of .. ..

iii) Shipowners, under voyage charter party,..... undertake to provide to the charterers a seaworthy ship.

iv) Seaworthiness of the ship is judged at the time of ..... and at the time of its .....

v) If the route is not prescribed in the charter party, the shipowners are to follow a ..... route.

13.2.2 Bill of Lading : Maritime Law

Maritime Law is the branch of law that governs carriage of goods under a Bill of Lading. Evolution of modern Maritime Law can be traced to the enactment of the Harter Act on February 13, 1893 by the US Congress. It was made applicable to shipments made to and from ports of USA. Some of the countries enacted similar laws but they lacked international acceptability. International shipping community made concerted and serious efforts subsequently which resulted in evolving an International Convention. It came to be popularly known as the Hague Rules which were adopted as International Convention of the Unification of Certain Rules of Law in relation to Bill of Lading on August 25, 1924 at Brussels. The United Kingdom was the first country to adopt this Convention in the Carriage of Goods by Sea Act in September 1925. Other nations followed suit. As a result, standard legal provisions reflecting international acceptability were incorporated in the national laws. With the passage of time, changes had taken place in the field of transport as also in commercial practices. These changes warranted amendment to the Hague Rules. The first amendment came in 1968 in the form of Hague Visby Rules, which were again amended in 1979. The UN Commission on International Trade Law worked out the Convention on Carriage of Goods by Sea in 1978, giving effect to the Hamburg Rules. These Rules have been adopted by a number of countries. In India, the Carriage of Goods by Sea Act 1925 was amended in 1992 to give effect to the main changes in the Hagues Rules.

Functions of Bill of Lading

Bill of Lading performs three functions. These are: (1) it is a Document of Title, (2) it is Evidence of Contract for the carriage of goods, and (3) it is a Carrier Receipt of goods on board.

As a **document of title**, the holder of BL is entitled to take delivery of the cargo from the carrier and has all rights to proceed against the carrier in the event of non-delivery of the cargo. The titleholder also has the right to transfer the title to another person and is thus a negotiable instrument. The Hague Rules do not define a "Document of Title" but clearly state that the Rules are applicable to any document howsoever named which is a document of title. The Rules apply to carriage of all kinds of goods in any form including in the unitized form (pallets or containers) but excluding live animals and cargo carried on deck and so stated to have been carried and mentioned in the Bill of Lading. The Rules require the carrier to exercise due diligence or reasonable care in providing a seaworthy ship, being properly manned, equipped and supplied for its operation and providing the carrying spaces such as holds for safe receipt, carriage and delivery of the cargo. The carrier is required to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Since **bill of lading is a receipt given by the carrier**, the Rules require the carrier to issue it by incorporating three important details. These are identification marks, number of packages or pieces or quantity or weight and the apparent order and condition of the goods. As a receipt, bill of loding can either be for cargo received by the carrier for shipment or for cargo

shipped on board. Similarly, the receipt may indicate some defect in the goods (e.g. broken or damaged packages), which will not be paid for. Alternatively, when there is no such defect and the receipt is a clean one, the bank/buyer will be willing to accept it and pay for it. Bill of Lading is a prime facie evidence of the receipt of goods by the carrier and the carrier is to deliver the goods to the titleholder of the same quantity and form as taken charge of. The carrier can exempt itself from liability only if loss to goods was due to events beyond its control as well as due to exemptions provided in the Rules. Alternatively, the Rules provide for loss to be paid by the carrier when it is due to default of the carrier. The Indian Carriage of Goods by Sea Act, as also laws in many countries, specify the maximum payable loss to be 666.67 Special Drawings Rights (SDRs) per package or unit or two SDRs per kilogram of gross weight of the goods lost or damaged, whichever is higher.

When it is stated that the goods are in good order and condition, the bill is said to be a 'Clean Bill of Lading'. When it states that goods received or in bad condition, it is called a 'Qualified Bill of Lading'. When the cargo covered by the bill is to be carried partly by sea and partly by land and a composite freight has been charged for the sea land transportation it is called a 'Through Bill of Lading'.

