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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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FORWARDING AGENCY

(Commission de transport)

A PRELIMINARY STUDY ON THE STATUS OF LAW ACCORDING TO SOME OF THE PRINCIPAL NATIONAL LEGISLATIONS WITH REGARD TO THE PROSPECT OF UNIFICATION

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BOWSTEAD On Agency.

Introduction

A primary difficulty in comparing the status of law in different countries is to be found in the frequent impossibility of finding terms in one language, which are exactly equivalent to the terms used in a foreign legislative system. When the rules of agency are concerned, the task is further complicated by vacillating use of terms without a clear distinguishing between different types of agent, which is particularly felt when terms are to be found in the English language. Different terms are often used for the same form of activity, and due to the lack of codified rules, different types of activity are not clearly held out from each other.

The conception of agency in English and American law shall be touched upon later.

In order to avoid ambiguity it must however be made clear which English terms shall be chosen in the survey to cover the corresponding continental terms.

For this purpose the following terms shall be used as equivalent.

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As forwarding agency shall be considered the activity of persons who, usually in their own name, undertake to arrange for the transport of goods on the account of a principal disclosed or undisclosed. Also the more casual activity may be included under this heading when undertaken against remuneration, but some legislations only deal with the activity of merchants. When the carriage is not executed by a third party, but the merchant himself undertakes the carriage, he may still at the same time be considered a forwarding agent and some legislations distinguish in the same person those two separate functions, while others in this case treat the forwarding agent entirely as a carrier.

The existence of a numerous class of intermediaries between the shipper and the carrier being due to the development which has singled out a number of functions, which the carrier is not obliged to look after, and which the shipper must take care of himself, if he does not employ a separate agent for that purpose, the functions of those agents could be summarized as the arrangement of the carriage (soignor le transport, Besorgung der Versendung). They include the setting up of a contract of carriage, reception, upkeep and forwarding to the carrier of the goods, the procuring of the necessary documents to accompany the goods, selection of carrier, mode and route of transport etc.

The forwarding agent is always an intermediary. If he enters into the bargain with regard to the sale of goods, he falls outside this category.

The forwarding agent is ordinarily a merchant. Some legislations expressly put this as a condition, while others only claim that the activity in question shall be undertaken for gain. Public institutions when acting in the form of mercantile enterprises (as for instance the state railways, shipping or air lines, or the mail) may well take upon themselves the duties of a forwarding agent, and be treated as such.
An agent, who does not act in his own name, shall, in accordance with French and German law and the national laws based thereupon, not be called a forwarding agent. In this study this term shall, when not otherwise expressly stated, in conformity herewith, only be applied to agents acting in their own name, while an agent who acts on behalf of a principal in his name without being his servant or assistant (préposé) shall be called a broker (courtier, Mäkler) whether he acts under a public licence or holding a special office or acts as a private merchant, and irrespective of the manner in which he has been given power to bind the principal.

Before venturing to draw any conclusions a short summary of the status of law according to the most important national legislations shall be attempted. It must be observed however, that time has not permitted a more profound survey, for which reason it is hoped that the deficiencies of this preliminary study will be excused.

It has been found practical to group the legislations examined in four groups according to their principal characteristics.

1. **French law**, with **Belgian** and **Netherlands** laws closely attached thereto.

2. **German law**, with **Scandinavian** and **Swiss** laws attached.

3. **Italian and Spanish law**, which having traits in common with as well French as German laws have developed more freely.

4. **English and American laws**.

The French and the German group both define the forwarding agent as acting on account of a principal in his own name.
Only the Dutch code does not make the acting in his own name a necessary condition, though attaching important rights thereto.

The great difference between the two groups is to be found in their determination of the agent's liability. According to the French group the agent must guarantee the execution of the transport, while the German group only holds the agent liable for faults and lets his liability end with the delivering of the goods to the carrier.

Another thing is that the German group knows the delcredere commission, which puts the forwarding agent in the same position as according to French law, and that French law admits clauses exonerating the agent of the ordinary strict liability, thus putting him in much the same position as according to the laws of the German group.

As the cases in which no comprehensive contract is set up could be considered exceptional, there could actually be said to be within the French and German group a choice between two systems, which is ordinarily made at the conclusion of the contract. So the difference between the French and German law may be more apparent than real, amounting to little more than a different rule of precedence between the two types of contract in case no stipulation is made by the parties to the contract.

Italian and Spanish law is distinguished by the rules on the liability of the agent, which is generally, in relation to the shipper, the same whether he acts in his own name or in the name of the shipper. The difference is to be found in the agent's relation to the carrier.

When acting in his own name the agent is fully responsible in relation to the carrier, and no relation at all is established between the shipper and the carrier. When acting in the name of the shipper, the agent assumes no liability in
relation to the carrier, while a complete and direct relation is established between the shipper and the carrier.

The extent of the forwarding agent's liability according to Italian and Spanish law is similar to that of German law, but the agent could also assume a del credere responsibility.

English law differs from all the continental legislations in its lack of statute law, and in consequence thereof its lack of fixed conceptions. In general the difference between the agent's liability when acting in his own name and in the name of the shipper is only to be found in his relation to the carrier, as in Italian and Spanish law, to which on the whole English law comes nearest. But unlike Italian and Spanish law the shipper and the carrier under English law are as a rule directly connected by the contract, also when the agent acts in his own name. There are however important exceptions to this rule, in particular when the agent is acting for principals domiciled abroad, and the right to sue may be excluded by contract. The liability of the agent is based on fault, when he has not contracted del credere.

It would be most simple in accordance with the classical continental conception to limit this study to agency executed in the agent's name. But though this can still be considered the typical form, also in countries which do not distinguish categorically between agency carried out in the name of the agent and in the name of the principal, it is hardly practical to limit the study in this way, when so important legislations do not observe this distinction. In consequence herof one might include the status of the brokers (courtiers, Mäkler) of French and German law in this study, as they may be engaged in the same kind of activity only with the difference that they act in the name of the principal.
This will, however, not be done, though their status must be touched upon in some connections.

Though the acting in his own name cannot be taken as a criterion for the trade of the forwarding agent, it seems still possible to take it as a characteristic trait, and for this reason the present study shall concentrate on the agent acting in his own name.

It is however, doubtful whether there is much reason to keep this distinction in the future development of law. The reason for its persistence is probably to be found in the historical fact that forwarding agency has been treated traditionally as a subdivision of commission, and it has been largely overlooked that practical reasons for the distinction which could be found when purchase and sale of goods or stocks are concerned, seldom exist in the field of forwarding agency.

When sale and purchase is concerned it may often be practical to keep the identity of the principal secret, and it often occurs that the agent deserves a remuneration for lending to the principal his name and his credit, when the agent is well known and has good reputation and connections while the principal has not, or at least not in the place where the trade is to be carried out. The personal credit of the shipper is rarely so important, and the shipper and carrier are as a rule aware of each other's identity, for the keeping secret of which no reason is found.

Paul Bailly (Contrat de Commission, éd. par J. Hamel) sharply criticizes the way French law attaches the privilege of the legal lien on the goods to the agent's acting in his own name. Summing up he concludes (p. 279): "peu importe que le commissionnaire agisse en son nom ou au nom de son commettant. Il lui rend dans les deux cas le même service, les deux situations sont presque identiques:"
il n'y a aucune raison de refuser au commissaire de transport, qui agit au nom de son commettant, les droits et les obligations définis par les articles 95 et suivants du Code de Commerce ".

It seems significant also that English law which has developed without regard to systematical doctrine does not recognize the sharp distinction.

Though several legislations define the forwarding agency as concerned with forwarding of goods, there is no doubt that an activity of exactly the same character is to be found regarding transport of passengers.

As a rule, travelling agencies act merely as intermediaires between the travelling public and the transportation companies and hotels reserving and procuring tickets and booking accommodation without assuming any liability for the execution of obligations undertaken. But when assuming a responsibility for the contract concluded, the travelling agencies seem to act as forwarding agents.

So it has been decided by French courts that an agency, which does not confine its activity to the delivery of tickets to the passengers, but undertakes to convoy them according to a fixed itinerary and guarantees the transport and sojourn from the beginning to the end, is a veritable commissaire de transport (Trib. com. Tourcoing, 24 April 1928).

The practical distinction between when a tourist agency should be considered a forwarding agent and when not, according to the different national legislations is however quite complicated. While the business of travelling agency more seldom comes within the French conception of forwarding agency, it might more often fall within the German conception, which ordinarily limits the agents' responsibility to the time of the loading of the goods which should probably correspond to the actual commencement of the voyage.
As the practical considerations are quite different from those involved where transport of goods is concerned, it has however been found practical, in view of the limited scope of this study, to exclude transport of passengers from further survey. Complicated questions may arise from conflict of laws where forwarding agency is concerned.

The national laws of three different persons, the agent, the shipper, and the carrier may be introduced.

Most countries have accepted the principle of the unity of the contract, which should be judged as a whole and not be judged differently according to different aspects on its various parts; but this principle cannot always be followed in all relations. In particular reservations must be made with regard to conflicts arising from the discrepancy between authority and power of the agent.

There is a general tendency to apply the lex loci executionis. This principle seems accepted in Germany, Switzerland, England, and U.S.A., but where international transports are concerned it may cause great difficulties to decide, where the contract must be said to be executed, in particular when the forwarding agency does not end by the delivery of the goods to the carrier, but includes a guarantee of their arrival at their final destination.

Other countries, in particular Italy, seem to adhere to the lex loci contractus.

A further study of the problems cannot be undertaken here.

The question is treated by Georges-René Delaunois (Des conflits des lois et le contrat de commission, in Contrat de Commission, ed. par J. Hanel), who underlines the practical advantages of applying the lex loci solutions and the unity of the contract. In Falconbridge's Conflict of Laws a chapter (XVIII) is found on agency, authority and power.
Législations
The French commercial code contains a section on the forwarding agents (des commissionnaires pour les transports par terre et par eau).

The commissionnaire in general is defined in article 94 as he, who acts in his own name or name of commerce (sous un nom social) on the account of a principal.

Article 95 furnishes all commissionnaires with a legal lien for all outlays and costs defrayed by them as well as for their commission with interest.

Articles 96-102 contain special rules for the forwarding agents. These are however somewhat lacking in clearness confounding to a certain extent the functions of the forwarding agent and the carrier, and have given rise to much doubt and confusion, particularly article 101, which states that the bill of lading forms a contract (la lettre de voiture forme un contrat) between the shipper and the carrier, or between the shipper, the agent and the carrier.

