



HILL DICKINSON

CARGO CONVENTIONS

Comparing Hague, Hague/Visby
and Hamburg Rules incorporating
US COGSA 1924

Contents

Section:	Page No.
Parties to the Conventions and the Countries which apply the Rules	2/3
<hr/>	
1 Which voyages covered?	4
2 Which contracts covered?	4
3 Geographical application	4
4 Who is the carrier?	4
5 Contract and tort claims	4
6 Carrier's general duty of care	4
7 Carrier's defences	5
8 Burden of proof	5
9 Fire	6
10 Live animals	6
11 Deck cargo	6
12 Dangerous cargo	6
13 Limits of liability	6
14 Loss of right to limit liability	7
15 Lower limits by agreement	7
16 Higher limits by agreement	7
17 Deviation	7
18 What is the effect of statements in the B/L?	7
19 What information must the B/L contain?	8
20 Duties of shipper in supplying carrier with information	9
21 Letters of indemnity	9
22 Notification of damage	9
23 Consequences of failing to notify carrier of loss under 22 above	9
24 Limitation of action	9
25 Where can cargo owner commence proceedings?	9
26 Arbitration	10
27 General average	10
28 Provisions which conflict with the Rules	10

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Parties to the Conventions and the Countries which apply the Rules

● SDR Protocol

■ By application of local law

Albania			
Algeria	Hague		
Angola	Hague		
Anguilla	Hague		
Antigua and Barbuda	Hague		
Argentina	Hague/Hague-Visby	■	
Australia	Hague-Visby/Hamburg	■ ●	
Austria	Hamburg		
Bahamas	Hague		
Bangladesh	Hague	■	
Barbados	Hamburg		
Belgium	Hague-Visby	●	
Belize	Hague		
Bermuda	Hague-Visby	●	
Bolivia	Hague		
Botswana	Hamburg		
British Virgin Islands	Hague-Visby	●	
Brunei	Hague		
Burkina Faso	Hamburg		
Burundi	Hamburg		
Cameroon	Hamburg		
Canada	Hague/Hague-Visby	■ ●	
Cape Verde	Hague		
Cayman Islands	Hague-Visby	●	
Chile	Hamburg		
China	Hague-Visby/Hamburg	■ ●	
Comoros			
Congo, Democratic Republic of the	Hague		
Cote d'Ivoire	Hague		
Croatia	Hague-Visby	●	
Cuba	Hague		
Cyprus	Hague		
Czech Republic	Hamburg		
Denmark	Hague-Visby	●	
Djibouti			
Dominica	Hague		
Dominican Republic	Hague		
East Timor	Hague		
Ecuador	Hague-Visby		
Egypt	Hamburg	●	
Estonia	Hague	■	
Falkland Islands	Hague-Visby		
Fiji	Hague		
Finland	Hague-Visby	●	
France	Hague-Visby	●	
Gambia	Hamburg		
Georgia	Hamburg	●	
Germany	Hague-Visby	●	
Ghana	Hague		
Goa	Hague		
Gibraltar	Hague-Visby	●	
Greece	Hague-Visby	●	
Grenada	Hague		
Guinea	Hamburg		
Guinea-Bissau	Hague		
Guyana	Hague		
Hong Kong	Hague-Visby	● 1	
Hungary	Hamburg		
Iceland	Hague-Visby	■ ●	
India	Hague/Hague-Visby	■ ●	
Indonesia	Hague-Visby	■	
Iran	Hague		
Israel	Hague/Hague-Visby	■ ●	
Italy	Hague-Visby	●	
Jamaica	Hague		
Japan	Hague-Visby	●	
Jordan	Hamburg		
Kenya	Hamburg	2	
Kuwait	Hague		
Lebanon	Hamburg		
Lesotho	Hamburg		
Liechtenstein			
Luxembourg	Hague-Visby	●	
Macau	Hague		
Madagascar	Hague		
Malawi	Hamburg		
Malaysia	Hague		
Marshall Islands			
Martinique			
Mauritania			
Mauritius	Hague		
Mexico	Hague-Visby	●	
Micronesia, Federated States of			
Moldova			
Monaco	Hague		
Montserrat	Hague-Visby	●	