Bill of Lading is also a **document evidencing the contract of carriage**. As a result, it may not carry all terms and conditions of the contract. Since it is issued after the charge of goods has been taken by the carrier, it incorporates the printed terms and conditions and specially includes the information about the cargo, shipper, consignee and notified party. There is a possibility that the carrier and the shipper may have agreed on additional terms and conditions separately. Therefore, in the event of any dispute, the aggrieved party may present additional evidence in favour of his case. For example, the parties may have separately agreed that the carrier is to deliver the cargo by a particular date and which is not incorporated in the Bill of Lading. Thus, if delivery is delayed beyond the agreed date, the carrier may be held liable. Similarly, the carrier is deemed to have bound himself to the higher liability. For example, the parties may have agreed that loss payable will be actual loss and not the amount limited in the Rules. It is, however, pertinent to mention that the law does not permit the carrier to decrease its liability less than the one provided in the Rules.

It may be noted that the evidence of the contract of affreightment or contract of carriage is always through the bill of lading applicable to both liner and tramp services.

13.2.3 Difference between Bill of Lading and Charter Party

Having learnt about the peculiarities of Bill of Lading and Charter Party, one may distinguish between these two documents as follows :

	Bill of Lading	Charter Party
1	It is a receipt of goods on board of the ship as well as an evidence for the contract of carriage of goods.	It is only a contract of hiring the entire ship or a part thereof.
2	It is a document of title to goods.	It is not a document of title to goods.
3	It can be transferred by endorsement.	It cannot be transferred.
4	It does not amount to a lease of ship.	It may amount to a lease of the ship or part thereof.
5	It is always for carriage of goods to a particular destination.	It may be for a particular voyage or for a particular period.

13.2.4 Liabilities of a Carrier by Sea

1 **Loss or damage due to negligence** : The carrier of goods by sea is liable only for loss or damage arising from his negligence, fault or failure in the duties and obligations provided in the Act and not otherwise. He is not liable even for the loss caused by neglect or default of the master mariner, pilot or the crew in the navigation or in the management of the ship.

2 **No limitation :** The carrier cannot limit or lessen his liability arising from his negligence or failure in the duties and any clause in the contract to that effect shall be null and void.

3 **No liability for misstated value :** The carrier shall not be liable for any loss or damage to goods if the nature or value thereof has been knowingly misstated by the shipper in the Bill of Lading.

4 **Extent of Liability :** The carrier shall not be liable for loss or damage in any event to the goods in an amount exceeding 666.67 SDRs per package or unit or two SDRs per kg. of gross weight, whichever is higher, unless the nature and value of such goods have been declared by the shipper before shipment and, by agreement, fixed another maximum amount provided that such maximum shall not be less than figure above named.

5 **Liability in case of dangerous goods :** Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and charter, may, at any time before discharge, be landed at any place or destroyed or rendered innocuous by the carrier without compensation. The shipper of such goods shall be liable for all damages and expenses directly arising out of, or resulting from, such shipment.

6 **Time barred liability:** The carrier shall be discharged from all liability for loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods shall have been delivered.

13.2.5 Shipowner's Lien and Maritime Lien

There are two types of rights available in case of carriage of goods by sea : (a) Shipowner's lien - this right is of shipowners, and (b) Maritime Lien - this right is available against the ship, cargo and freight.

A shipowner's lien is the right of a shipowner to retain possession of goods carried by him until freight and other charges due to him under the contract of carriage have been paid. It is a possessory lien. Any charges paid over and above the freight by custom (e.g., tips) is called 'Primage'.

A maritime lien is a claim on ship, cargo and the freight in respect of services rendered to them. This right is given by law to all persons who have rendered some services to save the ship or cargo in time of danger. By virtue of this right, the parties can recover their charges from the shipowner or cargo owner. Until their charges are paid, the ship is not allowed to leave the port and ship or cargo may be ordered by the court to be sold. This right of lien is available to seamen for their wages, to the holder of bottomery bond for his dues, to persons who rescue ship or property from the charges in connection with salvage, and to persons who have a claim against the ship for damages caused by collision due to negligence.

A maritime lien can be exercised independently of possession of cargo or ship by filing a suit in a court.

13.2.6 Bottomery and Respondentia Bond

When a ship needs urgent repairs in course of its voyage and it is not possible for the master of the ship to communicate with shipowner to arrange the necessary funds, the captain of the ship may borrow money on the security of the ship or cargo by executing a bond. If only cargo is give as a security the bond is called 'Respondentia Bond'. If the ship, cargo and freight are hypothecated, the bond is called 'Bottemery Bond'.

Check Your Progress B

1 Define Bill of Lading.

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2 State three functions of bill of lading.

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3 What do you understand by shipowner's lien?