In the first place it has been argued that the bill of lading cannot form the contract. It could only be the proof of a contract depending on the consent of the parties concerned. But so far the wording does not create practical difficulties. A graver argument has been evoked by the unconditional linking of the three parties as parties to one contract. It has been argued that there must be two sets of relations, one between the shipper and the agent, another between the agent and the carrier, and that the bill of lading only establishes the relations between the latter two.

It seems however established in practice, irrespective of the theoretical difficulties this may give rise to, that the shipper acquires rights against the carrier directly by the contract concluded by the agent, and the shipper is entitled to act directly against the carrier if he chooses to do so. But then the French
courts also admit action against the carrier on the part of the consignee who is no part to the contract. This may however, be excluded in certain international relations.

So the International Convention on carriage of goods by railway, to which France is a party, provides that only he who has contracted with the railway and in some cases the consignee, can sue the railway (art. 36 and 40).

The situation of the agent seems well elucidated, by the observation of RIFERT, who remarks that the truth is that the code regards the forwarding agent at the same time as agent and as carrier. In fact the code burdens the agent with the full liability for the whole transport as well as the liability for the activity exercised directly by him.

The forwarding agent must guarantee the arrival of the goods within the time agreed upon in the bill of lading, unless a case of force majeure is legally established (art. 97). He is also held to guarantee against average or loss of the goods, if no stipulation, to the contrary is included in the bill of lading, or a case of force majeure is established (art. 98). And he must guarantee against all damages caused by inter diary agents (art. 99). For the acts of his assistants he is liable in accordance with the general rule of French law (Civil Code, art. 1384).

There is however this important difference between the status of the carrier and that of the agent, that the carrier (according to art. 103, par. 3 as amended by the law of March 17th 1905) cannot exonerate himself from the liability for loss of the goods or average due to other reasons than force majeure. Any clause to that effect is held null and void, while clauses exonerating the agent in this respect are permitted (art. 98).

The forwarding agent is responsible for the entire transport to the final destination, to which the goods are
contracted to be carried, whether the carriage is executed by one or several carriers, and is liable for any defect or lack of execution of the contract short of force majeure.

So it seems that the status of the forwarding agent must be characterized as that of a del credere agent.

According to article 96 the forwarding agent is obliged to enter into a journal the kind and quantity of the goods, and on request the value.

In article 102, which prescribes the obligatory contents of the bill of lading, it is provided that it shall contain together with the conditions of the transport, the name and domicile of the agent and be signed by him.

These two articles are the only provisions of the code tending to regulate the form and content of the forwarding agent's activity.

It is an unlucky expression when the commercial code, in article 94 after defining the commissionnaire as an agent acting in his own name goes on stating that the duties and rights of the commissionnaire, who acts in the name of a committent, are determined by the provisions of the civil code (Livre III, Titre XIII, Du Mandat). It had been clearer if the term of commissionnaire had been reserved exclusively for agents acting in their own name. It is however generally accepted that only such can avail themselves of the important privilege granted in article 92 to the agent, who is given a lien on the value of the goods, dispatched, deposited, or consigned to him as long as he is in a condition to dispose of them, by the fact of their being in his custody, or before their arrival, by a bill of lading, for his commission, outlays and costs with interest. But it remains important and is often practically difficult to distinguish the
agents thus privileged from brokers (courtiers interprètes et conducteurs de navires, and courtiers de transport par terre et par eau) whose trade is regulated by Titre V Section II) and different kinds of local agents and intermediaries (transitaires, transporteurs à la gare, déménageurs, agences de voyage, etc.), who are all very interested to obtain the practical advantage of this privilege.

French jurisprudence has never drawn the consequence of art. 101 that the formal setting up of a bill of lading should be a necessary condition for the conclusion of a contract.

In the absence of other rules or the formation of the contract between the shipper and the agent the rules of common law are applied.

The contract is considered concluded without any claim to form as soon as mutual consent is achieved. It could be concluded between absent parties, in which case it must be considered as binding, when accepted in an irrevocable manner. It could be concluded also tacitly, and it is generally accepted that the non refusal of goods dispatched to the forwarding agent is equivalent to a formal acceptance on his part. On the part of the shipper the dispatch of goods to the forwarding agent is taken as an acceptance of all conditions of general usage. This is expressed in article 12 of the clauses of the Fédération Nationale des Commissionnaires de Transport in the following terms: "La remise des marchandises équivaut à l’acceptation expresse de toutes les conditions qui précèdent."

In accordance with the terminology using the same word commission for the task and remuneration of the agent, it has been argued that only the agent, who gets his remuneration as a
commission, can enjoy the legal status of a forwarding agent. The usage of contracting with the agent for the arrangement of the transport at one price covering all expenses, and in particular the way of contracting with the agent for the payment of only the ordinary freight charged by the carrier, leaving the agent to gain his profit from what reduction he can get from the carrier, has been held contrary to the classical conception of commission and the rules on mandat, which exclude a profit gained in other ways than as a commission.

The agent should in such cases be treated as a carrier. It seems to have been accepted, however, that the status of the agent shall be judged in accordance with the intention of the parties to the contract and under due consideration of general usage.

In case the agent carries out part of the transport himself, he may very well be treated as a carrier so far as that part is concerned, but as a forwarding agent with regard to that part, in respect of which he has only acted as an intermediary.

The agent has, in the absence of special provisions in the contract, a free choice concerning the execution of the carriage. The Court of Paris says in a decision of April 26th, 1941: "Celui qui reçoit des marchandises pour les faire transporter comme il le juge bon, en recourant à telle compagnie de chemin de fer ou à telle entreprise de transport de son choix, qui acquitte les frais de ces opérations et consent de ce chef des avantages importants à son client ".

The forwarding agent has undoubtedly, in the absence of contrary stipulation in the contract, the right to substitute another in his place. But it seems doubtful if he can avail himself of article 1994 in the Civil Code, which only holds the party, who has delegated a mandate, responsible if he has acted
against the instructions of the principal or entrusted the mandate to a notoriously incapable or insolvent person. Most authors hold that he remains liable according to the rules of articles 97-99.

It has been argued that the forwarding agent should be obliged to insure the goods, with which he is trusted, but the practice of the courts has not drawn this consequence of the law, and the clauses of the Federation of forwarding agents specify that insurance is only to be covered according to written instruction by the shipper repeated in each separate case.

The status of law between the forwarding agent and the carrier is the same as between the shipper, who does not use the service of an agent, and the carrier. The carrier is however treated as an intermediary agent in so far as he undertakes to deliver the goods to a consecutive carrier, and in case of a transport to be executed by a number of separate carriers for different parts of the passage, there may accordingly be, consecutively a number of carriers responsible as intermediary agents.
BELGIUM

The Belgian Code of Commerce (Livre I Titre VII art. 12) defines the commissionnaire in exactly the same words as the French Code.

On the whole the status of the forwarding agent (commissionnaire-expéditeur) seems to be the same as in France.

No direct relation is, however, established between the shipper and the carrier, according to Belgian law. But certain authors claim that the shipper is entitled to act directly against the carrier.

The forwarding agent has the same legal lien on the goods in his possession as according to French law. According to the Civil Code (Livre III Titre XVIII art. 20 al. 7) the lien perseveres 24 hours after the delivery of the goods to the proprietor or consignee provided that they remain in his possession.
The Netherlands Code of Commerce is based on the French Code, and most of the provisions on forwarding agency are the same as in the French Code. But treating *commissionairs*, defined as in the French Code, under a title different from that on forwarding agents (Van expéditeurs), art. 86-90 the Netherlands Code does not claim that the agent must act in his own name to be considered a forwarding agent. According to *Molengraaf* (Principes de droits commerciaux Néerlandais p. 167) the forwarding agents *ordinarily* contract in their own name. The Code says that everybody occupied in forwarding goods is a forwarding agent (art. 36: De expéditeur is iemand die zuch met het doen vervoeren van koopmanschappen en goederen te land of de water bezig houdt).

The provision of the French Code that the bill of lading (vrachtbrief) forms the contract between the shipper (afzender), the agent, and the carrier (schipper), is repeated by article 90.

The responsibility of the forwarding agent is the same as according to French law.

In case the agent takes upon him to arrange the transport at a fixed price, he is considered a transport-contractor (transport-onderneemer), who is distinguished from the carrier (vervoerder), who carries out the transport himself. As far as maritime transport is considered the law of Dec. 22, 1924, decides that the contractor shall be considered a carrier.

For transport on land the question is not regulated. The question is however of importance, as the Dutch law distinguishes in the same way as the French between the liability of the agent and the carrier.

If the agent has contracted in his own name and can thus be considered a *commissionair*, he has a legal lien on the goods in his possession (art. 80) as according to French law. As he has no such privilege when contracting in the name of the principal, the distinction has a great practical importance also in Dutch law.
The trade of the forwarding agent is regulated by the Commercial Code (Handelsgesetzbuch) articles 407-415, which form a separate chapter on forwarding agency (Speditions geschäft). If this chapter does not contain the required regulation of the rights and duties of the forwarding agent, article 407.2 stipulates that the rules on the trade of the broker (Kommissions- geschäft), contained in the preceding chapter of the code, should be applied. Article 407.2 expressly states that so should in particular be the case with regard to the rules of articles 388-390 concerning the reception, preservation, and insurance of the goods. (How far each of the other articles of the chapter apply to forwarding agency is dealt with in the commented editions of the Commercial Code).

The trade of the forwarding agent is further regulated in detail by the General German conditions of forwarding agency (Allgemeine Deutsche Spediteurbedingungen).

These rules were adopted by the Union of German Forwarding Agents (Verein Deutscher Spediteure) in 1927. In 1939 they were largely revised and augmented, and by a decree of the 29th of December 1939 they were declared generally binding. This development took place in connection with the state organization of corporations of different branches of trade and industry which incorporated all forwarding agents in a common group with the storage business (Reichsverkehrsgruppe Spedition und Lagerei). This corporation ceased to exist in 1945, and as the General Conditions were to be binding on members of the corporation, it could be open to doubt, whether they are still binding after the corporation has been dissolved. The question is discussed by Julius von Gierke in "Handelsrecht und Schifffahrtsrecht, § 74. Das Speditions geschäft."
He assumes that the conditions are still binding as general usage. Now, however, they can freely be deviated from, but as they generally purpose to exonerate the agent from a too heavy or indefinite responsibility this is not actually done.

But to many kinds of forwarding agency, particularly regarding carriage by sea and transport of furniture, the conditions do not apply.

In article 407 the forwarding agent is defined as he, who for gain undertakes to forward goods by means of a carrier or charterer of ships on the account of another person in his own name.

