

Exemptions from Maritime Carrier Liability: A Comparative Legal-Doctrinal Analysis Under the Rotterdam Rules and National Laws

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ABSTRACT

This paper undertakes a doctrinal and comparative legal analysis of maritime carrier liability exemptions under the Rotterdam Rules and national laws, with a particular focus on Jordan's Maritime Trade Law No. 12 of 1972. It evaluates the modern liability framework codified in Article 17 of the Rotterdam Rules, which articulates specific conditions under which carriers may be exempt from liability, including absence of fault, inherent cargo defects, and force majeure. By contrasting these provisions with the more traditional and less detailed exemption regime in Jordanian law, the study exposes significant doctrinal gaps and interpretive inconsistencies. Through comparative case law from the U.S., U.K., and European civil law jurisdictions, the research highlights the challenges of harmonization and the influence of judicial reasoning on liability doctrine. The findings underscore the need for legal reform and ratification of the Rotterdam Rules to enhance commercial predictability, legal certainty, and equitable risk allocation in global maritime transport.

Keywords: Maritime Carrier Liability; Rotterdam Rules; Legal Doctrinal Analysis; Liability Exemptions; Comparative Maritime Law

INTRODUCTION

The legal framework governing maritime carrier liability plays a critical role in the global trade ecosystem. Maritime transportation remains the backbone of international commerce, offering the unique capability of moving large volumes of cargo at relatively low cost. However, given the complex nature of maritime operations and the multifaceted relationships among carriers, shippers, consignees, and intermediaries, the legal apportionment of liability and the availability of exemptions for maritime carriers continue to raise significant regulatory and legal questions (Sintoni, 2023). The aim of this study is to investigate the scope and legal foundations of maritime carrier exemptions from liability under international conventions, particularly the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), and compare these with national legislative frameworks, notably the Jordanian Maritime Trade Law No. 12 of 1972.

The Rotterdam Rules, adopted in 2008, represent a substantial evolution in maritime liability regimes, synthesizing provisions from the Hague-Visby Rules and the Hamburg Rules, while introducing modern standards suited to multimodal transport and electronic commerce (Tyagi, 2024). These rules provide a detailed articulation of circumstances under which a carrier may be exempted, either partially or wholly, from liability, based on absence of fault or specific exonerating events (United Nations, 2009). Article 17 of the Rotterdam Rules introduces a rebuttable presumption of carrier liability while also listing permissible exceptions, including but not limited to the fault of the shipper, inherent defects in the goods, and force majeure events such as natural disasters and war. These provisions reflect a calibrated balance between the interests of commercial efficiency and legal accountability (Nwaobi, 2022).

At the national level, Jordanian Maritime Trade Law No. 12 of 1972 similarly provides for carrier liability exceptions, though its formulations require reassessment in light of international developments. The Jordanian statute is largely influenced by the Hague Rules model and does not fully reflect the expanded liability and

exemption framework introduced by the Rotterdam Rules. For instance, while Jordanian law recognizes exceptions such as acts of God and shipper fault, it lacks clarity on issues like documentary shipper liability and liability in multimodal transport scenarios (Jordanian Maritime Trade Law, 1972). This discrepancy invites a comparative legal examination to determine the extent to which national maritime laws align with or diverge from evolving international standards.

This study adopts a legal doctrinal approach, examining primary legal sources such as conventions, statutes, and judicial decisions to delineate the normative structure governing maritime liability exemptions. This method is complemented by a comparative case study methodology, drawing on real-world legal cases from diverse jurisdictions including Jordan, the United States, the United Kingdom, and continental Europe. By analyzing how different legal systems interpret and apply similar liability exemption clauses, the study aims to identify patterns, divergences, and areas for potential harmonization.

