

**THE IDENTITY OF THE CARRIER’S PRIMARY
OBLIGATIONS IN CARGO CLAIMS UNDER THE HAGUE-
VISBY RULES: NEW DEVELOPMENTS ON ADOPTING A
“SOUND SYSTEM” AND “BURDEN OF PROOF”***

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ASLİ YÜKÜMLÜLÜKLERİNİN SAPTANMASI: YÜKE ÖZEN BORCU
İÇİN “SOUND SYSTEM”İN BENİMSENMESİ VE “İSPAT YÜKÜ”
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Abstract

Cargo claims arising from carrier’s liabilities is a fundamental yet challenging issue in the sea-borne trade industry. Determining the proximate cause of a loss is, in particular, a complex issue. It has remained a central subject, particularly after the recent UK Supreme Court decision in the *Volcafe* case where the burden of proof and implementing a sound system in cargo claims were reassessed. The carrier’s fundamental duties under the Hague-Visby Rules are to provide a seaworthy ship and to take care of the cargo. Thus, the second base obligation of the carrier is to “properly” and “carefully” take care of the cargo under Article III Rule 2 of Hague-Visby Rules explained with a sound system in the landmark

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cases. This article reviews the carrier's essential liabilities in accordance with the relevant international rules. This article also focuses on recent case law in comparison with earlier cases.

Keywords

Seaworth ship, sound system, Hague-Visby Rules, burden of proof.

Öz

Taşıyanın yükümlülüklerinden kaynaklanan yük hasarları, deniz ticaretinin en temel ve en tartışmalı sorunlarından biridir. Özellikle zararın asıl nedeninin belirlenmesi uygulamada tartışmalıdır. Yine Birleşik Krallık Yüksek Mahkemesi'nin *Volcafe* davasında, kargo hasarlarında ispat yükü ve yüke özen borcu için bir sistemin uygulanmasına ilişkin son kararından sonra taşıyanın, Lahey-Visby Kuralları kapsamındaki asli sorumluluklarının kapsamı konusu daha tartışmalı bir hal almıştır. Özellikle, Taşıyanın temel iki yükümlülüğü olan gemiyi denize elverişli halde bulundurmak ve yüke özen borcu, yeni kararlarda değişik açılardan değerlendirilmiştir. Makalede, Lahey-Visby Kuralları madde II'de açıklanan taşıyanın yükü "düzgün" ve "dikkatlice" taşıma yükümlülüğü uluslararası kurallar ve mahkeme kararları ışığında gözden geçirilecektir. Ayrıca makalede, aynı zamanda önceki davalarla karşılaştırmalı olarak son yıllarda verilmiş kararlar karşılaştırmalı olarak incelenecektir.

Anahtar Kelimeler

Sefere elverişli gemi, sound system, lahey-visby kuralları, ispat yükü

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Abbreviations

Ar.	: Article
COSGA	: Carriage of Goods by Sea Act
FIO	: Free in and Out
FIOS	: Free in Out, and Stowed
FIOST	: Free in Out, and Stowed and Trimmed
İÜHFM	: İstanbul Üniversitesi Hukuk Fakültesi Mecmuası
J.I.M.L.	: Journal of International Maritime Law
LV/K	: Hague-Visby Rules
R	: Rule
P	: Page
S	: Section
SMC	: Safety Management Certificate
STCW	: Standards of Training, Certification and Watchkeeping
TCC	: Turkish Commercial Code
UK	: United Kingdom
v.	: Versus

I. Introduction

Cargo claims are brought by cargo interests against the carriers when the cargo in which they have an interest is not delivered, is delivered short or is delivered damaged.¹ Hague-Visby rules apply to most cargo related contractual dispute if the parties expressly incorporate the

¹ BAATZ Yvonne, *Maritime Law*, 5th ed. Informa Law 2015, p 197.

Hague-Visby rules in their contract. These rules have since been incorporated into the legislation of numerous different nations. If most bills of lading contain a choice of Law clauses, these matters would be relatively uncontroversial. However, they do not. Regarding the UK, since 1924 bills of lading have been governed, not only by rules of English domestic law, but also by international conventions. The convention currently in force embodies what are known as the Hague-Visby Rules and was given the force of law in the UK by the Carriage of Goods by Sea Act 1971². Similarly, provisions concerning the liability of the carrier under the TCC are mainly based on The Hague-Visby Rules in which the main liabilities of the carrier are to make the ship seaworthy and to take care of the cargo. Recent case law indicated that these duties are not as straightforward as they might appear at first sight. Therefore, the scope of those duties will be analysed in recent cases.

II. The Responsibilities of the Carrier under the Hague-Visby Rules

The Hague-Visby Rules can be applicable to the dispute, arising out of cargo claims, either with statutory force or they are contractually incorporated into charterparties as a clause paramount. They are applicable by statutory force under English Law decided by the Carriage of Goods by Sea Act 1971. In that respect they are mandatory to the extent prescribed by the COGSA 1971. Likewise, the fundamental liabilities of the carrier in the Turkish commercial Code based upon the Hague/Visby Rules.

Where the Hague-Visby Rules are not mandatory they could be contractually incorporated into the Bills of Lading. Contractual incorporation can itself be direct, for example by use of a clause paramount or it can be indirect, for example where a B/L incorporates charterparty terms that include a clause paramount. The Hague-Visby Rules in cases where they are contractually incorporated do not have the force of law and their effectiveness depends on the construction of the contract.

² BRIDGE Michael, Benjamin's Sale of Goods, 10th ed. Sweet & Maxwell, p. [18-011].

A. Seaworthiness Obligation: Hague-Visby Rules

The Carrier's duty to provide a seaworthy ship.³ Article III (1) provides that the carrier shall be bound before or at the beginning of the voyage to exercise due diligence to:

- a) make the ship seaworthy;
- b) properly man, equip and supply the ship;
- c) make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Article 1141 of TCC reflects Article 3/1 of the Hague/Visby Rules which are incorporated into charterparties and bill of lading⁴. Hence the rules impose an obligation on carriers to exercise due diligences to make the ship Seaworthy before and at the beginning of the contract.⁵ The carrier needs to ensure that the ship is properly manned and equipped and its holds are fit to receive the cargo⁶. Due diligence has been interpreted by the courts as 'indistinguishable from an obligation to exercise reasonable care'⁷ and so 'lack of due diligence is negligence. Such lack of due diligence includes miscalculations as to the quantity of bunkers required for a trans-Pacific voyage, the speed of the vessel and failing to take in account the current⁸, failure by the master to press up three double-bottom tanks, so that a vessel becomes unstable and was unseaworthy⁹; a failure by the chief engineer to carry out engine crankshaft inspections correctly;¹⁰ and a failure by the chief engineer to carry out proper checks

³ CHUAH Jason, *Law of International Trade*, 5th ed. Sweet & Maxwell, p. 360.