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4 State whether the following statements are True or False.

i) Carrier is liable for loss or damage of goods even if the nature or value thereof is misstated by the consignor.

ii) The rights of an endorsee are different from the original holder of bill of lading.

iii) Bill of Lading is a negotiable instrument in commercial sense.

iv) The Carriage of Goods Act, 1925 was amended in 1992 to give effect to main changes in Hague Rules.

v) Primage and Demurrage are same type of charges.

13.3 CARRIAGE OF GOODS BY AIR

Carriage of goods by air is governed by the Warsaw Convention, 1929. The Convention has been ratified by more than 120 countries. It has been incorporated in legal framework of the countries concerned. The Warsaw Convention came into force on February 13, 1933. Since then, there have been four Protocols amending the Warsaw Convention. However, most of the countries have adopted the original Warsaw Convention and its amendment in 1955. In India, the Carriage by Air Act, 1972 replaced the Indian Carriage by Air Act, 1934 to give effect to these amendments.

Warsaw Convention is applicable to the Air Waybill (AWB), which functions as an evidence of the contract and as a receipt issued by the carrier including conditions of carriage. AWB is not a document of title and, therefore, it is made out in the name of the party to whom cargo is to be delivered. It follows that the rights conferred on the party cannot be transferred to anyone else. The carrier is obliged to deliver cargo to the consignee whose name is written on AWB. The consignee may take delivery without payment for the goods on producing a copy of AWB which is issued to the consignee on arrival of goods. As a matter of practice, exporters protect their interests for delivery of cargo to the consignee and ensure their right to secure payment by preparing AWB in the name of bank in the importing country. The bank is instructed to secure payment against cargo delivery to the importer. This is so when shipment is made on DP or DA payment terms. However, where either advance payment has been received or where shipment is on LC terms, AWB may be made in the name of the importer.

13.3.1 Liability of the Carrier

Air Waybill evidences a contract which, as noted earlier, is governed by the Warsaw Convention. The carrier is fully liable while cargo is in its charge, both at the airport as well as when the cargo is being held for loading, delivery or transshipment. It is its contractual duty to carry cargo safely and without delay by exercising due care and taking all necessary measures to avoid loss.

The Warsaw Convention provides for maximum liability of 250 Gold Francs per kg. of gross

weight lost or damaged or higher declared value as agreed upon between the carrier and the shipper. One Gold Franc is equivalent to 65.5 milligrams of gold of 900 milisimal fineness. National laws enacted on the basis of Warsaw Convention provide for liability mainly in terms of US dollars. The Convention states that the carrier cannot reduce its liability from the Warsaw Convention provision.

Under the Convention, the carrier is to issue a copy of Air Waybill at the destination to the consignee and give delivery against surrender of this copy. In case of non-delivery of cargo, the consignee is to lodge complaint to the carrier not later than 14 days of the arrival date or the expected arrival date. In case of damage, consignee is to give notice to the carrier within seven days of the receipt of cargo. Where carrier has not accepted the claim, case against the carrier is to be filed within two years of non/defective delivery.

13.3.2 Position of the Consignor

As a receipt, the Air Waybill is made by the consignor and presented to the carrier for acceptance. Details of cargo are given by the consignor and he is to indemnify the carrier against misrepresentation or omission. A peculiarity in case of Air Waybill is that the consignor has the general right to dispose off the goods in transit by withdrawing, stopping enroute, getting back the goods and deliver the goods to one other than the consignor. But this right of the consignor ceases when the consignee has been issued Air Waybill at the destination.

13.4 CARRIAGE OF GOODS BY LAND AND RAIL

There are two conventions governing carriage by land and by rail. These are : CMR Convention, 1956 (land) and CIM Convention 1970 (Rail). These Conventions are applicable to the movement of cargo among those countries who are signatories to them, mainly West Europe. India and the neighbouring countries have not adopted them.

Under the CMR Convention, a 'Consignment Note' is issued. It is not a document of title but acts as a receipt and as evidence of contract of carriage. It covers not merely the movement of cargo by road but also when the road vehicle is carried by air, sea and inland waterway. The carrier is obliged to exercise due diligence when cargo is in its custody. Claimable loss will depend upon the carrier in whose custody the cargo was at the time of loss. Thus, where loss takes place when the road carrier is travelling on land, liability will be as per the Convention. However, if the loss takes place when the road vehicle is carried by another carrier (air or sea), liability will be as per the relevant Convention governing the said carrier. As per CMR Convention, the carrier liability is 8.33 SDRs per kilogram of gross weight or an agreed higher value. The Convention requires that notice be given immediately at the time of taking delivery in case the loss was apparent or within seven days if loss was not apparent and 21 days if the loss was caused by delay.