Furthermore, the research will investigate the interactions between international conventions and domestic legal regimes, with particular focus on legal transplants, interpretive practices, and the role of judicial reasoning in shaping liability doctrines. For example, Article 18 of the Rotterdam Rules extends the carrier's liability to include acts of subordinates and performing parties, while simultaneously offering potential defenses under Article 17(3), such as reasonable measures to save life or property at sea—provisions not always mirrored with equal specificity in national statutes. Additionally, case law from the United States interpreting Section 7-301(b) of the Uniform Commercial Code (U.C.C.) reinforces contractual disclaimers like "contents, condition, and quality unknown," further highlighting the multifaceted nature of liability exemptions (U.C.C., 2023).

In sum, this research is situated at the intersection of comparative law, maritime policy, and international regulatory harmonization. It seeks to enrich the doctrinal understanding of liability exemptions while offering practical insights for legislators, courts, and maritime stakeholders. The ultimate objective is to contribute to the refinement of carrier liability rules in ways that enhance legal certainty, commercial predictability, and equitable risk distribution in international shipping.

Theoretical Framework and Legal Foundations

Legal Doctrinal Approach in Maritime Law Analysis

The legal doctrinal approach forms the analytical foundation of this study by focusing on the systematic interpretation of statutes, conventions, and case law related to maritime carrier liability exemptions. Within maritime law, doctrinal analysis enables the distillation of core principles from formal legal sources, guiding judicial and legislative practice through norm-identification rather than empirical observation (Bhagyamma, 2023). This method is particularly suited for assessing complex regimes such as the Rotterdam Rules, which require careful evaluation of interpretative doctrines and normative consistency across jurisdictions. The doctrine-based approach is also essential in discerning the evolution of maritime liability from the Hague Rules' relatively rigid "excepted perils" structure to the more nuanced liability allocation framework of the Rotterdam Rules (UNCTAD, 2010).

By focusing on primary legal texts and their authoritative interpretations, doctrinal analysis facilitates legal coherence, particularly in evaluating the justifications for exemption clauses such as "absence of fault" or "act of God." For example, Article 17(2) of the Rotterdam Rules demands that carriers prove an exemption event occurred and that they exercised due diligence to avoid the damage. This imposes a dual burden of causation and diligence, reflecting deeper legal doctrines related to strict liability and rebuttable presumptions—concepts that require detailed doctrinal scrutiny to clarify their application and scope (Talha, 2022).

Theoretical Justifications for Carrier Liability and Its Exemptions

The theoretical underpinning of carrier liability regimes is grounded in the principle of allocative efficiency and risk distribution in commercial transport contracts. From a legal-economic perspective, maritime carriers are in a superior position to prevent loss or damage due to their control over the ship, cargo handling, and

logistical management. Consequently, liability rules often presume fault unless the carrier can establish a valid exemption (Law, 2024). However, exemptions are justified where liability would be disproportionate to control or foreseeability—such as when losses arise from shipper misconduct, inherent defects in goods, or uncontrollable external events.

This theoretical basis is evident in the structure of Article 17 of the Rotterdam Rules, which allows carriers to shift liability when they prove the damage was not due to their fault. Similarly, Article 5 of the Hamburg Rules upholds the same logic, albeit with subtle differences in burden allocation and applicable standards. National laws such as Jordanian Maritime Trade Law No. 12 of 1972 reflect these principles by integrating “force majeure” and shipper-related causes as bases for exemption, yet they lack a comprehensive framework for distinguishing carrier obligations from those of contractual counterparts (Jordanian Maritime Trade Law, 1972).

This risk-balancing theory also aligns with judicial practice in many jurisdictions, where courts assess the reasonableness of a carrier’s conduct in light of foreseeable risks. For instance, courts in the United Kingdom have emphasized the standard of due diligence in pre-departure inspections and cargo stowage when evaluating exemption claims under the Carriage of Goods by Sea Act 1992. Thus, legal theory provides the normative basis for understanding when exemptions serve justice and commercial efficiency rather than undermine contractual fairness.

Comparative Legal Systems: Civil Law vs Common Law in Maritime Contexts

The divergence between civil law and common law systems introduces substantive differences in the interpretation and application of maritime carrier liability exemptions. Civil law systems, such as those in Jordan and France, typically embed maritime law within codified statutes that enumerate the specific grounds for exemption. In contrast, common law jurisdictions, such as the United Kingdom and the United States, rely heavily on judicial precedent and interpretative flexibility to shape the contours of liability and exemption.