Morocco	Hamburg		Slovakia	Hamburg	
Mozambique	Hague		Slovenia	Hague	
Nauru	Hague		Solomon Islands	Hague	
Netherlands	Hague-Visby	●	Somalia	Hague	
New Zealand	Hague-Visby	●	South Africa	Hague-Visby	■
Nigeria	Hamburg		Spain	Hague-Visby	●
Norway	Hague-Visby	●	Sri Lanka	Hague-Visby	
Oman	Hague-Visby	■ ●	Sweden	Hague-Visby	●
Pakistan	Hague	■	Switzerland	Hague-Visby	●
Panama	Hague	■	Syria	Hague-Visby	
Papua New Guinea	Hague		Taiwan	Hague	
Paraguay	Hague-Visby		Tanzania	Hamburg	
Peru	Hague		Thailand	Hague-Visby/Hamburg	3
Philippines	Hague	■	Tonga	Hague-Visby	
Poland	Hague-Visby	●	Trinidad and Tobago	Hague	
Portugal	Hague/Hague-Visby	■	Tunisia	Hamburg	
Romania	Hamburg		Turkey	Hague	
Russian Federation	Hague-Visby	●	Turks and Caicos Islands	Hague-Visby	●
Sabah	Hague		Tuvalu	Hague	
Saint Helena	Hague		Uganda	Hamburg	
Saint Kitts and Nevis	Hague		Ukraine	Hague-Visby	■ ●
Saint Lucia	Hague		United Arab Emirates	Hague -Visby	■
Saint Vincent and the Grenadines	Hamburg		United Kingdom	Hague-Visby	●
Sao Tome and Principe	Hague		United States	Hague	
Senegal	Hamburg		Uruguay	None	4
Serbia and Montenegro	Hague		Venezuela	Hague-Visby/Hamburg	■
Seychelles	Hague		Vietnam	Hague-Visby	■
Sierra Leone	Hamburg		Zambia	Hague	
Singapore	Hague-Visby				

- 1 The Government of the People's Republic of China confirmed by letter of 4 June 1997 to the Depositary that the Hague-Visby Rules and SDR Protocol continue to apply to the Hong Kong Special Administrative Region, with reservations concerning Article 8 of the Visby Protocol and Article 3 of the SDR Protocol.
- 2 Hamburg Rules may not be applied to claims in practice.
- 3 By application of local law. Amendment to COGSA B.E. 2534 is being considered at the time of publication.
- 4 Local law will acknowledge some rights of limitation.

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
1. Which voyages covered?	Rules are silent.	Art X (a) B/L issued in a contracting state (b) carriage from contracting state (c) contract of carriage expressly applies Rules.	Art 2 (a) B/L issued in a contracting state (b) carriage from contracting state (c) carriage to contracting state (d) B/L provides Rules to apply.	Shipments to and from the United States in foreign trade. 46 U.S.C.A. § 1300.
2. Which contracts covered?	Art 1(b) Bill of lading or "other similar document of title". Not charterparties. 'Straight' bills of lading will be considered as "documents of title" for the purposes of the Rules. See <i>The Rafaela S</i> [2003] 2 Lloyd's Rp. 113, CA.		Art 1.6 Contract of carriage by sea. Need not be a B/L or document of title. Not charterparties.	Contracts of carriage covered by a B/L or any similar document of title issued under or pursuant to a C/P from the moment at which such document of title regulates the relations between a carrier and a holder of the same. 46 U.S.C.A. § 1301 (b).
3. Geographical application	Art 1(e) "covers the period from the time when the goods are loaded on to the time when they are discharged from the ship".		Art 4 Carrier is responsible while in "charge" of the goods at the port of loading, during the carriage, and at the port of discharge i.e. normally from time taken over from shipper to time delivered to consignee. Subject to local port regulations.	Covers the period from the time when the goods are loaded until the time when they are discharged from the ship. 46 U.S.C.A. § 1301 (e).
4. Who is the carrier?	Art 1 (a) Owner or charterer "who enters into contract of carriage with a shipper".		Art 1.1, Art 10, Art 11 "any person by whom or in whose name a contract of carriage has been concluded with a shipper". Covers "actual" and "contractual" carrier.	The carrier includes the owner or the charterer who enters into a contract of carriage with a shipper. 46 U.S.C.A. § 1301 (a).
5. Contract and tort claims	Rules are silent. May apply to just contract claims. Applies to both under English law.	Art IV bis Apply to contract and tort claims.	Art 7 Apply to contract and tort claims.	Act is silent, but by construction of courts COGSA has been limited to contract claims.
6. Carrier's general duty of care	Art III 1. Carrier must exercise due diligence before and at beginning of voyage to: (a) make ship seaworthy; (b) properly man, equip and supply the ship; (c) make holds etc. fit and safe for reception, carriage and preservation of cargo. 2. Carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge goods.		Art 5.1 Carrier, his servants and agents must take all measures that could reasonably be required to avoid the event causing loss and its consequences.	1. Carrier must exercise due diligence before and at beginning of voyage to: (a) make ship seaworthy; (b) properly man, equip and supply the ship; (c) make holds etc. fit and safe for reception, carriage and preservation of cargo. 2. Carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge goods carried. 46 U.S.C.A. § 1303 (1) (a-c), (2).

