CARRIAGE BY ROAD

Preliminary Study

Rome, March 1948
INDEX
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Introduction .................................. page 1

Section I

Carriage of goods

A.- General remarks ............................... page 2
B.- Nature of carriage contract ................ " 4
C.- Formation and proof of carriage contract .... " 5
D.- Obligations of the carrier and the transport commissaire /forwarding agent/ ............... " 11
   1.- Carriage .................................... " 11
       Stoppage in transitu ........................ " 12
   2.- Delivery of the goods carriage ............. " 16
   3.- Liability of the carrier and of the commissaire de transport /forwarding agent/ .......... " 19
       a) Conditions of liability ................ " 19
       b) Duration of liability ................. " 20
       c) Extent of liability ................... " 21
   4.- Consequences of the carrier's or transport commissaire's /forwarding agent/ liability " 30
       a) Damages ................................ " 30
       b) Abandonment (laissé pour compte) ...... " 33
       c) Valuables .............................. " 34
   5.- Clauses limiting or excluding liability of carrier and transport commissaire /forwarding agent/ .... " 35
       a) Clauses limiting liability ............ " 35
       b) Clauses excluding liability .......... " 36
   6.- Guarantee in favour of consignor ........... " 38
   7.- Who may sue for damages ................ " 38
II.

8.- Who may be sued for damages ............ page 40
   a) The first carrier .................... " 40
   b) Intermediate and last carrier (voiturier livreur) .............. " 42
   c) Claim of carriers against other carriers employed for the same journey ....... " 45

9.- Estoppel and limitation of actions ........ " 46
   a) Estoppel ............................ " 46
   b) Limitation of actions .............. " 50

E.- Obligations of consignor and consignee .......... " 53

1.- Payment of freight .......................... " 53

2.- Guarantees granted to carrier and commissionnaire de transport /Forwarding agent/ .... " 54
   a) Lion ............................... " 54
   b) Privilege ........................... " 54

F.- Discharge of the contract of carriage ......... " 56

Conclusion ............................... " 58

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CARRIAGE BY ROAD

INTRODUCTION

International carriage by sea, by rail and by air are all regulated by international conventions: The Brussels Convention of 1924 for the unification of certain rules relating to bills of lading, the Rome Conventions of 1933 concerning the transport of goods (C.I.M.), of passengers, and baggage (C.I.V.) by rail; the Warsaw Convention of 1929, for the unification of certain rules relating to international carriage by air. But a general agreement concerning international carriage by road has not so far been reached.

The rules governing carriage by road in different countries vary in quite a number of points. Hence conflicts of laws arise in the very frequent case, when goods are carried into a country different from that in which the contract of carriage has been concluded.

Since the last war, international carriage by road has developed considerably to meet many necessities and therefore its international regulation seems to become more and more desirable.

For the above reasons, and for the purposes of arriving at an international convention for the international carriage by road of goods and passengers, the International Institute for the Unification of Private Law, in agreement with the Bureau International des Transports par Autocar et Camion (B.I.T.A.C.), has decided to prepare a preliminary report, to examine and compare the principal laws of Europe on the subject.

The present study deals first with the carriage of goods and thus with the carriage of passengers.
Section I

Carriage of goods

A.- General remarks

The Codes of some countries contain a fairly complete regulation of the contract of carriage and of agency /forwarding agent/, while other countries have no explicit provisions concerning such contracts.

Rules in force in different European States concerning the carriage of goods by road are as follows:

1.- AUSTRIA = Carriage in general is still regulated by the German Commercial Code of 1861 (Nuremberg and Hamburg Code), arts. 379 to 389 (on carriage commission) and arts. 390 to 421 (on the contract of carriage).


3.- CZECHOSLOVAKIA = The provisions of the German Commercial Code of 1861, arts. 379 to 421 are in force without any modification.

4.- ENGLAND = Carriage by road is regulated principally by Common Law, but some regulations provisions are also to be found in the Carriers Act, 1830.

5.- FRANCE = Civil Code arts. 1782 to 1786 (carriers by land and sea), and Commercial Code, arts. 95 to 102 (carriage commissionaires /forwarding agent/ by land and sea), arts. 102 to 108 (carriers).

6.- GERMANY = Commercial Code of 1897, arts. 407 to 415 (carriage commission) and arts. 425 to 452 (freight market).

7.- HUNGARY = Commercial Code of 1875, arts. 384 to 392 (on carriage commission), arts. 393 to 421 (on carriage).
8. ITALY = Civil Code of 1932, arts. 1678 to 1680 and arts. 1683 to 1702 (on carriage).

9. LUXEMBOURG = Civil Code of 1801, arts. 1782 to 1786 (on carriers by land and water), Commercial Code of 1817, arts. 96 to 102 (on carriage commissionnaires /forwarding agent/ by land and water) and arts. 103 to 118 (on carriers).

10. THE NETHERLANDS = Commercial Code, arts. 86 to 90 (carriage commissionnaires /forwarding agent/), and arts. 91 to 99 (carriers by road, on rivers and inland waterways).

11. PORTUGAL = Commercial Code of 1888, arts. 366 to 393 (on carriage).

12. ROMANIA = Commercial Code of 1887, arts. 413 to 441 (on contracts of carriage).

13. SPAIN = Commercial Code of 1885, modified on July 30th 1904, arts. 349 to 379 and 952 (commercial contracts of carriage by land).

14. SWITZERLAND = Code des Obligations, art. 439, on carriage commissionnaires /forwarding agent/, and arts. 440 to 457 on the contract of carriage.

The Scandinavian countries, Denmark, Norway, and Sweden, have no special provisions concerning carriage by road. Contracts of carriage by road, in these countries, are regulated by the provisions of common law governing contracts of hire of services.

The contract of carriage of goods is concluded between the consignor or charterer, who delivers the goods to be carried, and the carrier who undertakes to carry them. Sometimes the consignor acts through a commissionnaire /forwarding agent/, who delivers the goods to the carriers with whom he contracts. Contracts of carriage of goods usually imply also the existence of a third party, the person to whom the goods are addressed, who is called the consignee. Nevertheless the consignor and the consignee may be one and the same person.
We shall deal below with the nature, the formation and the proof of the contract of carriage, with the duties and in particular the liabilities of carriers or agents (forwarding agents) and finally with the duties of the consignor and the consignee.

B.- Nature of carriage contract

In most countries, contracts for the carriage of goods are considered as a sub-group of the contracts of hire of services. But in its nature it is also akin to a contract of deposit.

The Swiss Code Fédéral des Obligations (art. 440) submits, in principle, the contract of carriage to the provisions governing mandate.

In England contracts of carriage are classified under the heading of "bailment", viz. a group including all contracts by which goods are entrusted to a person for a certain period and for specified purposes.

A contract of carriage is generally considered as onerous; hence it follows that provisions governing it do not apply to carriage gratuitously performed.

We shall not consider herein to what extent in different countries a contract of carriage is a civil or a commercial contract. The scope of this study is confined to carriage performed professionally. But it may be added that in Germany, Austria, and Hungary, professional carriers are considered as traders. The Codes of Belgium, France, and Luxembourg classify carriage by land among commercial acts, the habitual performance of which gives the status of trader. On the other hand, a single carriage is not regarded as having a commercial character.

In contrast with continental law, English law distinguishes between a private carrier and a common carrier. The latter undertakes for payment to receive specified goods, delivered to him for conveyance by any person, and to carry them to specified destination. If he refuses without reason to carry any goods, persons
wishing to employ him may sue him for damages. A private carrier, on the other hand, may refuse to carry goods brought or offered to him for carriage. Furthermore a private carrier is liable only for goods entrusted to him as a bailee, where the liability of a common carrier, as we shall see, is particularly strict.

C.—Formation and proof of carriage contract.

In all countries, contracts of carriage are based on agreement and are not subject to any condition of form. Although the contract, to be binding, need not be in writing, nevertheless, it is, for the purpose of proof, usually entered into or confirmed in writing. It generally has the form either of a way-bill (Frachtbrief) or of a receipt or of a "Ladeschein".

Way-bills are mentioned in the legislations of Austria, Belgium, Czechoslovakia, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Portugal, Roumania, Spain and Switzerland.

A way-bill consists generally in a written document, in the form of an open letter, addressed by the consignor to the carrier or the consignee, with the object of fixing the terms of the carriage contract. Usually it specifies all important details concerning the contract of carriage, for instance the nature, quantity and markings of the goods carried, place of delivery, consignee's name, and cost of carriage. A way-bill is usually made in duplicate, one's copy being kept by the carrier and the other by the consignor. In practice a way-bill usually bears the name of the consignee, and therefore it is not transferable. Nevertheless, excepting Austria, Czechoslovakia, Germany and Hungary, it is to be presumed that a way-bill may always be made to order or to bearer; in such cases, surrender of the bill transfers ownership of the goods. The Italian, Portuguese and Roumanian Codes explicitly lay down this rule. In France, as in Belgium, Luxembourg and Spain, such clauses, ordinarily, are not in use.
A receipt is a document issued by the carrier, wherein he declares that the goods have been received from the consignor, to be carried to a certain destination, on certain terms.

The Italian and Swiss Codes mention the receipt, but the same is also in frequent use in other countries and, particularly, in France. The receipt may generally be used in the same way as a way-bill. It may be made out to order; in this case it is transferable. In France, however, such a clause is not in use. The receipt is also mentioned by the Hungarian Commercial Code and by the English Carriers Act.

In the Austrian, German, and Hungarian Codes, besides the way-bill, provision is made also for a document called the Ladeschein (bulletin de chargement). It lays down the carrier's obligations regarding delivery of the goods. It is binding on the carrier towards the consignee, but not towards the consignor, who recognizes only the way-bill. The Ladeschein includes the clause to order and is transferable by endorsement. For its wording, this document corresponds closely enough to a receipt. This Ladeschein could be defined as a bill of lading for carriage by land.

Regulations applying to the above in different States are as follows:

AUSTRIA = The Austrian Code, like the German Code, distinguishes between the way-bill and the Ladeschein; its rules are almost identical to those of German law (see below).

BELGIUM = The Law of 1891, in its general provisions, mentions only the way-bill, a document addressed by the consignor or by the commissionnaire /forwarding agent/ to the consignee (art. 1). This document constitutes only a proof, and as such it is valid in regard both to the consignor and to the carrier. The way-bill is often made in several copies; it may be issued to order or to bearer and in the former case it is transferable by endorsement, like a real bill of exchange.

CZECHOSLOVAKIA = The same rules apply as in Austria.
ENGLAND - The public carrier must give a receipt on request for goods of great value, and the value of which is declared. The receipt shall state that the goods have been received, and mention their declared value. If the carrier refuses to give a receipt, he is liable for the full value of the goods and cannot claim an increased charge (Carriers Act, 1830, s. 3; see also below, p. 26).

FRANCE - The Commercial Code is concerned only with the way-bill (art. 101). The latter is a document in the form of an open letter, signed by the consignor or by the commissaire (forwarding agent), and addressed to the consignee. It must contain those statements concerning the terms of the contract which are laid down in art. 102 of the Commercial Code, but it is recognized that not all these data are required for the validity of the contract. The carrier's signature is not essential. The way-bill may be made in a single copy; in this case it is issued to the carrier, who delivers it to the consignee. But often two copies of the way-bill are made: one, signed by the consignor, is issued to the carrier; the other, signed by the carrier, is kept by the consignor. Sometimes only a single unsigned copy of the way-bill is made: the original is then called "the true way-bill", and the copy "the false way-bill".

The way-bill serves at the same time the purposes of proof of the contract for carriage, of instructions to the carrier's agents, and finally of way of putting the goods at the consignee's disposal while still in transit. The way-bill may be transferred; the mode of transfer depends on the form given to the bill. In fact, the way-bill is always addressed to a person designated by his name; consequently, in case of transfer, the provisions concerning the transfer or the pledging of credits (arts. 1690 and 2075 of the French Civil Code) must be applied. A clause to order or to bearer is not in use. The way-bill is transferred by endorsement when it is to order, or simply by delivery when it is to bearer.
The way-bill is often replaced by a declaration signed by the consignor that the goods have been dispatched and by a receipt signed by the carrier, stating that he has received the goods from the consignor and setting out the conditions of the contract of carriage. The receipt, generally, can be used for the same purpose as the way-bill. It may be made out either to a person designated by his name, or to order, or to bearer. Like the way-bill, the receipt is a proof of the contract of carriage; it gives instructions to the carrier and his servants and indications to the consignee; finally the consignor and the consignee may, through the receipt, transfer the ownership of the goods during transit. As to its contents, the receipt corresponds nearly enough to the Ladeschein provided for by the German Code.

GERMANY — The German Commercial Code distinguishes between the way-bill and the Ladeschein (arts. 426, and 444 to 450).

The carrier may ask the consignor for a way-bill. This document, announcing to the consignee the arrival of the goods carried, is delivered by the consignor to the carrier and by the latter to the consignee, at the end of the journey. The way-bill contains important details of the contract of carriage (art. 426). It bears the names of the parties and it is not transferable. The consignor is liable in full to the carrier for inaccurate or incomplete statements in the way-bill, even when such misstatements are due to an excusable mistake on his part (art. 426). The way-bill, once accepted by the carrier, constitutes a proof that a contract for carriage has been concluded with the terms specified in the way-bill. Such a contract is binding both upon the consignor, who submitted it, and upon the carrier, who accepted it.

But as between the consignor and the carrier, the way-bill has the value only of a simple proof, not of a formal instrument. From the consignee the carrier can only claim what is stated in the way-bill.
The consignor and the carrier can agree that a Ladeschein (bulletin de chargement) will be issued to the former by the latter. This document sets out the carrier's obligation to deliver the goods to their destination (art. 444). It may be to order (art. 445) and in this case it becomes transferable by endorsement. The carrier is liable towards the regular bearer (art. 447). The consignee is not liable for terms of the carriage contract which have not been inserted in the Ladeschein (art. 446). But, in fact, it is declared that the Ladeschein is not used for carriage by land.

HUNGARY = The Hungarian Commercial Code of 1875, as in Germany, provides for two documents, viz. the way-bill (art. 394) and the Ladeschein (art. 415). Regulations for drawing them up correspond almost word by word with the German and Austrian regulations.

The way-bill governs relations between the consignor and the carrier, the Ladeschein, above all, relations between the carrier and the consignee. The Ladeschein is transferable by endorsement.