The forwarding agent is always a merchant, and his work is employed by the shipper (Versender) under the terms characterized as hire of work (Werkvertrag). Acting in his own name he is distinguished from the broker (Frachtmäklcr), who only acts as an intermediary establishing the contact between the shipper and the carrier, and never signs the contract in his own name except according to special authorization by the shipper.

In art. 415 it is expressly stated that the rules on forwarding agency apply to any merchant who undertakes to forward goods for another in his own name even if he does not ordinarily execute the trade of a forwarding agent, but only takes upon him to arrange a single transport.

The status of law between the agent and the carrier depends on the contract of carriage. Between the shipper and the carrier the contract does not establish any rights or duties of a contractual character. When no extracontractual liability on the part of the carrier can be substantiated, the shipper has only the rights of action based on the contract against the agent, and only against the agent, with whom he has made the contract. If this first agent (Hauptspediteur) negotiates with another agent
(Zwischenpediziteur) for this latter to organize the further transport, the shipper can only act against the first agent although the second is also an independently responsible agent acting in his own name. The first agent can, however, code his rights against subsequent agents to the shipper.

The status of law between the forwarding agent and the shipper is the subject regulated by the chapter of the Commercial Code on forwarding agency.

According to German law the place where the contract is meant to be fulfilled (der Erfüllungsort) is the place, the law of which must be applied to the contract.

This is ordinarily the same place where the contract is concluded. When the forwarding agent acts as carrier, it is however the place of destination of the carriage. But article 65 of the General Conditions decides, for all cases to which they apply, that the law of the place, where that office of the forwarding agent, with which the shipper has negotiated, is situated, is to be applied.

The forwarding agent has the duty to exercise the care of a solicituous merchant. He shall look after the interests of the shipper and follow his instructions, and is particularly requested to take good care in his choice of carriers and intermediary agents (art. 408).

He is fully responsible for all damage due to fault or negligence on his own part or on the part of his assistants (Erfüllungsgehilfen), but is not liable for fortuitous mishappenings. (B.G.B. §§ 276 and 278).

Neither is he in any way responsible for damages occurring to the goods after they have been delivered in a proper state to the carrier nor for the arrival of the goods to their destination when he has only taken good care in his choice of carrier and fulfill-
ed all obligations until the goods passed over to the care of the carrier. As the assistants of the forwarding agent in carrying out the contract are not considered subsequent forwarding agents (Zwischenspediteure), with regards to those the first agent is only obliged to take due care in his choice of agents. But he is liable for the faults of brokers, if he relies on the service of such. So is also the case with regard to sub-agents (Unterspediteure). Those are agents employed by the first agent for the carrying out of the whole contract or part of the contract which the first agent is not entitled to leave to somebody else.

Whether an agent shall be considered as an intermediary agent (Zwischenspediteur), for whose acts the first agent is not liable, or a sub-agent (Unterspediteur), for whose acts the first agent is liable, depends on whether the first agent is entitled to leave the work to another agent or is obliged to carry it out under his own liability. If there is no stipulation in the contract or established usage to the contrary the first agent will not be able to liberate himself from his full liability by interposing another agent, and any agent employed by him will be considered a sub-agent, for whose acts he remains liable.

The onus of proof that he has acted with due care rests with the forwarding agent, who is held liable if he cannot explain how the goods have been lost or damaged.

The forwarding agent can however exonerate himself wholly or partly if he can prove contributory fault or negligence of the shipper. (B.G.B. § 254). This may for instance be possible if the shipper has omitted to call the agent's attention to essential circumstances concerning the condition of the goods or their exceptionally high value.

The parties are free to deviate from the rules of the code by inserting clauses in the contract to the effect of limiting or extending the agent's liability. But such stipulations could
be set aside by the courts, if an exoneration of liability is considered contrary to decent customs of trade (B.G.B. § 138). This may, for instance, occur if the agent has used a virtual monopoly to impose unfair conditions on the shipper.

When the General Conditions apply they modify considerably the responsibility of the forwarding agent, who is only liable for faults up to a certain limit, and who is liberated of the heavy onus of proof with regard to absence of fault on his part.

The General Conditions stipulate, however, that the agent is obliged to insure against all damage, which may occur during his carrying out of the contract. But the shipper is burdened with the cost of insurance, which only affects the agent’s liability. The agent is not obliged to insure the goods against damage, for which he has no responsibility, except when he is expressly ordered to do so by the shipper.

The forwarding agent has a right to commission and can claim his commission as soon as the goods are forwarded to the carrier (art. 409). If no price for his services is agreed upon, he is entitled to claim a commission in accordance with the usual rates of the place (art. 354). He is further entitled to have refunded all his outlays (B.G.B. § 670). He cannot charge the shipper with a higher freight than the freight agreed upon in the contract with the carrier (art. 408.2). He can however make a contract, in which the costs of the carriage are settled as a fixed sum, but he has in this case only the rights of a carrier, and is not entitled to commission, except when expressly stipulated in the contract (art. 413).

The forwarding agent can also undertake the carriage of the goods himself if this is not excluded by the contract, and in this case he is considered as a carrier and an agent at the same time and has the right both to the usual freight and to commission
(art. 412). If he chooses, however, to leave the carriage to somebody else, but earn a profit by collecting several consignments to be carried simultaneously thus obtaining a reduced rate, he is considered as a carrier only (art. 413.2) and cannot simultaneously exert the right of an agent to commission.

The agent has a legal lien on the goods for his commission and outlays when the goods are still in his guard, or he is able to dispose of them by way of bill of lading, mate's receipt or warehousman's certificate (art. 410). The subsequent agent is obliged to exercise the rights of his predecessor (art. 411).

The forwarding agent is in no contractual relation with the owner of the goods, when this is another than the shipper, nor with the consignee of the goods, whether he is or becomes the owner of the goods or not. The law does not furnish special provisions for these cases, which must be treated in accordance with the general rules concerning extra-contractual liability, which are based on the finding of illicit acts. The consignee, as a rule the buyer of the goods, must in the first place act against the shipper who must in his turn act against the forwarding agent. It may be then that the agent can defend himself against the shipper by arguing that he has suffered no damage. This may for instance be the case if the shipper has acquitted his contractual obligations by delivering the goods in good condition to the agent. The courts have however decided that the shipper shall be admitted to pursue the agent also for damages to the buyer, assuming that the shipper is contracting also in the interest of third parties adopting their interest as his own (Entscheidungen des Reichgerichts in Zivilsachen, Band 40, p. 189). A comprehensive study of this problem is found in a treatise by Heinrich Küpper: "Die Rechte des Kaufers gegen den Spediteur bei zu Schadenersatz verpflichtendem Verhalten des Letzteren."
Germany

Both the shipper and the agent are permitted to cancel the contract in accordance with the rules of article 627 of the Civil Code, which only exclude the case when the contracting party cannot otherwise procure the services contracted for. When the contract is cancelled by one party without important reason the other is entitled to compensation for the damages accruing.

The contract is void, if the shipper goes bankrupt.

If the forwarding agent goes bankrupt the shipper is entitled to have his goods separated from the agent's estate.
The unified Scandinavian laws on commission were the result of the work of cooperating national committees, which finished their task in 1912. In the reports presented on this occasion it was argued that it was too complicated to bring forwarding agency (spedition) within the scope of the legislation in question as long as no unified rules existed with regard to the form of bills of lading. Accordingly the provisions of the laws on commission were only made applicable to sale and purchase of goods, money representatives, or other moveables, and it remains doubtful to which extent the provisions of these laws can be applied analogously to forwarding agency in the continued absence of legislation in this field.

The conception of forwarding agency in Scandinavian law is however quite clear. In the comments to the proposals for law on commission forwarding agency was defined as the forwarding of goods in the agent's own name for the account of somebody else. This definition is repeated in a Danish law, which sets up certain general claims (Danish nationality, domicile, moral integrity, and registration) for the execution of the trade of forwarding agent. (Naeringsloven art. 61), but does not otherwise regulate the trade. The corresponding Norwegian law (nr. 6 May 17, 1890, § 35a) does not even define the terms.

The forwarding agent (speditör) is thus clearly distinguished from the broker (mægler, måklare, megler), who does not act in his own name.

Ekspeditör is an intermediary between the carrier and the shipper. It often happens that he takes upon himself at the same time to act as a forwarding agent on behalf of the shipper, but he is primarily the representative of the carrier. Vincent Galtung
(Reder og Ekspeditör p. 17) defines the ekspeditör as a person who has regular business with one or more shipping-lines and according to agreement with those concludes freight-contracts for the account of and in the name of the shipping-company, accepts and delivers goods on behalf of the shipping-company and takes care of the goods before the lading and after the unloading.

The forwarding agent on the contrary is the agent of the shipper (aftendar, befrægter), and concludes freight-contracts on his account, though in his own name.

According to Henry Ussing (Enkelte kontrakter p. 371) also the contract, by which the agent undertakes the carriage himself, is termed forwarding agency (spedition).

Galtung (Reder og ekspeditör p. 17) claims it to be characteristic of the forwarding agent that he has no permanent appointment from his principal. There seems, however, to be no necessity to exclude an agent acting permanently on behalf of one shipper from the term of forwarding agent, as long as he is still acting in his own name.

In the absence of special laws on forwarding agency the relations between the principal and the agent are primarily governed by the stipulations of the contract, with the general reservation that the contract contains nothing contrary to law and good customs of trade as expressed in the unified Scandinavian laws on contracts. When so required the contract must be interpreted and supplemented in accordance with general usage.

Particularly important in the absence of statute law are the General Conditions of the Nordic Union of Forwarding Agents (Nordisk Speditör-forbunds Almindelige Bestemmelser), which were first adopted the 1st of July 1919, and revised the 29th of May 1937.
According to these rules the liability of the forwarding agent is ended, when the goods are delivered to the carrier. The agent is only liable for damages due to fault on his own part or on the part of his assistants. The agent is exonerated of the onus of proof, and his liability is limited to one krone per kilogram, or kr. 1,000 per shipment.

It can hardly be assumed that the agent should be obliged to insure the goods, unless he was instructed by the shipper to do so or it must be assumed that he was expected to do so. The laws on commission (art. 10) prescribe that the agent entrusted with the sale or purchase of goods is obliged to insure the goods against fire, but an analogy could only be established if such insurance must be considered the general usage, which does not seem to be the case.

The forwarding agent has a legal lien including the right to retain the goods, when they are in his possession, for all claims accruing from the contract.

A forwarding agency on a del credere basis, in which case the agent guarantees the execution of the contract, is not unknown in Scandinavian practice, but it is an exception, for the assumption of which clear evidence must be produced.