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
7. Carrier's defences	<p>Art IV</p> <p>1. Unseaworthiness - only defence is for carrier to show he exercised "due diligence" to ensure vessel seaworthy before and at beginning of voyage.</p> <p>2. Properly and carefully load, etc.</p> <p>The following defences apply:</p> <p>(a) Act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.</p> <p>(b) Fire, unless caused by the actual fault or privity of the carrier.</p> <p>(c) Perils, dangers and accidents of the sea or other navigable waters.</p> <p>(d) Act of God.</p> <p>(e) Act of war.</p> <p>(f) Act of public enemies.</p> <p>(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.</p> <p>(h) Quarantine restrictions.</p> <p>(i) Act or omission of the shipper or owner of the goods, his agent or representative.</p> <p>(j) Strikes or lock-outs, or stoppage or restraint of labour from whatever cause, whether partial or general.</p> <p>(k) Riots and civil commotions.</p> <p>(l) Saving or attempting to save life or property at sea.</p> <p>(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.</p> <p>(n) Insufficiency of packing.</p> <p>(o) Insufficiency or inadequacy of marks.</p> <p>(p) Latent defects not discoverable by due diligence.</p> <p>(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier, nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.</p>		<p>Art 5.1</p> <p>Carrier must prove he, his servants or agents, took all measures that could reasonably be required to avoid the occurrence and its consequences.</p>	<p>(a) Act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.</p> <p>(b) Fire, unless caused by the actual fault or privity of the carrier.</p> <p>(c) Perils, dangers and accidents of the sea or other navigable waters.</p> <p>(d) Act of God.</p> <p>(e) Act of war.</p> <p>(f) Act of public enemies.</p> <p>(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.</p> <p>(h) Quarantine restrictions.</p> <p>(i) Act or omission of the shipper or owner of the goods, his agent or representative.</p> <p>(j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general.</p> <p>(k) Riots and civil commotions.</p> <p>(l) Saving or attempting to save life or property at sea.</p> <p>(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.</p> <p>(n) Insufficiency of packing.</p> <p>(o) Insufficiency or inadequacy of marks.</p> <p>(p) Latent defects not discoverable by due diligence.</p> <p>(q) Any other cause arising without the actual fault or privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.</p> <p>46 U.S.C.A. § 1304 (1), (2) (a-q).</p>
8. Burden of proof	<p>Rules are unclear (except under Art IV(2)(q)). Under English law cargo owner must establish inference of unseaworthiness or failure to properly and carefully carry the goods, and the carrier must prove relevant defence in 7 (above).</p>		<p>Carrier must prove that reasonable steps to avoid loss were taken unless damage is caused by fire, (see 9 below).</p>	<p>Shipper must show cargo delivered to carrier in good order and condition and received at discharge in damaged condition. Clean B/L is <i>prima-facie</i> evidence of this. Once this established, burden shifts to carrier to show either due diligence or the application of one of the defences.</p>