ITALY = The Italian Code of 1942 (art. 1683 and 1684) deals with the way-bill and with the receipt. It lays down that the consignor must give the carrier a way-bill (lettera di vettura) on demand, and that the way-bill may be to order. The carrier is bound, on the consignor's demand, to give the latter a duplicate of the way-bill or, if the way-bill has not been issued to him, a receipt acknowledging delivery of the goods, and setting out conditions of carriage. When the way-bill or the receipt are to order, the endorsement or the delivery of such documents, signed by the carrier, transfers ownership of the goods. Agreements not mentioned in the way-bill are not binding on the consignee or on the bearer of the copy signed by the carrier.

LUXEMBOURG = The Luxemburg Commercial Code, which is the same as the French, mentions only the way-bill (art. 102).

THE NETHERLANDS = The Netherlands Commercial Code deals with the way-bill (art. 90). Its form is that of an open letter, accompanying the goods, addressed to the consignee, signed by the consignor, and issued to the carrier at the same time as the goods.
PORTUGAL = The Portuguese Commercial Code mentions only the way-bill (arts. 369 to 371, and 373 to 375). On the consignor's demand, the carrier must give the former a way-bill ("guia de transporte") dated and signed, with the usual entries. The way-bill may be issued to order or to bearer. The consignor must give the carrier, on demand, a duplicate of the way-bill bearing his signature. When the way-bill is to order or to bearer, endorsement or simple delivery transfers ownership of the goods carried (art. 374). Particular undertakings, not set out in the way-bill, do not bind the consignee or those to whom the way-bill is transferred.

ROUMANIA = In the Roumanian Commercial Code (art. 414, 415 and 417) only the way-bill is regulated; the consignor must give it to the carrier, if requested. The carrier, on demand, must give the consignor a duplicate of the way-bill, bearing his signature. The way-bill may be to order or to bearer; in the latter case, as in Portugal, endorsement transfers the right to dispose of the goods carried.

SPAIN = The Spanish Commercial Code (arts. 350 to 354) is also concerned only with the way-bill. Parties may require of each other the drawing up of a way-bill with the usual entries. All questions arising out of carriage have to be settled by reference to the way-bill. After a contract has been executed, the way-bill is returned to the carrier against delivery of the goods carried. If the consignee, at the time of delivery, cannot give the carrier the way-bill signed by the latter, he must give the carrier a receipt for the goods delivered to him.

SWITZERLAND = The Federal Code des Obligations (art. 443) mentions the way-bill and the receipt. The way-bill is issued by the consignor and accompanies the goods. The receipt is handed over by the carrier to the consignor. The owner of the receipt is deemed to be the owner of the goods.
Notwithstanding the principle of freedom of proof, applying in all countries to contracts of carriage, some codes have attempted to require written evidence of such contracts. For this purpose in France and Luxembourg (Commercial Code art. 96, and Civil Code art. 1875) and also in Belgium (art. 2) the carrier or the commissionnaire /forwarding agent/ through whom carriage is effected are bound to record in their books for each act of carriage the nature, quantity and, if required, the values of the goods to be carried as appearing from the consignor's statements. In France, as well in Luxembourg (Commercial Code, art. 102) the carrier or the commissionnaire /forwarding agent/ must copy out the way-bill in a book the pages of which are numbered and initialled, and which must be kept without leaving any blank.

The Portuguese Commercial Code (art. 368) requires the carrier to enter in his books the various acts of carriage he undertakes, specifying nature, destination, consignor's names and residences, means employed, and charges.

In Spain (art. 378) carriers must keep a special book.

The Netherlands Commercial Code (art. 96) compels carriers to keep a register of goods received for carriage when such goods consists in coin, gold, silver, jewellery, pearls or other valuables, and the consignor may require the carrier to enter the declared values in that register.

D. Obligations of the carrier and the transport commissionnaire /forwarding agent/

1. Carriage

The carrier is bound to carry the goods within the agreed on or the customary time, to provide for their preservation during carriage, and to deliver them to the consignee after their arrival at the place where they are directed.
As for the route to be followed, the carrier shall observe both special clauses agreed and custom.

Generally speaking, no special rule prescribes in what order the goods consigned to a carrier must be despatched. But according to the Commercial Codes of Austria (art. 394), Hungary (art. 397), and Czechoslovakia (art. 394) in the absence of any special agreement as local customs, carriage must begin within a period to be fixed according to circumstances. The Commercial Codes of Portugal (art. 378) and Roumania (art. 419) provide that the carrier must dispatch the goods in the same order in which he has received them, and that this order may be altered only if the nature or the destination of the goods, unforeseen occurrence (cas fortuit), or force majeure, or other cause, compel the carrier to follow a different order. The Italian Civil Code (art. 1679) provides that acts of carriage through "public services operating on regular routes" must be effectuated with the same order of the requests; in the case of several requests being made at the same time, those for the longer routes have preference.

**Stoppage in transit**

European Codes differ over stoppage in transit. The systems followed may be divided into four classes:

(i) Absolute and perpetual mobility, at all times, of the right of disposal of the goods during transit. The consignee is entitled to dispose of the goods as from the moment the consignor has delivered to him his own receipt.

(ii) The consignor alone is entitled to dispose of the goods during transit, to the exclusion of the consignee.

(iii) Mixed systems: the right of disposal may be transferred from the consignor to the consignee, in certain cases and, or conditions.

(iv) the right to dispose of the goods during transit belongs, in principle, to the owner of the goods.
The first system (i) is followed in France and also in Switzerland.

FRANCE = The holder of the receipt or of the way-bill is entitled to stoppage in transit. The carrier is obliged to execute an order of countermand, either from the consignor or from the consignee, only when he has satisfied himself that the order comes from the person holding the document. If there is no way-bill or receipt, the consignor retains the right of stoppage via-à-via the carrier, as long as the goods are in transit.

SWITZERLAND = The Code des Obligations recognizes, in principle, the consignor's right to recover the goods as long as they are still in the carrier's possession, but the Code also states that this right cannot be exercised: a) if a way-bill issued by the consignor has been delivered by the carrier to the consignee; b) if the consignor has caused the carrier to issue a receipt which the consignor cannot return; c) if the carrier has sent a written notice to the consignee, notifying him of the arrival of the goods and inviting him to collect them; d) if, after the arrival of the goods at their destination, the consignee has applied for their delivery.

In the above cases the carrier must execute the orders only of the consignee. Nevertheless, in the case considered in paragraph b), the carrier should not do so before the goods reach their destination, unless the receipt has been issued to the consignee. This is the same system as in France.

The Austrian, Belgian, Czechoslovak, German and Spanish Codes follow the principle of the second system (ii), which reserves the right of disposal of the goods to the consignor, and not to the consignee. The Scandinavian countries also follow this system.

According to the German Code (art. 433), the consignor may notify the carrier that he will recover the goods in transit and that they must be returned to him or delivered to a consignee other than the one named in the way-bill. The consignor's right to recover
such goods is terminated when, after the goods have arrived at the place of delivery, the bill has been handed over to the consignee, or when the latter has availed himself of the rights conferred upon him by the contract of carriage towards the carrier. In this case the carrier can carry out only the consignee’s instructions. Nevertheless it is admitted that, if the way-bill has been made in duplicate, the consignor can exercise his right to recover the goods only on the condition of the duplicata being produced.

From the time the goods are delivered, and until they arrive at their destination, the consignee is entitled only to take measures necessary for the preservation of the goods carried, and to give the carrier the necessary instructions for this purpose (art. 434). Hence, during this period, the consignee is nothing but an agent of the consignor, and has no right in his own name.

The Commercial Codes of Austria (arts. 402 and 404) and Czechoslovakia (arts. 402 and 404) contain the same regulations as the German Code.

According to the Belgian law of 1891 (art. 6), unless the way-bill has provided otherwise, the carrier is bound to follow the instructions of the consignor, who remains the sole person entitled to dispose of the goods. The right of disposal is transferred from the consignor to the consignee as soon as the goods have been placed on the carrying lorry in the case of goods to be delivered at the consignee’s residence, or as soon as a notice of their arrival has been sent to the consignee in case of goods not deliverable at the consignee’s residence.

According to the Spanish Commercial Code (art. 390) the carrier is bound to carry out orders of the consignor only when the latter has handed over the way-bill.

According to Danish and Swedish judicial precedents, the consignor may dispose of the goods during transit but, after the goods have arrived at their place of destination, it is the consignee who is entitled to exercise the right of disposal. If a bill of legitimation (papier de légitimation) has been issued, the consignee can dispose of the goods only by producing this document.
The third system, viz. the mixed system (iii) applies in Italy, Hungary, Portugal and Roumania.

According to the Italian Code (arts. 1689 and 1691) the consignor, in principle, has the right of disposal during transit, up to the moment when the consignee, holding the document which entitles him to take possession of them, has claimed from the carrier the delivery of the goods, or has received the way-bill. But when the way-bill in duplicate or the receipt are to order, the right of disposal belongs to the person to whom the document has been transferred by endorsement.

The Commercial Codes of Portugal (art. 380) and Roumania (art. 421) contain similar provisions.

The Hungarian Commercial Code (arts. 404 and 406) has the same rules as the German Code, but it adds that when a receipt has been issued, the carrier must follow the instructions of its holder.

The fourth system (iv) is the one adopted in England. According to Common Law "the owner of the goods is, in principle, entitled to dispose of the goods in transit, and may alter their destination".

The carrier is entitled to consider the consignee as the owner of the goods, and the consignor as his agent to contract with the carrier, unless he is given notice of the contrary.

It must be noted that in English law the seller, if he has not reserved to himself the right of disposal at the time the goods were delivered to the carrier, is thereafter no longer the owner of the goods. But the English seller, if the buyer has become insolvent, has the right of stoppage during transit. He may cause the goods to be re-delivered to himself, as long as they are in transit, viz. up to the moment when they are delivered to the buyer by the carrier.
2. Delivery of the goods carried

Normally, the carrier must notify the consignee, if the latter is known, that the goods have arrived at the place of destination. This is explicitly laid down in the Swiss Code des Obligations (art. 450).

According to the Italian Civil Code (art. 1687) the carrier, if delivery is not to take place at the consignee's residence, must promptly notify the consignee of the arrival of the goods. But if the carrier has handed over to the consignor a duplicate of the way-bill to order, or a receipt (récépissé de chargement) to order, the carrier is no longer bound to do so, unless the consignor has appointed in the way-bill a domicile (domiciliatario) at the place of destination (art. 1691).

It is a general rule that the carrier, when goods are sent on condition that carriage shall be paid by the consignee, must not deliver the goods to the consignee unless he is paid the amount indicated in accordance with the conditions of the way-bill. The consignee has no right to obtain delivery of the goods until he has paid the amount due. This rule is explicitly laid down in the Commercial Codes of Austria (art. 405), Czechoslovakia (art. 405), Germany (art. 435), Hungary (art. 407), Portugal (art. 390), Roumania (art. 433). See also the Italian Civil Code (art. 1689) and the Swiss Federal Code des Obligations (art. 444).

According to the Commercial Codes of Germany (art. 442) and Roumania (art. 435), and to the Italian Civil Code (art. 1692), the carrier, if he delivers the goods without receiving payment, is liable to the consignor for the amount he should have recovered, as we shall see below. According to the Commercial Codes of Austria (art. 412), Czechoslovakia (art. 412) and Hungary (art. 414), under these circumstances the carrier loses the right to claim from the consignor.
Many reasons may induce the consignee to refuse acceptance of the goods or payment of carriage. It is possible that the consignee refuses the goods with or without a legitimate motive, claiming that there has been a delay in delivery, that the goods are in bad condition, that they do not correspond with the goods he had bought from the consignor, etc.

Furthermore, it may become impossible to deliver the goods because the consignee cannot be found. What can the carrier do in such cases, to avoid controversy on the condition of the goods, to avoid holding them in custody, and to recover his charges for carriage?

It may generally be said that the measures the carrier is entitled to take according to the codes of different countries, in order to protect his interests, are analogous in principle. The differences between them generally concern rules of procedure.

In France the carrier may exercise the special rights conferred upon him by art. 106 of the Commercial Code.

(i) He may first of all ask that the condition of the goods be verified and ascertained by experts appointed by the president of the Commercial Tribunal or, in his absence, by a magistrate (juge de paix). All parties must be notified and summoned.

(ii) If the consignee persists in refusing the goods, the carrier may obtain from the same judicial authorities an order to transfer the goods to a public warehouse.

(iii) Finally, the carrier asks for an order to sell a part of the goods, to recover his charges out of the price obtained.

These different remedies are available not only to the carrier, but also to all who have an interest in the preservation of the goods or in the checking of their material conditions.

The Belgian law of 1891 (art. 8), the Commercial Codes of Luxemburg (art. 106) and The Netherlands (art. 94) lay down, in principle, the same rules.
Thus the Commercial Codes of Austria (art. 407), Hungary (art. 409) and Czchoslovakia (art. 497) contain provisions similar to those of art. 106 of the French Code.

The German Commercial Code contains no provision concerning the right of obtaining an expert's appraisal (expertise), but the existence of such a right appears sufficiently clear, from the provisions of art. 449 of the Code of Civil Procedure. Art. 437 of the Commercial Code deals particularly with the carrier's right to place the goods in a public warehouse and to have them sold by private authority; the carrier may store the goods or, should they be liable to quick deterioration, he may have them sold, if he cannot wait for the consignor's instructions or if these instructions cannot be carried out. In principle, the carrier is bound to notify the storage or sale of the goods to the consignor and to the consignee.

The same rules are found in the Italian Civil Code (art. 1686).

According to the Commercial Codes of Portugal (arts. 388, 390), and Roumania (art. 438), the carrier can also demand judicial storage (dépôt judiciaire) of the goods, and the sale of that portion of the goods which may be necessary to secure the payment of his charges.

The Spanish Commercial Code (art. 367) provides that, in case of disagreement on delivery, the carrier and the consignee shall appoint experts and, if necessary, a third expert. Should the dispute persist the goods are stored. According to art. 369, the consignee's refusal to accept the goods or to pay for the carriage leads to seizure by the magistrate.

According to the Swiss Federal Code des Obligations (art. 444), the carrier is bound to store the goods, and has the right of depositing them with a third party, at the consignor's expense, even without authorization from a judge.
If neither the consignor nor the consignee dispose of the goods within a reasonable time, the carrier may have them sold for the account of the owner under the supervision of the competent authority of the place where the goods are.