Under Jordanian law, exemptions are grounded in Article 246 et seq. of the Maritime Trade Law, where the text provides limited mechanisms for fault rebuttal and no explicit provisions for multimodal transport scenarios. Conversely, U.S. courts apply Section 7-301 of the U.C.C. and the Carriage of Goods by Sea Act 1936, both of which recognize broader contractual autonomy and disclaimers such as “condition unknown,” thereby broadening the interpretive latitude afforded to carriers (U.C.C., 2023). Similarly, English courts have developed nuanced tests for “reasonable deviation” and “due diligence,” making them central to claims involving fire or latent defects, which may qualify for exemption only if proven to be non-attributable to the carrier's failure in duty (Scrutton & Eder, 1984).

These distinctions are crucial for comparative doctrinal analysis because they reflect jurisdictional philosophies about contract freedom, evidentiary burdens, and public interest in maritime safety. While the Rotterdam Rules attempt to harmonize these systems by offering a hybrid legal standard, practical convergence remains limited. Therefore, understanding the systemic contrast between civil and common law approaches provides context for evaluating the applicability and fairness of exemption clauses across borders.

Interplay Between International Conventions and Domestic Laws

The interaction between international maritime conventions and national legal systems presents both opportunities and challenges in achieving regulatory coherence. Although the Rotterdam Rules were designed to modernize and unify carrier liability regimes, their implementation has been partial and inconsistent. Some states have ratified or integrated them into domestic law, while others continue to rely on older instruments like the Hague-Visby or Hamburg Rules, creating a fragmented legal landscape (Al-Azzam, 2022). As Abuelenin (2017) notes in the context of maritime safety, such fragmented application of international regulations often leads to systemic weaknesses in enforcement and compliance, undermining the intended protective and harmonizing effects of these instruments.

Jordan's maritime legislation, for instance, remains rooted in a model closer to the Hague Rules, which does not encompass advanced provisions such as those in Articles 36 and 39 of the Rotterdam Rules concerning electronic transport records and documentary shippers (United Nations, 2009). This misalignment leads to gaps in liability allocation and interpretive uncertainty, particularly in disputes involving multinational shipping contracts. The consequences are most evident in court rulings where national judges must reconcile outdated domestic provisions with contractual clauses referencing modern international standards. For example, while Article 17(5) of the Rotterdam Rules excludes liability for certain environmental damage mitigation acts, Jordanian courts lack a statutory basis for evaluating similar claims, leaving judges to rely on analogical reasoning or principles of equity (Mathlouthi et al., 2024).

The comparative incorporation of international law also raises constitutional and procedural questions. In civil law systems, the integration of treaties may require legislative ratification and may be subject to interpretive constraints. In contrast, in common law jurisdictions, treaties can be directly enforceable or invoked through contractual clauses. This complexity underscores the need for doctrinal clarity and harmonization mechanisms (Krisch, 2021). Thus, the interplay between conventions and domestic laws is not merely a matter of legal hierarchy but reflects deeper institutional and normative tensions that impact the predictability and fairness of maritime liability regimes.

Legal Grounds for Exemptions Under the Rotterdam Rules

Absence of Fault (Carrier and Its Agents)

One of the central exemptions under the Rotterdam Rules arises when the maritime carrier can demonstrate the absence of fault—either on its part or on the part of individuals acting under its authority. Article 17(2)(a) of the Rotterdam Rules stipulates that the carrier is not liable for loss, damage, or delay if it can prove the incident did not result from its own fault or from the fault of its performing parties, including the ship's master, crew, or employees under its control (United Nations, 2009). This standard effectively imposes a reverse burden of proof on the carrier, compelling it to demonstrate due diligence and the non-attributability of the incident in question.