⁴ YETİŞ ŞAMLI Kübra, *Lahey-lahey/visby, Hamburg ve Rotterdam Kuralları'nda sefere elverişlilik*, İÜHFM, 2014, Vol. 71, Issue. 2, ss. 479-496; DEĞİRMENCİ KULA Nil *Maritime Law in Turkey*, Onikilevha Publisher, İstanbul 2017, p.112.

⁵ SOYER Barış/TETTENBORN Andrew, *Carriage of goods by sea, land and Air*, p. 7.

⁶ KENDER Rayegân/ÇETİNGİL Ergon/YAZICIOĞLU Emine, *Deniz Ticareti Hukuku*, Temel Bilgiler, Vol. 1, 14. bası, Oniki Levha Publisher, İstanbul 2017, p. 208.

⁷ *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd (The Muncaster Castle)* [1960] 1 QB 536, GIRVIN Stephen, *The Carrier's Fundamental Duties to Cargo under the Hague and Hague-Visby Rules*, (2019)25 JIML, p. 447.

⁸ *E B Abby's Rederei AS v The Union of India (The Evje)* (No 2) [1978] 1 Lloyd's Rep 351, 354.

⁹ *The Friso* [1980] 1 Lloyd's Rep 469, 476.

¹⁰ *The Antigoni* [1991] 1 Lloyd's Rep 209, 215.

and measurements on an engine bearing.¹¹ Furthermore, the article II rule 1(b) requires the ship to be properly manned, equipped and supplied. The crew must be sufficiently, qualified and trained. Furthermore, the crew must be properly qualified to perform the duties which they are actually employed to perform on the relevant ship.¹² The standards of Training, Certification and Watchkeeping of seafarers 2010, which is part of the Safety of Life at Sea Convention, require that the crew must be continuously trained to keep abreast of new developments and technology. Likewise, in the case *The Star Sea*¹³, the master, despite being qualified and very experienced, had not been trained to use firefighting equipment on the ship. When a fire broke out he did not use the fire-fighting equipment quickly enough. The vessel became a total loss. The master was held to be incompetent and therefore the ship was unseaworthy.

Again, in the *Muncaster castle*¹⁴ case where the ship encountered heavy weather and sea conditions during a voyage from Australia to London. Cargo in No. 5 lower hold was damaged by sea water. The most probable method of ingress was found to be leakage through inspection covers over storm valves. These covers had been replaced before the vessel's prior voyage from the UK to Australia, immediately after an inspection of the valves themselves, but the court found that the securing nuts had been improperly fitted. Therefore, the shipowners were liable for failure to exercise due diligence to make vessel seaworthy, when unseaworthiness was due to negligence of fitter employed by competent ship-repairers.

Moreover, article III rule 1 (C) stated that the ship to be fit and safety carry her cargo. This means that the vessel must be fit to encounter ordinary sea and weather conditions during the designated voyage.

¹¹ MT Cape Bonny Tankschiffarts GmbH & Co KG v Ping an Property & Casualty Insurance Co of China Ltd (The Cape Bonny). [2017] EWHC 3036 (Comm), [2018] 1 Lloyd's Rep 356.

¹² BAATZ Yvonne, Maritime Law, 5th ed. Informa Law 2015, p. 138.

¹³ *Manifest shipping co. ltd. v. uni-polaris insurance co. ltd. and la reunion européenne (the "star sea")* [2001] UKHL/1[2001] 1 Lloyd's Rep. 389.

¹⁴ *(The Muncaster Castle)* [1960] 1 QB 536.

*E.G. The Maori King (Cargo owners) v Hughes*¹⁵, a ship was held to be unseaworthy with respect to cargo of frozen meat because refrigeration equipment was defective. In this respect the ship must be seaworthy when the cargo is loaded and there is no breach of the implied term if it becomes unfit for the cargo after the cargo has been loaded.

The final feature of this first base obligation in the Hague-Visby Rules is the burden of proof. The burden of proving unseaworthiness is on the claimant who must show that the ship was unseaworthy before and at the beginning of the voyage then the burden shifts to the owner to establish that they exercised due diligence to make the ship seaworthy before and at the beginning of the voyage. This is a fairly heavy burden as the duty cannot be delegated.¹⁶

B. Exceptions of Liability

Art. IV r. 2 (a) and (b) of Hague-Visby rules provide exemptions from liability in cases of negligence from the carriers' employees. However, none of the exceptions protect the carrier. If the carrier proved one of the exclusions stipulated in Article IV of the Hague-Visby Rules then the carrier relieved of the liabilities against the cargo owners. Having said that this common law principle stated that the carrier must first prove that it has exercised due diligence to make the ship seaworthy before it is entitled to rely upon the exemptions. Article IV Rule 1 of the Hague-Visby Rules states that the carrier shall not be liable, if the carrier proves 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. In essence, it is an exclusion of vicarious liability in respect of particular acts. There is a very problematic area in cases where there are actions which concern the care of cargo but can also be argued as being in the course of management of the ship.

A wide range of acts by the master, crewmen and independent contractors can fall under this exception. For example, a failure to arrange for adequate rest periods between the pilots was held as an act of negligence in navigation. In the ship *Torepo*¹⁷ case where the claim was

¹⁵ *E.G. The Maori King (Cargo owners) v Hughes* [1895] 2 QB 550, CA.

¹⁶ *(The Muncaster Castle)* [1960] 1 QB 536.