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
9. Fire	Art III & IV If due to e.g. poor stowage, carrier only liable if caused by his actual fault or privity. If caused by unseaworthiness, carrier liable unless he exercised due diligence to ensure vessel seaworthy before and at beginning of voyage.		Art 5.4 Carrier liable if claimant proves fire arose from fault or neglect on the part of the carrier, his servants or agents.	Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from fire unless caused by the actual fault or privity of the carrier. 46 U.S.C.A. § 1304 (2) (b).
10. Live animals	Art I(c) Excluded from Rules.	Art I(c) Same as Hague Rules. CF UK COGSA 1971, S1(7) which applies Rules to live animals.	Art 1.5 and 5.5 Rules apply but carrier not liable for inherent "special risks". If carrier complies with shipper's instructions he will be presumed not to be liable.	Excluded from Act. 46 U.S.C.A. § 1301 (c).
11. Deck cargo	Art I(c) Excluded from Rules if stated to be carried on deck on face of B/L. Undeclared deck carriage may affect carrier's ability to rely on defences, although the carrier may still rely on package limitation under Art. IV, r. 5. See The <i>Kapitan Petko Voivoda</i> [2003] 2 Lloyds Rep. 1, CA.	Art I(c) Same as Hague Rules. CF UK COGSA 1971, S1(7) which applies Rules to deck cargo.	Art 9 Rules do not exclude deck cargo. Carrier can undertake deck carriage if agreed with shipper or accords with the "usage of a particular trade or is required by statutory rules or regulations". Must be statement in the B/L that goods carried on deck. Failure to agree deck carriage makes carrier liable for damage, loss or delay resulting solely from carriage on deck. Carrier cannot limit liability when deck carriage is in breach of express agreement to carry below deck.	Excluded from Act. (If stated in B/L to be carried on deck and is so carried then this Act will apply, but not <i>ex proprio vigore</i> .)
12. Dangerous cargo	Art IV Rule 6 Inflammable, explosive or dangerous goods if loaded without knowledge of the master (or carrier's agent) may be discharged, rendered harmless or destroyed at shipper's expense. If carrier knows of their nature but they prove dangerous they may still be discharged, rendered harmless or destroyed without liability on the part of the carrier, save in general average.		Art 13 Similar provisions apply and the shipper is obliged to mark and label dangerous goods in a suitable manner.	Same as Hague Rules.
13. Limits of liability (a) Goods lost or damaged	Art IV Rule 5 £100 per package or unit unless value declared and inserted in the B/L. The £100 limit per package has been held to amount to £100 gold value (see The <i>Rosa S</i> [1988] 2 Lloyd's Rep. 574), often resulting in a higher limit than the Hague-Visby Rules limitation.	Art IV Rule 5 10,000 Poincare Francs per package or unit or 30 Poincare Francs per kilo of gross weight of damaged or lost goods whichever is higher. By virtue of SDR Protocol 1979 2 SDRs per kg or 666.67 SDRs per package.	2.5 SDRs per kg or 835 SDRs per package or shipping unit.	Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in cases of goods not shipped in packages, per customary freight unit or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the B/L. 46 U.S.C.A. § 1304 (5).

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
13. Limits of Liability (b) Goods delayed	No special provisions.		Art 6 2.5 x freight payable on goods delayed, subject to upper limit of total freight on all goods or amount of limitation if goods have been lost or destroyed under formula in (a) above.	No specific provision.
14. Loss of right to limit liability	No special provisions.	Art IV Rule 5 (e) Right to limit loss if carrier intends to cause loss or is reckless knowing loss would probably result.	Art 8 Carrier will only lose right to limit liability if he intended to cause loss or was reckless knowing such loss would probably result. Deck carriage where expressly prohibited will result in loss of right to limit liability.	No specific provisions. Unreasonable deviation will oust limitation as a result of case law/precedent.
15. Lower limits by agreement	Art VI Only permitted where not an ordinary shipment, and reasonable in special circumstances.		No specific right to agree lower limits.	Not permitted. 46 U.S.C.A. § 1304 (5).
16. Higher limits by agreement	Art V Permitted if recorded in the B/L.		Art 6.4 Art 15 Permitted if agreed. Should be recorded in the B/L.	Permitted if recorded in the B/L. 46 U.S.C.A. § 1305.
17. Deviation	Deviating carrier might lose right to rely on defences in Rules and lose right to limit liability. Art IV Rule 4 provides "any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of the Rules or contract of carriage."		No special provisions. Deviation if it causes loss is subject to general test of carrier's liability (see 6 above). Art 5.6 exempts a carrier from liability where he attempts to save life or "reasonable measures" are taken to save property. This would apply to deviation as much as any other cause of loss.	Similar to Hague Rules - Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this chapter or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom. Provided however that if the deviation is for unloading cargo or passengers it shall, prima facie, be regarded as unreasonable. 46 U.S.C.A. § 1304 (4).
18. What is the effect of statements in the bill?	Art III Rule 4. Prima facie evidence of their accuracy.	Art III Rule 4 Prima facie evidence in hands of shipper, conclusive in hands of third party, e.g. consignee to whom the B/L is transferred in good faith.	Art 16 Prima facie evidence of statement in hands of shipper (whether shipped or received B/L). Conclusive in hands of third party who relies on statements. However, if freight is payable by holder of the B/L failure to state this is evidence that no freight is payable.	After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a B/L showing among other things: (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or covering in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage. (b) Either the number of packages or pieces, or the

(cont'd...)