On the whole the state of Scandinavian law concerning forwarding agency must be considered very similar to German law, and in case of doubt a certain illumination of the subject could sometimes be found with reference to German doctrin.

Alarik Hernberg (Rättshandbok § 64. Spedition) thus assumes that the German rule, which holds the forwarding agent liable as a carrier, when he has not informed the shipper about the identity of the carrier, could be accepted as Finnish law.
The status of the forwarding agent according to Swiss law is very similar to the rules of German law.

The forwarding agent (Spediteur, commissionnaire-expéditeur ou agent de transport) is defined in art. 439 of the Swiss Obligationenrecht, as he who undertakes, against remuneration to forward goods on the account of the shipper (Versender, commettant), but in his own name. The rules on commission (art. 425-438) are applied and supplementary thereto the general rules on agency (Auftrag art. 399-406) but with regard to the carriage of goods the relations are ruled by the provisions on the contract of carriage (art. 440-457).

Though the Swiss legislation does not distinguish between civil and commercial law the commercial character of the forwarding agency is pointed out by specifying that the law applies to agency undertaken against remuneration.

Only the shipper and the agent are parties to the contract (Speditionsvertrag) and there is no kind of contractual relation between the shipper and the carrier. Only in case of the agent going bankrupt, the shipper is entitled to act against the carrier. Otherwise, he can only act, if the agent cedes his right to him.

The agent is obliged to carry out the undertaking contracted for. He shall exercise good care, and is obliged to carry out the contract personally, when he is not expressly authorized to delegate the authority given him, or it is in accordance with usage to use sub-agents. He is only responsible for exercising good care in the choice and instruction of sub-agents, when the use of such are allowed, and of carriers. He is not supposed to guarantee the execution of the contract, and is entitled to a special del credere commission, if he enters into such bond.
The agent has a lien on the goods, which he is permitted to retain, until he has obtained his commission and recovered his outlays. (Retentionsrecht, Obligationenrecht art. 434 and Zivilgesetzbuch art. 895).

The agent is permitted to undertake the carriage himself, unless otherwise stipulated in the contract. In this case he is liable for all loss and damage, which he cannot prove to be due to force majeure (auf Umständen beruhe, die durch die Sorgfalt eines ordentlichen Frachtführers nicht abgewendet werden konnten).

A particular provision of Swiss law is that in case the forwarding agent employs the service of a public means of transport (öffentliche Transportanstalt, entreprise publique) the particular statutes of the enterprise in question are applied, unless the shipper and the agent expressly stipulate another arrangement (art. 456).
The Italian term *spedizioniere*, generally speaking, is equivalent to the term *forwarding agent* and is found in the new Civil Code of March 16, 1942 under the title concerning the forwarding agency (articles 1737 to 1741), which was unknown to the former Commercial Code. As the forwarding agent contracts in his own name but on his client's account, like a mandatory who is not representative of the interested person, the rules established for mandate (Civil Code: articles 1703 to 1730) apply also to the forwarding agency.

The forwarding agent is not a carrier; he does not transport goods. His task is to conclude on his own behalf a contract of carriage or affreightment with the carrier or carriers, if the journey covers more distances, and to secure all arrangements due to the undertaking of transport.

Therefore he appears to be responsible to his principal (i.e. the sender) only as far as the conclusion of the contract of carriage is concerned, without being liable for loss or deterioration of the goods during transport, and, generally, for the execution of such contract by third parties. In case the forwarding agent concludes a contract with a carrier in name of his principal, it is assumed that he is acting as a mandatory agent being representative of the person who appoints him.

No prescribed form is required in order to have forwarding agency established under agreement.

Goods delivered to the forwarding agent are in fact detained by him, but legal title of possession reposes on whoever has the right to it.
Italy

It may happen, finally, that the forwarding agent, though acting under mandate, allows himself to operate as a carrier, providing by his own means for the carriage of goods. In that case, he becomes invested of the right and duties of a regular carrier.
The forwarding agent (comisionista de transportes) is a merchant, whose trade is regulated by the commercial code (art. 379 and 349). Apart from one special rule (art. 376), prescribing the use of a register of the goods he undertakes to forward, the activity of the forwarding agent is regulated by the general rules on comisión mercantil (art. 244 - 280). The comisionista can act either in his own name or in the name of his principal (art. 245).

As comisión mercantil is defined a mandate, which has as its purpose an act of commerce, and either the principal or the agent is a merchant.

If the agent intends to contract in the name of the principal, it must be clearly manifested. In case of doubt the agent is considered to have contracted in his own name (art. 247).

When the agent has contracted in his own name, no relation is established between the principal and third parties, who are mutually unable to act against each other (art. 246).

While in relation to third parties the agent is either directly obliged according to the contract when he has signed in his own name, or not at all involved when he has signed in the name of the principal, the liability of the agent towards the principal is the same. In this respect the Spanish law is very similar to Italian law. There is however a special rule, which holds the agent acting in his own name jointly responsible with the carrier (art. 275) according to the rules on land and sea transport respectively.

Any agent is obliged to carry out agency undertaken. He must use great care, and act in accordance with the instruction of his principal. He can otherwise act in accordance with usage.
and to the best of his judgement, but must never act against any express disposition of the principal. If he acts according to instructions, he can never be held responsible for damages accruing therefrom (art. 254), while he is held responsible for all damages or losses occasioned by his failure to follow instructions (art. 256).

The agent is obliged to carry out his agency personally, unless delegation was permitted by the contract or follows from general usage of commerce (art. 261). He is responsible for the acts of his substitutes, even when delegation is permitted, if he chooses himself the person to whom the authority is delegated. In case the principal chooses the delegate, the agent's liability ceases (art. 262).

The agent is not allowed to execute the transport himself (art. 267) except with the permission of the principal.

The agent is only obliged to insure the goods if ordered to do so. If he fails to insure, when directed to do so, he is obliged to compensate all losses accruing.

The agent is responsible in general for the goods, with which he is entrusted, but he is exonerated when the loss or damage is due to fortuitous event, - force majeure, the passage of time or defect of the things in question (vicio propio de la cosa) (art. 266).

The del credere guarantee, known as comisión con garantía (art. 272) is an exceptional liability, which must always be expressly undertaken.

All agents have a legal lien on the goods in their custody or at their legal disposal for all outlays and costs as well as for their commission. This lien remains on the goods eight days after they have passed out of the hands of the agent (art. 276 and 375).
English law does not have a well defined conception of the forwarding agent as distinguished from other kind of agents, as it is found in Continental legislations.

Within the whole field of agency the Factors Act is the only statute law, and as it applies to mercantile agents, whose business is to sell or buy goods, no rules concerning the relations between principal and forwarding agent could be found there.

Such rules, in so far as they could be established, belong to common law, as extracted from decided cases.

Though it is here chosen to use the term forwarding agent which is used parallel with the terms shipping agent or freight agent, it should be noticed that the kind of activity here treated under this term is often exercised by agents, who are called brokers. This term most often corresponds to the continental conception of courtier or Mäkler, but as English law does not distinguish between contracts concluded in one's own name or in the name of a principal in the same way as continental law, the activity of separate kinds of agents cannot very well be held out from each other. According to the definition of MacLachlan (Treatise on the Law of Merchant Shipping, 7 ed., p.136) a shipbroker is, however, an agent or middleman between the mercantile and shipping communities, for the purpose of procuring freights and of negotiating the sale and purchase of ships. He is thus ordinarily an agent of the carrier and not of the shipper, but as both parties could use the same intermediary, he may be in some cases the agent of the shipper.
The status of law depends primarily on the authority of the agent (The space of this survey does not permit an examination of questions arising from the agent's power to exceed his authority).

The authority depends primarily on the contract, but as no form is required, it is often insufficient. In this case it must be interpreted in accordance with general usage, which may vary from place to place, as well as according to which kind of transport is concerned. The authority may be implied in so far as acts which form a normal part of the business in question, are concerned and need only be express if containing unusual terms.

The agent may have to act either for a disclosed or an undisclosed principal. The principal may be disclosed but unnamed, which means that the agent has made it clear to the third party that he is acting on behalf of a principal, without mentioning whom. This case is, however, hardly of any practical importance where transport of goods is concerned. Though there is no legal necessity of disclosing the name of the principal (as for instance in France, where it is claimed for reason of taxation) it seems difficult within the field of transport to find much reason for keeping the name of the shipper secret. The secrecy, which may be very practical for instance for stockbrokers, seems here out of the place.

The agent must act in person, and has no power to delegate his authority or to appoint a sub-agent to do any act on behalf of the principal except with the express or implied authority of the principal. But the authority of the principal is often implied, in particular when the employment of sub-agents is justified by the usage of the trade, or when it may be presumed
that the principal was agreed to delegation of the authority.

There is not privity of contract between a principal and sub-agent, and the principal can only enforce his rights by action against the first agent. If a sub-agent was appointed without the authority of the principal, the principal is not bound by his acts.

The agent is bound to perform the undertaking he has contracted for. He must strictly pursue the terms of his authority, and obey all lawful instructions of the principal. In the absence of express instructions he must act according to usage, and where there is no special usage to the best of his judgement. It is the duty of the agent to exercise such skill, care and diligence in the performance of his undertaking as is usual or necessary for the proper conduct of the profession. What is usual or necessary is a question of fact depending upon the nature of the agency and the circumstances of the case.

The agent must act with perfect good faith and make full disclosure of any personal interest he may have in the conduct of affairs of his principal. He is obliged to render full account of his transactions to the principal, and is not permitted to acquire any personal benefit therefrom without the knowledge and consent of his principal.

If the agent enters into any transaction in which he has a personal interest conflicting with his duty to the principal, the principal may either repudiate the transaction, or he may affirm it, in which latter case he is entitled to recover from the agent any profit he has made in respect thereof. If not otherwise instructed the agent is requested to contract in the name of his principal, and to set up contracts in such a way that they shall be directly binding on both the principal and third party
and entitle each of those two parties to sue the other on the basis of the contract. It may however be a consequence of usage that the agent is called upon to contract in his own name. This is in particular the usage when the agent is acting for a foreign principal, meaning a principal, who does not reside or carry on business in England.

When the agent acts in the name of his principal he does not incur any liability to the principal for the execution of the contract. Only when he acts as a del credere agent, in which case he is entitled to a special del credere commission, does he guarantee the due performance of the contract. The agent can sign in the name of the principal and still assume a del credere liability.

The agent is always liable for any damage caused to the principal by the negligence or breach of duty on his own part as well as on the part of sub-agents employed by him.