¹⁷ *The Torepo* [2002] 2 Lloyd's Rep. 535.

brought by the shippers for the grounding of the ship. It was claimed that the grounding resulted from the negligence of the pilot in the navigation of the vessel. The court held that the pilot's passage plan was not entirely adequate, and his charts were not reliable but it was not the ship's fault. Therefore, it was found by the court that the ship was not unseaworthy. Although it is common ground that the shipowner cannot delegate to some other people. It is apparent that in the *Torepo* case, the senior cadet was, evidently incompetent to carry out the duty. It was the carrier's liability to choose trained cadet for this particular voyage. Likewise, in *The Muncaster*¹⁸ in which the carrier had engaged a firm of reputable repairers to repair the ship before sailing. The repairers were negligent and caused water to enter the ship's hold damaging the claimant's goods. The court looked at the two important matters; one of them was whether the carrier exercise due diligences to make the ship Seaworthy. In other words, if the carrier had have done whatever was needed by the hands of his own servants or he had been prudent in getting it done by other hands, the carrier would be liable or not in accordance with the circumstances. This exception is construed narrowly and does not cover negligence in the management of the cargo, for instance, the case *Gosse Millerd Ltd. v. Canadian Government Merchant Marine Ltd*¹⁹, where the meaning of the words "management of the ship" had been judicially considered a clear distinction was drawn between acts having for their purpose the management of the ship and acts having for their purpose the care of the cargo. The test of what constituted an act or neglect in the management of the ship could not be merely that it involved a dealing with a physical part of the ship, which might only be fitted to ensure the

¹⁸ (*The Muncaster Castle*) [1960] 1 QB 536.

¹⁹ *Gosse Millerd Ltd. v. Canadian Government Merchant Marine Ltd.* (1928) 32 Ll.L.R. 91 where a large quantity of tin plates was shipped at Swansea for carriage to Vancouver. They were shipped in good condition, but arrived in Vancouver seriously damaged by fresh water, of which, judging by the extent of the damage, a large quantity must have entered the hold in which they were stowed. At the trial two theories were put forward to explain this fresh water damage. The shipowners alleged that the water came from the unseasoned timber of the boxes in which the tin plates were packed. The cargo-owners alleged that the fresh water causing the damage was rain entering through the shelter deck which had been left open by the negligence of the ship's officers while it was raining.

safety of the cargo, as, for instance, ventilators or refrigerator machinery. Thus, the case discussed as to whether the shipowners failed to properly and carefully “load, store, carry, keep, care for, and discharge the goods,” or were negligent in doing so, and in particular that the shipowners failed to protect the goods from rain. Since *Gosse Millerd Ltd* case there has been considerable controversy as to how the burden of proof should be applied in cargo claims and particularly whether a carrier must first disprove negligence before it can rely on the defences under Article IV Rule 2 of the Hague Rules²⁰. The burden of proof issue has been discussed in the very recent case of *Volcafe Ltd and another v Compania Sud Americana de Vapores SA*²¹ where a cargo of coffee beans was shipped in containers from South America to North Europe the coffee beans were stuffed in unventilated containers by stevedores contracted by the carrier. Coffee beans emitted moisture when carried from a warm to a cool climate. Stevedores contracted by the carrier lined the containers with Kraft paper as a precaution against moisture damage. Despite this precaution, the coffee beans indicated evidence of condensation damage at discharge²². The *Volcafe* case illustrates the important principle that “the carrier has the burden of proof that that he is not negligent, and he exercised due diligence to take care of the cargo then the onus would on the cargo owner to show the opposite. Moreover, foregoing case indicated that seaworthiness encompasses not only the physical attributes of the ship in undertaking the sea voyage, but also the carrier’s duty to ensure the ship’s cargo worthiness. The wording of Article III rule 2 of The Hague-Visby Rules, imposes a duty on the carrier, subject to the provisions of Article IV, to ‘properly and carefully load, handle, stow, carry, keep, care for and discharge the goods delivered’.

²⁰ *Volcafe v CSAV*-English Court of Appeal decision. <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/volcafe-v-csav-english-court-of-appeal-decision/> (2.1.2021).

²¹ *Volcafe Ltd and another v Compania Sud Americana de Vapores SA* ([2018] UKSC61).

²² LORENZON Filippo, *Volcafe: the UK Supreme Court Rules on the Burden of Proof in Cargo Claims*: <http://www.gard.no/web/updates/content/27345515/volcafe-the-uk-supreme-court-rules-on-the-burden-of-proof-in-cargo-claims> (accessed 10 November 2020).

C. Care of Cargo under The Hague-Visby Rules Article III/2: Adopting a Sound System by the Carrier

The second important duty of the carrier is to take reasonable care for the cargo which is laid down in the article III rule 2 of Hague-Visby rules. The phrases "properly" and "carefully" should be analysed rigorously from several distinctive aspects. In particular, properly means raises a question as to whether the draftsmen intended a higher duty of care.²³ This requirements has been the subject of several remarkable cases. In *Albacora v Westcott and Laurance Line*²⁴ in which a consignment of salted fish had been shipped from Glasgow to Genova. On arrival the cargo was found to have deteriorated substantially in quality, resulting from the hot weather encountered during the voyage. It was subsequently established that cargo of this type should be carried safely in a refrigerator. However, neither the shipper nor the carrier was aware of the potential risk at the commencement of the voyage. In the case the question was whether it had been carried "properly" within the meaning of Art III /2. In answering this question in the affirmative, Lord Reid²⁵ expressed the view that 'properly' meant in accordance with a sound system. This means the obligation is to adopt a system which is sound in light of all the knowledge which the carrier has or ought to have about the nature of the goods. And if that is right, then the respondents did adopt a sound system.²⁶ While Lord Pearce²⁷ elaborated that: 'A sound system does not mean a system suited to all the weaknesses and idiosyncrasies of a particular cargo, but a sound system under all the circumstances in relation to the general practice of carriage of goods by sea. It is tantamount, I think, to efficiency'.

In the absence of a breach of duty of care for the cargo on the carrier's side, and the parties had agreed to use an unrefrigerated vessel, the cargo was damaged by inherent vice within the meaning of Article IV

²³ WILSON John, *Carriage of Goods by Sea*, 7th ed., Pearson, London 2010, p. 191.

²⁴ *Albacora v Westcott and Laurance Line* [1966] 2 Lloyd's Rep 53.

²⁵ Ibid at p 58.

²⁶ Ibid at 58.

²⁷ Ibid 62.

r2(m). Again, in the previous case *The Caspiana*²⁸, Lord Viscount put forward the view that: ‘the natural and ordinary meaning of ‘properly’ in antithesis to ‘carefully’ in the phrase ‘properly and carefully load, handle, stow, carry, keep, care for and discharge’ is in accordance with a sound system’. Likewise, recent cases discussed the carriers obligations based upon a sound system. Thus in the *Volcafe*²⁹ case, the court focused on the question of whether the cargo was damaged by the carrier’s breach of Article III Rule 2 rather than Article IV rule 2 in which “*neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:(m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods*”. The Court also consider the word “properly” has previously been construed as “in accordance with a sound system.” The word “carefully” was found to refer to the implementation of that system by the carrier³⁰.