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
(...cont'd)				quantity or weight, as the case may be, as furnished in writing by the shipper. (c) The apparent order and condition of the goods. Provided that no carrier, master, or agent of the carrier, shall be bound to state or show in the B/L any marks, number, quantity or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking. 46 U.S.C.A. § 1303 (3) (a-c).
19. What information must the bill contain?	Art III Rule 3 (a) Leading marks necessary for identifying goods. (b) Number of packages or pieces, or the quantity or weight as the case may be, as furnished by the shipper.		Art 15 (a) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper. (b) The apparent condition of the goods. (c) The name and principal place of business of the carrier. (d) The name of the shipper. (e) The consignee if named by shipper. (f) The port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading. (g) The port of discharge under the contract of carriage by sea. (h) The number of originals of the B/L, if more than one. (i) The place of issuance of the B/L. (j) The signature of the carrier or person acting on his behalf. (k) Freight to the extent payable by the consignee. (l) The statement referred to in paragraph 3 of Article 23, i.e. that carriage is subject to the convention. (m) Statement, if applicable, that the goods shall or may be carried on deck. (n) The date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties. (o) Any increased limit or limits of liability where agreed.	Prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with the information contained in the B/L. 46 U.S.C.A. § 1303(4).

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
(...cont'd)			If the carrier is unable to state any of the matters in (a) above he should express his omission on the B/L.	
20. Duties of shipper in supplying carrier with information	Art III Rule 5 Shipper is deemed to guarantee accuracy of statement as to weight and quantity of cargo. Shipper to indemnify carrier for loss resulting from errors.		Art 17 Same as Hague Rules.	Same as Hague Rules. 46 U.S.C.A. § 1303 (5).
21. Effectiveness of letter of indemnity issued by shipper for carrier not clausling bill	No specific provisions. Void under English law. (Brown Jenkinson & Co Ltd -v- Percy Dalton (Ldn) Ltd [1957] 2 Lloyd's Rep. 1).		Art 17 Void for B/L in hands of consignee. Valid against shipper unless carrier intended to defraud consignee. If fraud, carrier may not limit liability.	No specific provisions. If issued, carrier may be estopped from proving pre-shipment condition by case law.
22. Notification of damage	Art III Rule 6 Notice of loss or damage must be given in writing to the carrier or his agent - (i) on day of delivery; or (ii) within 3 days where damage is latent.		Art 19 Notice of loss or damage to be given in writing to carrier - (i) by the working day following delivery to consignee; or (ii) within 15 days of delivery where damage is latent. Notice of delay must be given within 60 days of delivery. Carrier must give notice to shipper of complaint within 90 days of delivery.	Same as Hague Rules. 46 U.S.C.A. § 1303 (6).
23. Consequences of failing to notify carrier of loss, damage or delay under 22 above	Art III Rule 6 Prima facie evidence of delivery of goods in condition described by B/L.		Art 19 Prima facie evidence of delivery of goods in condition described by B/L. If goods delayed and complaint not made within 60 days the carrier is exempted from liability.	Same as Hague Rules. 46 U.S.C.A. § 1303 (6).
24. Limitation of action	Art III Rule 6 "Suit" must be brought within 1 year of delivery or date delivery should have taken place.	Art III Rule 6 Same as Hague Rules. Art III Rule 6 bis Indemnity actions may be brought after 1 year; the period for commencing suit to be not less than 15 months after claim settled or suit served. Local jurisdiction.	Art 20 Litigation or arbitration to be commenced within 2 years from date of delivery of goods or the last day upon which the goods should have been delivered. Indemnity proceedings may be commenced after this period (at least 90 days from date of commencement of action against carrier must be allowed).	Same 1 year statute of limitation as Hague Rules. 46 U.S.C.A. § 1303 (6).
25. Where can cargo owner commence proceedings?	Rules are silent.		Art 21 May sue in court of: (a) principal place of business of carrier; (b) place contract was made; (c) port of loading; (d) port of discharge; (e) place designated by contract of carriage; (f) place of arrest of vessel. This may be challenged by the carrier if he submits to one of the other jurisdictions and provides security for the claim.	No specific provision.

	Hague Rules	Hague-Visby Rules	Hamburg Rules	Present US COGSA
26. Arbitration	Rules are silent.		Art 22 Arbitration agreement permitted. If incorporating charterparty arbitration clause, must be comprised in B/L as "special annotation". Claimant may choose where to commence arbitration from: (a) place where defendant has principal place of business; (b) place where contract was made; (c) port of loading; (d) port of discharge; or (e) place specified in arbitration clause.	No specific provision.
27. General average	Art V "Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average."		Art 24 "The provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average."	Same as Hague Rules. 46 U.S.C.A. § 1305.
28. Provisions which conflict with the Rules	Art III Rule 8 Void.		Art 23.1 Void and compensation may be payable where claimant has suffered a loss: see Art 23.4.	Void.

Notes

Notes

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