The above measures may be taken, in some countries, not only in case of obstacles to delivery, but also whenever any accident arise in the course, or on the occasion of carriage. See the French Commercial Code (art. 106).

In some countries the carrier is formally entitled to sell the goods, if they are liable to quick deterioration, or if their presumed value does not cover the amount of charges. This is the case in Switzerland. (See Swiss Code Fédéral des Obligations, art. 445). According to the Spanish Commercial Code (art. 362), the carrier can also have perishable goods sold.

3. Liability of the carrier and of the commissaire de transport /forwarding agent/

a) Conditions of liability.— When the carrier or the commissaire /forwarding agent/ fails to perform one of his obligations, he is liable for the damage resulting. His liability may arise in three cases:

(i) Partial or total loss of the goods;
(ii) Injury, viz. material deterioration of the goods carried;
(iii) Delay in delivery.

Loss exists when the goods have actually perished. Injury means any decrease in value. Finally, a delay arises when carriage has not been performed within the time agreed upon.

See the Commercial Code of Austria (art. 397), the Belgian law of 1891 (art. 3), the Commercial Codes of Czechoslovakia (art. 397), France (art. 97), Germany (art. 428), Hungary (art. 400), Italy (art. 1687), Luxembourg (art. 97), Portugal (art. 382), Roumania (art. 422), Spain (art. 358).
When there is no agreement, delay is generally fixed by custom and this is explicitly laid down by the Austrian, Czechoslovakian, German, Hungarian, Italian and Portuguese Codes. The Roumanian Commercial Code provides that delay, in the absence of agreement, is a question for the judge (art. 422).

When there are no recognised customs, the German Commercial Code provides that carriage must be performed within a period of time appropriate to the circumstances.

According to the Spanish Commercial Code (art. 358), if no period of time has been fixed for the delivery of the goods, the carrier must send them with the first consignment of similar or kindred goods which he shall dispatch to the place to which the goods are destined. If he acts so, it is not considered that there has been delay.

The Commercial Codes of Portugal (art. 382) and Roumania (art. 428) state that the absence of sufficient means of transport does not justify delay.

In England there is delay when the carriage has not been executed within a reasonable time.

b) Duration of liability.-- In all countries the liability of the carrier or of the commissionnaire /forwarding agent/ does not begin only with carriage itself. It begins from the moment the goods have been handed over either to the carrier himself or to his servant, in charge of the reception of goods; it ceases with the delivery of the goods to the consignee.

So: Commercial Codes of Austria (art. 395), Czechoslovakia (art. 395), France and Luxemburg (art. 1783), Germany (art. 429), Holland (art. 91), Hungary (art. 398), Italy (art. 1693), Portugal (art. 383), Roumania (art. 425).
c) Extent of liability.— It is commonly admitted that the carrier's liability for damages, in case of loss, destruction, or injury to the goods, or of delay in delivery, is very extensive. Nevertheless the various European codes follow on this subject of the carrier's liability and the degree of liability.

(i) On the one hand we find the principle according to which the carrier is absolutely liable for any accident whatsoever, unless he proves that default is due to events well-defined and such as to release from any liability.

(ii) On the other hand we find the principle by which liability is based exclusively on negligence. This principle has become more strict in all countries where it obtains, because it is always bound up with the condition that the carrier must disprove negligence. The consequence is that the carrier is liable not only when negligence has been established, but also when the cause of loss, injury, or delay cannot be discovered or proved.

The latter principle (ii) is accepted in Germany, Switzerland, and the Scandinavian countries, where the carrier is released if he proves that loss, injury, or delay are due to circumstances which a careful carrier (German Commercial Code, Swiss Code Fédéral des Obligations) could not have avoided.

This system is also followed for the case of delay in delivery in Austria, Czechoslovakia, Hungary and in England, so far as the common carrier is concerned: the private carrier in England is in any case liable only for negligence.

The first principle (i) is followed mainly in France, but also in Belgium, Holland, Italy, Luxemburg, Portugal, Roumania and Spain. It obtains also in Austria, Czechoslovakia and Hungary for the cases of loss or injury. England, where in case of loss and injury Common Law makes the common carrier an insurer of the goods entrusted to him by the consignor, must also be classified in this group.
The carrier is in general exempted from liability in the following cases:
1°) force majeure or cas fortuit (in England Act of God and act of King's enemies);
2°) defects of the thing entrusted to the carrier;
3°) Act of the consignor or the consignee.

Authorities often hold that force majeure is an accidental occurrence, foreign to normal happenings in the environment wherein it occurs, an event which it is neither within the power of man nor within his judgment either to prevent or to forestall. Thus in principle, according to such authorities, cases of force majeure are natural accidents, acts of State, military requisition.

An accidental occurrence (cas fortuit) is, according to the same authorities, an event due to chance, foreign to the debtor's normal activity which it is impossible to foresee or to prevent, but which occurs during and within the very course of the fulfilment of an undertaking, such as a fire in a warehouse.

Nevertheless the decisions of the Courts in some countries (for instance France and Belgium) make no distinction between force majeure and cas fortuit; thus use both terms indifferently, either together or separately, to design any occurrence which it is impossible either to foresee or to overcome. Such are storm, lightning, flood, act of State. On the other hand fire, bad conditions of materials, shortage of personnel, are not universally considered grounds of exemption of the carrier from his liability.

In other countries, the Netherlands for instance, the decisions are almost unanimous in laying down that the notions of force majeure and cas fortuit are identical; but the carrier can prove force majeure only by establishing that he has taken all precautions expected of a good carrier.

The act of God, according to English Common Law, comprises sudden natural occurrences, such as: destruction by earthquake,
lightning, floods, or storms at sea. But a carrier cannot represent as Act of God the theft of the goods during their transit, nor their seizure during violent attack, nor their having been nibbled by rats or burnt in a fire imputable neither to himself nor to his servants. "Act of King's enemies" means war and revolution. Thus the common carrier's liability in Great Britain is stricter than on the Continent.

By defect of the thing it is understood all predisposition in goods to deteriorate during transit, due whether to their own nature or to tendencies to which they are particularly liable, for instance the cozing of liquids, the fermentation of wheat, sickness among animals, etc.—The carrier is exempted from liability when he proves that loss, damage or delay arise from an act either of the consignor or of the consignee. Absence of packing or defective packing should logically be considered among the acts of the consignor, as they imply a negligence on his part. Nevertheless, in several countries they are considered as varieties of defects of the thing carried. Such is the case in France. See also the Commercial Codes of Austria (art. 395), Czechoslovakia (art. 395), Hungary (art. 398) and the Italian Civil Code (art. 1693).

In England defective packing is considered as negligence of the consignor.

As to the carrier's liability, we can briefly state that most continental Codes, with the exception of those of Austria, Czechoslovakia and Hungary, recognize the principle of negligence, but that some of these codes (especially the French) have been influenced in a large measure by the principles governing the theory of risk.

As to the liability of the transport commissionnaire, /forwarding agent/, two systems can be distinguished:

1) the French system, in which the commissionnaire /forwarding agent/ has the same liability as the carrier. This system is followed by the Codes of Belgium, France, Luxemburg, Switzerland and the Netherlands;
2) the German system. The commissionnaire / forwarding agent/ is liable only for his own negligence, unless he contracts for an inclusive price (à forfait). In this case he is also liable for the carrier's negligence. This system is followed in Austria, Czecho-
slovakia and Germany.

In all countries the carrier and the commissionnaire
/forwarding agent/ are liable for the negligence of their workmen
and employees in the execution of their task. This rule is explicitly
laid down in some codes, while in other countries it is derived from
general principles. See the Commercial Codes of Austria (art. 400),
Czecholovakia (art. 400), Germany (art. 431), Hungary (art. 402),
Portugal (art. 377), Roumanie (art. 423). See also the Civil Codes
of France and Luxemburg (art. 1384).

The regulations in force in the various States are as fol-
lows:

AUSTRIA = In Austria there is a distinction between delay on the
one hand and loss and injuries on the other.

In case of delay, the carrier is liable for damages caused
by delay, unless he proves that the delay could not have been avoided
with the care of a prudent carrier (art. 397).

Otherwise Austrian law has adopted an actual legal liability
independent of negligence, and follows the principle of professional
risk. In cases of loss or injury, the carrier is entitled to release
only if he proves that the damage is due to force majeure or to the
nature of goods, particularly to interior deterioration, spontaneous
shrinkage, oozing of liquids, and defective packing not discoverable
from the outside.

As to the liability of the transport commissionaire
/forwarding agent/ the regulation is the same as in Germany (arts. 380
and 384).
BELGIUM = The Belgian law of 1891 provides that in case of delay the carrier and the commissionnaire /forwarding agent/ are exempted from liability if they can prove that delay is due to *cas fortuit* or *force majeure* (art. 3). They are also liable for loss and injury, unless they prove them to have resulted from a cause, which cannot be imputed to them (art. 4).

CZECHOSLOVAKIA = The Czechoslovak Commercial Code (arts. 380, 384, 395 and 397) reproduces, verbatim, the provisions of the Austrian Commercial Code.

DENMARK = In Denmark the carrier, in principle, is only liable for his own negligence in case of damages caused by loss, injury or delay, but he must prove the grounds of exemption.

ENGLAND = In England a distinction is made between the common carrier and the private carrier. The former is liable only as a bailee of the goods entrusted to him, viz. he is liable only for damages resulting from his own negligence or incompetence, or from that of his servants.

As the common carrier, the distinction is between delay on the one hand, and loss and injury on the other. The common carrier is not liable for damages due to delayed delivery, if he proves that the delay could not be avoided, notwithstanding the normal care to be expected of him. The carrier's liability, however, is in the other cases particularly strict. Common Law makes the carrier an insurer for the consignor.

Hence the common carrier is liable, in principle, for all damages occurred during the execution of the contract. Nevertheless his liability is excluded when the loss is due to one of the following causes: Act of God, King's enemies, defects of the thing carried, consignor's negligence. Act of God includes sudden natural occurrences and acts of the King's enemies, such as war and revolution. By special clauses, the carrier, can restrict and modify his liability as a
common carrier. But these conditions must be contained either in the contract or in some notices, and the carrier must prove that the latter has been brought to his customers' attention, before the contract was made (Carriers Act, 1830, sec. 6).

FRANCE — Carriers and transport commissaires /forwarding agents/ are liable for delay, loss and injury (Commercial Code, arts. 97, 98, 103, 104 and Civil Code, art. 1764). However, the liability of the carrier and of the transport commissaire /forwarding agent/ is excluded in three cases: 1) cas fortuit ou force majeure; 2) defects of the thing carried; 3) consignor's negligence. In the two first cases, liability is also excluded in case of delay.

The two expressions "force majeure" and "cas fortuit" are used in France as synonyms and without any discrimination to indicate accidents caused by external events which could not be foreseen; for instance: lightning, floods, act of State. The decisions of the Courts do not admit the carrier claim "cas fortuit" as a ground for exemption from liability for damages due to the conditions of his business (service accidents).

When the carrier, to obtain exemption from liability, claims that damage was due to an event for which he is not liable, the burden of proof is on him.

GERMANY — The German Commercial Code makes a distinction between the carrier and the transport commissaire /forwarding agent/. It states (art. 429) that the carrier is liable for damages to the goods by loss or injury, during the period between the carrier's acceptance of the goods and their delivery to the consignee, unless the carrier proves the loss, injury or delay to have been caused by circumstances which the precaution of a cautious carrier could not have avoided.

As to the liability of the transport commissaire /forwarding agent/, the German Commercial Code makes a distinction between two different cases. The transport commissaire /forwarding agent/ may have to account for the charges he pays to the carriers
he employs, or he may fix an inclusive charge in advance (à forfait). In the first case the commissionnaire /forwarding agent/ is liable only for his own negligence, like the carrier (art. 408) and the burden of proving that he has cared for the goods carried, as a good tradesman should have cared for them, rests upon him. In the second case, to the contrary, the commissionnaire /forwarding agent/ is liable for his personal negligence and for that of intermediate commissionnaires /forwarding agents/ and carriers he has appointed. It has been thought that the commissionnaire /forwarding agent/ who contracted with the consignor for an inclusive price should be treated more strictly, because he had an interest in obtaining the lowest charge possible for carriage, in order to realize larger profits (art. 413).

HUNGARY = As to the carrier's liability, the same rules as in Austria are found in arts. 398 and 400 of the Hungarian Commercial Code. The liability of the transport commissionnaire /forwarding agent/ is the same as in Germany (art. 365).

ITALY = Liability for delay in delivery is regulated by arts. 1218-1220 of the Civil Code. The carrier is liable for delay, unless he proves that the delay is due to a cause which cannot be imputed to him (art. 1218).

In cases of loss or injury, the carrier's negligence is presumed. The carrier can obtain release only by proving the existence of cas fortuit, defects of the thing carried, or consignor's or consignee's negligence (art. 1693).

Cas fortuit means any event foreign to the carrier and not to be imputed to him. The event must be such, that it could not have been avoided by normal care, viz. natural events, act of State, act of a third party, a.s.o.

As to goods which are subject to shrinkage in weight or bulk during carriage, the carrier is not liable for them, unless the shrinkage exceeds natural loss.

The transport commissionnaire /forwarding agent/ is only liable for his own negligence.
LUXEMBURG = The liability of the carrier and the transport commissionnaire /forwarding agent/ are the same as in French law; the carrier and the commissionnaire /forwarding agent/ are liable unless they can prove force majeure, defects of the thing carried or consignor's negligence (Commercial Code, art. 103).

PORTUGAL = The Portuguese Commercial Code (arts. 377 and 383) adopts the principles of the French Code, as regards both the carrier and the commissionnaire /forwarding agent/. Art. 377 seems however to exclude the commissionnaire's /forwarding agent/ liability for carriers he has not appointed himself.

ROUMANIA = The Roumanian Commercial Code (arts. 423 and 425) contains the same provisions as the Portuguese Code.

SPAIN = According to the Spanish Commercial Code of 1885, the carrier is liable in case of delay, loss or injury, but the consignor is liable for cas fortuit, force majeure, nature and defects of the thing carried. The burden of proof is on the carrier.

SWEDEN = In Sweden, the carrier is not liable for delay, loss, or injuries, unless their cause might have been avoided by a careful carrier. Thus, in principle, he is liable only for his own negligence. But he must prove the grounds for his exemption.