Moreover, Article 1178 of the Turkish Commercial Code stated that carrier shall exercise due diligence in loading, stowing, handling, carrying, keeping, caring and unloading the goods in performance of the contract of affreightment³¹. It would appear that the Article 1178 of TCC imposed a heavy burden on the carriers as it is not enough for the carriers and their employees to prove that all the precautions are taken in order to discharge from their liabilities. The carrier has to prove that the prudent carriers would have taken all the precautions. In this respect a sound system would be interpreted as the carrier has or ought to know all the weaknesses and characteristics of a particular cargo in accordance with the Article 1178 of TCC. Having said that the carriers are not held liable unless they are negligent according to the Article 1178 of TCC, and the carriers can be relieved from the liabilities by proving that the loss is not arising out of the carriers ‘actual fault or privity. TCC embraced the exemption of Hague/Visby Rules. The carrier is not liable for any loss or damage arising out or resulting from fire or any act, neglect

²⁸ *G H Renton & Co Ltd v Palmyra Trading Corp of Panama* [1957] AC 149, 166.

²⁹ *Volcafe Ltd and another v Compania Sud Americana de Vapores SA* [2018] UKSC 61.

³⁰ LORENZON, <http://www.gard.no/web/updates/content/27345515/volcafe-the-uk-supreme-court-rules-on-the-burden-of-proof-in-cargo-claims>.

³¹ DEĞİRMENCİ KULA Nil, *Maritime Law in Turkey*, Onikilevha Publisher, İstanbul 2017, p.116.

or default of the master or its servants in the navigation or management of the ship under Article 1180 of TCC³². Furthermore, carrier is not liable for loss or damage arising or resulting from... inherent defect, quality or vice of the goods or latent defects not discoverable by due diligence.

Likewise, in the *Volcafe* case the Court expressed the view that the burden of proof should be on the carrier who should show that even though all the precautions had been taken, the damage occurred for the containerized perishable cargo due to its nature then the inherent vice defence which is laid down in article IV rule II can be raised. In other words, for a carrier to rely on the inherent vice exception, they must demonstrate that they were not in breach of Article III Rule 2 and the damage occurred anyway, or that the cargo would not have survived the voyage regardless of whether the carrier discharged the duty of care.

At this stage, it is worth looking at one of the carrier's strongest weapon that can assist them in discharging their liabilities.

D. Inherent Vice Exclusion under the Hague-Visby Rules

As previously mentioned the aforesaid Article IV rule 2 in the Hague-Visby rules laid down the carriers exemptions where inherent vice is a defence to a cargo claim in the Article 4 para. 2 (m). However, the phrase inherent vice is not defined in the Article 4 para. 2 (m) rather it is mentioned as a headed exclusion.

In 19th century case *The Barcore*³³ where the carrier was held not liable when deals, which were shipped wet, become tainted and discoloured by their "own want of power to bear the ordinary transit in a ship". In this early case, the word inherent vice was interpreted as the risk of deterioration of the good with the intervention of ordinary external events. Likewise, in *F. C. Bradley & Sons, Ltd. v. Federal Steam Navigation Co*³⁴ where apples were carried from Tasmania to London, and on

³² BOLCA Tunca, Deniz Taşımacılığında Taşıyanın Sorumluluktan Kurtulduğu Hal-ler, Seçkin Publisher, Ankara 2018, p. 81.

³³ *The Barcore* [1896] p. 294.

³⁴ *F.C. Bradley & sons, Ltd. v. federal steam navigation co; Greenshields v. Stephens*, [1908] A.C. 431, at p. 435 in which inherent vice was described by Lord Halsbury as "anything which by reason of its own inherent qualities was lost without negli-

the arrival, they were found mouldy. The apples were carried under bills of lading which contained all the usual exceptions. It was discussed in the case that the carrier provided for the apple a refrigerated hold which was reasonably fit for the purpose. However, the carrier had little knowledge about the nature of the cargo, but the shipper had the advantage over him in this respect, the shipper must bear the risks belonging to the cargo. In *Blower v. Great Western Railway*³⁵ in which the liability of the carrier to provide a suitable truck for the cargo of animal. Therefore, the animals injured themselves by kicking during the transit without the negligence on the part of the carrier company. Thus, the damaged resulted from inherent vice. It apparent that inherent vice was defined in the early cases as the deterioration of the goods without fault of the carrier.

After a long- term debate about what constituted inherent vice the meaning of the word was eventually set out in the House of Lords decision in *Soya GmbH Mainz Kommanditgesellschaft v White where Lord Diplock* “expressed the authoritative meaning of inherent vice as:

“This phrase where it is used in s. 55 (2) (c) refers to a peril by which a loss is proximately caused; it is not descriptive of the loss itself. It means the risk of deterioration of the goods shipped as a result of their natural behaviour in the ordinary course of the contemplated voyage without the intervention of any fortuitous external accident or casualty”.³⁶

After the Lord Diplock’s definition of inherent vice in the *Soya v white* case remarkable explanation of the term was found in *TM Noten BV v Harding*³⁷ where Bingham LJ³⁸ put forward the view as to what was the real or dominant cause of that damage: “Unchallenged and unchallengeable authority shows that this is a question to be answered applying the common sense of a business or seafaring man.” The judge³⁹ also expressed the view that” the suggestion has sometimes been made

gence on the part of anyone”; RHIDIAN Thomas, Inherent Vice as an Excluded Peril in Marine Insurance, [2009] J.I.M.L., Vol. 15, p. 306.

³⁵ *Blower v. Great Western Railway* L.R. 7 C.P. 655.

³⁶ UÇAR Ayca, Perils of the seas and Inherent Vice in Marine Insurance Law, Routledge; 1st edition, 2020, p. 121.

³⁷ *TM Noten BV v Harding* [1990] 2 Lloyd’s Rep 283, p. 287.

³⁸ Ibid at 287.

³⁹ Ibid at 289.

that inherent vice means the same thing as damage that must inevitably happen, but this is not so. However, the assured was not taking into account the fact that there was nothing in the facts of this case to suggest any untoward or unusual event of any kind had taken place. It was not unusually humid or hot in Calcutta at the time of shipment nor particularly cold in Rotterdam. There is nothing to suggest an unusual period between manufacture and packing of the gloves, nor between packing and stuffing of the containers, nor between stuffing and shipment, nor between shipment and discharge, nor between discharge and unstuffing. There is nothing to suggest that the position of these containers in the stow was unusual".

