



SAMOA

SEA CARRIAGE OF GOODS ORDINANCE 1960

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SEA CARRIAGE OF GOODS ORDINANCE 1960

1960

No. 5

AN ORDINANCE to make certain provisions relating to the carriage of goods by sea.

[Assent and commencement date: 10 June 1960]

**PART 1
PRELIMINARY**

1. Short title – This Ordinance may be cited as the Sea Carriage of Goods Ordinance 1960.

**PART 1A
COASTWISE TRADE**

2. This Part to apply to coastwise trade – (1) This Part applies:

- (a) to carriage of goods by sea in ships from any port in Samoa to any other port in Samoa; and
- (b) to bills of lading and other shipping documents relating to the carriage of goods.

(2) In this Part, and in every bill of lading or other shipping document to which this Part applies, “owner”, unless the context otherwise requires, includes any charterer to whom a ship may be demised.

3. Owner of ship not liable in certain cases – If the owner of any ship carrying goods from any port in Samoa to any other port in Samoa exercises due diligence to make the ship in all respects seaworthy, and properly manned, equipped, and supplied:

- (a) neither the ship nor the ship’s owner or agent shall be responsible for loss or damage arising or resulting from faults or errors in navigation or in the management of the ship; and
- (b) neither the ship nor the ship’s owner, agent, or master shall be responsible for loss or damage arising or resulting from—
 - (i) dangers of the sea or other navigable waters;
 - (ii) acts of God;
 - (iii) acts of public enemies;
 - (iv) inherent defect, quality, or vice of the thing carried;
 - (v) insufficiency of package;
 - (vi) seizure under legal process;

- (vii) act or omission of the shipper or owner of the goods or his or her agent or representative;
- (viii) saving or attempting to save life or property at sea, or deviating in rendering such service.

4. Restrictions as to provisions of bills of lading – (1)

Subject to subsection (2), where any bill of lading or other shipping document to which this Part applies contains any clause, covenant, or agreement:

- (a) whereby the manager, agent, master, or owner of any ship, or the ship itself, shall be relieved from liability for loss or damage arising from the harmful or improper condition of the ship's hold or arising from negligence, fault, or failure in proper loading, stowage, custody, care, or delivery of any lawful merchandise or property committed to their or its charge; or
- (b) whereby the obligations of the owner of the ship to exercise due diligence to properly equip, man, provision, and outfit the ship, to make the hold of the ship fit and safe for the reception of cargo, and to make the ship seaworthy and capable of performing its intended voyage are in anywise lessened or avoided; or
- (c) whereby the obligations of the master, officers, agents, or servants to carefully handle and stow the cargo, and to care for and properly deliver it, are in any wise lessened or avoided, –

that clause, covenant, or agreement shall be null and void and of no effect, unless the Court before which any question relating thereto is tried adjudges it to be just and reasonable.

(2) This section does not apply to the carriage of live animals.

5. Provisions as to condition of goods on delivery to ship

– (1) Any clause written or stamped upon the face of a bill of lading or other shipping document to which this Part applies, purporting to describe the condition or defect of packages or goods referred to therein, is void unless:

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- (a) the attention of the shipper or his or her agent, or where there is no agent at the port of shipment known to the owner of the ship then of the person delivering the packages or goods alongside the ship, has been called to the condition or defect of the packages or goods at the time of their delivery to the ship; and
- (b) the condition or defect of the packages or goods has been noted on the receipt given at that time or, where no receipt is given, on any shipping document given at the ship's side on the delivery of the goods; and
- (c) the fact that attention has been so called to the condition or defect of the packages or goods at the time of their delivery to the ship has been noted on the bill of lading or other shipping document given in respect of the packages or goods.

(2) If any package which has been acknowledged in a bill of lading or other shipping document to have been received in good or apparent good order and condition and is found to have been tampered with or pillaged, the production of *bona fide* invoices is *prima facie* evidence that the contents of the package were in accordance therewith, unless the package is one of a number of packages delivered to the same consignee, in which case the production of *bona fide* invoices shall be accepted as the *prima facie* evidence as aforesaid only if the consignee proves that the goods claimed to have been pillaged or not delivered were not contained in 1 or more of the other packages.

6. Maximum liability of owner – (1) Neither the owner nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods to any greater extent than a sum calculated at the rate of \$20 per cubic foot, but not in any case exceeding \$100 per package or unit, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading or other shipping document.

(2) This declaration if embodied in the bill of lading or other shipping document is *prima facie* evidence, but shall not be binding or conclusive on the owner.

(3) By agreement between the owner, master, or agent of the owner and the shipper another maximum amount than that mentioned in this section may be fixed:

PROVIDED THAT such maximum shall not be less than the amount above-named.

(4) Neither the owner nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading or other shipping document.