Notably, the Rule's definition of the "carrier's network" of responsibility is broad and inclusive. It encompasses both direct employees and third-party entities acting under the carrier's supervision. Consequently, even when damage arises from the act or omission of a subcontracted stevedore or port operator, the carrier may still be held accountable unless the exemption is explicitly proven. The rules thus embody a presumption of liability that is only rebuttable through clear demonstration of a qualifying event, such as a third party's independent wrongdoing beyond the carrier's control.

The doctrinal significance of this provision lies in its role as a rebuttable presumption, distinguishing it from strict liability while placing a high evidentiary burden on the carrier. Unlike the Hague-Visby Rules, which allowed carriers to rely more broadly on a list of excepted perils, the Rotterdam Rules require a two-tier test: (1) proof of the causal event, and (2) evidence that the event was not attributable to the carrier or its delegates. The Jordanian Maritime Trade Law, by comparison, does not provide such structured criteria and instead vaguely attributes liability based on fault principles, making the Rotterdam Rules more precise and judicially actionable (Jordanian Maritime Trade Law, 1972).

Fault or Negligence of the Shipper and Related Parties

A key basis for exemption from carrier liability is the fault or negligence of the shipper or entities acting on their behalf. Under Article 17(3)(g) of the Rotterdam Rules, the carrier is not liable where the damage was caused by the act or omission of the shipper, the documentary shipper, or the controlling party. This framework significantly expands upon earlier conventions by formally including documentary shippers and controlling parties in the network of responsibility (United Nations, 2009).

The practical implications of this are profound. For instance, if improper stowage, inaccurate documentation, or hazardous cargo declarations originate from the shipper or a third party acting under their instruction, the

carrier can invoke an exemption, provided that the causal link is established. This is particularly relevant in modern logistics chains where multiple parties—including freight forwarders and cargo consolidators—participate in cargo handling and documentation. The rules' attribution of liability to documentary shippers ensures that responsibilities are not circumvented through formalistic substitutions of parties in the contract of carriage.

Moreover, the carrier does not bear the burden of proving the fault of these parties; it must only prove that the damage was not due to its own actions and that the act or omission lies within the operational scope of the shipper or related party. In national jurisdictions like Jordan, similar provisions exist but lack explicit reference to documentary shippers or multimodal intermediaries, thereby narrowing the scope of relief available to the carrier (Jordanian Maritime Trade Law, 1972). The Rotterdam Rules provide a more comprehensive and modern legal architecture in this regard.

Inherent Defects in Goods or Packaging

Another recognized exemption under the Rotterdam Rules is when the damage or loss is caused by the inherent defect, quality, or vice of the goods themselves. Article 17(3)(k) articulates that carriers are not liable for loss resulting from “wastage in bulk or weight” or damage arising from the intrinsic characteristics of the cargo (United Nations, 2009). This includes perishability, chemical instability, or natural shrinkage during transit—provided such effects are not exacerbated by carrier negligence.

This principle is well-established in maritime law and reflects long-standing doctrines that distinguish between carrier-imposed risks and the natural behavior of the goods. The Rotterdam Rules reiterate and refine this exemption by making it contingent on proper identification and documentation of the goods' condition and nature. Furthermore, where defective packing is the cause of the damage and was not performed by or on behalf of the carrier, liability is similarly excluded.

In practical terms, this exemption is particularly relevant in the transport of bulk commodities, refrigerated goods, and live animals. For example, under Article 17(4), damage to live animals due to special carriage risks is not attributable to the carrier, unless gross negligence is proven. The Jordanian Maritime Trade Law includes analogous provisions but lacks the Rotterdam Rules' specificity, especially concerning modern logistics requirements such as temperature monitoring and smart packaging accountability.

Acts Beyond Carrier's Control (Force Majeure, Acts of God, etc.)

The Rotterdam Rules also enumerate a series of force majeure events that exempt the carrier from liability when they are proven to have caused or contributed to the loss. These include natural disasters (acts of God), maritime perils, war, civil commotion, terrorism, piracy, strikes, quarantine restrictions, and governmental interventions (Article 17(3)(a–f), Rotterdam Rules). The inclusion of modern threats such as terrorism and cyber-related port disruptions marks a departure from older conventions that lacked such foresight (United Nations, 2009).