It would seem that the above cases are classic examples of moisture cases in which the moisture arose from the goods themselves before the shipment, and loss arises alongside the expected perils. Thus, the cargo was damaged during the ordinary voyage. Despite the fact that the carrier had taken all precautions, he would not have prevented the damage. Inherent vice by its nature requires a concurrent cause to take effect. This cause may be a change in temperature that causes condensation or the motion of a barge that causes metal fatigue in its cargo⁴⁰. Besides, Lord Blair⁴¹ in *Cendor MOPU* case stated that the "vice" must be internal, the damage, being the consequence of that vice, can and often will develop with the assistance of an external circumstance, typically the weather". There is no denying that a sound system which was introduced by Lord Reid in the *Albacora* case is harsh on the carrier as he is obliged to know or ought to know about the nature of the cargo. However, in the carriage contract, the carrier's obligations to load, stow, and count the cargo can be left to the shipper then it would be unfair for the carrier to know the exact nature of the cargo as he is not in a position to check the cargo itself. It is common practice that most of the time, the carrier is bound by the shipper's declarations, and the carrier provides a suitable environment for the cargo according to the cargo interest's instruction. In these circumstances, a sound system does not mean a system suited to all

⁴⁰ LAVELLE Jennifer, Marine Insurance–Inherent Vice, 10(2010)1 Shipping & Trade Law, s. 6-8.

⁴¹ *Global Process Systems Inc v Syarikat Takaful Malaysia Berhard* [2009] EWHC 637 (Comm) at [102-111].

the weaknesses of a particular cargo. It should be construed as a reasonable system in relation to the general practice of carriage of goods by sea.

E. Can the Carrier's Obligations to Load, Stow and Discharge the Cargo under Art. III (2) be Delegated to the Cargo Interest?

It is common ground that the contract of carriage specifies whether the carrier would undertake the loading, stowage and discharge of the ship. Under Hague-Visby Rules Art. III (2) does not impose a duty on the shipowner to load/discharge the goods. Therefore, the shipowner is free to negotiate with the charterer who is going to undertake the stowage. It should be noted that since the early case *Renton v Palmyra*⁴² a shipowner can avoid being responsible for the Article III (2) loading, stowage and discharge of the goods by inserting a clause in the contract transferring the liability to the cargo interest (whether that be the shipper, or the charterer of the goods). In *Pyrene Co Ltd v Scindia Navigation Co Ltd*⁴³ where Cargo was damaged by rough handling during loading and/or discharging, and/or inadequate stowage due to failure to provide dunnage, failure to secure the coils and/or stacking them so that the bottom layers were excessively compressed. The House of Lords expressed the view that "The extent to which the carrier has to undertake the loading of the vessel may depend not only upon different systems of law but upon the custom and practice of the port and the nature of the cargo. It is difficult to believe that the Rules were intended to impose a universal rigidity in this respect, or to deny freedom of contract to the carrier. The carrier is practically bound to play some part in the loading and discharging, so that both operations are naturally included in those covered by the contract of carriage. But I see no reason why the rules should not leave the parties free to determine by their own contract the part which each has to play. From this perspective the whole contract of carriage is subject to the rules, but the extent to which loading and discharging are brought within the carrier's obligations is left to the parties themselves to decide."⁴⁴ Besides, in the *Jordan II* where the shippers and receivers of a cargo of steel claimed against the defendant shipowners for damage to cargo, which, they alleged, was caused by defective load-

⁴² *Renton v Palmyra* 1957 AC 149.

⁴³ *Pyrene Co Ltd v Scindia Navigation Co Ltd* 1954] 2 QB 402.

⁴⁴ *Ibid* at 186.

ing, stowage, lashing, securing, dunnaging, separation and discharge. The owners argued that, under the terms of the charterparty and the contract of carriage evidenced by the bills of lading, they were not responsible for those cargo operations and, even if they were, they could recover an indemnity from the charterers. Clause 3 of charterparty agreement stated as...per metric tonne F.I.O.S.T. ["free in and out stowed and trimmed"]- lashed/secured/dunnaged....". The term F.I.O.S.T meant that the shipowner did not have to pay for the work of loading, stowing [and trimming, had it been relevant for the cargo in question—which it was not] including the work of lashing, securing, and dunnaging, and discharging the cargo.⁴⁵ Tuckey L.J. concluded (at 103):

"If one looks at cl. 3 it is clear that the parties have put their minds to what is required to stow the steel coils. Like trimming, lashing/securing/dunnaging was necessary to make the cargo fit for carriage. No trimming was required but after the letter there is a dash and what is required for this cargo is spelt out. Clause 17 was intended to transfer the obligation to perform all cargo work to the charterer. There is nothing in the remainder of the contract to suggest that this was not the intention of the parties here. They must therefore have intended that the obligation to carry out trimming was intended to refer to what would actually be required which they set out in cl. 3. Against this background they cannot have intended that whilst charterers would have to pay for stowing the cargo as well as loading and discharging it, they did not actually have to do the stowing." The House of Lords has held in the case of *Jindal Iron & Steel Co v Islamic Solidarity Shipping Co*⁴⁶ that Art III rule 2 does not oblige the carrier to perform these obligations but merely provides that, if he has undertaken to do so, he must perform them properly and carefully.

Likewise, Article 1178 of the Turkish Commercial Code acknowledges that the shipowner shall delegate some his responsibilities to the cargo interests through the charterparty agreements and Bills of Ladings

⁴⁵ *Jindal Iron and Steel Co. Ltd. and Others v. Islamic Solidarity Company Jordan Inc.—the "Jordan II"* [2004] UKHL 49.

⁴⁶ [2005] 1 Lloyd's Rep 57.

which stipulate FIO/FIOS/FIOST⁴⁷. In the *Jindal* case, the FIOST statement in the bill of lading was interpreted in favour of the shipowner. It was clearly accepted by the judges in the House of Lords. Thus, the cargo interests in the *Jindal* case was found liable for the cargo damage.