SWITZERLAND = The Swiss Code Fédéral des Obligations (arts. 447 to 449) provides that the carrier is liable for delay, loss and injuries, unless he can prove the existence of circumstances that could not have been foreseen by a careful carrier, viz. a carrier making use of his own experience and special knowledge. The natural quality of the goods and the consignor's or the consignee's negligence exempt the carrier from liability.

The forwarding agent, with respect to the carriage of the goods, has the same liability as the carrier (art. 439).
THE NETHERLANDS - In the Netherlands the carrier, in principle, has the same liability as in France. He answers for all damage to goods carried, except that if due to force majeure, to defects of the thing or to the consignor's negligence.

He can establish force majeure if he proves that he has taken the precautionary measures to be expected of a good carrier.

Proof.- When the carrier, to be exempted from liability, pleads force majeure or cas fortuit, defects of the thing, negligence of consignor a.s.o., he must prove his allegations. This proof may be given by all possible means.

Acceptance of goods by the carrier without reservations does not, in general, deprive the latter of the right of pleading defects of the thing carried. Some Codes, however, provide that acceptance without reservations establishes a presumption that the goods, apparently, were properly packed (Italian Civil Code, art. 1693, Roumanian Commercial Code, art. 418), or that they had no patent defects (Portuguese Commercial Code, art. 375).

According to the Spanish Commercial Code (art. 357) the carrier may verify the goods in the presence of witnesses, with the consignor's or the consignee's assistance. If one of the latter, although duly invited, does not appear, the goods are verified in the presence of a notary, who issues a declaration to that effect. If the consignor's declaration is recognized to be correct, the costs of verifying it are upon the carrier. If the declaration is incorrect, the costs are upon the consignor. The carrier can refuse badly packed goods (art. 356).

To facilitate proof of the condition of the goods at the moment of delivery to the consignee, some codes grant the consignee the right to have the condition of the goods verified at his own expense, even if they show no external sign of deterioration (Commercial Codes of Portugal, art. 385, Roumania, art. 434 and Italian Civil Code, art. 1697). According to the Italian Code the carrier, if injury exists, must refund the consignee's expenses.
According to the Belgian law of 1891 (art. 7), the carrier is entitled to request immediate verification of the goods carried, in case of loss or patent injuries. In case of delay, of latent injuries or of losses inside the goods carried, the carrier may offer the consignee to have the goods verified.

4. - Consequences of the carrier's or transport commissionnaire's forwarding agent's liability

a) Damages. - In case of partial or total loss, injury or delay, the carrier or the transport commissionnaire /forwarding agent/ liable for it must pay damages when prejudice has been caused. How are damages estimated?

In certain countries, such as France, Belgium, Luxemburg, Portugal, the Netherlands and the Scandinavian countries, the rules of Common Law apply, according to which, in principle, both actual loss ("damnum emergens") and loss of profit ("lucrum cessans") are taken into account.

But several commercial Codes embody for the case of loss or deterioration of the goods carried, some special provisions whereby, with the object of reducing the carrier's liability and of avoiding difficulties connected with the assessment of damages, the manner of assessing damages in the case of carriage of goods is established. The German, Austrian, Spanish, Hungarian, Roumanian and Czechoslovak Commercial Codes and the Italian Civil Code follow this system. The Swiss Code Fédéral des Obligations also contains special regulations on the subject.

In case of delay all countries apply the rules of Common Law, according to which the carrier is generally bound to indemnify in full. As a general rule damages must represent both the actual loss suffered by the plaintiff ("damnum emergens") and the loss profit ("lucrum cessans"); but they cannot go beyond what is the direct
and immediate consequence of carriage not having been executed. Moreover, the carrier is bound to pay only damages foreseen, or which might have been foreseen at the time the contract was concluded, except when the non-execution of the contract has been due to malice on the part of the carrier himself.

See the Civil Codes of France, Luxembourg, Belgium (arts. 1149 to 1151), Germany (art. 249 ff.), Spain (arts. 1105-1107), Italy (arts. 1218-1229), Portugal (arts. 706-707) and the Commercial Codes of Austria (art. 283), Hungary (art. 272), Czechoslovakia (art. 283).

According to the Swiss Code Fédéral des Obligations (art. 99) the assessment of damages is based on general principles, and it includes "damnum emergens" and "lucrum cessans". But damages cannot exceed the amount due in case of total loss, unless specifically agreed to the contrary (art. 448). See below.

In England, in case of delay, the amount of damages is equal to the reasonable loss due to delay.

According to art. 382 of the Portuguese Commercial Code, the carrier, when a delay in delivery is more than twice as long as the time fixed for delivery, will have to pay, over and above the usual indemnity, any further damages resulting from the delay.

According to the Romanian Commercial Code (art. 428) when carriage has been delayed, the carrier loses a part of his charge, proportional to the length of the delay. If the delay is twice as long as the time fixed for the execution of the contract, the carrier loses his full charge. The carrier is also bound to make good damages caused by delay.

In case of loss or deterioration, liability is the same as for delay in France, Belgium, Luxembourg, the Netherlands, Portugal and the Scandinavian Countries. In these countries damages include, in principle, both "damnum emergens" and "lucrum cessans". The carrier, however, is liable only for damages that had been, or might have been foreseen when the contract was concluded. Thus the consequence of an incorrect declaration by the consignor is that the party
claiming damages cannot claim, in principle, more than the declared value, plus the cost of carriage.

Total value ("damnum emergens") is represented by the market or customary value. In all the above countries it seems that valuation is based on price obtainable at destination at the time of arrival of the goods there.

See the Codes of Belgium, France, Luxemburg (arts.1149-1151), the Netherlands (art. 384) and the Portuguese Commercial Code (art. 384).

In Germany, Austria, Spain, Hungary, Italy, Roumania, Sweden and Czecho-Slovakia, on the other hand, special regulations have been framed, by which the carrier is not always bound to pay all damages.

According to the German Commercial Code (art. 430) the measure of damages must correspond to the current market value or, failing this, to the usual value of goods of the same nature at the place and at the moment fixed for delivery, after deduction of customs duty and other expenses avoided as a consequence of the loss. In case of loss due to carrier's malice or gross negligence, full damages may be recovered.

The Commercial Codes of Austria (art. 396), Hungary (art. 399) and Czecho-Slovakia (art. 396) contain, in principle, the same regulations.

According to the Spanish Commercial Code (art. 363) the carrier must pay the full value, or respectively the difference in the value, which the undelivered or injured goods would have had in the place and at the time agreed for delivery.

According to art. 1696 of the Italian Civil Code, damages resulting from loss or injury are assessed on the basis of current price, or failing this of the usual value of goods carried to the place and at the time of delivery.

Art. 430 of the Roumanian Commercial Code provides that damages resulting from loss or injury are calculated according to the
current price of the things carried to the place and at the time of
delivery. The current price is determined according to the provi-
sions of art. 40 of that Code, with the deduction of expenses
avoided as a consequence of the loss or injury. If the damage re-
sults from malice or gross negligence, the damages are assessed
according to the provisions of arts. 1084 and 1086 of the Roumanian
Civil Code, corresponding to arts. 1150 and 1151 of the French Civil
Code.

According to the Suisse Code Fédéral des Obligations
(arts. 447-448) the carrier, in case of total or partial loss, is
liable for the actual value of the goods; the consignor's or the
consignee's particular interest is not considered. Market value
at the place of destination must be taken as a basis. When goods
are partially lost, damages are assessed on general principles
(art. 99); however, unless specifically agreed, damages in excess
of the full value of the goods cannot be claimed.

In England the carrier is liable for the value of the
goods and for their loss of value. The value is the price the
goods would have fetched at the moment of arrival at the place of
destination.

As a general rule it must be presumed that, if the value
has been declared, no higher value can be recovered. This rule is
explicitly laid down in the Roumanian Code (art. 431) which states
that the carrier, in case of loss, is liable only for the declared
value.

1) Abandonment (laissé pour compte).— Instead of claiming
damages according to the above rules, can the interested parties,
in case of injury or delay, abandon the goods to the carrier?

In several countries this is not allowed, for instance
in Belgium and Portugal (Commercial Code, art. 385). In other
countries the interested party cannot do so, unless he proves
the loss to be equal to the full value of the goods carried. On the other hand, abandonment (laisse pour compte) is admitted in Spain and in France.

According to the Spanish Commercial Code (art. 371) delay due to the carrier's default entitles the consignee to abandon him the goods before they reach their destination. If the consignee abandons the goods, the carrier is liable for their entire value, as if they had been lost.

In France the consignee cannot abandon goods to the carrier on account and recover their entire value from him, unless the delay or the injury has been such that the consignor's purpose in sending the goods cannot be achieved.

c) Valuables.—In most countries the carrier is not liable for valuables, coin, stock and shares, unless their nature and value has been declared to him.

Similar provisions are found in the Commercial Codes of Germany (art. 429), Austria (art. 395), Hungary (art. 398), Roumania (art. 431) and Czechoslovakia (art. 395), in case of loss or injury. In case of delay the carrier is not exempted from liability, even when the nature and value of the goods have not been declared to him. See also the Portuguese Commercial Code (art. 384).

Art. 96 of the Netherlands Commercial Code makes it binding on the consignor to declare the value of valuables. When such a declaration has not been made, the consignor, in case of loss or injury, will be allowed to prove their value only according to the exterior appearance of the things carried. If, on the contrary, a declaration has been made, the value may be established by all means of proof. This article also makes it binding upon common carriers to keep a registry of these articles.

No similar provision exists in the French, Belgian and other Codes, but the principle has been accepted in the decisions
of the Courts. The consignor who omits calling the carrier's attention to the exceptional value of the things carried is considered guilty of negligence.

In England, according to the "Carriers Act, 1830", the carrier is not liable for the loss or injury of valuables when their value exceeds £10, unless, when the goods were handed over to him for carriage, their nature and value had been declared and the special charge required had been paid.

If a declaration of the value and nature of the goods has been omitted, the carrier is not liable for his own negligence and for negligence on the part of his servants. But these provisions of the "Carriers Act" do not protect the common carrier from liability for criminal acts of his servants or employees, unless a special clause excludes such liability.

5.-- **Clauses limiting or excluding liability of carrier and transport commissionaire /forwarding agent/**

The liability of the carrier and the commissionaire /forwarding agent/ as said above, is very heavy. Consequently, they try to limit it by special clauses, providing that they shall not be liable for loss, injury, or delay. The question is whether such clauses are valid.

a) **Clauses limiting liability.**-- Such clauses limit in advance the damages the carrier may have to pay through the determination, by agreement, of a fixed maximum amount of a compensation of so much per kilogram or other unit of weight. These are penal clauses and as such valid, in principle, in all countries. But in most countries the carrier cannot limit his own liability in advance, in cases of malice or gross default. In England, on the contrary, he may do so, as we shall see below.
The Commercial Codes of Austria (arts. 398 and 399), Hungary (art. 401) and Czecho-Slovakia (arts. 398 and 399) declare that when a reduction on the charge for carriage, or the total exemption from this charge, or other penalty have been stipulated for the case of non-observance of the delay fixed for carriage, the consignor or the consignee may however, in doubtful cases, demand compensation for damages due to delay and exceeding the amount provided for. When the carrier can prove that the delay could not have been avoided by the care of a good carrier, the above clauses may be invoked only if they have been expressly agreed upon.

According to the Commercial Codes of Portugal (art. 383) and Roumania (art. 429) the carrier, in cases of shrinkage in weight or bulk of goods liable to shrink during transport, may limit his liability during transit to a percentage or to a share for each package.

This limitation has no effect when the consignor or the consignee prove that the shrinkage was not caused by the nature of the goods or that, in the circumstances, it could not have reached the limit fixed.

According to the Roumanian Commercial Code (art. 439) if a penalty has been fixed in a contract of carriage, in respect of non-execution or delay in delivery, both the execution of carriage and the penalty may be demanded. Proof of damage is not required to claim the penalty. If it is proved that the amount of the damage is greater than the penalty, the difference may be demanded.

b) Clauses excluding liability.— The validity of clauses excluding the carrier's liability has been questioned in many countries. In France above all the question has been much discussed. It has been maintained that these clauses are contrary to public order, since there is a danger that they might encourage carrier's negligence, by exempting him from any pecuniary liability. Before 1905 such clauses had been very frequent. French Courts had
declared that in principle a carrier could not stipulate that he
would not be liable for his own negligence. However, since 1874,
it had been decided that these clauses, in case of loss or injury,
had the effect of placing the burden of proof on the consignor or
on the consignee, so that it was not the carrier who had to prove
cas fortuit or force majeure, but it was the plaintiff who had to
prove the carrier's negligence. This principle gave rise to com-
plaints, and in 1905 a very strict legislation was introduced, in
the form of the "Loi Rabier". This law, an addition to art. 103
of the Commercial Code, forbids clauses excluding liability, inas-
much as they are intended to release the carrier from his liability
in case of loss or injury. It forbids, as contrary to public order,
not only clauses exempting the carrier from liability, but also
clauses placing the burden of proving negligence on the consignor
or on the consignee. Consequently clauses excluding liability are
valid in case of delay, and no doubt remains as to the validity of
penal clauses, intended only to limit the carrier's liability.

The "Loi Rabier" does not however forbid the transport
commissionnaire /forwarding agent/ to exclude by a special clause
his own liability for the acts of carriers employed by him. On the
contrary, the validity of such a clause is explicitly admitted by
art. 98 of the Commercial Code.

In all other European countries, except England and
Switzerland, the law on the carriage of goods has no provision
concerning clauses excluding liability.

According to English Common Law the carrier may, by spe-
cial agreement, limit or modify his own liability. He can thus
exclude even liability for gross default. But a notice or public
declaration to this effect are not sufficient. According to the
Carriers Act 1830, art. 6, these limitations must be contained in
the contract or in a notice which the carrier must prove to
have brought to knowledge of his customers before the contract was
made.
In Switzerland, as in most countries, carrier's liability for malice or gross negligence cannot be excluded beforehand. Moreover, transport concerns which require a federal or cantonal licence for doing business, cannot stipulate exemption beforehand from the consequences of slight negligence (art. 455).

In some countries, the decisions of the Courts have limited the efficacy of such clauses to the shifting of the burden of proof. This is the case in Luxembourg. In Belgium some decisions follow the same line, but the Belgian Court of Cassation has sometimes admitted that the carrier's liability may be excluded when there is neither malice nor gross negligence.