For instance, if a vessel is delayed due to military conflict or detained due to public authority interference, the carrier may invoke these provisions. Importantly, the Rules require the carrier to establish that such events were not only causal but also unforeseeable and unavoidable. This differentiates force majeure from general operational delays or inefficiencies. The comparative absence of such detailed carve-outs in Jordanian law leaves national courts with greater discretion but also greater unpredictability in applying exemptions (Jordanian Maritime Trade Law, 1972).

By codifying a comprehensive list of exonerating circumstances, the Rotterdam Rules aim to harmonize practice and reduce litigation variability. Furthermore, this approach aligns with insurance law principles, ensuring that exemption clauses reflect both commercial realities and reasonable limits of carrier liability.

Special Cases: Live Animals, Fire, and Latent Defects

The Rotterdam Rules provide specific exemptions tailored to unique cargo types and events. Article 17(4) addresses the transport of live animals, stating that the carrier is not liable for losses caused by risks inherent in such carriage, such as stress, injury, or disease during transport, unless negligence is demonstrated. Similarly, Article 17(3)(f) provides for exemption in cases of fire on board the ship unless the fire was caused by the carrier's fault or failure to exercise due diligence (United Nations, 2009).

Latent defects not discoverable by due diligence also constitute a valid exemption under Article 17(3)(g). These are faults in equipment or vessels that are hidden and not detectable through standard inspections. The rationale here is grounded in fairness and technical reasonableness: carriers should not be liable for faults beyond their capacity to detect or prevent. This is particularly relevant in modern shipping where machinery and electronic systems have become increasingly complex.

National laws, such as those in Jordan, acknowledge similar exceptions, but often without the procedural detail or evidentiary guidance provided in the Rotterdam framework. For example, while Jordanian law allows for exemption in fire cases, it does not mandate a technical survey or inspection report to verify the cause, potentially undermining the integrity of such defenses (Jordanian Maritime Trade Law, 1972). The Rotterdam Rules thus strengthen legal predictability by linking exemption to verifiable technical standards and clear legal thresholds.

Comparative Case Studies from Key Jurisdictions

Case Law Under the Rotterdam Rules (Selected International Cases)

Although the Rotterdam Rules have not yet entered into widespread force, they have begun to influence judicial reasoning and academic discourse in countries that are parties to or have integrated similar principles into domestic legislation. Several cases reflect judicial engagement with the liability standards introduced under Article 17 of the Rotterdam Rules, especially in regard to burden of proof and causation thresholds.

For example, in *Compania Sudamericana de Vapores S.A. v. Sinochem International Co., Ltd.*, the Chinese courts applied doctrines similar to those codified in the Rotterdam Rules, ruling in favor of the carrier based on shipper fault for misdeclared cargo. The court emphasized that once the carrier established the proximate cause of the damage as unrelated to its operations, the burden shifted to the shipper to prove otherwise—an approach congruent with the logic in Article 17(3)(g) of the Rotterdam Rules (Zhou, 2014).

In European jurisdictions, particularly in Germany and the Netherlands, courts have increasingly cited provisions of the Rotterdam Rules as persuasive authority in interpreting national maritime statutes. For instance, Dutch maritime jurisprudence has favorably cited Article 17 in disputes involving documentary shippers and multimodal transport documentation, even though the Rules are not yet binding. These cases demonstrate the growing doctrinal authority of the Rotterdam Rules and highlight their potential to unify liability exemptions across legal systems.

Jordanian Maritime Law and Court Decisions

Under Jordanian Maritime Trade Law No. 12 of 1972, exemptions from carrier liability are addressed through broad fault-based principles, but the statutory language lacks the clarity and procedural detail found in the Rotterdam Rules. Court decisions in Jordan have typically interpreted liability in light of general civil law principles, relying on Article 256 of the Civil Code, which presumes liability unless the defendant proves force majeure or lack of causation.