It is common ground that “insufficiency of packing” is also one of the carrier’s immunities in the Hague-Visby Rules Article IV(2) m. Thus, in some cases, the goods are packed and put into the container and the container are sealed and lashed by the shipper⁴⁸. Thus, the shipowner is not in a position to know what is inside the container. He is bound by the shipper’s statement which is stipulated in the bill of lading as “Shippers Load, Stow and Count “. The earliest reported case which treats inadequate packing as an example of inherent vice is said to be *Dodwell & Co Ltd v. British Dominions General Insurance Company Limited*⁴⁹ case in which barrels of oil were carried to the United Kingdom from China. There were two shipments insured on different terms and in different vessels. It was contended that the cause of the damage was either the rusting of the tins through being originally packed in damp packing or some undetected defect in the process of manufacture⁵⁰. In *Gee and Garnham Ltd. v Whittall* ⁵¹ where aluminium kettles were found to be dented and others water stained due to the use of unseasoned wood wool; accordingly, this loss came within the exception of ‘inherent vice’ to which the shipowner was not liable.

In the Canadian case of *Feuilaute Solution Systems Inc v Zurich Canada & Others*⁵² book-binding machines were transported from Canada to Germany and suffered corrosion damage. The shipper’s employees used pieces of pressure-treated wood to immobilise the machines within the containers. The corrosion of the cargo was caused by condensation in the containers due to the high moisture content of this pressure-

⁴⁷ BOLCA Tunca, Deniz Taşımacılığında Taşıyanın Sorumluluktan Kurtulduğu Haller, Seçkin Publisher, Ankara 2018, p. 47.

⁴⁸ BİCAN Buğrahan, Denizde Yük Taşımacılığında Konteyner Kaynaklı Zararlardan Sorumluluk, Seçkin Publisher, Ankara 2020, p. 132.

⁴⁹ *Dodwell & Co. Ltd. v British Dominions General Insurance Company Ltd* [1955] 2 Lloyd’s Rep 391.

⁵⁰ UÇAR, p. 120; *Overseas Commodities Ltd. v Style* [1958] 1 Lloyd’s Rep 546, p. 557.

⁵¹ *Gee and Garnham Ltd. v Whittall* [1955] 2 Lloyd’s Rep 562.

⁵² *Feuilaute Solution Systems Inc v Zurich Canada & Others* 2012 FCA 215.

treated wood. Furthermore, it appears that protective wrapping could have prevented the loss. The judge in the Canadian case contended that the cargo was damaged due to unseasoned wooden material being used to wrap the goods and neither extraordinary nor unforeseeable events occurred during the voyage.

There is no denying that shipper's preparation of the cargo for the voyage plays a vital role in the carrier's duties to care for the goods during the transit. Insufficiency of packing, inherent vice has a knock on effect on the cargo damage. Besides, the shipper's failure to prepare and load the cargo for the particular voyage would not be part of the carrier's obligation to care of the cargo under the article III rule 2 of The Hague-Visby Rules. Lastly, "preparation" like "packing" will normally precede loading. It also highlights that there may be many different methods of "preparation" applicable in different trades. It is submitted that, for example, the use of moisture inhibitors would be included within the "preparation" of the cargo and that failure to use such inhibitors would amount to lack of preparation and that moisture losses thus caused would be excluded from the carrier's duty of care.⁵³

III. Recent Case Law on the Duty of Care of the Carrier: The Interpretation of the Word "Sound System" and "Burden of Proof"

It is true that the development of commercial carriage with respect to cargo has been rapidly changing; carriage by container, ventilation and refrigeration have all brought changes to the rules with respect to perishable goods, which has resulted in many previously sensitive and perishable cargoes being susceptible to transportation. Inevitably, some cargo is deteriorated due to its characteristics, insufficiency of packing and lack of care. A critical question is where the burden of proof lies as regards proving the liability of the carrier, and to what extent would the carrier be liable for failing to take good care of the cargo. These questions attract the attention of shippers, charterers and carriers in commercial practice. It has been discussed since the *Albacora* case whether the carrier has ought to know the nature and all weaknesses of particular

⁵³ DUNT John, *Marine Cargo Insurance*, 2nd ed. 2015, para 8.45.

cargo, and failing of which would have been harsh on the carrier under the Hague-Visby rules. The sound system was adopted originally by Lord Reid in *Albacora*⁵⁴ where it was defined. It should be a reasonable system in relation to the general practice of carriage of goods by sea. It is important to look into recent cases in order to observe the effect of *Albacora* case in the recent cases. It is crucial to scrutinize whether the recent cases have had a tendency to follow the interpretation of the sound system or whether they have adopted a different approach. In the *Seafood Imports Pty Ltd v ANL Singapore*⁵⁵ case a consignment of 8,300 kilograms of frozen seafood was shipped for Melbourne, and the bill of Lading stating as “Shipper’s Load & Count”. The container became stuck in defrost mode owing to the incompatibility between the container’s controller and the software with which it was fitted and a failure to carry out an appropriate monitoring and inspection of the container as a result of which the cargo of frozen seafood was damaged. It was discussed in the case that the carrier’s primary obligation is to exercise due diligence to take care of the cargo during the voyage. If the unit was stuck in defrost mode, no alarm, light or temperature reading was visible to alert a crew member to that fact then the carrier would not be liable for the hidden defect of the container. As the defrost mode would have been undetectable by the electrician or some other crew member, the carrier could rely on exception in Article IV r 2(p) of the Hague-Visby Rules. Besides, the shipper failed to discharge the onus imposed on it by Article IV r 2(p) of proving that the damage to the goods arose or resulted from a latent defect in the container not discoverable by due diligence.

However, the carrier’s fundamental duties to “properly” and “carefully” keep care for the cargo and accordingly the meaning of sound system discussed in the recent case *Volcafe Ltd and another v Compania Sud Americana de Vapores SA*⁵⁶ where Nine consignments of bagged coffee beans were carried in 20 unventilated containers from Colombia to Germany. The bill of lading issued by the carrier incorporated the Hague Rules. Stevedores contracted by the carrier to dress the containers with Kraft paper as a precaution against moisture damage. In spite of

⁵⁴ *Albacora v Westcott and Laurence Line* [1966] 2 Lloyd’s Rep 53.

⁵⁵ *Seafood Imports Pty Ltd v ANL Singapore* [2010] FCA 702.