6. - Guarantee in favour of consignor

In Spain and Portugal, the consignor has a lien, for the value of the goods carried, on all the carrier's means of conveyance. Viz: Commercial Codes of Spain (art. 372) and Portugal (art. 392).

In the other countries, the consignor may have such a lien on the carrier's means of conveyance only by special agreement, or if he has acquired the exclusive right of using such means.

7. - Who may sue for damages

Four systems can be distinguished:

a) In France and in the countries the legal systems of which have been influenced by French commercial legislation, above all Belgium and the Netherlands, the consignor and the consignee can both simultaneously sue for damages. Hence this right, in those countries, does not depend upon the ownership of the goods nor, in principle, upon the right of disposal. Both the consignor and the consignee may sue within the limits of their respective interests, and obtain compensation for damages actually suffered, irrespective of any judgment rejecting the other interested party's action. The consignor derives his right directly from the contract of carriage to which he has been a party; the consignee's right derives from the circumstance that the consignor, when contracting with the carrier, has done so for the benefit of the consignee (Code Civil, art.1121). The right of action of the consignee may even be exercised by a buyer of the goods who holds the receipt.
The carrier cannot of course be sued successively both by the consignor and by the consignee. From the moment he has paid damages to the one, he is released in respect of the other.

b) According to the German Commercial Code, the consignor can always demand execution of contract, delivery of goods, and payment of damages to the consignee.

The consignee can exercise his rights under the contract of carriage, when the goods carried have arrived at the place of delivery; thenceforth he can demand that the goods be delivered into his own hands and that the payment of damages, if any, be made into his own hands (art. 435).

The Commercial Codes of Austria (art. 405), Czechoslovakia (art. 405) and Hungary (art. 407) sanction the same rules.

According to the Italian Civil Code (art. 1689) and the Romanian Commercial Code (art. 432), the consignee may exercise his rights against the carrier, based on the contract of carriage, after the arrival of the goods carried, or after the date on which they were due at destination.

c) The Swiss Code Fédéral des Obligations (art. 443) provides that the person entitled to dispose of the goods may sue for damages.

d) In England Common Law provides that either the consignor or the consignee are entitled to sue for damages, according to whether the consignor has contracted with the carrier in his own name or as the consignee's agent.

The latter case applies when the ownership of the goods sold is transferred to the consignee by their dispatch. In general right to claim damages depends upon the ownership of the goods lost or damaged. The owner is entitled to sue. An exception arises only when the carrier explicitly contracts to be liable to the consignor and the latter has contracted in his own name.
3. Who may be sued for damages.

When carriage has been performed by a single carrier, it is evident that it is he who must be sued for damages.

But when there are several carriers, the question may become rather complex. Two cases must be distinguished:

(i) The consignor may directly contract successively with several carriers or, what amounts to the same, the goods may be handed over, in an intermediate place, to a person who undertakes to have them carried over by another carrier. In this case there are as many separate contracts of carriage as there are carriers. Each of them is responsible for the part of carriage he has cared for.

(ii) But the consignor often makes a single contract of carriage with a carrier or a transport commissionnaire /forwarding agent/, while the goods to reach their destination must-through the hands of several carriers or transport commissionnaires/forwarding agents/. This is no longer a case of successive acts of carriage, but a case of a single carriage, in connection with which many questions may arise. What is the position of each individual carrier in respect of the consignor and of the consignee? What is the position of these carriers one towards the other, and what rights have they one upon the other?

a) The first carrier (commissionnaire-chargeur). The full liability of the first carrier, from the moment the goods are taken over until they are delivered, is admitted without difficulty in France by established authorities and by the constant decisions of the Courts and by the great majority of national codes.

According to the French Commercial Code (art. 99) the first commissionnaire /forwarding agent/ or commissionnaire-chargeur is liable for the acts of the intermediate commissionnaire /forwarding agent/ to whom he hands over the goods. The liability of the first commissionnaire /forwarding agent/ extends to the acts of the
intermediate commissionnaires /forwarding agents/ he employs, and even of the latters' agents, but he has a right to claim against them. This principle may however have an exception when the intermediate commissionnaire /forwarding agent/ has been freely elected by the consignor.

In Germany art. 432 of the Commercial Code provides that, when a carrier, to perform the carriage he has undertaken, entrusts the goods to another carrier, the first is liable for the execution of the carriage, up to the delivery of the goods into the consignee's hands.

The Commercial Codes of Austria (art. 401), Spain (art. 379), Hungary (art. 403) and Czechoslovakia (art. 401) follow the same rule.

The Belgian law, art. 5, also provides that the first carrier is liable for the acts of the intermediate commissionnaire /forwarding agent/ or carrier to whom he hands over the goods. The case, however, may be different when the successive carriers have been formally designated, and consequently imposed, by the consignor.

In Italy art. 1700 of the Civil Code of 1942 provides that when carriage has been undertaken jointly by several successive carriers, on the basis of a single contract, the carriers are jointly liable for the execution of the contract, from the place of origin to the place of destination. The contract is presumed to be a single one if the consignor gives the first carrier a way-bill covering the journey up to the place of destination.

The Commercial Codes of Portugal (art. 377) and Roumania (art. 423) declare that the carrier is liable for the acts of his servants, for all successive carriages and for all other persons to whom he entrusts the execution of carriage.
In Switzerland, according to art. 449 of the Code Fédéral des Obligations, a carrier who does not himself take care of the carriage and has goods transported by another carrier, is liable for all accidents and mistakes occurring in the course of the journey. If the intermediate carrier is a public transport service, the first carrier is liable only to the extent of the second carrier’s liability towards himself (art. 456).

Similarly, in Great Britain and Denmark, the Courts make the first carrier liable for the whole journey and for any negligence of subsequent carriers.

b) Intermediate and last carrier (voiturier livreur).—European codes follow three systems:

(i) By the first system the intermediate carrier and in principle also the last carrier (delivery agent) are liable only for their own acts.

(ii) The second system is stricter. Each single carrier is liable, not only for the execution on of his own part of the journey, but also for the entire journey.

(iii) The third system recognizes the right of both consignor and consignee to sue either the first or the last carrier, indifferently. But they may not sue an intermediate carrier, unless it is proved that the damage has been caused while that particular carrier was in charge of execution.

(i) The first system has been adopted in France and Luxembourg.

In France judgment can be entered against an intermediate carrier only if the event out of which the damage arose took place while the goods were in his hands. This places on the plaintiff the burden of proving that the carrier sued had received the goods in good condition and in due time and - if the action has been brought against the intermediate carrier - that the latter did not
hand over the goods to the following carrier, or that he handed them over with losses, injuries, or delay. In a case of patent injuries, it is always presumed that the carrier received the things in good condition, and it is up to him to prove that the injuries may not be ascribed to him.

The last carrier is in the same position as the intermediate carrier. On the contrary, when goods are sent for carriage to be paid on delivery (en port dû) the consignee must pay the entire cost of carriage to the last carrier; in this case the latter is considered as representing the other carriers for the entire journey and is liable for it, except for his right to claim against the responsible party for negligence.

In Luxembourg the last carrier is liable only for patent injuries that he could verify, and when he has received the goods from the preceding carriers without reservations. In case of latent injuries, he is liable only if it is proved that the injury occurred on the part of the journey he cared for.

(ii) The principle of the second system is adopted in Austria, Belgium, Germany, Hungary, Italy, Portugal, the Scandinavian Countries and Spain.

The German Commercial Code (art. 432) is particularly definite on this point. When a subsequent carrier accepts goods and their original way-bill, he enters into a contract for their carriage as a joint carrier for the whole journey, and undertakes a personal obligation to execute the carriage according to the terms of the way-bill. Each of these carriers is personally liable to the consignor and to consignee for the execution of the entire contract.

The same rules are found also in the Spanish Commercial Code (art. 379).

The Commercial Codes of Austria (art. 401), Czechoslovakia (art. 401), Hungary (art. 403), declare that any carrier
succeeding another carrier, by the sole act of receiving the goods and the way-bill, enters into a contract of carriage, as embodied in the way-bill. He is liable for all obligations resulting from the carriage already performed by the preceding carriers, and he is liable for the execution of the according to the original contract.

In Belgium the Courts consider the intermediate carrier as a real substitute of the first carrier (commissionaire chargeur); who enters into the contract and undertakes all rights and liabilities of the first carrier. Any intermediate carrier may be considered, by the consignor or by the consignee, as a first carrier, and as such liable for any damage.

In Italy also (art. 1700) each carrier is jointly liable for the entire journey. The succeeding carrier is entitled to obtain a declaration, in the way-bill or in a separate document, concerning the condition of the goods at the moment they are handed over to him. In the absence of such a declaration, it is presumed that he has received the goods in good condition and as specified in the way-bill (art. 1701).

The Portuguese Commercial Code (art. 377) provides that subsequent carriers undertake the rights and obligations of the original carrier; they are deemed to have received the goods in good condition; unless there have been reservations to the contrary.

(iii) The third system is adopted by Roumania. According to art. 436 of the Roumanian Civil Code, the interested party can sue either the first or the last carrier. He can also sue the intermediate carrier if he proves that the injuries occurred while the goods were in the care of the latter.

Individual carriers are entitled to obtain, in the way-bill or otherwise, a declaration on the condition of the goods carried, at the moment they are handed over to them. Goods accepted without reservations are presumed to be free from patent defects (art. 224).
c) Claim of carrier against other carriers employed for the same journey. - As a consequence of regulations concerning the liability of carriers employed for the same journey, it often happens that damages are recovered as against carriers not guilty of negligence. This necessarily implies the existence of an action for indemnity, which will straighten the position by shifting liability arising out of the carriage on the right subject.

A carrier who has been ordered to pay damages for an event which may be not attributed to him, has of course a right to claim against the guilty party (1).

In France, generally speaking, the carrier who sues for indemnity must prove that the event out of which the damage arose is to be attributed, exclusively or partly, to the defendant's negligence. Thus the French system is rather severe upon the carrier whose full liability has been claimed by the party having an interest in the goods, viz. to the first carrier (commissionnaire-chargeur), who in practice remains liable for unspecified damages, to the advantage of intermediate carriers who benefit from the unknown origin of such damages. The same system is followed in Spain.

According to art. 373 of the Spanish Commercial Code, in the case of goods lost or injured, the concern undertaking carriage in the first place cannot claim against other carriers employed for the same journey unless it proves that goods were handed over in good condition. This rule however shows the Spanish system to be less severe to the first carrier (commissionnaire-chargeur) than the French, as it does not require him to prove that the damage was due to the defendant; it requires him only to prove, what is easier, that goods were handed over in good condition.

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(1) In Roumania such a carrier also has the right to be relieved by the carrier who had immediately preceded him (art. 436).
Another principle obtains in some countries, such as Austria, Germany and Italy, where liability is divided among the co-carriers, in cases of damage from an undetermined cause. Damages are assessed against the individual carriers in proportion to the part taken by each of them in the carriage, or to the share each has received, or should have received of the total charge for carriage.

The Commercial Codes of Germany (art. 432) and Italy (art. 1700) provide in these cases that, if it cannot be proved who caused the damage, damages are divided between the carriers, in proportion to their part in the carriage. Nevertheless the carrier who can prove that the damage did not take place on the portion of the journey entrusted to him is exempted from liability.

The decisions of the Austrian Courts sanction the same principle.

9. Estoppel and limitation of actions

Most Codes have provided two ways of barring actions for liability arising out of a contracts of carriage: a special kind of estoppel and a shorter period of limitation.

a) Estoppel. - To take advantage of estoppel it is generally required that the consignee has received the goods without reservations, and that he has paid the freight. But in some countries, such as Belgium and Portugal, acceptance of the goods in sufficient by itself, irrespective of payment of freight.

Some Codes have rendered the application of estoppel less severe, by establishing in general a distinction between patent and latent injuries for the purpose of allowing a certain delay within which to bring against the carrier an action for liability for injuries of the second kind. The period allowed varies from one country to another. It is a week from acceptance of the goods in Germany, eight days in Italy, Portugal and Switzerland, five days in Roumania, three days in France, 48 hours in the Netherlands, 24 hours in Spain. Belgian law makes several distinctions.

In general the acceptance of the goods without reservations has the effect of discharging the carrier from liability.
He is in this case protected from any action arising from the contract of carriage; his exemption is complete, and no distinction can be made according to the nature of the damage, except in case of latent injuries. In France, on the contrary, estoppel applies only to claims for partial loss or injury.

The regulations in force in the different countries are as follows:

AUSTRIA (art. 408).—When the goods have been accepted without reservations and the freight has been paid, any action against the carrier is barred. After acceptance and payment of freight, the carrier may nevertheless be sued for injuries or partial losses which it has not been possible to ascertain from the outside. To such end, verification must have been demanded without delay, and the loss must be proved to have occurred between receipt of the goods by the carrier and their delivery to the consignee.

BELGIUM.—According to the Belgian law of 1891 (art. 7) the receipt of the goods carried bars any right of action against the carrier or the commissionnaire /forwarding agent/, except in cases of special reservations or latent injuries. Reservations or complaints must be made in writing and addressed to the carrier on the second day, at the latest, after acceptance, in case of manifest injuries and losses, and within a period not exceeding seven days (day of acceptance excepted) for delays. Nevertheless the consignee is bound to allow an immediate examination of the goods carried, if the injury or the partial loss is pointed out by the carrier at the moment of delivery. In case of latent injury or of loss in the interior of the goods carried, a claim from the consignee may still be admitted, if made in writing and addressed to the carrier within a period not exceeding seven days (not counting the day of acceptance) and if it is proved that injury or loss have preceded delivery. The exception admitted for cases of latent injury or loss does not apply if the consignee has been offered an examination of the goods when delivery took place.
CZECHOSLOVAKIA.— The Czechoslovak Commercial Code (art. 406) contains, textually, the provisions of the Austrian Code.

FRANCE (Code Commercial, art. 105).— Every right of action against the carrier, for partial loss or injury, is barred when the delivery of goods has been accepted and freight paid, unless, within three days from acceptance, the consignee notifies the carrier of his complaint, specifying its nature, by an extra-judicial act or by registered letter. All agreements to the contrary are void, except in cases of international carriage.

Estoppel does not apply to actions for total loss or delay. Carriers' liability holds good if the consignee can prove that the carrier or his servants were guilty of theft or fraudulent methods to conceal injuries or losses.