The agent is entitled to remuneration for his work. If it is not directly stipulated in the contract how much he shall be paid, the agent is entitled to the usual remuneration, or if no custom or usage can be relied upon, a reasonable remuneration. The agent is entitled to full compensation, if the contract is revoked by the principal. He is entitled to recover all expenses paid.

The agent has a legal possessory lien on the goods of his principal in the possession of the agent. The agent is entitled to retain the goods in his possession until the principal has satisfied all claims for remuneration earned, and outlays and costs defrayed under the execution of the contract. The agent’s lien on the goods is however confined to the rights of the principal in the goods, and must yield to previous rights and equities of third persons.
The lien is equally applied whether the agent is personally liable for the performance of the contract or not.

The principal is bound directly by the acts of the agent, acting within the scope of his authority, and at the same time the principal acquires directly by the contracting of the agent the rights contracted for by him, irrespective of whether the agent is also personally liable or not. Every principal, whether disclosed or undisclosed may sue or be sued in his own name, unless it is expressly excluded by the terms of the contract. In case of foreign principals, however, such cannot be sued and are not entitled to sue on any contract made by an agent in the United Kingdom, unless the agent was authorized to establish privity of contract between the principal and the third party, and the intention of the agent to establish such privity was clearly manifested by the contract or factual circumstances. Usage and customs may modify these general rules. When an agent contracts personally though also on behalf of his principal, he is personally liable, and may be sued by the third party in his own name, on the contract, whether the principal is named therein or not. The agent is presumed to have contracted personally, if he has signed in his own name without qualification.

Where loss or injury is caused by any wrongful act or omission of an agent to a third party, the agent can always be sued as personally liable.

If the agent has contracted personally he is entitled to sue third parties in his own name otherwise not, neither when acting as a del credere agent.
The American law with regard to forwarding agency is primarily the English common law.

Some statute law is, however, found in the Interstate Commerce Act, Part V, Freight Forwarders (U.S. Code, Title 49, Transportation, Sec. 1001-1002). Freight forwarder or forwarding merchant are the usual American terms for the forwarding agent.

This act applies to "interstate commerce", which is defined as transportation between points in different states within the United States, between points within the same state, but through any place outside thereof, and between the United States and foreign countries. Only transportation between points within the same state, and not touching any point outside that state, is excluded from federal regulation, and governed by the law of the state in question. A survey of the law of the individual states shall not be attempted, but could be assumed ordinarily to be based on English common law.

The Interstate Commerce Act chiefly purports to control the rates charged, and secure equal treatment to anybody, forbidding all undue preference or discrimination and combining to control the traffic in a monopolistic way. In order to accomplish this wide powers are given to the Interstate Commerce Commission, which has authority to institute investigations and determine rates and conditions.

For the purpose of the act freight forwarder means any person, firm, etc., which (otherwise than a carrier subject to the provisions of the same act on carriers) holds itself out to the general public to transport or provide transportation of property, for compensation, and which, in the ordinary and usual course of its undertaking assembles and consolidates, or provides for
assembling and consolidating shipment of such property, and performs, or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipment, and assumes responsibility for the transportation of such property from point of receipt to point of destination, and utilizes, for the whole or any part of the transportation of such shipment, the services of a carrier or carriers subject to the chapters of the act on carriers.

No person is allowed to act as a freight forwarder unless he holds a permit from the Interstate Commerce Commission. The commission shall issue such permit to any applicant, who is found ready, able, and willing properly to perform the service proposed, and the proposed service, to the extent authorized by the permit, is found consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act; otherwise such application shall be denied.

The freight forwarder shall inform the Commission of his rates and charges before they could be applied.

The act is silent about the contractual relations between agent, principal and third parties and the extent of the liability of the agent.

As according to English law the agent may act either in his own name or in the name of the principal.

According to the practice of the courts the freight forwarder is not considered a common carrier, a person who offers carriage to the public, but he is nevertheless held liable for not receiving goods, unless showing good cause for the refusal (see American and English Encyclopaedia of law, Forwarding Merchants).

An activity, which could often be characterized as forwarding agency is, however, exercised by so-called express
companies, which are common carriers. They are companies organized for the speedy transportation and personal delivery of goods, in particular parcels. They are considered common carriers, though they can use the conveyances of other carriers as well as carry out the transport by their own means of transport. In the absence of contrary contractual stipulation they are insurers of the safe and speedy personal delivery of the goods at the place of destination, and are only exonerated when the goods are lost by "act of God or the public enemy".

The forwarding merchant is distinguished from the carrier by having no interest in the conveyance or the freight, being remunerated by the shipper by way of a commission. The distinction may cause practical difficulties, but is important for the determination of the extent of liability. In case a common carrier receives goods to keep in store until orders should be given to transport the same, he has been held a forwarder, while he is held liable as a carrier if the deposit is a mere accessory to the carriage. The forwarding merchant is only liable for ordinary diligence, and there seems to be considerable difference in degree, in what is here claimed, from the very high degree of skill and care required by English law. The forwarder must obey the instruction of the consignor, either expressly or fairly implied, and is liable to any loss accruing from disregard thereof. The forwarder is liable for the acts of all agents employed by him.

Though only liable for ordinary care, the forwarding agent is yet bound to give some account of the property before he can throw on the plaintiff the onus of proving negligence. Where he made no memorandum of goods delivered to him, and could not account for them from that time, a forwarder was held liable for the loss of the goods without further proof of negligence.
In case of combined transportation there is a presumption that each carrier is only a forwarder beyond his own line. But the use of the word "forward" in the contract is not enough to reduce a carrier's liability to that of a forwarder if the actual undertaking according to the contract has the nature of carriage.

As well the forwarder as the carrier has a legal lien on the goods for all charges connected with the transport on the goods in his custody.
CONCLUSIONS

Summing up the status of the forwarding agent in order to judge what could practically be done to promote unification within this field of law two distinct issues present themselves.

One is the choice of the limits within which to fix our conception of the forwarding agent.

The other is the choice of the rules, which have a chance to be accepted as an international standard.

Faced with the problem of fixing a concise definition of forwarding agency, it must be admitted that no legislation has succeeded to give a definition, which leaves no doubt as to whether a certain activity falls within or without the conception chosen. In practical life the issue is obscured by the fact that the same person in the pursuance of his trade often combines a number of different activities, and the same act of commerce may in some cases fall either within or without the conception chosen when considered in different relations. So it seems necessary to give up the wish for a clear well defined limitation of the subject, which could form a satisfactory logical basis for the task in question. And one must fall back on the rather vague traditional conception, which varies in the different countries.

Here one is led on to the next question, which rules could be practically chosen.

If it is found practical to aim at a universal unification the vague English conception of forwarding agency must be born in mind. If it is, however, found impracticable at the present moment, to aim further than a continental European unification, a more restricted conception may be used.
Three ways of unification present themselves: a unification of the national legislations, a unification by way of international convention, regulating the international trade only, while leaving the state of national law to the legislation of individual states, or a non-legislatory unification based on the introduction of one or a few standard contracts with detailed regulations, which could be generally accepted by the organisations of forwarding agents, trade and transport.

In case a universal unification should be aimed at, the claim that the agent must act in his own name would probably have to be given up. On the European continent however, only the Spanish and Dutch law among the legislations surveyed do not limit the conception to agency in the agent's own name.

Only the French group of legislations holds the forwarding agent liable to guarantee the execution of the transports. The liability according to all other legislations, though varying in details, is based on the finding of faults in the agent's handling of his agency, which is ordinarily ended with the delivery of the goods to the carrier. A liability of the agent concerning the transport executed by the carrier must be based on the agent's wilful misconduct or negligence in his choice of carrier or conclusion of contract with him.

Generally both the agent and the principal are bound by the contract, and liable to pay damages for breach of contract if not executed. German law however gives both parties a right to cancel the contract, when this can be done without prejudice to the other party.

All legislations hold the forwarding agent liable to use diligence and care in carrying out his agency, but the degree of skill and care claimed varies a good deal in the practise of the courts in different countries.

It is unanimously agreed that the agent is obliged to
follow the principal's instructions, and is liable for all losses accruing in disregard thereof.

He is generally held liable for the acts of his employees.

With regard to independent sub-agents the picture is more variegated.

French, Spanish, and English law ordinarily hold the agent liable for the acts of sub-agents, though the agent be exonerated, if the sub-agent was employed on the express order of the principal - not with his permission only.

German and Italian law does not hold the agent liable for the act of sub-agents, unless such were employed without express or implicit authorization.

Whether an agent is found authorized to use a sub-agent depends in lack of contractual stipulation, either permitting or forbidding delegation, on usage.

Most legislations demand that the agent shall carry out his agency personally, but usage to the contrary is generally respected. French las permits delegation, but then the first agent is held fully responsible anyway.

All legislations recognize some kind of legal lien on the goods to the benefit of the forwarding agent.

French law gives the forwarding agent a legal lien on the goods as long as he is in possession of the goods or can dispose of them by way of legal documents, but makes this extensive lien dependant on the agent's contracting in his own name. Also Dutch law, which does not make the contracting in one's own name a criterion of forwarding agency makes it a condition for granting the same lien as French law. A similar lien is granted by German law.

Swiss law only gives a right to retain the goods.
Spanish law gives a full lien on the goods, and grants such irrespective of the agent's having contracted in his own name or not.

According to Spanish law the lien remains on the goods eight days after they have passed out of the hands of the agent.

English law does not either make the lien dependant on whether the agent has contracted personally or not. The lien is confined to the rights of the principal in the goods, and must yield to previous rights and equities of third parties.

The relations in case the agent wants to execute the carriage himself (contre-partie, Selbstentritt) is differently arranged, though all legislations recognize the right of the parties to regulate it in the contract.

In the absence of stipulations French law always permits it, but the agent is then treated as a carrier, and though the legal responsibilitu is the same, there is the great practical difference that the carrier is not entitled to the benefit of clauses limiting his liability permitted to the forwarding agent.

German law, permitting the execution of the carriage by the carrier himself, treats him simultaneously as a forwarding agent and as a carrier, according to the relation in question.

Scandinavian law claims some point of support in the contract or usage or at least some evidence of tacit sanction to admit the right of the agent to execute the carriage himself.

Spanish law makes the permission of the principal an necessary condition.

English law also makes the permission, at least implied, a necessary condition.

It seems that a unification must either adopt the principle of the principal's consent, or burden the agent with
an extensive liability from the moment he undertakes the transport himself. The latter alternative has the advantage of making unnecessary the often difficult proof of consent, which could be tacitly implied.