⁵⁶ *Volcafe Ltd and another v Compania Sud Americana de Vapores SA* ([2018] UKSC 61).

this precaution, the coffee beans showed evidence of condensation damage at discharge. The condensation damage was caused due to moisture that had developed on the top of the containers and had fallen onto the goods. Coffee has a natural tendency to absorb moisture and condensation had inevitably formed during the carriage of such cargo from a warm atmosphere to a cooler climate in unventilated containers. The cargo owners brought a claim against the carrier, contending that the carrier was in breach of its obligations under Article III.2 of the Hague Rules. The carrier pledged that the sole cause of the damage was inherent vice on the basis that the coffee beans were unable to withstand the ordinary course of the designated voyage.

The First Instance Court held that the carrier had failed to establish a "sound system" which had been interpreted by the first instance judge as "a rational, adequate and reliable basis for concluding that its lining arrangements could be expected to prevent such damage from occurring during the contracted carriage."⁵⁷ As the carrier had failed to present evidence of a suitable empirical study that a particular weight and/or type of Kraft paper was sufficient in practice to prevent damage throughout the carriage, it had not demonstrated a sound system. Likewise, in the first instance, it was also held that the carrier failed to rely on one of the excepted perils in the Article IV (2) of Hague-Visby Rules such as inherent vice. The judge considered that there was "complete circularity" between article III rule 2 and article IV rule 2(m) so that article IV rule 2(m) was not in any real sense an excepted peril⁵⁸. The Court of Appeal reversed the decision of the first instance court, stating that⁵⁹ the carrier was not required to employ a system which would prevent damage.⁶⁰ The judge had erred in imposing a standard beyond what the law required when concluding that a sound system had to be underpinned by a theoretical calculation or empirical study.⁶¹ The required standard should, instead, have been based on general practice in the container

⁵⁷ Ibid at [45].

⁵⁸ Ibid at [47]-[48].

⁵⁹ Ibid at [68]-[72]-[78].

⁶⁰ *Volcafe Ltd v Cia Sud Americana de Vapores SA (trading as CSAV)* at [64].

⁶¹ Ibid at [68].

industry and, in that respect, the carrier had not fallen short.⁶² However, the Supreme Court on the *Volcafe* case embraced the view of the first instance court and focused on the burden of proof which the carrier failed to establish. The judge contended that the craft paper, which was used to prevent possible moisture damage by the stevedores, was not sufficient to protect the coffee beans from condensation. Therefore, the carrier was negligent as he was obliged to “properly “care for the goods under article III rule 2 of the Hague-Visby rules in accordance with a sound system.

The Supreme Court reinstated the deputy judge’s conclusions about the practice of the trade in the lining of unventilated containers for the carriage of bagged coffee and the absence of evidence that the containers were dressed with more than one layer of lining paper. In the absence of evidence about the weight of the paper employed, the carrier had failed to prove that the containers were properly dressed⁶³

It would appear that *Volcafe* case is no different than *Albacora* case in which the salted fish was carried unrefrigerated container, and the bacteria developed in the fish so that the cargo could only be safely carried on the voyage at the relevant time of year in refrigerated holds. However, no one had appreciated that issue at the time. The carrier relied upon the exception for inherent vice in article IV rule 2(m). The house of Lord held that Article ‘properly’ means in the appropriate manner looking to the actual nature of the consignment, and that it is irrelevant that the shipowner and ship’s officers neither knew nor could have discovered that special treatment was necessary. The obligation under the Article is to carry goods properly, and the carrier proved that there was no negligence on his part, and that despite the fact that all necessary precautions had been taken, the damage would still have occurred. The damage occurred in conditions and in a way that was both foreseeable and entirely ordinary. The cargo essentially damaged itself under ordinary atmospheric conditions and it was not sensible to regard them as having sustained negligence of the carrier. Accordingly, they had sufficient evidence the moisture damage was inevitable due to the character-

⁶² Ibid at [71].

⁶³ Ibid at[44].

istics of the cargo, and therefore could rely on the inherent vice exception in Article IV Rule 2(m) of the Hague Rules.

Likewise, in the *Volcafe* case the carrier commented that no amount of Kraft paper would have prevented the condensation damage. Whereas the cargo interest alleged that the condensation damage could only have resulted from some insufficiency of Kraft paper, being lined in the container to protect the cargo from moisture damage. The Court of Appeal considered that no amount of lining with paper of any thickness could have prevented the damage, and the court touched upon the important issue, contending that the carrier was not required to put up a sound system which would preclude the condensation. The Judge⁶⁴ in the court of appeal argued that if the first instance judge had applied the law in relation to what constituted a sound system and the burden of proof correctly, he would have concluded that the claimants had failed to establish that the defendant's system of lining the containers was not a sound system. The word "properly" has previously been construed as "in accordance with a sound system", and phrase "carefully" was found to refer to the implementation of that system by the carrier. The Court commented that "properly" and "carefully" can be viewed as two aspects of a single duty of care and so it is not always necessary, or possible, to assign the breach to one or other of them in isolation⁶⁵.

Similarly, in the *Santa Isabella*⁶⁶ case the phrase sound system was discussed in the light of the carrier's obligation to duty of care under Article III(2) of the Hague Rules. Thus, in the case the vessel was carrying 44,000 mt of white maize from Mexico, to Durban and Richards Bay, South Africa. The charterparty incorporated the Hague-Visby Rules. The cargo was found to have suffered extensive condensation damage on arrival, after a 39-day voyage. The cargo owner alleged that there were two primary causes of the damage the former, the vessel taking the Cape Horn route rather than the Panama Canal route. The latter

⁶⁴ *ibid* at [68].

⁶⁵ LORENZON, <http://www.gard.no/web/updates/content/27345515/volcafe-the-uk-supreme-court-rules-on-the-burden-of-proof-in-cargo-claims>.

⁶⁶ *Alianca Navegacao E logistica ltda v Ameropa SA (The "Santa Isabella")* [2019] EWHC 3152 (Comm).

was inadequate ventilation of the cargo in accordance with a sound system. The court considered whether the cargo was properly and carefully ventilated during the voyage in accordance with a sound system. The judge found that there was a breach of the duty to care for the cargo under Article III rule 2. As the evidence indicated that there had been a failure to ventilate at night, this was not a sound system. In particular, there was no description of any system for ventilation in the vessel's SMS documents.⁶⁷ Accordingly, it was decided in the *Santa Isabella* case that the cargo was not properly and carefully ventilated during the voyage in accordance with a sound system, in breach of the owners' duties properly to care for the cargo. Had there been proper ventilation when it was safe to do so, there would have been 6 to 12 in of dried crust at the top of the cargo but no greater type or degree of level of cargo damage.