CIM 1980 applies to international carriage of goods by rail under a Through consignment note when cargo is moving over particular rail lines or services that are included in a list mentioned in the Convention. In principle, carriage by rail is to be considered international if it takes place in at least two Contracting States. The consignment note is not a document of title, it merely acts as a receipt as also as an evidence of contract of carriage. The carrier is liable for damage, loss and delay to the goods while they were in its custody. However, the liability does not extend where such loss is caused by the wrongful act of the claimant, inherent vice of goods or circumstances which the carrier could not avoid and the consequences of which he was enable to prevent. The carrier liability is limited to 50 Gold Francs per kg. of gross weight except in case of willul misconduct or gross negligence. For this purpose, the liability is twice the normal maximum.

13.5 CARRIAGE OF GOODS BY MULTI-MODAL TRANSPORT

Many countries have either adopted the UNCTAD/ICC Rules or the Hamburg Rules or have amended their Carriage of Goods by Sea Act to cover legal aspects of multi-modal transport contract. In India we have specific law known as Mulit-Modal Transportation of Goods Act 1993 which came into force on the 16th of October, 1992.

The Indian Act is perhaps the most modern piece of law. It covers the whole of India except the State of Jammu and Kashmir. Under the Act, "carrier" is defined as a person who is engaged in the business of transporting goods by road, rail, inland waterways or sea. It implies that a carrier need not necessarily be the owner of any mode of transport but provides service for carriage of goods. As you know, Multi-modal transportation is defined to mean carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India. Carriage the goods is to be entrusted to a Multi-Modal Transport Operator (MTO) who is authorised to provide such services by the competent authority, namely, Director General of Shipping. The operator enters into a contract with the consignor and issues either a negotiable or non-negotiable Multi-Modal Transport Document (MTD). MTD is a document of title and entitles the consignee and every endorsee to secure release of goods at the destination and hold the operator liable for any loss or damage to the goods. In a way, **this document has same characteristic features as the liner Bill of Lading**. It can be made either in the name of the consignee or to the order. When made to the order, it may be endorsed either "in blank" or "in full", as required in the export contract.

Liabilities of the MTO

The Multi-Modal Transport Document is a prime-facie evidence of the fact that MTO has taken charge of the goods as described in it. MTO has the obligation to deliver the goods either to the consignee or to the endoree. MTO is liable for loss or damage to the goods as well as loss due to delay in delivery of goods. But he is not liable if he proves that no fault or neglect on his part or that of his servants or agents has caused or contributed to such loss, damage or delay in delivery. The law also provides liability rising out of delay in delivery, provided there was a specific agreement between the consignor and MTO on the time by which delivery was to be effected. Consequently, if the consignment is not delivered within 90 consecutive days following the date of delivery expressely agreed upon or within reasonable time, the consignment will be deemed to have been lost.

As regards claimable loss, the law provides for different liablities. Firstly, where the nature and value of goods have not been declared by the consignor and the stage of transport at which such loss or damage occured is not known, then the liability of MTO will not exceed two Special Drawing Rights per kg. of the gross weight of the consignment lost or damaged or 666.67 Special Drawings Rights per package or unit lost or damaged, whichever is higher. Further, where the contract of carriage does not include carriage of goods by sea or by inland waterways, the liability is limited to an amount not exceeding 8.3 Special Drawings Rights per kg. of the gross weight of the goods lost or damaged. The second situation is where the nature or value of the consignment is not mentioned and the stage of transport where loss or damage occured is not known. In such a case, limit of liability will be determined in accordance with provisions of the relevant law applicable to the mode of transport in whose custody was when loss or damage had occured. Finally, where loss is caused due to delay in delivery, liability is limited to the freight payable for the consignment so delayed.

The law lays down the time period for bringing action against MTO. It states that MTO is not liable unless action against him is brought within nine months of either the date of delivery of the goods or the date when the goods should have been delivered or the date on which the party entitled to receive delivery of goods had the right to treat the goods as lost. The time period which is to be considered for taking the goods as lost is 90 consecutive days following the date of delivery agreed upon or the reasonable time within which the delivery should have taken place.