The system of the agent assuming a del credere liability is to be found in all legislations. In case the agent has contracted del credere, all legislations give him a status, which is almost identical with the rule of French law.

The determination of the contractual relations between the principal and the carrier and their right to sue each other differ quite widely.

French law directly links the three parties, the shipper, the agent and the carrier as parties to the contract. The same provision is repeated by Dutch law; while no direct relation is established between shipper and carrier by Belgian law.

German law distinguishes neatly between the two sets of relations between the shipper and agent, and between the agent and carrier, and admits no contractual relation between shipper and carrier, and this system is followed by Swiss law. Italian and Spanish law make the same distinction. When the agent has contracted in his own name, only he is a party to the two sets of contracts, and the sender and carrier are excluded from acting directly against each other.

On the other hand the shipper and carrier are the only parties to the contract, when the agent has acted in the name of the shipper. In this case the shipper and carrier directly acquire all contractual rights against each other, and no contractual relation is established between the agent and the carrier.

The general principle of English law is that the principal directly acquires all contractual rights against third parties, with which the agent has contracted, whether he has done
so in his own name or in the name of the principal, and that the principal and third parties are entitled directly to sue each other. This rule does not exclude the simultaneous existence of a privity of contract between the carrier and the agent, who has acted in his own name. On the other hand as well a contractual stipulation as general usage may exclude the establishment of a contractual relation between the shipper and the carrier. This system is undoubtedly too complicated to be used out of the countries of English law, and a choice must be made between the system immediately linking the three parties, and giving the shipper and the carrier a full right to act directly against each other, and the system distinguishing two separate unconnected acts of relations. Any compromise between these two logically clear solutions seems apt to complicate the problems in an unnecessary way.

The French system is of course very simple and easy, but it seems to a certain extent to ignore a principal trait in the juridical character of the forwarding agency, which is precisely to interpose between the two principal parties an intermediary, who is to liberate the shipper of all the troubles and intricacies connected with the arrangement of the transport ... In consequence of this consideration it seems natural to let all litigations be directed against the agent. For the purpose of unification it counts also that this is the system followed by the majority of legislations, and as English law makes possible to choose this system, where it is not implied, only French law is contrary.

A number of complex questions, which it has not been found possible to enter into, in this short study, may arise from the differences between the ways different national legislations determine acts of commerce, and the absence of a distinction
between commercial and civil acts in other legislations. It seems, however, justified to leave these questions aside, as they will very seldom give rise to difficulties where forwarding agency is concerned, considering its typically commercial character in the overwhelming number of cases.

Other problems may arise concerning when and how the forwarding agency is ended in case of death, bankruptcy or other hindrance afflicting either the shipper or the agent.

While it seems possible to regulate internationally whether a voluntary cancellation of the contract should be permitted, a regulation of the impediments falling outside the powers of the parties seems to involve too complicate problems.

It might, however, be practically possible to determine internationally which national law shall be applied, where international transports are concerned.
B. STATUTORY PROVISIONS
Belgium

Code de Commerce

Livre I – Titre VII – De la commission.

Art. 12. Le commissaire est celui qui agit en son propre nom ou sous un nom social, pour le compte d'un commettant.

Art. 13. Les devoirs et les droits de la personne qui agit au nom d'un commettant sont déterminés par le code civil, liv. III, tit. XIII.

Art. 14. Tout commissaire a privilège sur la valeur des marchandises à lui expédiées, déposées ou consignées, par le fait seul de l'expédition, du dépôt ou de la consignation, pour tous prêts, avances ou paiements faits par lui, en sa qualité de commissaire, soit avant l'expédition des marchandises, soit pendant le temps qu'elles sont en sa possession.

Ce privilège ne subsiste que sous la condition que le commissaire ou un tiers convenu entre les parties a été mis et est resté en possession des marchandises.

Dans la créance privilégiée du commissaire sont compris, avec le principal, les intérêts, commission et frais.

Art. 15. Si les marchandises ont été vendues et livrées pour le compte du commettant, le commissaire se rembourse, sur le produit de la vente, du montant de sa créance, par préférence aux créanciers du commettant.
Art. 94. Le commissaire est celui qui agit en son propre nom ou sous un nom social pour le compte d'un commettant. Les devoirs et les droits du commissaire qui agit au nom d'un commettant sont déterminés par le code civil, livre III, titre XIII.

Art. 95. Tout commissaire a privilège sur la valeur des marchandises à lui expédiées, déposées ou consignées, par le fait seul de l'expédition, du dépôt ou de la consignation, pour tous les prêts, avances ou paiements faits par lui, soit avant la réception des marchandises, soit pendant le temps qu'elles sont en sa possession.

Ce privilège ne subsiste que sous la condition prescrite par l'article 92 qui précède.
Dans la créance privilégiée du commissaire, sont compris, avec le principal, les intérêts, commissions et frais. Si les marchandises ont été vendues et livrées pour le compte du commettant, le commissaire se rembourse, sur le produit de la vente, du montant de sa créance, par préférence aux créanciers du commettant.

Art. 96. Le commissaire qui se charge d'un transport par terre ou par eau est tenu d'inscrire sur son livre-journal la déclaration de la nature et de la quantité des marchandises, et, s'il en est requis, de leur valeur.

Art. 97. Il est garant de l'arrivée des marchandises et effets dans le délai déterminé par la lettre de voiture, hors les cas de la force majeure légalement constatée.

Art. 98. Il est garant des avaries ou pertes de marchandises et effets, s'il n'y a stipulation contraire dans la lettre de voiture, ou force majeure.
Art. 99. Il est garant des faits du commissaire intermédiaire auquel il adresse les marchandises.

Art. 100. La marchandise sortie du magasin du vendeur ou de l'expéditeur voyage, s'il n'y a convention contraire, aux risques et périls de celui à qui elle appartient, sauf son recours contre le commissaire et le voiturier chargés du transport.

Art. 101. La lettre de voiture forme un contrat entre l'expéditeur et le voiturier, ou entre l'expéditeur, le commissaire et le voiturier.

Art. 102. La lettre de voiture doit être datée.
Elle doit exprimer
La nature et le poids ou la contenance des objets à transporter.
Le délai dans lequel le transport doit être effectué.
Elle indique:
Le nom et le domicile du commissaire par l'entremise duquel le transport s'opère, s'il y en a un,
Le nom de celui à qui la marchandise est adressée.
Le nom et le domicile du voiturier.
Elle énonce:
Le prix de la voiture,
L'indemnité due pour cause de retard.
Elle est signée par l'expéditeur ou le commissaire.
Elle présente en marge les marques et numéros des objets à transporter.

La lettre de voiture est copiée par le commissaire sur un registre coté et paraphé, sans intervalle et de suite.
§ 388. (Ankunft in mangelhaftem Zustande, Notverkauf)

Befindet sich das Gut, welches dem Kommissar zugesendet ist, bei der Ablieferung in einem beschädigten oder mangelhaften Zustande, der ausserlich erkennbar ist, so hat der Kommissar die Rechte gegen den Frachtführer oder Schiffer zu wahren, für den Beweis des Zustandes zu sorgen und dem Kommittenten unverzüglich Nachricht zu geben; im Falle der Unterlassung ist er zum Schadensersatz verpflichtet.

Ist das Gut dem Verderb ausgesetzt oder treten später Veränderungen an dem Gute ein, die dessen Entwertung befürchten lassen, und ist keine Zeit vorhanden, die Verfügung des Kommittenten einzuholen, oder ist der Kommittent in der Erteilung der Verfügung säumig, so kann der Kommissar den Verkauf des Gutes nach Massgabe der Vorschriften des § 373 bewirken.

§ 390. (Beschädigung beim Kommissar, Unterlassung der Versicherung)

Der Kommissar ist für den Verlust und die Beschädigung des in seiner Verwahrung befindlichen Gutes verantwortlich, es sei denn, dass der Verlust oder die Beschädigung auf Umständen beruht, die durch die Sorgfalt eines ordentlichen Kaufmanns nicht abgewendet werden konnten.

Der Kommissar ist wegen der Unterlassung der Versicherung des Gutes nur verantwortlich, wenn er von dem Kommittenten angewiesen war, die versicherung zu bewirken.

Vierter Abschnitt - Speditionsgeschäft

§ 407. (Begriff, Unwendung des Kommissionsrechts)

Spediteur ist, wer es gewerbsmässig übernimmt, Güterversendungen durch Frachtführer oder durch Verfrachter von
Geschiffen für Rechnung eines anderen (des Versenders) in eigenem Namen zu besorgen.
Auf die Rechte und Pflichten des Spediteurs finden, soweit dieser Abschnitt keine Vorschriften enthält, die für den Kommissionär geltenden Vorschriften, insbesondere die Vorschriften der §§ 388 bis 390 über die Empfangnahme, die Aufbewahrung und die Versicherung des Gutes, Anwendung.

§ 408. (Pflichten des Spediteurs, Frachtberechnung)
Der Spediteur hat die Versendung, insbesondere die Wahl der Frachtführer, Verfrachter und Zwischenspediteure, mit der Gorgfalt eines ordentlichen Kaufmanns auszuführen; er hat hierbei das Interesse des Versenders wahrzunehmen und dessen Weisungen zu befolgen.
Der Spediteur ist nicht berüchtigt, dem Versender eine höhere als die mit dem Frachtführer oder dem Verfrachter bedingene Pracht zu berechnen.

§ 409. (Fälligkeit der Provision)
Der Spediteur hat die Provision zu fordern, wenn das Gut dem Frachtführer oder dem Verfrachter zue Beförderung übergeben ist.

§ 410. (Gesetzliches Pfandrecht)
Der Spediteur hat wegen der Fracht, der Provision, der Auslagen und Verwendungen sowie wegen der auf das Gut gegebenen Vorschüsse ein Pfandrecht an dem Gute, sofern es noch im Besitze hat, insbesondere mittels Konsesseins, Ladesehens oder Lagerscheins darüber verfügen kann.

§ 411. (Zwischenspediteur)
Bedient sich der Spediteur eines Zwischenspediteurs, so hat dieser zugleich die seinen Vormanne zustehenden Rechte, insbesondere dessen Pfandrecht, auszuüben.
Soweit der Vormann wegen seiner Forderung von dem Nachmann befriedigt wird, geht die Forderung und das Pfandrecht des Vormanns auf den Nachmann über, Dasselbe gilt von der Forderung und dem Pfandrechte des Frachtführers, soweit der Zwischenspediteur ihn befriedigt.