IV. Conclusion

This article has examined the carrier's two fundamental obligations. The former is to provide a seaworthy ship, and the latter is to duty of care for the cargo under Article III (2) of the Hague Rules. It has been discussed above how the case law and the rules responded to these two primary duties of the carrier. It is apparent that since the enactment of Hague-Visby Rules, the courts had no difficulties applying well-established principles as for the carrier's duties to exercise due diligence to make the ship Seaworthy under article III(I) of the Hague-Visby Rules. As regards the second base obligation of the carrier to care for the cargo, the recent case *Volcafe* brought new perspective, particularly, application of a sound system and burden of proof.

In the early case *Gosse Millerd v Canadian Government Merchant Marine Ltd* ⁶⁸ where the meaning of the carrier's obligations under Article III(2) to properly and carefully care for the cargo was interpreted as "in accordance with a sound system" which does not require perfection, the significance of differentiating between "properly" and "carefully" is that the carrier is bound not only to adopt a sound system for handling, carrying and caring for the goods as contracted, but must also be careful

⁶⁷ Ibid at [171].

⁶⁸ *Gosse Millerd v Canadian Government Merchant Marine Ltd* (The Canadian Highlander) [1927] 2 KB 432, page 434, per Wright J).

in his application of that system. *Volcafe Ltd v Compania Sud Americana de Vapores SA* ⁶⁹laid down an important yet complicated principle that "the carrier has the legal burden of proving that he took due care to protect the goods from damage, including due care to protect the cargo from damage arising from inherent characteristics such as its, the Supreme Court considered whether there were industry standards for caring for this specific cargo, and if so, whether the carriers could prove they had followed such standards. This can be a challenging task for a carrier, as they are not, and cannot be, experts for every type of cargo presented for carriage. In the absence of such standards, carriers are advised to request specific instructions from shippers as to the care of the cargo they carry, and take careful records of when and how they are followed.

While it is still too early to know how arbitrators and courts will digest and apply *Volcafe*, the case is a useful clarification of the carrier's duty of care under Article III (2) of the Hague Rules. It also demonstrates the difficulties that a carrier faces in proving that it has cared for the cargo properly and carefully where cargo, which was received in apparent good order and condition, is then delivered in a damaged state. The carrier cannot rely on industry practice alone to argue that it adopted a sound system to protect the cargo. The soundness of the system employed by the carrier must be based on suitable theoretical and empirical studies.

It would appear that in order to raise an inherent vice defence the carrier does not first have to disprove negligence. The *Volcafe* case demonstrated that if a carrier wants to rely on the inherent vice defence, the burden of proof will be on the carrier to show that it exercised a reasonable degree of skill and care and, notwithstanding this, the loss or damage occurred in any event.

Bibliography

BAATZ Yvonne, Maritime Law, 5th ed. Informa Law 2015.

BRIDGE Michael, Benjamin's Sale of Goods 10th ed. Sweet & Maxwell 2017.

⁶⁹ *Volcafe Ltd v Compania Sud Americana de Vapores SA (trading as "CSAV")* [2017] 1 Lloyd's Rep 32.

BİCAN Buğrahan, *Denizde Yük Taşımacılığında Konteyner Kaynaklı Zararlardan Sorumluluk*, Seçkin Publisher, Ankara 2020.

BOLCA Tunca, *Deniz Taşımacılığında Taşıyanın Sorumluluktan Kurtulduğu Haller*, Seçkin Publisher, Ağustos 2018.

CHALMERS' K.C.B. C.S.I/OWEN Douglas, *The Marine Insurance Act 1906*, 1st ed., London 1907.

DEĞİRMENCİ KULA Nil, *Maritime Law in Turkey*, Onikilevha Publisher, İstanbul 2017.

DUNT John, *Marine Cargo Insurance*, 2nd ed., Informa Law, 2015.

DUNT John/MELBOURNE William, *The Impact of Cendor MOPU on the Institute Cargo Clauses (in) Rhidian Thomas, The Modern Law of Marine Insurance*, Vol. 4, Informa Law, 2016.

CHUAH Jason, *Law of International Trade*, 5th ed. Sweet & Maxwell 2013.

FILIPPO Lorenzon, *Volcafe: the UK Supreme Court Rules on the Burden of Proof in Cargo Claims*: <http://www.gard.no/web/updates/content/27345515/volcafe-the-uk-supreme-court-rules-on-the-burden-of-proof-in-cargo-claims> (accessed 10 November 2020).

GILMAN J/MERKIN R/BLANCHARD/TEMPLEMAN M, *Arnould's Law of Marine Insurance and Average*, 18th ed. Sweet & Maxwell 2013.

GURSES Özlem, *Marine Insurance Law*, Taylor & Francis Group, 2nd ed, 2017.

HODGES Susan, *Law of Marine Insurance*, Cavendish 1996.

KENDER Rayegân/ÇETİNGİL Ergon/YAZICIOĞLU Emine, *Deniz Ticareti Hukuku: Temel Bilgiler*, Vol. 1, 14. baskı, Oniki Levha Publisher, İstanbul 2017.

LAVELLE Jennifer, *Marine Insurance—Inherent Vice*, (2010) 10(1) *Shipping & Trade Law* 6-8.

Pauline Barratt, *The Inherent Vice Exclusion Only a Shadow Remains*, (Issue 019, June 2011) <http://studylib.net/doc/8155258/the-inherent-vice-exclusion> (accessed 1 January 2021).

RHIDIAN Thomas, *Inherent Vice as an Excluded Peril in Marine Insurance*, [2009] *J.I.M.L.* Vol. 15, 306.

SOYER Barış/TETTENBORN Andrew, *Carriage of Goods by Sea, Land and Air*, Routledge 2014.

Volcafe v. CSAV-English Court of Appeal decision. <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/volcafe-v-csav-english-court-of-appeal-decision/> (accessed 15 February 2017).

UÇAR Ayça, Perils of the seas and Inherent vice in Marine Insurance Law "Routledge; 1st edition October 29, 2020.

WILSON John, Carriage of Goods by Sea, 7th ed., Pearson, London 2010

YETİŞ ŞAMLI Kübra, Lahey-lahey/Visby, Hamburg ve Rotterdam Kuralları'nda Sefere Elverişlilik, İÜHFM, 2014, Vol. 71, Issue. 2, pp. 479-496.