GERMANY (art. 438).— Acceptance of delivery of the goods and payment of freight bar any right of action against the carrier unless before acceptance the deterioration of the goods has been ascertained by experts, appointed by the competent authorities. But even after acceptance and payment, the carrier may be sued for latent injuries, when the verification of injuries has been requested in the week following the acceptance of the goods, and when it is proved that the injury was produced in the interval between acceptance by the carrier and delivery to the consignee. No estoppel may be pleaded when the injury is due to malice or gross negligence.

HUNGARY.— According to the Hungarian Commercial Code (art. 410) all right of action against the carrier is barred by the acceptance of goods and the payment of freight. The carrier, nevertheless, remains liable for losses and injuries which could not be ascertained from the outside at the moment of delivery, when they have occurred between acceptance by the carrier and delivery.
ITALY (art. 1696).— In principle, when the goods are accepted without reservations and the freight is paid, all action against the carrier, arising out of the contract, is barred, except in case of malice or gross negligence on the carrier’s part. But in cases of partial loss or injury, not apparent at the moment of delivery, action may be taken, provided the damage is reported as soon as it is known, and eight days after the delivery at the latest.

LUXEMBOURG.— According to the 1807 Commercial Code of Luxembourg (art. 105) no action can be taken against the carrier, when acceptance of goods and payment of freight have taken place.

THE NETHERLANDS.— Art. 93 of the Netherlands Code provides that by acceptance of the goods and payment of freight any right of action against the carrier is barred. But if the injury or the loss cannot be seen from the outside, a judicial appraisal to ascertain the injury or deterioration may be demanded, even after the goods have been accepted. It must be regulated within 48 hours of acceptance, whether the freight has been paid or not.

PORTUGAL.— According to art. 365, par. 2, of the Portuguese Commercial Code, claims against the carrier for injuries during transport cannot be made after acceptance, if the goods have been verified or if the injury is apparent. Outside these cases, claims are only admitted within the eight days following delivery.

ROUMANIA.— The Roumanian Commercial Code (art. 440) contains the same rules as the Italian Code, but the period within which damages may be claimed for latent injuries is only five days.

SPAIN.— According to the Spanish Commercial Code (art. 366) claims for latent injuries are admitted within 24 hours of acceptance of the goods. Claims for apparent injuries cannot be received after acceptance and payment of freight.

SWITZERLAND.— According to art. 452 of the Swiss Code Fédéral des Obligations, acceptance of the goods without reservations and payment of freight are a bar to any action against the carrier,
except in cases of malice or gross negligence. The carrier is liable for latent injuries, if the consignee detects them in the period within which, according to the circumstances, he might or should have verified the condition of the goods, and if he informs the carrier immediately on detection. Such communication must take place within eight days from delivery.

b) Limitation of actions.— In most countries a short period of limitation is fixed in the case of contracts for transport. However, the periods allowed vary from one country to another.

The Austrian Commercial Code (arts. 386 and 408) likewise provides a period of limitation of one year for actions of liability. Defences based on loss, injury or delay are equally barred when the carrier or the commissionnaire de transport /forwarding agent/ has not been notified of the facts within a year. Limitation does not apply in case of fraud and misrepresentation.

The Belgian law of 1891 (art.9) provides a period of limitation of six months for inland carriage, and one year for international carriage, for all actions arising from a contract of carriage, except criminal actions.

The Commercial Code of Czechoslovakia (arts. 386 and 408) contains the same rules as the Austrian.

The French Commercial Code (art. 108) lays down that all actions arising out of contracts of carriage, whether between the carrier and the commissionnaire /forwarding agent/ or between the consignor and the consignee, are barred by the expiry of the period of one year, except in cases of fraud or breach of confidence. In case of total loss, the period of limitation begins to run from the date when delivery was due. In other cases, it runs from the date of delivery. The period of limitation for actions between carriers is one month, running from the day on which action was
brought against the carrier entitled to claim against other carriers.

If the carriage has been effected on behalf of the State, the period of limitation begins to run only from the date of notification of the ministerial decision for liquidation, or of the final order. This applies only to actions of carriers against the State.

The German Commercial Code (arts. 414 and 439) provides a period of limitation of one year for actions of liability against carriers and commissionaires de transport /forwarding agents/. In the case of injury or partial loss, the period dates from delivery. In case of total loss or delay, the period runs from the date when delivery was due. The carrier's liability may be pleaded by way of defence even after the period of limitation of the action of liability has expired, provided, within that period, the carrier or the commissaire /forwarding agent/ have been notified of the loss, injuries or delay. This short period of limitation does not apply to the action of the carrier against other carriers.

The above provisions do not apply when the loss injury, or delay are due to malice on the part of the carrier or the commissaire de transport /forwarding agent/.

The Hungarian Commercial Code (arts. 390 and 410) contains the same provisions as the Austrian Code.

The Italian Civil Code of 1942 (art. 2951) has adopted a period of limitation of one year in case of contracts of carriage and forwarding. The period is extended to 18 months if the carriage begins or ends outside Europe. The period of limitation runs from the date on which delivery of the goods has taken place or was due.

The Commercial Code of the Netherlands (art. 95) lays down that all actions against the commissaire /forwarding agent/ and the carrier, for loss or injury, are barred after six months for inland carriage and after a year for international carriage, without prejudice to action for fraud or breach of confidence.
The Roumanian Commercial Code (arts. 937, 939 and 948) provides, in principle, a period of limitation of ten years for commercial actions, i.e. actions arising out of acts which are commercial, even for one party only. But shorter periods of limitation are adopted in many cases. It provides, in particular, that actions against the carrier are barred: 1) after six months, in the case of carriage performed in Europe (excluding Iceland and the Faroe Islands), through Asiatic or African seaports on the Mediterranean, through seaports on the Black Sea, the Suez Canal, or the Red Sea, or through a place in the interior connected by railway with one of the above seaports; 2) after one year, in the case of carriage performed elsewhere. The period, in case of total loss, runs from the date on which the goods should have reached their destination, or else from the date the goods were delivered to the consignee.

The Swiss Code Fédéral des Obligations (art. 127) provides that all actions must be brought within ten years, unless the law provides for a shorter period of limitation; this period cannot be modified by agreement between the parties. According to art. 454 actions to recover damages against the carrier must be brought within one year. In case of destruction, loss or delay, this last period runs from the day on which the goods were due for delivery, and in cases of damage to goods, from the day on which they were handed over to the consignee. The consignor and the consignee may at any time assert their claims against the carrier by way of defence, provided the complaint has been made within one year and their rights have not been lost by acceptance of the goods. These provisions do not apply in cases of malice or gross negligence on the carrier's part.
E. — Obligations of consignor and consignee

1. — Payment of freight

The contract of carriage being a contract for gain, the existence of a charge for carriage is considered an essential element of it. It is paid either by the consignor at the moment of delivery of the goods to the carrier (this is called carriage paid), or by the consignee on arrival (this is called carriage due on delivery). The consignor, however, is always liable for the freight, if the consignee, who should have paid it, is in default. On the contrary the consignee is liable only if he accepts the goods, but the consignor has the right to claim against him, if the latter has refused to accept the goods without a lawful motive. This last rule, in force in all countries, is explicitly stated in some commercial Codes.

The Commercial Codes of Austria (art. 406), Czechoslovakia (art. 406), Germany (art. 436) and Hungary (art. 408) provide that by acceptance of the goods and of the way-bill the consignee becomes liable to pay the carrier, according to the terms of the way-bill.

According to the Italian Civil Code (art. 1689) the consignee cannot exercise any right arising from the contract unless he has paid the carrier's charges for carriage, and the amounts due on the goods carried. See also art. 451 of the Swiss Code Fédéral des Obligations, and art. 433 of the Roumanian Commercial Code. The latter in addition provides that, in cases of disagreement, the carrier is bound to hand over the goods carried to the consignee, if the latter pays the sum he believes to be due and at the same time deposits the difference between this sum and the sum demanded by the carrier. According to the Swiss Code, the consignee, when disputing charges on the goods, cannot demand delivery unless he deposits the disputed sum in court.
Besides the charge for carriage, the consignor or the consignee is bound to pay all the accessory charges connected with the carriage. They must also refund the carrier for his expenses on the goods, particularly custom duties.

When the consignee refuses the goods or the payment of freight, or when the consignee cannot be found, the carrier can sue only the consignor.

2. Guarantee granted to carrier and commissionnaire de transport /forwarding agent/

To protect their rights towards the consignor and the consignee, the carrier or the commissionnaire de transport /forwarding agent/ have a lien, and in some countries also a privilege.

a) Lien. The carrier is entitled to withhold delivery of the goods until he has been paid for his charges for carriage and accessory expenses arising out of the contract for carriage. Even though this lien is not explicitly sanctioned in all countries, it must be presumed as existing everywhere.

Lien being a matter of fact, the carrier loses his right to retain the goods when he voluntarily hands them over.

b) Privilege. In general the carrier and the commissionnaire de transport /forwarding agent/ also enjoy a privilege. This privilege guarantees all credits accruing in the carrier’s favour out of the contract of carriage, such as charges for carriage, custom duties, and cost of return to consignor in case the consignee refuses to accept the goods. The credit must refer precisely to the goods on which the carrier claims his privilege. Thus he cannot claim, on the proceeds of sale, charges for preceding carriages, distinct from the carriage in question, which are still unpaid.

This privilege arises as soon as the goods have come into the carrier’s possession.
In certain countries this privilege ceases when the goods are delivered; in other countries it persists even after the goods have been handed over to the consignee.

The first system is in force in France (Code Civil, art. 2102, 6°), Hungary (arts. 388, 411), Luxemburg (Code Civil, art. 2102, 6°), Italy (art. 2761), Portugal (art. 391) and Roumania (art. 437).

According to the decisions of the Courts of Luxemburg, the goods carried are considered to be in the carrier's possession during the time he leaves them (according to local usage) at the consignee's disposal, to be examined and verified.

The German Commercial Code (art. 440) allows three days after delivery for the exercise of the privilege, provided the goods are still with the consignee or with a person detaining them on the consignee's behalf.

The Commercial Codes of Austria (art. 409) and Czechoslovakia (art. 409) contain the same rule.

According to the Belgian law of 1851 on privileges and mortgages (art. 20, 7°) the carrier's privilege lasts 24 hours after the delivery of the goods to the owner or to the consignee, provided they have retained possession.

According to the Spanish Commercial Code (art. 375) the goods carried are a pledge for the carrier's credit, before delivery and for eight days after it. If the consignee has not paid freight and expenses within 24 hours of delivery, the carrier may demand the judicial sale of the goods, up to the amount of his credit.

If the carriers are several, the last of them must enforce the rights of his predecessors, particularly their right to regard the goods as a pledge for their credits.

See the Commercial Codes of Austria (arts. 382 and 410), Czechoslovakia (arts. 382 and 410), France (arts. 92 and 95), Germany (art. 441)\(^{(1)}\), Hungary (arts. 383 and 412), Italy (art. 1702), Portugal (art. 391), Roumania (art. 437), Spain (art. 379).

\(^{(1)}\) In Germany, however, the commissaire /forwarding agent/ cannot avail himself of art. 441 of the Commercial Code.
When the carrier has delivered the goods without obtaining payment, thus losing his privilege, he is liable to his predecessors and loses (like preceding carriers and forwarding agents) any right to claim against preceding parties. Nevertheless he retains his right to be paid towards the consignee or towards the consignor, if the latter is liable for the freight (Commercial Codes of Austria, art. 412; Czechoslovakia, art. 412; Germany, art. 442; Hungary, art. 414; Italian Civil Code, art. 1702; Roumania, art. 435).

The Commercial Codes of Austria (art. 411), Czechoslovakia (art. 411), Germany (art. 443) and Hungary (art. 413) also define the rank of the carrier's privilege. If the right arises from carriage of goods on the carrier's part, or from dispatch of the goods by the consignor, the privilege of latest date has priority over earlier rights. This class of privileges has priority over all other; on the contrary, among the latter, the earliest in date is preferred to the later ones.

In other countries rank is determined by general principles governing the classification of privileges.

F. Discharge of the contract of carriage

The carrier cannot cancel the contract of his own accord. But it must be presumed that the consignor has this right, because carriage is performed exclusively in his interest; nevertheless he must, notwithstanding cancellation, pay the carrier for the cost of carriage.

In some countries the consignor has the right to cancel the contract when the beginning or the continuation of carriage is temporarily prevented and no negligence may be attributed to him.

According to the German Commercial Code (art. 428) the consignor may withdraw from the contract of carriage, when the dispatch of the goods is for the moment at a standstill. If the
delay is not to be attributed to the carrier, the consignor must refund meaning the carrier's expenses for arranging the carriage, unloading and the portion of the journey already performed. If delay is due to the carrier, he has a right to be reimbursed only up to the amount of any profit obtained by the consignor by cause of the event.

The Commercial Codes of Austria (art. 394), Czechoslovakia (art. 394) and Hungary (art. 397) have the same rules, in the case it has become impossible to begin carriage or to continue the journey owing to natural occurrences or to other accidental causes.

According to the Roumanian Civil Code (art. 420), when the carriage is prevented or delayed out of measure by an accidental occurrence or force majeure, the consignor may cancel the contract by paying the expenses claimed by the carrier. If the obstacle to carriage arises on the route, the carrier is entitled to an indemnity in proportion to the distance covered.

The same rule is found in the Portuguese Commercial Code (art. 379).

In the other countries the consignor's right to cancel the contract is limited only by common law. If the consignor prefers to demand the cancellation of the contract of carriage because it has not been performed within the period agreed upon, he will have only to prove that this period has elapsed.
CONCLUSION

The present survey of the regulation of contracts of carriage by road in various national codes shows that, while there are some divergences between the systems followed, their nature is not such as to preclude the possibility of reconciliation.

Way-bill.—This survey shows that in all countries the contract of carriage is based on agreement, and is not subject to any requirement of form. Hence the first question is whether an international convention should leave the parties to the contracts free to protect as they wish their own interests, or whether it should make compulsory the establishment of a written contract.

To answer this question it may be interesting to see how the point has been settled in the other international traffic conventions: the Warsaw Convention of 1929 for the unification of certain rules affecting international carriage by air (C.V.), and the Rome Convention of 1933 for the carriage of goods by rail (C.I.R.).