§ 412. (Selbsteintritt)
Der Spediteur ist, wenn nicht ein anderes bestimmt ist, befugt, die Beförderung des Gutes selbst auszuführen.
Macht er von dieser Befugnis Gebrauch, so hat er zugleich die Rechte und Pflichten eines Frachtführers oder Verfrachters; er kann die Provision, die bei Speditions-
§ 413. (Spedition zu festen Spesen; Sammelladung)
Hat sich der Spediteur mit dem Versender über einen bestimmten Satz der Beförderungskosten geeinigt, so hat er aus schliesslich die Rechte und Pflichten eines Frachtführers. Er kann in einem solchen Falle Provision nur verlangen, wenn es besonders vereinbart ist.

Bewirkt der Spediteur die Versendung des Gutes zusammen mit den Gütern anderer Versender auf Grund eines für seine Rechnung über eine Sammelladung geschlossenen Frachtvertrags, so finden die Vorschriften des Abs. 1 Anwendung, auch wenn eine Einigung über einen bestimmten Satz der Beförderungskosten nicht stattgefunden hat. Der Spediteur kann in diesem Falle eine dem Umstanden nach angemessene Fracht, höchstens aber die für die Beförderung des einzelnen Gutes gewöhnliche Fracht verlangen.

§ 414. (Verjährung)

Die Verjährung beginnt im Falle der Beschädigung oder Minderung mit dem Ablaufe des Tages, an welchem die Ablieferung stattgefunden hat, im Falle des Verlustes oder der verspäteten Ablieferung mit dem Ablaufe des Tages, an welchem die Ablieferung hätte bewirkt sein müssen.

Die im Abs. 1 bezeichneten Ansprüche können nach der Vollendung der Verjährung nur aufgerechnet werden, wenn vorher der Verlust, die Minderung, die Beschädigung oder die verspätete Ablieferung dem Spediteur angezeigt oder die Anzeige an ihn abgesendet worden ist. Der Anzeige an den Spediteur steht es gleich, wenn gerichtliche Beweisaufnahme zur Sicherung des Beweises beantragt oder in einem zwischen dem Versender und dem Empfänger oder einem späteren Erwerber des Gutes wegen des Verlustes, der Minderung, der Beschädigung oder der verspäteten Ablieferung anhängigen Rechtsstreite dem Spediteur der Streit verkündet wird.

Diese Vorschriften finden keine Anwendung, wenn der Spediteur den Verlust, die Minderung, die Beschädigung oder die verspätete Ablieferung des Gutes vorsätzlich herbeigeführt hat.
§ 415. (Gelegenheitsspediteur)

Die Vorschriften dieses Abschnitts kommen auch zur Anwendung, wenn ein Kaufmann, der nicht Spediteur ist, im Betribe seines Handelsgewerbes eine Guterversendung durch Frachtführer oder Verfrachter für Rechnung eines anderen in eigenem Namen zu besorgen übernimmt.
Sezione III - Della spedizione.

Art. 1737 - Nozione. - Il contratto di spedizione è un mandato col quale lo spedizioniere assume l'obbligo di concludere, in nome proprio e per conto del mandante, un contratto di trasporto e di compiere le operazione accessorie.

Art. 1738 - Revoca. - Finché lo spedizioniere non abbia concluso il contratto di trasporto col vettore, il mittente può revocare l'ordine di spedizione, rimborsando lo spedizioniere delle spese sostenute e corrispondendogli un equo compenso per l'attività prestata.

Art. 1739 - Obblighi dello spedizioniere. - Nella scelta della via, del mezzo e delle modalità di trasporto della merce, lo spedizioniere è tenuto ad osservare le istruzioni del committente e, in mancanza, a operare secondo il migliore interesse del medesimo.

Salvo che gli sia stato diversamente ordinato e salvi gli usi contrari, lo spedizioniere non ha obbligo di provvedere all'assicurazione delle cose spedita.

I premi, gli abboni e i vantaggi di tariffa ottenuti dallo spedizioniere devono essere accreditati al committente, salvo patto contrario.

Art. 1740 - Diritti dello spedizioniere - La misura della retribuzione dovuta allo spedizioniere per l'esecuzione dell'incarico si determina, in mancanza di convenzione, secondo le tariffe professionali o, in mancanza, secondo gli usi del luogo in cui avviene la spedizione.

Le spese anticipate e i compensi per le prestazioni accessorie eseguite dallo spedizioniere sono liquidate sulla base dei documenti giustificativi, a meno che il rimborso e i compensi siano stati preventivamente convenuti in una somma globale unitaria.

Art. 1741 - Spedizioniere vettore - Lo spedizioniere che con mezzi propri o altrui assume l'esecuzione del trasporto in tutto o in parte, ha gli obblighi e i diritti del vettore.
Art. 80. Een commissiehuis is voor de vorderingen, welke hij als zoodanig ten laste van zijn commissiegever heeft, zoo ter zake zijner voorgeschoten gelden, interesten, kosten en provisie als voor zijne nog loopende verbindtenissen, bevoorrecht op de goederen, die de commissiegever hem, ter verkoop of om die tot nadere beschikking onder zich te houden, heeft toegezonden, of die hij voor desen heeft gekocht en ontvangen, zoolang zij zich in zijne magt bevinden.

Van expediteurs.

Art. 86. De expediteur is iemand die zich met het doen vervoeren van koopmanschappen en goederen te land of te water bezig houdt. Hij is verplicht in een dagregister onder-scheidenlijk aan te teekenen den aard en doeleindelijk der te vervoeren goederen of koopmanschappen, alsmede, zulks gevorderd worden, derzelver waarde. (Co., 96; K. 4 no 5, 6v., 76, 90, 95; B. 1185 no 7, 1829 v., 1849.)

Art. 87. Hij moet instaan voor de behoorlijke zoo spoedig mogelijke verzending van de bij hem tot dat einde ontvangen koopmanschappen en goederen, met inachtneming van alle die middelen van zekerheid welke hij tot eene goede bezorging kan bij de hand nemen. (Co. 97; K. 68; B. 1403, 1837 v.)

Art. 88. Hij moet ook na verzending instaan voor de beschadiging of voor het verlies van koopmanschappen en goederen, welke aan zijne schuld of onvoorzichtigheid kunnen worden toegeschreven. (Co. 98; K. 91 v.; B. 1280 v.)

Art. 89. Hij staat ook in voor de tusschen-expediteurs door hem gebruikt. (Co. 99; B. 1840.)
Art. 90. De vrachtbrief maakt de overeenkomst uit tusschen den afzender of den expediteur en den voerman, of den schipper, en behalve hetgeen tusschen partijen mogt zijn overeengekomen, zoo omtrent den tijd binnen welken de vervoering moet volbracht zijn, en de schadeoostelling in geval van vertraging, als anderszins:

1o. De benaming en het gewigt of de maat der te vervoeren goederen, benevens derzelver merken en getallen;
2o. Den naam van dengene aan wien het goed gezonden wordt;
3o. Den naam en de woonplaats van den voerman of den schipper;
4o. Het bedrag van het vrachtloon;
5o. De dagteekening;
6o. De onderteekening van den afzender of van den expediteur.

De vrachtbrief moet door den expediteur in zijn dagregister worden ingeschreven. (Cc. 101 v.; K. 86, 506.)
Art. 244. Se reputará comisión mercantil el mandato, cuando tenga por objeto un acto u operación de comercio y sea comerciante o agente mediador del comercio el comitente o el comisionista.

Art. 245. El comisionista podrá desempeñar la comisión contratando en nombre propio o en el de su comitente.

Art. 246. Cuando el comisionista contrate en nombre propio, no tendrá necesidad de declarar quién sea el comitente, y quedará obligado de un modo directo, como si el negocio fuese suyo, con las personas con quien contratare, las cuales no tendrán acción contra el comitente, ni éste contra aquéllas, quedando a salvo siempre las que respectivamente correspondan al comitente y al comisionista entre sí.

Art. 247. Si el comisionista contratase en nombre del comitente, deberá manifestarlo; y si el contrato fuere por escrito, expresarlo en el mismo o en la antifirma, declarando el nombre, apellido y domicilio de dicho comitente.

En el caso prescripto en el párrafo anterior, el contrato y las acciones derivadas del mismo producirán su efecto entre el comitente y la persona o personas que contrataren con el comisionista; pero quedaré éste obligado con las personas con quienes contrato, mientras no pruebe la comisión, si el comitente la negare, sin perjuicio de la obligación y acciones respectivas entre el comitente y el comisionista.

Art. 248. En el caso de rehusar un comisionista el encargo que se le hiciere, estará obligado a comunicarlo al comitente por el medio más rápido posible, debiendo confirmarlo, en todo caso, por el correo más próximo, al día en que recibió la comisión.

Lo estará, asimismo, a prestar la debida diligencia en la custodia y conservación de los efectos que el comiten-
la haya remitido, hasta que éste designe nuevo comisionista, en vista de su negativa, o hasta que, sin esperar nueva designación, el Juez o Tribunal se haya hecho cargo de los efectos a solicitud del comisionista.

La falta de cumplimiento de cualquiera de las obligaciones establecidas en los dos párrafos anteriores constituye al comisionista en la responsabilidad de indemnizar los daños y perjuicios que por ello sobrevengan al comitente.

Art.249. Se entenderá aceptada la comisión siempre que el comisionista execute alguna gestión en el desempeño del encargo que le hizo el comitente, que no se limite a la determinada en el párrafo segundo del artículo anterior.

Art.252. El comisionista que sin causa legal no cumpla la comisión aceptada o empezada a evacuar, será responsable de todos los daños que por ello sobrevengan al comitente.

Art.254. El comisionista que en el desempeño de su encargo se sujete a las instrucciones recibidas del comitente, quedará exento de toda responsabilidad para con él.

Art.256. El comisionista desempeñará por sí los encargos que reciba y no podrá delegarlos sin previo consentimiento del comitente, a no estar de antemano autorizado para hacer la delegación; pero podrá, bajo su responsabilidad, emplear sus dependientes en aquellas operaciones subalternas, que según la costumbre general del comercio, se confían a éstos.

Art.258. Si el comisionista hubiere hecho delegación o substitución con autorización del comitente, responderá de las gestiones del substituto, si quedare a su elección la persona en quien había de delegar, y, en caso contrario, cesará su responsabilidad.
Art. 266. El comisionista que tuviere en su poder mercaderías o efectos por cuenta ajena, responderá de su conservación en el estado que los recibió. Cesará esta responsabilidad cuando la destrucción o el menoscabo sean debidos a casos fortuitos, fuerza mayor, transcurso de tiempo o vicio propio de la cosa.