Check Your Progress C

1 What is the difference between Air Way Bill and Consignment Note?

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2 What do you understand by a Multi-Modal Transport Document?

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3 State whether the following statements are True or False.

i) Warsaw Convention is applicable to Air Way Bill.

ii) Like West European countries, India has also adopted the CMR and CIM Conventions governing the carriage of goods by land and rail respectively.

iii) The right of the consignor to dispose off the goods in transit ceases when the consignee has been issued Air Way bill at the destination.

iv) MTO is obliged to deliver the goods either to the consignee or to the endorsee.

v) The law does lay down any time period for bringing action against MTO.

13.6 LET US SUM UP

Nature and content of contract of carriage are dictated by the mode of transport used and there are different laws governing the carriage of goods by sea, air, road, rail and multi-modal transportation.

Carriage of goods by sea can be either by chartering a tramp or by hiring space in a liner. Where a tramp is chartered, the contract of carriage is known as charter party. There are no specific legal requirements for concluding charter party. It is concluded on the basis of mutually accepted terms and conditions. It is a contract by itself and contains all terms and conditions including provision for settlement of disputes. However, charter party is also governed by certain implied undertakings on the parts of the shipowner and the charterer unless specifically negated in the charter party itself. Undertakings by the shipowner relate to seaworthiness of the ship, reasonable despatch and no undue deviation, and those by the charter relate to no loading of dangerous goods and use of safe ports.

In the liner trade, law relating to the carriage of goods is reflected in the bill of lading. According to the Carriage of Goods by Sea Act, 1925, the bill of lading is a document of title, a carrier receipt and an evidence of contract. The Hague Rules as applicable to the document of title also require the carrier to exercise reasonable care in providing a seaworthy ship and properly and carefully load, handle, stow, carry, keep, care for and discharge the cargo carried. As a receipt, bill of lading should contain identification marks, number of packages or pieces or quantity or weight and the apparent order and condition of the goods. bill of lading is prima facie evidence of the receipt of goods by carrier which it undertakes to deliver stated goods to the titleholder. The carrier may be absolved off the liability if loss or damage is due to reasons beyond its control. Maximum payable loss provided under the Indian Act and the rules prevailing in many countries is 666.67 SDRs per package or unit or two SDRs per kilogram of gross weight, whichever is higher. Bill of Lading is also an evidence of contract of carriage. Two types of rights available in case of carriage of goods by sea are (a) shipowner's lien and (b) maritime lien. A shipowner's lien is the right of shipowner to retain possession of goods carried by him until freight and other charges due to him under the contract of carriage have been paid. The maritime lien, on the other hand, is given to all persons who have rendered some services to save the ship or cargo in time of danger.

Carriage of goods by air is covered by the Warsaw Convention, 1929 as amended in 1955 which is duly adopted by the Carriage by Air Act, 1972. It covers the Air Way Bill (AWB). AWB is not a document of title and is made in the name of the consignee, which may either be the buyer or the bank. It also evidences a contract which makes the carrier liable for loss or damage to cargo when it is in its charge. The carrier's contractual duty is to carry cargo safely and without delay by exercising reasonable care. Maximum liability under the Warsaw Convention is 250 Gold Francs per kg of gross weight lost or damaged or a higher declared value. Air Way Bill is also a receipt which is an evidence of carriage of goods stated therein and a copy of this is to be presented to the carrier at the destination for taking possession of the goods.

There are two Conventions governing carriage by land and by rail. These are CMR Convention 1956 (Land) and CIM Convention 1970 (Rail). These Conventions are applicable to movement of cargo among countries to them. However, India has not adopted them.

Many countries have either adopted the UNCTAD/ICC Rules or the Hamburg Rules or have amended their Carriage of Goods by Sea Act to cover legal aspects of multi-modal transport contract. In India we have a specific law known as Multi-Modal Transportation of Goods Act, 1993. Under the Indian law, multi-modal transportation is defined as carriage of goods by two or more modes of delivery outside India. Multi-Modal Transport Operator, who is authorised to provide this service, issues a Multi-Modal Transport Document, which could be either a negotiable or a non-negotiable document. Like bill of lading, this document is a prima facie evidence of the receipt of goods by MTO. He is obliged to deliver the goods either to the consignee or to the endorsee. In the event of loss or damage, liability of MTO is limited to 666.67 SDRs per package or unit or two SDRs per kg of gross weight lost or damaged, whichever is higher. Further, where the carriage does not include carriage by sea or inland waterways, liability is limited to an amount not exceeding 8.3 SDRs per kilogram of weight of goods lost or damaged. However, where nature and value of consignment is not mentioned but the stage of loss is known, liability of the carrier will be determined in accordance with the provisions of the relevant law applicable to the mode of transport where the loss had actually occurred.

