

# Exam JUR5401 Maritime Law Autumn 2007

MATILDE

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## What has happened?

The *shipping company Fahrer* enters into a contract of carriage with the furniture producer *Vinje* about transporting water sensitive furniture from Oslo to Rotterdam by October 15<sup>th</sup>.

The goods were waiting for a few hours in the rain at the side of the ship before driven on board by *S.Stevedor*.

Due to a broken hatch, water was running into the cargo hold and the ship had to go to port in Horten to repair the damages.

The ship is delayed to Rotterdam and two of three pallets have water damages.

## The damage

The value of the furniture was NOK 200.000 per pallet.

Transport to the factory and back NOK 16.000.-

Total repair NOK 40.000.-

Loss of profit NOK 50.000.-

50% of the damage related to the water in the cargo hold, and  
50% to the loading.

## The claims

- Vinje alerts the shipping company, Fahrer, that he would hold Fahrer responsible for all losses he had suffered because of the transport.
- Legal basis for the claim?
- Fahrer will not pay
- Legal basis?

## Vinjes legal basis/arguments

- The contract of affrayment
- The Maritime Code
  - The duty of the carrier to protect the interests of the cargo owner, § 262
  - The carriers liability for cargo damages,
    - § 275
  - The carriers liability for delay
    - § 278

## Fahrers arguments

- The water damage at port
  - Vinjes own mistake
  - S.Stevedors responsibility
- The water damage during transport
  - Not related to shortcomings of the transport
- The amount of the damage
  - Only repair costs
- The notification came too late

## 1.1 Has Vinje notified about the damage to the goods in time?

- ***The water damage***
- NMC § 288, 1 paragraph
  - Apparent damage
    - Written and at once
- NMC § 288, 2. paragraph
  - Joint inspection
    - Oral notice is good enough
- What happened at the joint inspection?

## 1.2 The water damage which arose under loading. The packing.

- Was the packing done with due care?
  - By Vinje? No
  - By Stevedor? Yes
- If no, who is responsible ?
  - Sender/Shippers responsibility § 255
  - Carriers responsibility § 256, 1. and 2. paragraph
- If Vinje is responsible for the packing, he can not claim Fahrer for the damage which arouse under loading

## Did Stevedor take on responsibility for the packing?

- Or did Stevedor only help?
  - Probably only help, but both solutions are ok
- If Stevedor has taken on the responsibility for the packing, the question is whether or not Fahrer can be held liable for the acts of Stevedor.
  - Vicarious liability
  - Discussed below

## 1.2 The water damage which arose under loading.

- ***The periode of responsibility***
  - § 274
  - "...at the port of loading..."

## 1.2 The water damage which arose under loading..

- Stevedor or Fahrer?
  - §275 "...personal fault or neglect or that of anyone for whom he or she is responsible.."
  - § 276 "...others performing work in the service of the ship"

## 1.2 The water damage which arose under loading..

- What is the legal basis for the liability?
- § 275 "The carrier is liable.. Unless the carrier shows that the loss was not due to his or her personal fault or neglect.."
  - The goods waited in two hours in the rain
  - The owner had informed about the water sensitiveness
  - Packed in plastic
  - Two hours normal
- Conclusion?
  - Fahrer is liable

## 1.2 The water damage related to water in the cargo hold.

- The goods were in the carriers custody (§ 274)
- The question is whether or not the carrier can prove that the damage did not due to the fault or neglect of himself or anyone for whom he is responsible (§ 275)
- Two questions:
  - A) Did the captain act with due care when the closing mechanism broke?
  - B) Was it negligent to start the voyage without checking the closing mechanism?

## 1.2 The water damage related to water in the cargo hold

- Did the captain act with due care when the closing mechanism broke?
- Yes he did,
- But – *if we suppose the opposite result* – then what?
  - §275 – liable
  - §276 – “the carrier is not liable if the loss not liable if the loss resulted from fault or neglect in... *the management of the ship*”

## 1.2 The water damage related to water in the cargo hold

- No liability if the error is related to the management of the ship (§ 276)
- But if the error is related to the management of the cargo, the exception will not apply
- What interest was the act (or omission) done?
  - Here; keeping the hold dry – both?
- Conclusion?

## 1.2 The water damage related to water in the cargo hold

- **Assuming** that the exception for management of the ship in § 276, 1. paragraph is applicable
- Question 2:
- Is the exception in § 276, 2. paragraph on **initial unseaworthiness** applicable?
- Same discussion as regards Q b): **Was it negligent to start the voyage without checking the closing mechanism?**
  - "There had been problems with the closing mechanism earlier, but it was functional"
- Conclusion - open



## 1.3 What must Fahrer indemnify?

- Providing that Fahrer is liable for the damages, what must the shipping company indemnify Vinje?
- The repairs of the furniture (40.000)
  - Direct loss
- The transport to the factory and back (16.000)
- The loss of profit (50.000)
  - Consequential loss

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## The repairs of the furniture

- Starting point: § 279
  - “...**the value of the goods** at the place and time when the goods were or should have been delivered...”
- Assuming that the value is 20.000 per pallet
- Two pallets are damaged
- The damage is 40.000 NKR

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## The expenses for transport and the loss of profit

- Starting point § 279: “damage of the goods”
  - Direct loss
  - Not consequential loss (when a factory is unable to obtain raw materials – lost production)
  - Discussion on the how far this reaches
    - Arbitration practise
    - NY DOLSØY (ND 1987.160 NSC)
      - Two fishing vessels received contaminated bunkers
      - Engine needed to be repaired (ok)
      - Lost catch?
        - » NSC – no general rule, but here, no doubt!
    - ISLAND (ND 2004.59 ISC) same, if direct related to the damage
    - DENMARK (SHD 24.07.02 – not published) NO! Transport is not damage of the goods
    - SWEDEN (HD 12.06.14) – transport law is exclusively governed in the relevant codes

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## The expenses for transport and the loss of profit

- Conclusion?
- Expenses for transport – ok
- Loss of profit – no
- If we accept the expenses for transport – what is the amount?
- The code gives no instruction – 16.000 NOK
- The damage §279:  $40.000 + 16.000 = 56.000$  NOK

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## § 280 Limits of liability

- Carriers liability shall not exceed 667 SDR for each ***unit of the goods***
- (No information on the weight)
- Lets assume 1 SDR = 10 NKR
- The limit is then  $667 \times 10 \text{ NKR} = 6667 \text{ NKR}$  per unit
- Here: 2 units:  $6667 \text{ NKR} \times 2 = 13.334 \text{ NOK}$
- **Conclusion the carrier is only liable for 13.334 NOK**