



LAWS OF KENYA

CARRIAGE OF GOODS BY SEA ACT

CHAPTER 392

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CHAPTER 392

CARRIAGE OF GOODS BY SEA ACT

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SCHEDULE – RELATING TO BILLS OF LADING

CHAPTER 392**CARRIAGE OF GOODS BY SEA ACT**

[Date of commencement: 28th September, 1926.]

An Act to regulate the carriage of goods by sea

[Act No. 16 of 1926, Cap. 224(1948), L.N. 2/1964, Act No. 38 of 1968.]

1. Short title

This Act may be cited as the Carriage of Goods by Sea Act.

2. Provisions of Schedule to apply

Subject to the provisions of this Act, the provisions of the Schedule to this Act shall have effect in relation to and in connexion with the carriage of goods by sea in ships carrying goods from any port in Kenya to any other port whether in or outside Kenya.

3. Absolute warranty of seaworthiness not to be implied

There shall not be implied in any contract for the carriage of goods by sea to which the said Schedule applies any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

4. Statement to be included in bill of lading

Every bill of lading, or similar document of title, issued in Kenya which contains or is evidence of any contract to which the said Schedule applies shall contain an express statement that it is to have effect subject to the provisions of the said Schedule as applied by this Act.

5. Modification of Article VI in relation to coasting trade

Article VI of the said Schedule shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Kenya to any other port in Kenya, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

6. Modification of paragraphs 4 and 5 of Article III in relation to bulk cargoes

Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the said Schedule, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

7. Saving

This Act does not affect the operation of section 230 of the Merchant Shipping Act, 1967 (which relates to the carriage of dangerous goods) or of any regulations made under that section, nor the operation of section 273 of that Act (which relates to the limitation of liability of ship owners).

[Act No. 38 of 1968, Sch.]

SCHEDULE

[Section 2.]

RELATING TO BILLS OF LADING

ARTICLE I – INTERPRETATION

1. In this Schedule—

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

“**carrier**” includes the owner or the charterer who enters into a contract, of carriage with a shipper;

“**contract of carriage**” means a contract of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

“**goods**” includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

“**ship**” means any vessel used for the carriage of goods by sea.

2. The monetary units mentioned in this Schedule are to be taken to be gold value.

ARTICLE II – RISKS

Subject to the provisions of Article VI of this Schedule, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, hereinafter set forth.

ARTICLE III – RESPONSIBILITIES AND LIABILITIES

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

- (a) make the ship seaworthy;
- (b) properly man, equip and supply the ship;

- (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV of this Schedule, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things –

- (a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) the apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with subparagraphs (a), (b) and (c) of paragraph 3 of this Article.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from the inaccuracies in such particulars; the right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. (1) Unless notice of loss or damage and the general nature of such loss or damage is given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage is not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

(2) The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

(3) In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

(4) In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded, the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading:

Provided that, if the shipper has previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a “shipped” bill of lading.

8. (1) Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connexion with goods arising from negligence, fault or failure in the duties and obligations provided in this Article, or lessening such liability otherwise than as provided in this Schedule, shall be null and void and of no effect.

(2) A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV – RIGHTS AND IMMUNITIES

1. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, to secure that the ship is properly manned, equipped and supplied and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with paragraph 1 of Article III of this Schedule.

(2) Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this paragraph.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

- (a) act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) act of God;
- (e) act of war;
- (f) act of public enemies;
- (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;

- (i) act or omission of the shipper or owner of the goods, his agent or representative;
- (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, shall not be deemed to be an infringement or breach of the provisions of this Schedule or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (1) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connexion with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

(2) This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

(3) By agreement between the carrier, master or agent of the carrier and the shipper, another maximum amount than that mentioned in this paragraph may be fixed, but that maximum shall not be less than the figure above named.

(4) Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connexion with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. (1) 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 character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

(2) If any such goods shipped with such knowledge and consent become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier, except to general average, if any.

ARTICLE V – SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

1. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Schedule, provided such surrender or increase is embodied in the bill of lading issued to the shipper.
2. The provisions of this Schedule shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the provisions of this Schedule.
3. Nothing in this Schedule shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI – SPECIAL CONDITIONS

1. Notwithstanding the provisions of the preceding Articles of this Schedule, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea:

Provided that in such case no bill of lading shall be issued, and the terms agreed shall be embodied in a receipt, which shall be a non-negotiable document and shall be marked as such.

2. Any agreement so entered into shall have full legal effect.
3. This Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE VII – LIMITATION ON THE APPLICATION OF THIS SCHEDULE

Nothing in this Schedule contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connexion with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII – LIMITATION OF LIABILITY

The provisions of this Schedule shall not affect the rights and obligations of the carrier under any law for the time being in force relating to the limitation of the liability of owners of sea-going vessels.