The C.V. (art. 5) provides that the consignor is entitled to request the acceptance of the air way-bill, but that the existence or the absence of a way-bill affect neither the existence nor the validity of the contract of carriage, which comes under the rules of the C.V. quite irrespective of the way-bill.

The C.I.R. (article 6, par. 1) on the contrary provides that the consignor must deliver a way-bill, a contract of carriage being regarded as concluded as soon as the railway station of dispatch has accepted the goods, accompanied by their way-bill for transit. Thus, the establishment of a rail-carriage way-bill is a condition indispensable to the conclusion of a contract (art. 8, par. 1).

It must be noted, in comparing the C.V. and the C.I.R., that the air transport companies affiliated with the International Air Traffic Association (I.A.T.A.) insist that all packages should be covered
by a way-bill, and the "Conditions for transport (goods)" provide that
the consignor must write an air way-bill in three originals, according
to the form prescribed by the carrier, and that he must hand them over
together with the goods; they provide also that the contract for air
carriage is concluded as from the time of the acceptance by the carrier
of the goods to be carried, accompanied by the way-bill.

The consignor of goods to be carried by air, when entering
into a contract of carriage, is thus in practice in the same position as
the consignor of goods to be carried by rail.

In carriage by road, it would naturally, and for various
reasons, be very useful to make compulsory the establishment of a written
document. It is however doubtful whether every country would accept such
be a rule, and it may be supposed that in some countries it would be extremely
difficult to secure effective sanction for such obligation.

From the point of view of civil law, the existence of a written
document is not so necessary for carriage by road as for that by rail.
It will be enough to point out the main difference between carriage by
rail and carriage by road: international transport by rail, apart from
its organization and technical management, is performed by different
companies, or public services, acting within limited territories, while
transport by road may be under a single management throughout a journey
covering several territories.

Should the establishment of a written document be not obligatory,
a protection of the interests of the parties could be obtained if the
carrier were entitled to request the consignor to establish and sign a
way-bill, and the consignor to request the carrier to accept it.

Naturally one might ask whether the way-bill should not be
written by the carrier. It is however only the consignor who can fill
in the entries of a way-bill and guarantee their correctness. In
practice it happens frequently that it is not the consignor himself
who fills in the way-bill, but the carrier's agent: in such cases
however the agent is acting on behalf of the consignor.
The second question is whether it would not be advantageous to give the way-bill for carriage by road the value of a bill of lading. The bill of lading is a negotiable document used in contracts of carriage, the legal nature of which is characterized by the following essential elements:

(i) rights on the goods (jura in re) are embodied in it;
(ii) it is transferable by delivery and endorsement;
(iii) it gives its legitimate bearer an exclusive right to the delivery of the goods.

As we have seen, the way-bill (receipt) may have, in several countries, the value of a bill of lading, while in other countries where it has not such value, the use of Ladseheinen (bulletins de chargement) has been provided for. The latter, however, are not in use, and in practice way-bills are always issued to persons indicated by name. They are also, in fact, non-transferable. In some countries, however, they may be employed as legitimating documents between the consignor and the consignee.

What are the rules on this point, in other international conventions?

The International Convention for the unification of certain rules concerning bills of lading, 1924 (the Hague rules) applies only to negotiable documents.

According to article 6 of C.I.H., unspecified indications of the consignee such as "to the order of", or "to the bearer", are not allowed. Article 61, par. 3, of C.I.H. allows an exception to this rule in the case of carriage with a negotiable document, and of carriage of goods which are not to be delivered without the handing over of a duplicate of the way-bill. According to this article, two or more contracting States may, by special agreement, undertake to use in the traffic between such States negotiable carriage documents, or they may adopt regulations providing that goods will not be delivered unless a duplicate of the way-bill is
handed over. Although the duplicate of the way-bill is not a transferable document (papier-valeur), a trade custom has formed, whereby this duplicate actually has the function of a negotiable instrument. Indeed it is usual, in commercial traffic implying sales at a distance, for the buyer to pay the price of the goods against delivery of the duplicate.

The consignee obtains the duplicate from the consignor, with the object of determining the latter's right to dispose of the goods. From that moment he can confidently pay the price of the goods, because by giving away the duplicate, the consignor can no longer dispose of the goods and the buyer may be sure that the goods sent to his address shall be regularly handed over to him. Such a regulation of sale contracts might induce to believe that the duplicate is sold and the ownership of the goods ceded at the same time. In matter of fact, the law of carriage itself implies certain provisions which make it easier, or actually make it possible, to attach to the transfer of the duplicate such an effect (See C.I.C.V., art. 21, par. 2; art. 24, par. 1, al.2 and art. 41, par. 3, last al.).

C.V., on the contrary, does not exclude the establishment of way-bills "to order" or "to the bearer". Thus in article 8, which enumerates the entries that the way-bill must contain, it is specified under section f) "the consignee's name and address if such be the case". Air transport companies have nevertheless refused to accept way-bills to order and to the bearer, the "General Conditions for transport (goods) adopted by the I.A.T.A., providing that the way-bill must contain the consignor's and the consignee's name and address. Consequently only the consignor and the consignee so designated may, according to C.V., require the performance of contract. The result is that, in practice, the air way-bill cannot be transferred, either by endorsement or by simple delivery. However in French law (and also in Belgian and Netherlands law) this does not mean that the rights evidenced by the way-bill cannot be transferred. By complying with the formalities laid down in article 1690 of the French Code
Civil, rights evidenced by the way-bill may be transferred.

It must be noted that in 1930 the League of Nations' Committee for the Organisation of Communications and Transit declared itself in favour of the creation of a negotiable document of transport, for the following purposes:

a) to guarantee the seller for the price of the goods, the buyer not being in a position to claim delivery from the carrier unless he possesses the negotiable document, which will be handed over to him only against payment of the price;

b) to allow the goods to be sold in transit, delivery being effected by the handing over of the document to the buyer;

c) to allow the bearer of a negotiable document to obtain credit on the goods carried, and in particular to deposit the title as a guarantee for the bills of exchange he issues.

The enquiry made has shown that in commercial circles it is wished that way-bill should become a negotiable document of transport, but it has also shown that carriers would not favourably accept such a change. According to the different codes, the way-bill (receipt) is evidence of the contract of carriage, but not unrebuttable evidence. International conventions follow the same principle.

According to art. 11 of C.V. entries in the way-bill concerning weight, dimensions and packing of goods, number of packages, etc., have full credence unless disproved. Entries concerning quantity, bulk, and condition of goods are evidence against the carrier only when he has verified the goods in the consignor's presence and checked them on the air way-bill, or when the entries concern the apparent condition of the goods.

These provisions correspond mainly to those of C.I.M. concerning liability in respect of entries in the way-bill. However, according to C.V., the carrier must verify the weight and number of packages; herein it differs from C.I.M., whose article 7, par. 3 provides that the laws and regulations of each State shall establish under what conditions railway companies are entitled or bound to
verify or check the weight of the goods and the number of packages. As for the other entries, the burden of proof is on the railway company if the goods have been accepted without reservations; C.V. provides on the contrary for carriage by air that the burden of proof, as to quantity, bulk, and condition of the goods, is on the consignor, unless the goods have been checked by the carrier in the consignor's presence, or unless the entries concern the apparent condition of the goods.

The Hague rules provide (art. 3) that the bill of lading must contain:

a) the particulars of the principal marks necessary to identify the goods in the form in which they are furnished in writing by the consignor before the loading of the goods begins, provided these marks are printed on the goods or applied in any other clear way on the unpacked goods or on the boxes or packing containing the goods, so that they may continue to be normally legible up to the end of the journey;

b) according to the case, the number of packages or pieces, or the quantity or weight, as they are stated in writing by the consignor;

c) the apparent state and condition of the goods.

These provisions however are of no value to the consignor, for the carrier will be free not to declare, or not to mention in the bill of lading, marks, numbers, quantities or weights which he seriously suspects of not corresponding exactly with the goods he has actually received, or which he has been unable to verify reasonably.

The burden of proof on the carrier, by reason of entries made by the consignor, is heavier according to the C.V. than according to the Hague rules, but it is less heavy than the burden the C.I.M. lays upon carriers by rail.
As to liability concerning the entries in the way-bill, three systems may be devised: a) the way-bill is good evidence, but the carrier may prove the contrary; b) the way-bill amounts in any case to full proof against the carrier; c) the entries of the way-bill will amount to full proof only in so far as they may be verified. If the first system is accepted, the carrier will always avail himself of a "no liability" clause. The second system has serious drawbacks, because there are entries which in practice may not be verified.

As we have seen, the right to dispose of the goods in transitu is differently regulated in the different European Codes:

(i) the bearer of the receipt is entitled at any moment to dispose of the goods, whether the bearer be the consignor or the consignee to whom the consignor has handed over the receipt;

(ii) the right to dispose of the goods is reserved exclusively to the consignor;

(iii) the right to dispose of the goods may be transferred from the consignor to the consignee, in some cases or under certain conditions;

(iv) the right to dispose of the goods belongs, in principle, to the owner.

The C.W. (arts. 12 and 13) and the C.I.F. (art. 21) accept, in principle, the second system.

The Hague rules do not contain special provisions on the right to dispose of the goods in transitu, but they apply only to bills of lading or similar documents, which are documents of title to the goods.

The system reserving the right to dispose of the goods in transitu exclusively to the consignor clearly offers many advantages to the carrier. It gives him a guarantee which might otherwise be jeopardized by the transferability of the right of disposal. On the other hand, it meets the interests of trade
less completely than the first system; being more rigid it does not facilitate, as much as the other, transactions upon goods in transitum; the transferability of the right of disposal increases their power of circulation, inasmuch as the right is transferable from the consignor to the consignee.

Carrier's liability. — Liability for delay and for damage to the goods carried, based on a contract of carriage, is submitted, in most countries, to the general rules on contracts, and, in other countries, to stricter rules (see Austria, Great Britain, Hungary, etc.)

What brings about contractual liability is the presence of negligence. Although most continental codes have rejected the theory of risk, which holds that negligence is not necessary in order that the debtor's liability arises, this theory, in some countries, has influenced considerably the decisions of the Courts. This is particularly the case in France, where the courts recognize exemption from liability only in case of accidents due to external events, such as cannot be foreseen (force majeure). Whether evidence that no negligence exists is sufficient to release the debtor, or whether evidence of force majeure be required, it must be presumed that the practical result, on the whole, will be the same, because, all considered, in the second case the proof of force majeure may always be obtained through all legal means, hence also by presumption.

Among international conventions, the Hague rules and the C.V. uphold the theory of negligence, while the C.I.M. applies, in principle, the theory of risk.

Article 3, par. 2 of the Hague rules provides that the carrier shall perform, appropriately and carefully, the loading, upkeep, arrangement, transport, custody, care, and unloading of the goods carried. This article should be compared with art. 4, par. 2, enumerating a list of 17 cases in which the carrier is
not liable for damage caused. This list includes shipper’s acts, defects of the goods, diversion for the purpose of saving life or property (reasonable diversion), and accidents which may be classified as force majeure. Further, this paragraph, under the letter g), provides that neither the carrier nor the ship shall be liable for loss or damage resulting from any cause other than the act or negligence of the carrier or the act or negligence of agents or persons employed in the carriage; the burden of proof, however, is on the person claiming the benefit of this immunity, and he will have to prove that neither his own negligence nor carrier’s acts, nor negligence or acts of the carrier’s agents have contributed to the loss or damage. Finally it is provided that the carrier is not liable if loss or damage is due to negligence of his servants in the navigation or in the management of the ship.

These rules apply both to losses and to damage to the goods themselves, and to damage resulting from delay in delivery. C.V. embodies the same principles. According to art. 20 of C.V. the carrier by air is not liable when he proves that he and his servants have taken all necessary measures to avoid damages, or that they were unable to take such measures. Besides this basic rule, C.V. provides that the carrier by air will also not be liable when he proves that the loss or damage is due to faulty steering, to badly conducted navigation or management, and that, in every other respect, he and his agents have taken all measures necessary to avoid damage.

According to art. 27 of C.I.M. the railway company is liable, in principle, for all damage due to total or partial loss of the goods, and also for any injury they suffer. C.I.M. however mentions two headings under which the railway company is intitled to immunity. These two headings differ as to the party on whom the burden of proof is. The first comprises the causes enumerated in art. 27, par. 2 : the railway company can claim immunity only on condition
of proving that the damage is due to one of these causes. The second comprises causes in respect of which the railway company benefits of the presumptions of law contained in art. 26, par. 2, and art. 31.

The causes of immunity enumerated in art. 27, par. 2, are the following: negligence of the party entitled to the goods; an order of the party entitled to the goods, not resulting from negligence of the railway company, defects of the goods, force majeure. C.I.M. does not give a definition of "force majeure"; according to art. 53 of C.I.M., this should be defined by national laws and regulations. The Courts of the various States generally consider that three circumstances of fact are essential elements of force majeure in the case of railway law: 1) the cause or origin of the event must be foreign to the management of the railway; 2) the event must be extraordinary and impossible to foresee; 3) the event and its harmful consequences must be unavoidable.

The causes of immunity exempting the carrier from liability are the following: transport in open trucks, performed according to tariffs or to agreement with the consignor; lack of packing or defective packing; goods loaded by the consignor or unloaded by the consignee; inherent nature of certain goods causing breakage, rust, spontaneous interior deterioration, exceptional leakage, desiccation or wastage; irregular, inaccurate, or above all incomplete designation of articles excluded from carriage because they are subject to explosion or spontaneous combustion; carriage of live stock, performed with or without escort.

According to art. 27, par. 1 of C.I.M., the railway company is liable for damage due to delay. The railway company however is exempted from liability if it proves that the delay was caused by circumstances the company could not have avoided and was powerless to remedy (art. 27, par. 3). The exact construction of this last provision is doubtful.
According to the 3rd Revision Conference, liability for delay in delivery must always be less strict than liability for damage during transit. The minutes of the proceedings of this Conference however do not give any clear indication of the meaning to be attached this last provision.

Liability nevertheless is limited by the provisions of art. 11 of C.I.M. concerning the term within which the goods must be delivered, viz. term for dispatching the goods and term for their carriage. If the railway does not overstep these terms, there is no liability for delay in delivery.

Upon what principle should the carrier's liability rest, in a convention on carriage by road - negligence or risk?