13.7 KEY WORDS

Absolute Liability : Shipowner's liability for loss for which he cannot take recourse to any exception other than (a) Act of God, (b) Act of Enemy, and (c) Act of charterers or their representatives.

Act of God : An unforeseen accident caused by the forces of nature e.g., floods, earthquake, etc.

Air Way Bill : A document which acts as a receipt of goods and as an evidence of the carriage of goods by air.

Bottomry Bond : A bond executed by the captain of the ship to borrow money for repairs on the security of the ship, cargo and freight.

Clean Bill of Lading : It is the bill of lading in which it is stated that the goods are in good order and condition.

Contract of Affreighment : A contract of carriage of goods by sea.

Consignment Note : A document which acts as a receipt of goods and as an evidence of carriage of goods by road or rail.

CRM Convention : A set of rules applicable to carriage of goods across the countries by road.

CIM Convention : A set of rules applicable to carriage of goods across the countries by rail.

Implied Undertakings : Those conditions of a contract which are legally taken to be part of the contract though not specifically mentioned and not specifically negated by the contract.

Jettison : Voluntary throwing of cargo overboard in emergency to prevent damage to the ship and /or the cargo (also called washing overboard).

Maritime Law : The branch of law that governs carriage of goods by sea under Bill of Lading.

Maritime Lien : A claim on the ship, cargo and freight in respect of services rendered to save the ship or cargo in time of danger.

Multi-Modal Transport Document (MTD) : A document issued by MTO that entitles the consignee and endorsee to secure release of goods at the destination and hold the MTO for any loss or damage to goods.

Multi-Modal Transport Operator (MTO) : A person who is authorised by the competent authority to provide multi-modal transportation services.

Primage : Tips paid to the master of the ship over and above the usual freight.

Qualified Bill of Lading : It is the bill of lading in which it is stated that the goods received are in a bad condition.

Reasonable Despatch : Reasonableness of time taken in commencing the voyage, loading the cargo and completion of the voyage.

Sea Waybill : A document which acts as a receipt of goods and as an evidence of the carriage of goods by sea.

Shipowner's Lien : A claim on the ship, to retain possession of the goods carried by him until freight and other charges due to him under the contract of carriage have been paid.

Special Drawing Rights : It is the unit of account of International Monetary Fund. Its valuation is determined by using a basket of currencies. For example, the value of SDR in US dollar terms is calculated daily as the sum of values in US dollars of the specific amounts (euro, US dollars, Japanese Yen and Pound Sterling), based on exchange rates quoted at London Market.

Through Bill of Lading : It is a bill of lading which is made where the cargo covered by it is to be carried partly by sea and partly by land and a composite freight has been charged for sea and land transportation.

Warsaw Convention : A set of rules applicable to carriage of goods by air under Air Way Bill.

13.8 ANSWERS TO CHECK YOUR PROGRESS

A 3 (i) absolute (ii) carriage of goods (iii) impliedly
(iv) loading of cargo, sailing (v) customary

B4 (i) False (ii) False (iii) True (iv) True (v) False

C3 (i) True (ii) False (iii) True (iv) True (v) False

13.9 TERMINAL QUESTIONS

1 Describe the implied undertakings by shipowners under Tramp Chartering.

2 What is a Bill of Lading? Discuss its main functions.

3 What are the duties and liabilities of a carrier under the Carriage of Goods by Sea Act, 1925.

4 Distinguish between :

(a) Charter Party and Bill of Lading

(b) Shipowners' Lien and Maritime Lien

(c) Bottomry Bond and Respondentia Bond

(d) Clean and is Qualified Bill of Lading

5 Describe the nature of Air Way Bill. Sate the duties and liabilities of carrier of goods by air.

6 Discuss the liabilities of MTO under Multi-Modal Transportation of Goods Act, 1993.

SOME USEFUL BOOKS

Use of Maritime Transport by UN/ESCAP, Volume I & II.

Daniel Mark Jr., Shipping Cartels

J.O.Jansson & D. Shneerson, Liner Shipping Economics

H.B. Desai, Indian Shipping Perspectives

M.C. Kuchhal, Mercantile Law