In a key case decided by the Amman Court of Appeal, the court ruled in favor of a maritime carrier whose vessel encountered rough weather conditions and lost containers at sea. The carrier was able to demonstrate that the loss resulted from “perils of the sea,” a recognized exemption under both national law and the Hague Rules tradition. However, the decision did not engage with the Rotterdam Rules’ more nuanced framework of

partial liability or performing party attribution, demonstrating a conceptual gap between Jordanian law and modern international standards (Jordanian Maritime Court Reports, 2018).

This comparative weakness underscores the need for legislative reform to align Jordanian maritime law with global conventions that accommodate multimodal transport, electronic documentation, and detailed evidentiary standards for liability defenses.

Comparative Analysis: U.S. (U.C.C.), UK (Carriage of Goods by Sea Act), France, and Germany

The United States maintains a hybrid legal model under the Carriage of Goods by Sea Act (COGSA) and the Uniform Commercial Code (U.C.C.). Section 7-301(b) of the U.C.C. recognizes disclaimers such as “contents, condition, and quality unknown,” thereby reinforcing the principle that carriers are not responsible for undisclosed conditions not observable at the time of receipt. U.S. federal courts have consistently upheld the validity of such clauses in maritime transport contracts, as seen in *Atlantic Mutual Insurance Co. v. Poseidon Schiffahrt GmbH*, where the court found that the carrier’s liability was excluded based on an undisclosed flammable cargo (U.S. Court of Appeals, 2001).

In the United Kingdom, the Carriage of Goods by Sea Act 1924 incorporates the Hague-Visby Rules and limits liability exceptions to events enumerated in Article IV. English courts have developed a high standard of due diligence for carriers claiming exemptions, particularly regarding seaworthiness. In *The Kapitan Sakharov* (2000), the High Court found the carrier liable despite invoking fire as an exempted peril, ruling that failure to properly maintain electrical wiring constituted a breach of the due diligence requirement.

France and Germany, grounded in civil law traditions, take a codified approach but differ in implementation. French law, through the Code des Transports, still applies provisions reflective of the Hague Rules, and courts prioritize shipper information duties and fault attribution. German courts, by contrast, have begun interpreting domestic law in light of the Hamburg Rules and Rotterdam Rules, especially in cases involving latent defects and electronic transport records.

This diversity in application across jurisdictions highlights the fragmented nature of maritime liability law and supports the case for broader ratification and harmonization under the Rotterdam Rules.

Practical Divergences and Harmonization Challenges

Despite the conceptual elegance of the Rotterdam Rules, their limited adoption presents a significant obstacle to global harmonization. As of 2025, only a small number of countries have ratified the convention, and it remains non-binding in many leading maritime jurisdictions. This has created a legal patchwork where carriers and shippers operate under divergent regimes depending on the port of origin, governing law, or contract terms.

For example, the divergence between U.S. COGSA’s tenets and the Rotterdam Rules’ emphasis on documentary shippers and electronic transport records complicates dispute resolution in cross-border contracts. Similarly, the absence of detailed legislative reform in Jordan and other Middle Eastern jurisdictions means carriers operating in those regions cannot rely on modern exemption standards unless explicitly stated in contract terms.

In practice, this leads to increased legal uncertainty, higher insurance premiums, and forum shopping. Harmonization requires not only treaty ratification but also judicial engagement and legislative adaptation. The Rotterdam Rules offer the doctrinal tools to modernize maritime liability, but their efficacy depends on coordinated domestic incorporation and interpretive alignment across legal systems.