En los casos de pérdida parcial o total por el transcurso del tiempo o vicio propio de la cosa, el comisionista estará obligado a acreditar en forma legal el menoscabo de las mercaderías, poniéndolo, tan luego como lo advierta, en conocimiento del comitente.

Art. 274. El comisionista encargado de una expedición de efectos, que tuviere orden para asegurarse, será responsable, si no lo hiciere, de los daños que a éstos sobrevengan, siempre que estuviere hecha la provisión de fondos necesaria para pagar el premio del seguro, o se hubiere obligado a anticiparlos y dejar de dar aviso inmediato al comitente de la imposibilidad de contratarse.

Si durante el riesgo el asegurador se declarase en quiebra, tendrá el comisionista obligación de renovar el seguro, a no haberlo prevenido cosa en contrario el comitente.

Art. 275. El comisionista que en concepto de tal hubiere de remitir efectos a otro punto, deberá contratar el transporte, cumpliendo las obligaciones que se imponen al cargador en las conducciones terrestres y marítimas.

Si contratase en nombre propio el transporte, aunque lo haga por cuenta ajena, quedará sujeto para con el porteador a todas las obligaciones que se imponen a los cargadores en las conducciones terrestres y marítimas.

Título VII - Del contrato mercantil de transporte terrestre

Art. 378. Los comisionistas de transportes estarán obligados a llevar un registro particular, con las formalidades que exige el artículo 36, en el cual asentarán por orden progresivo de
numeros y fechas todos los efectos de cuyo transporte se encarguen, con expresión de las circunstancias exigidas en los artículos 350 y siguientes para las respectivas cartas de porte.

Art. 379. Las disposiciones contenidas desde el artículo 349 en adelante, se entenderán del mismo modo con los que, aun cuando no hicieren por sí mismos el transporte de los efectos de comercio, contrataran hacerlo por medio de otros, ya sea como asistentes de una operación particular y determinada, o ya como comisionistas de transportes y conducciones.

En cualquiera de ambos casos quedarán subrogados en el lugar de los mismos portadores, así en cuanto a las obligaciones y responsabilidad de éstos, como respecto a su derecho.
Titre XVème - De la commission

Art. 434. (442). Le commissaire-constable, en présence de l'objet du contrat, ou sur le prix qui a été réalisé. C.895 et s.

Art. 439. (448). Le commissaire-expéditeur ou agent de transport qui, moyennant salaire et en son propre nom, se charge d'expédier, ou de réexpédier des marchandises pour le compte de son commettant, est assimilé au commissaire, mais n'en est pas moins soumis, en ce qui concerne le transport des marchandises, aux dispositions qui régissent le voiturier. C. 426 et s., 440 et s.

Titre XVIème - Du contrat de transport

Art. 441. (451). L'expéditeur doit indiquer exactement au voiturier l'adresse du destinataire et le lieu de la livraison, le nombre, le mode d'emballage, le poids et le contenu des colis, le délai de livraison et la voie à suivre pour le transport, ainsi que la valeur des objets de prix.

Le dommage qui résulte de l'absence ou de l'inexactitude de ces indications est à la charge de l'expéditeur. C. 97 et s.

Art. 442. (452). L'expéditeur veille à ce que la marchandise soit convenablement emballée.

Il répond des avaries provenant de défauts d'emballage non apparents.

Le voiturier, de son côté, est responsable des avaries provenant de défauts d'emballage apparents, s'il a accepté la marchandise sans réserves.
Art. 443. (453). L'expéditeur a le droit de retirer la marchandise tant qu'elle est entre les mains du voiturier, en indemnisant celui-ci de ses débours et du préjudice causé par le retrait; toutefois, ce droit ne peut être exercé:

1. Lorsqu'une lettre de voiture a été créée par l'expéditeur et remise au destinataire par le voiturier;
2. Lorsque l'expéditeur s'est fait délivrer un récépissé par le voiturier et qu'il ne peut le restituer;
3. Lorsque le voiturier a expédié au destinataire un avis écrit de l'arrivée de la marchandise, afin qu'il en soit à la retirer; \(0\) 450;
4. Lorsque le destinataire, après l'arrivée de la marchandise dans le lieu de destination, en a demandé la livraison.

Dans ces cas, le voiturier est tenu de se conformer uniquement aux instructions du destinataire; toutefois, lorsqu'il s'est fait délivrer un récépissé, il n'est lié par ces instructions, avant l'arrivée de la marchandise dans le lieu de destination, que si le récépissé a été remis au destinataire.

Art. 444. (454). Lorsque la marchandise est refusée, ou que les frais et autres réclamations dont elle est grevée ne sont pas payés, ou lorsque le destinataire ne peut être atteint, le voiturier doit aviser l'expéditeur et garder provisoirement la chose en dépôt ou la déposer chez un tiers, aux frais et risques de l'expéditeur. \(0\) 472 et s.

Si l'expéditeur ou le destinataire ne dispose pas de la marchandise dans un délai convénable, le voiturier peut, de la même manière qu'un commissionnaire, la faire vendre pour le compte de qui de droit, avec l'assistance de l'autorité compétente du lieu où la chose se trouve. \(0\) 435. Tit. fin. 54.

Art. 454. (464). Les actions en dommages-intérêts contre le voiturier se prescrivent par une année à compter, en cas de destruction, de perte ou de retard, du jour où la livraison aurait dû avoir lieu, et, en cas d'avarie, du jour où la marchandise a été livrée au destinataire. \(0\) 127 et s., 447, 448, 452.

Le destinataire et l'expéditeur peuvent toujours faire valoir, par voie d'exception, leurs droits contre
le voiturier, pourvu que la réclamation soit formée dans l'année et que l'action ne soit pas éteinte par l'acceptation de la marchandise. CC 210, al. 2, 452.

Sont réservés les cas de dol ou de faute grave du voiturier. CC 28.

Art. 456. (467). Le voiturier ou le commissionnaire-expéditeur qui recourt à une entreprise publique pour effectuer le transport dont il s'est chargé, ou qui coopère à l'exécution d'un transport par elle accepté, est soumis aux dispositions spéciales qui régissent cette entreprise. CC 439, 455, al. 3.

Sont réservées toutes conventions contraires entre le voiturier ou le commissionnaire-expéditeur et le commettant.

Le présent article n'est pas applicable aux camionneurs.

Art. 457. (468). Le commissionnaire-expéditeur qui utilise une entreprise publique de transport pour exécuter son contrat, ne peut décliner sa responsabilité en alléguant qu'il n'a pas de recours contre l'entreprise, si c'est par sa propre faute que le recours est perdu. CC 439, 455, 456.
1002. Definitions and exemptions

(5) The term "freight forwarder" means any person which (otherwise than as a carrier subject to chapters 1, 8 or 12 of this title) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the service of a carrier or carriers subject to chapters 1, 8, or 12 of this title.

(6) The term "interstate commerce" means transportation (A) between a point in a State and a point in another State, whether or not such transportation takes place wholly within the United States; (B) between points within the same State but through any place outside thereof; or (C) from or to any point in the United States to or from any point outside thereof, but only insofar as such transportation takes place within the United States.

(7) The term "service subject to this chapter" means any or all of the service in connection with the transportation in interstate commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the
authority of this part to perform or provide; but such term shall not include that part of the undertaking of any such person for the performance of which the services of an air carrier subject to sections 401 - 422, 423 - 485, 486 - 681 of this title are utilized, or for the performance of which transportation by motor vehicle exempted under the provisions of section 303 (b) (?a) of this title is utilized.

1004. Rates, charges, and practices.
(a) It shall be the duty of every freight forwarder to provide and furnish, upon reasonable request thereof, the service subject to this chapter covered by its permit issued under this chapter, and to establish, observe, and enforce just and reasonable rates and charges therefor and just and reasonable classifications, regulations, and practices relating thereto and to the issuance, form, and substance of receipts and bills of lading, the manner and method of presenting marking, packing, and delivering property for transportation in service subject to this chapter, the facilities for such transportation, and all other matters relating to or connected with such transportation, and every unjust or unreasonable rate, charge, classification, regulation, or practice is prohibited and declared unlawful.

(b) It shall be unlawful for any freight forwarder, in service subject to this chapter, to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit point, locality, region, district, territory or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Provided, That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any carrier of whatever description.

(c) It shall be unlawful for any common carrier subject to chapters 1, 8, or 12 of this title to make, give, or cause any undue or unreasonable preference or advantage to any freight forwarder, whether or not such freight forwarder is controlled by such carrier,
In any respect whatsoever; or to subject any freight forwarder, whether or not such freight forwarder is controlled by such carrier, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(d) Nothing in this chapter shall be construed to prohibit any freight forwarder from entering into an agreement with another freight forwarder for the joint loading of traffic between points in transportation subject to this chapter, except that the Commission may cancel, suspend, or require the modification of any such agreement which it finds, after reasonable opportunity for hearing, to be inconsistent with the national transportation policy declared in the Interstate Commerce Act.

1005. Tariffs of freight forwarders.

(a) Every freight forwarder shall file with the Commission and print, and keep open to public inspection, tariffs showing its rates and charges for service subject to this chapter, and all classifications, rules, regulations, and practices with respect thereto. Such tariffs shall become effective only after thirty days' notice, and shall plainly state the points between which property will be transported, the classification of property, and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges, or the value of the service rendered to the shipper or consignee.

(b) All rates and charges of freight forwarders for service subject to this chapter shall be stated in lawful money of the United States. The Commission shall be regulations prescribe the form and manner in which the tariffs to which this section applies shall be published, filed and posted; and the Commission is authorized to reject any tariff filed with it which is not in accordance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(c) No freight forwarder shall charge or demand or collect or receive a greater or less or different compensation
for or in connection with service subject to this chapter than the rates or charges specified therefor in its tariffs lawfully in effect; and no freight forwarder shall refund or remit in any manner or by any device any portion of the rates or charges so specified, or extend to any person any privileges or facilities in connection with such service and affecting the value thereof except such as are specified in its tariffs: Provided, That the provisions of section 22 of this title (relating to transportation free or at reduced rates), insofar as such provisions relate to transportation or service in the case of property, shall apply with respect to freight forwarders, in the performance of service subject to this chapter, with like force and effect as in the case of the persons and service to which such provisions are specifically applicable.

(d) No change shall be made in any rate, charge, classification, regulation, or practice specified in any effective tariff of a freight forwarder for or in connection with service subject to this chapter, except after thirty days' notice of the proposed change, filed and posted in accordance with this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow changes upon notice less than that herein specified, or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special circumstances or conditions.

(e) No freight forwarder shall engage in service subject to this chapter unless the rates and charges for such service have been filed and published in accordance with the provisions of this section.