Apart from all legal argument, the theory of risk has found favour for this reason: that the burden of proof laid on the injured party often proves very difficult, when rich and powerful companies are sued, and that the latter may well bear a heavy liability.

As to burden of proof, we may remark first of all that if the goods carried have been damaged, this establishes a presumption that the carrier has not fulfilled the contract. To obtain exemption from any liability, the carrier must prove either that the damage is due to an event excluding negligence, or that he has taken all necessary precautions, thus proving that he has not been guilty of negligence usually present on these occasions. Hence the burden of a difficult proof is not upon the injured party.

As to the argument that rich and powerful companies may well bear a heavy liability, it is difficult to accept this point of view, when we consider the financial difficulties the great transport companies have to face. We must not forget that the enforcement of a purely objective liability on carriers would inevitably result in higher charges for carriage.
It has also been said that the heavy liability of the carrier would be justified by the particular nature of the contract of carriage. It happens very rarely that the person contracting with the carrier is in a position to follow the operations of a transport company, so closely as to be able to ascertain whether damage occurring during carriage should be attributed to force majeure, or to carrier’s negligence. But this argument is not sufficient to justify the acceptance of the theory of risk. It is only an argument in favour of placing of the burden of proof upon the carrier.

According to general legal principles, compensation will generally be used to meet the damage to the greatest extent, viz., both the depreciation of the plaintiff’s property (damnum emergens) and the loss of probable profit (lucrum cessans). Against this principle of private law, transport law in various States has adopted a principle ordinarily limiting damages to depreciation of property, without taking into account loss of profitable. According to this principle the carrier is liable for the whole damage only in case of malice or gross negligence.

According to article 4, par. 2 of the Hague rules, the carrier, like the shipper, will in no case be liable for loss or damage to the goods, for more than £ 100 for each package or unity, or the equivalent of this sum in other currencies – unless the nature and value of the goods have been declared by the shipper before they were shipped, and unless a statement to that effect has been introduced into the bill of lading. This declaration, thus inserted, will constitute a presumption, subject to proof or the contrary, but it shall not bind the carrier, who will be entitled to challenge it.

C.V. has also established a legal limitation of the carrier’s liability (art. 22). In the carriage of goods, liability is limited to 250 French francs for kilogram, unless the consignor has made a special declaration of interest in the delivery, at the
moment the package is handed over to the carrier, and has paid a
supplementary charge if required. In this case the carrier is
bound to pay up to the amount declared, unless he proves that this
amount is higher than the consignor's actual interest in the goods.
In case of malice, or negligence amounting to malice, on the part
of the carrier by air, art. 25 of the C.V. lays down that the
carrier shall not be entitled to avail himself of C.V. provisions
excluding or limiting his liability.

According to art. 29 of C.I.M., liability is limited, in case of loss or injury to goods carried by rail, to 100 gold
frs. for kilogram. In case of delay, if proof is not brought that
damage has resulted from it, the railway company is bound to pay
one tenth of the freight if the delay does not exceed one tenth
of the term for delivery, and then pro rata: one tenth of the freight
for each tenth or fraction of the term, up to a maximum of one
half of the price freight. If the plaintiff can prove that direct
damage has resulted to him as a consequence of the delay, the
assessment of damages may go so far as to refund the entire freight.
When the loss, injury, or delay is caused by malice or gross
negligence chargeable to the railway, the plaintiff is entitled
to full compensation of the damage suffered, up to twice the
maxima above foreseen (art. 36).

The principle of limited liability has two justifications:

(i) to avoid that the carrier, by limitation of his liability,
practically succeeds in eliminating it;

(ii) to give the consignor the possibility of estimating
the extent of the risk he takes.

This principle is a great advantage to the carrier.
When his liability is limited to a given sum, he can cover his
risks by insurance.

We have drawn attention to the fact that on the whole
clauses of exoneration are in principle valid in different
countries. It is only in France that such clauses are explicitly
forbidden.
Art. 23 of C.V. also explicitly forbids these clauses, and C.I.M. does not allow railways to set aside C.V. legal provisions. Exceptions to carrier's liability are explicitly and restrictively enumerated in the C.I.M. itself. Hence the liability system of C.V. and of C.I.M. is heavier for carriers than the systems adopted in the different countries, France excepted. On the other hand the first system is mitigated, as we have seen, by limitation in the amount of compensation.

It is thus a matter of choice between the system of leaving the carrier free to limit his own liability, and the system of limited liability.

In case of successive acts of carriage under a single contract, national laws on transport follow one of the under-mentioned three systems:

(i) The first carrier is liable for the execution of carriage until delivery of goods into the consignee's hands. He is thus liable even if the cause of loss, injury or delay is clearly to be attributed to subsequent carriers. The latter are liable only for their own acts.

(ii) Each carrier is liable jointly with other carriers for the whole journey.

(iii) The first and the last carrier, and the carrier who had performed the carriage during which the loss, injury or delay took place, are jointly liable.

C.I.M. follows the principle of the third system (iii). According to art. 42, par. 3, an action for damages may be brought against the forwarding railway company, the delivering railway company, or the railway company on whose line the event, being the cause of action, took place. Even when the delivering railway company has not received the goods, it can nevertheless be sued: the plaintiff can choose between the above said railway companies. His right of action, once exercised against the carrier as has chosen, is barred.
C.V. has also adopted the third system (iii). According to art. 30 the consignor of the goods is entitled to claim against the first carrier, and the consignee against the last carrier. Both can sue the carrier who was performing the carriage when the loss, destruction, injury, or delay took place. The carriers are jointly liable to the consignor and to the consignee.

The Hague rules do not deal with this question. Hence, the first carrier's full liability, from the time the goods are handed over to him until delivery, is universally accepted. But what is the liability of the remaining carriers? The normal principle is that liability should be on the carrier on whose line the damage took place. But it is not always easy to ascertain when and where the damage occurred, even though, at the best, each carrier can verify the apparent condition of the goods at the moment he takes them over. These considerations concur to favour a collective and joint liability of the carriers. Finally it may be asked whether the consignee should not be entitled to sue in any case the last carrier, with whom he deals at the moment of delivery and whose domicile, in many cases, is the same as the consignee's.

According to a basic legal principle, it is generally admitted that a debtor sued for a joint debt, is entitled to contribution or indemnity from his co-debtors. As we have seen, national Codes adopt the principle of joint liability and provide that the carrier who has paid compensation for damage to goods carried of for delay in delivery is entitled, according to certain rules, to claim contribution or indemnity against the carriers who have taken part in the carriage. In other countries, such as France and Spain, this right is based essentially, as we have seen, on the principle of imputability; an action for contribution or indemnity can succeed only if it is directed against the person who is proved to be guilty of the damage.

Among international conventions, only C.I.M. contains provisions for the apportionment of the compensation paid.
According to C.I.M. the railway company through whose negligence the damage has been caused, is the only party liable for it. When it has been caused by several railway companies, each of them answers for its own negligence. If no proof can be given to identify the party guilty of negligence, damages are apportioned between all the railway administrations, in proportion to the number of kilometers on which the tariffs apply, but excepting those which prove that the damage did not occur on their line. The same rules apply in case of delay, but only when delay is due to the negligence of several railway companies. The compensation is paid by these railway companies in proportion to the delay occurred on their respective lines.

Estoppel.—Most national codes recognize the principle that, once the goods have been handed over to the party entitled to them, and unreservedly accepted by him, the carrier is considered legally to have fulfilled his obligations under the contract, so that no action arising from the contract of carriage may be brought against him. We have seen how certain codes have mitigated this estoppel by making generally a distinction between latent and apparent injuries, with the object of allowing a certain period within which to sue the carrier for liability by reason of injuries of the second kind; this period varies from one country to another.

The general stipulation of the Hague rules provides that the removal of the goods from the port where they are unloaded and the placing of them under the custody of the person entitled to their delivery under the contract of carriage establishes, unless the contrary is proved, a presumption that the goods handed over by the carrier are such as described in the bill of lading (art. 3, par. 6).

This rule however does not apply when the condition of the goods has been verified in the presence of both parties at the moment of acceptance, or when a notice of loss and damage
with a general description of the loss or damage is given in writing within three days from delivery to the consignee or to his agent, before, or at the moment of, removal of the goods; or else if the loss or damage are not apparent. If the consignee has accepted the goods without protest, he is entitled, even after three days from delivery, to sue the carrier within a year — but in this case it is on him to prove that the goods had not been delivered in good condition.

According to art. 26 of C.V. acceptance of the goods without protest by the consignee establishes a presumption, unless the contrary is proved, that the goods have been handed over in good condition and in accordance with the air way-bill. In case of injury the consignee must address a protest to the carrier immediately after discovery of the injuries and at the latest within seven days from the acceptance of the goods. In case of delay, the protest must be made at the latest within fourteen days from the day on which the goods have been put at the consignee's disposal. Failing a protest within the term provided for, no action against the carrier can be taken, save in cases of fraud on the carrier's part.

According to art. 44, par. 1 of C.I.M., in case of partial loss or injury, the general rule is that acceptance of the goods bars all actions arising from carriage, in respect of railway companies. This rule does not apply when the loss or injury has been verified before acceptance by the interested party, and a written statement (procès-verbal) has been drawn up; when the verification, which should have been made as above, has been omitted only through the railway company's negligence; when the existence of latent damage has been ascertained after acceptance, provided the railway company has not offered the consignee a verification of the goods at the station of delivery, and a demand for verification has been made immediately after the detection of damage and at the latest within the seven days following the acceptance of the goods, and provided the interested party
proves the damage thus ascertained to have occurred in the interval between acceptance for carriage and delivery.

In case of protests for delay, the action is barred unless the protest has been made within the thirty days following the acceptance of the goods.

Finally the action is not barred if the interested party proves that damage was caused by malice or gross negligence, which may be attributed to the railways' company.

Under C.V. rules the consignee is thus placed in a more favourable position than under C.I.M. rules, because in the first case, even if damage to the goods is apparent, he is not bound (as under C.I.M. rules) to make his protest at the very moment of acceptance.

When the consignee is entitled to claim damages after acceptance of the goods, as provided by the Hague rules, the carrier's position becomes too difficult. The longer the consignee waits before bringing action, the more difficult it is for the carrier to make the necessary investigations. From the consignee's point of view, a not too short delay affords him a large guarantee.

Limitation of actions.-- Transport laws in most countries, as well as international transport law, have adopted the principle that legal relations between contracting parties, based on contracts of carriage, must be finally settled as quickly as possible. Transport law also provides that actions not barred by acceptance of the goods by the consignee are subject to periods of limitation shorter (generally speaking) than those established by private law in the various States. Actually, while the codes of these States, for actions arising in the field of contracts and torts, provide for periods of limitation of 3, 10, 20, 30 and even 32 years, actions arising from contract of carriage are generally barred after one year.

The Hague rules provide that the carrier and the ship shall be exempted from all liability for loss or injury, unless
action be brought within one year from the delivery of the goods or from the date on which they should have been delivered.

C.I.M. provides for a period of one year. As an exception rule, action is barred after three years when based on an injury caused by fraud or malice.

C.V. provides for a longer period of limitation longer than the one in force for carriage by sea and land. According to C.V., actions for damages must be brought, to avoid limitation, within a term of two years, running from the arrival of the goods at their destination or from the day when the aircraft should have arrived, or from the interruption of carriage.

It seems to us that there is no reason for contemplating, in international carriage by road, a period of limitation longer than the one provided for national carriage by road and for international carriage by sea and rail.

**Combined transport.**—International carriage by road may often be combined with other means of conveyance. When, for carriage of this type, the journey by road is based on a way-bill, while the journey by rail, sea, or air is covered by another document (in other words, when carriage is not based on a single contract), it is equivalent to several successive transports. In this case, naturally, to each means of conveyance the rules governing that same means must apply.

The consignor however wishes often to enter into a single contract covering all the means of conveyance employed. It is then a case of combined transport. It is evident that such kind of transport offers the greatest advantages for trade and also for communications. For this reason one may ask whether an international convention dealing with carriage by road should not also govern transport of this type.

How far have international conventions on carriage by rail, air, and sea contributed to the solution of this problem?

C.I.M. makes a distinction between two groups.
of combined transport. One of them is governed by C.I.M. and the other is not.

According to art. 2 of C.I.M., the lines of companies for transport by road and sea, but not the lines of air transport companies, may be included in the list of lines provided for in art. 58. But transport lines by road and sea must then be regular lines, they must complete the journey by rail, they must perform international transport and they must be operated by one of the contracting States or by a railway company on the list. The inclusion in the list of a road or sea transport line has the effect of placing the company operating such a line under all obligations imposed by C.I.M. and of conferring upon it all the rights granted by the convention to railways, excepting those modifications which are rendered necessary by the use of different means of conveyance. Such modifications cannot however affect the application of the provisions on liability laid down by C.I.M.

The other group of combined transports, according to C.I.M., includes international transport performed at the same time on railways and transport services other than those mentioned above.

For this group, railway companies may agree upon special conditions, which freely depart from C.I.M. rules. C.I.M. does not limit the scope of such modifications. They are not necessarily confined to the part of the transport performed by transport companies other than railways, but may actually include the part of the transport performed by the latter.

On the other hand, companies of air and sea transport are strictly bound, under C.V. and the Hague rules, to apply in the case of combined transport only the legal system established by the above conventions. C.V. even provides that, in case of combined transport performed partly by air and partly by whatever other means of conveyance, the provisions of the convention shall apply to transport by air.
In 1931 the representatives of the International Railway Union (U.C.I.) and of I.A.T.A. met to study the drafting of a convention introducing a system of combined air and rail traffic for goods. The final text was adopted by I.A.T.A. in 1932 and by U.I.C. in 1933. Article 19 of the convention provides that the liability of the carrier by air, in case of loss, injury or delay, covers the periods stated in arts. 13 and 19 of C.V. The liability of the railway company in case of loss or injury to goods, or in case of the term fixed for delivery being overstepped, covers the period during which the goods were in the railway's custody. Should it not be possible to ascertain the period during which the injury took place, liability is regulated exclusively by the rules governing transport by air. In these cases a system of uniform liability has been worked out for railway and air transport companies.

It is evident that trade and communications would be seriously hampered if, in case of combined transport, differential treatment should be applied according to whether loss or injury occurred when the one or the other means of conveyance were used.

For this reason, transport companies should try to reach an understanding with the object of securing a uniform regulation of combined international transport, in the interest of international trade.