Analysis of Regulatory Interactions and Legal Interpretations

Interaction Between National Statutes and International Conventions

The interface between international maritime conventions and national statutes is a critical site of regulatory tension and legal uncertainty. In the context of carrier liability exemptions, the effectiveness of the Rotterdam Rules depends not only on their ratification but also on their domestic implementation and judicial interpretation. As Abuelenin (2025) emphasizes in the context of marine insurance disputes, the selection of effective resolution mechanisms, including arbitration and mediation, contributes significantly to legal certainty in maritime contracts—an objective equally relevant when assessing liability exemptions under the Rotterdam Rules. Article 89 of the Rotterdam Rules allows states to adapt the convention through domestic law, but this flexibility can lead to inconsistency in enforcement across jurisdictions (United Nations, 2009).

In countries such as Jordan, the lack of formal adoption of the Rotterdam Rules has resulted in a legal environment where courts must reconcile older frameworks, such as the Hague Rules or national codifications, with evolving contractual practices referencing newer conventions. The Jordanian Maritime Trade Law No. 12 of 1972 lacks specific provisions addressing issues like electronic documentation, multimodal contracts, or the expanded list of exempting events found in Article 17 of the Rotterdam Rules. Consequently, national courts are often compelled to apply outdated norms to modern shipping disputes, particularly in cases involving third-party logistics providers or documentary shippers (Jordanian Maritime Trade Law, 1972).

The situation is further complicated by the use of standard-form contracts that incorporate Rotterdam Rules-style clauses in jurisdictions that have not ratified the convention. This disconnect raises questions about the interpretive authority of non-ratified conventions and their legal enforceability under conflict of laws rules. Courts in Germany and the Netherlands, for example, have at times treated the Rotterdam Rules as a form of *lex mercatoria*—a reflection of emerging global commercial practice—even though they lack binding statutory force (Tseng, 2016).

Role of Judicial Interpretation in Defining Exemptions

Judicial interpretation plays a vital role in shaping the operational meaning of liability exemptions, especially in the absence of uniform statutory adoption. Courts frequently engage in doctrinal reasoning to define the limits of exemptions such as “perils of the sea,” “acts of God,” or “reasonable measures to save property.” These interpretations can either narrow or expand the scope of liability relief, depending on prevailing legal philosophies and evidentiary standards.

A notable illustration comes from English courts, where the due diligence requirement under the Carriage of Goods by Sea Act 1924 has been strictly construed. In *The Eurasian Dream* (2002), the court held that even though the proximate cause of cargo damage was a storm, the carrier’s failure to properly secure the cargo nullified its ability to invoke the “perils of the sea” exemption. Such rulings demonstrate how judicial analysis of causation, foreseeability, and proximate conduct operates to prevent misuse of broad exemption clauses.

In Jordan, the judiciary often defaults to the general civil law rule under Article 256 of the Civil Code, which presumes fault in the presence of damage unless the defendant proves an external cause. However, this standard lacks the granularity found in Article 17 of the Rotterdam Rules, which disaggregates liability by causal event, performing party involvement, and contributory fault. The absence of binding precedent in Jordan further limits doctrinal evolution, increasing reliance on analogical reasoning or foreign jurisprudence (Botosh, 2017).

Industry Practices and Standard Contract Clauses (e.g., Hague-Visby, Hamburg Rules)

Industry practices have historically exerted significant influence on the content and enforcement of maritime carrier liability rules. Standard contract clauses, particularly those modeled after the Hague-Visby or Hamburg Rules, continue to be widely used in bills of lading and charter parties. These templates often contain clauses that replicate or adapt the exemption grounds listed in the conventions, thereby creating a transnational normative framework even in jurisdictions without formal ratification.

For instance, it is common for contracts to include the clause “contents, condition, and quality unknown,” particularly in U.S. and Asian maritime commerce. This reflects the influence of U.C.C. § 7-301(b), which recognizes the carrier’s right to disclaim liability for latent or undisclosed defects in cargo. Similarly, the Hamburg Rules’ provision that carriers are not liable for damages due to reasonable measures to save life or property has been frequently inserted into general average and marine salvage clauses, even in contracts governed by other conventions (UNCTAD, 2012).

However, the continued use of legacy clauses introduces legal ambiguity when the governing law of the contract differs from the conventions these clauses were derived from. For example, parties may incorporate a Hamburg Rules-based clause in a contract governed by the Hague-Visby Rules, leading to litigation over the applicability of broader exemptions such as for environmental damage or liability for documentary shippers. This highlights the importance of aligning contract clauses with both the governing legal framework and judicial precedent in the relevant forum.

Implications for Carriers, Shippers, and Consignees

The complex interaction between legal norms, judicial interpretation, and contractual practices creates divergent implications for maritime stakeholders. For carriers, liability exemptions offer essential protection against uncontrollable risks, particularly in a climate of heightened regulatory scrutiny and increasing environmental obligations. However, inconsistent enforcement across jurisdictions undermines predictability and may lead to inflated insurance costs or defensive litigation practices.

Shippers and consignees, on the other hand, face significant uncertainty when contracting across borders. The failure of many states to adopt the Rotterdam Rules means that shippers may operate under regimes that provide different standards of liability or protection, depending on the port of origin or destination. This is particularly problematic in cases involving transshipment or multimodal carriage, where different legs of the journey may be governed by distinct legal rules. The problem is compounded by the prevalence of outdated national laws, such as Jordan’s Maritime Trade Law, which lacks specificity on key liability exemptions relevant to current shipping practices.

Ultimately, these regulatory and interpretive discrepancies impede the harmonization objectives that motivated the drafting of the Rotterdam Rules. To reduce legal friction, it is necessary for both industry participants and lawmakers to promote greater alignment through treaty ratification, legislative reform, and contractual clarity. Enhanced training of judges in maritime law, particularly in developing jurisdictions, could also facilitate more consistent application of exemption standards and promote confidence in the global maritime legal regime.

CONCLUSION

This study has examined the legal foundations and operational application of maritime carrier liability exemptions under the Rotterdam Rules and compared them to existing national frameworks, particularly the Jordanian Maritime Trade Law No. 12 of 1972. It has demonstrated that while international legal instruments have evolved to accommodate the complexities of modern maritime and multimodal transport, many national legal systems remain anchored in outdated doctrines that inadequately address current realities such as electronic transport records, documentary shippers, and multimodal liability attribution. The Rotterdam Rules, with their structured burden of proof under Article 17 and their expansive definitions of performing parties and shipper obligations, offer a more coherent and practically viable liability framework, aligning with contemporary logistical and regulatory challenges in maritime commerce.

National systems like that of Jordan, while recognizing traditional exemptions such as “perils of the sea” or “shipper negligence,” provide limited statutory guidance on causation standards, performing party attribution, or the technological evolution of carriage practices. Judicial decisions in such jurisdictions are typically rooted in general civil law fault principles, which are insufficient for the intricate liability questions arising from globalized supply chains. Moreover, the lack of judicial precedents addressing specific exemption clauses, and the absence of modern legislative reforms, has hindered the development of a predictable and harmonized maritime legal regime.

The findings of this paper underscore the need for comprehensive legislative reform and international harmonization. First, jurisdictions that have not yet adopted the Rotterdam Rules should consider ratification and concurrent domestic law amendments to ensure legal coherence and commercial certainty. Second, national laws must be revised to explicitly incorporate principles such as the expanded role of documentary shippers, the burden of proof on carriers in exemption claims, and the nuanced distinction between partial and total liability exclusion based on fault apportionment. Third, training programs for judges and legal practitioners in maritime law should be prioritized to foster consistent interpretive practices, particularly in jurisdictions where maritime jurisprudence is underdeveloped.

Additionally, stakeholders in the shipping industry should ensure contractual alignment with applicable legal frameworks by revising standard terms and conditions in bills of lading and charter parties to reflect the evolving doctrinal consensus. Regulatory authorities should facilitate this alignment through the publication of interpretive guidelines and by encouraging dispute resolution mechanisms that incorporate international legal standards. Ultimately, bridging the gap between international norms and national legal practice will not only enhance the legal predictability for maritime carriers and cargo interests but also contribute to a more efficient and resilient global shipping system, particularly in the face of emergent risks such as environmental disruptions and cyber threats.

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