(5) This section does not apply to the carriage of live animals or of other cargo which in the bill of lading or other shipping document is stated as being carried on deck and which is so carried.

PART 2 CARRIAGE BY SEA FROM SAMOA

7. Application of Rules in Schedule – (1) Subject to the provisions of this Ordinance, the Rules contained in the Schedule (in this Part referred to as “the Rules”) have effect in relating to and in connection with the carriage of goods by sea in ships from any port in Samoa to any port outside Samoa.

(2) The Rules does not, by virtue of this Ordinance, apply to any contract for the carriage of goods by sea made before the commencement of this Ordinance, nor to any bill of lading or similar document of title issued, whether before or after the commencement of this Ordinance, in pursuance of any such contract as aforesaid, unless the rules would have applied to such contract, bill of lading, or document had this Ordinance not been passed.

8. Absolute warranty of seaworthiness not to be implied – There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of goods to provide a seaworthy ship.

9. Statement as to application of Rules to be included in bills of lading – (1) A bill of lading or similar document of title issued in Samoa which contains or is evidence of any contract to

which the Rules apply shall contain an express statement that it is to have effect subject to the Rules as applied by this Ordinance.

(2) Any owner, charterer, master, or agent who issues any such bill of lading or similar document of title without complying with this section is liable on summary conviction to a fine of 2 penalty units.

10. Modification of Rules 4 and 5 of Article III in relation to bulk cargoes – If, under the custom of any trade, the weight of any bulk cargo inserted in a bill of lading to which the Rules apply is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then despite anything to the contrary in the Rules, the bill of lading is taken not to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment is taken not to have been guaranteed by the shipper.

PART 3 MISCELLANEOUS

11. Lodging of claims for damage, short-delivery, and pillage – (1) The agents in Samoa of any ship not registered in Samoa is taken to be the legal representatives of the master and the owner or charterer of the ship after the departure of the ship from the port at which the ship was discharged for the purpose of receiving and paying claims for short-delivery, damage, or pillage of cargo, and the amount of any such claim may be recovered from the agents in any Court of competent jurisdiction:

PROVIDED THAT it is lawful for the agents, by notice in writing delivered to the Collector of Customs not later than 24 hours before the departure of any ship, to decline to accept any responsibility under this section in respect of that ship, in which case the master and some other person approved by the Collector shall, before the ship is allowed its clearance, enter into a joint and several bond in a sum not exceeding the value of the ship's cargo, as shown by the ship's papers, for the payment of any sum which, together with costs, may be recovered against the agents of the ship.

(2) No proceeding for the recovery of any claim under this section shall be taken unless notice of the claim is given to the agents not later than 14 days after the delivery of the cargo in respect of which the claim is made.

12. Bill of lading to be binding if signed by authorised person – A bill of lading or other shipping document relating to the carriage of goods issued by the manager, agent, master, owner, or charterer of a ship, and signed by any person purporting to be authorised to sign it, is binding on the master and the owner or charterer of the ship as if the bill of lading or other document had been signed by the master.

13. Saving – Nothing in this Ordinance affects section 3 of the Mercantile Law Amendment Act 1922 (NZ).

14. New Zealand Statute superseded – As from the coming into force of this Ordinance, the Sea Carriage of Goods Act 1940 (NZ) ceases to be part of the law of Samoa.

SCHEDULE **(Section 7)**

RULES RELATING TO BILLS OF LADING

ARTICLE 1

Definitions

IN THESE Rules the following expressions have the meanings hereby assigned to them respectively, that is to say:

“carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper;

“contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

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“goods” includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

“ship” means any vessel used for the carriage of goods by sea;

“carriage of goods” covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II**Risks**

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III**Responsibilities and Liabilities**

1. The carrier shall be bound, before and 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.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, care for, and discharge the goods carried.

3. After receiving the goods into his or her charge, the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading 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

coverings 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 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 bill of lading any marks, number, quantity, or weight which he or she has reasonable ground for suspecting not accurately to represent the goods actually received, or which he or she has had no reasonable means of checking.

4. Such a bill of lading is *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with Rule 3(a), (b), and (c).

5. The shipper is taken to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him or her, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his or her responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless the notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his or her agent at the port of the discharge before at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within 3 days, such removal is *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the

carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a “shipped” bill of lading:

PROVIDED THAT if the shipper shall have previously taken up any document of title to such goods he or she shall surrender the same as against the issue of the “shipped” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the dates of shipment, and when so noted the same shall, for the purpose of this article, be deemed to constitute a “shipped” bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules shall be null and void and of no effect.

A benefit of insurance or similar clause is taken to be a clause relieving the carrier from liability.

ARTICLE IV

Rights and Immunities

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to 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 in accordance with the provisions of Rule I of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this rule.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from the following:

- (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;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers, and accidents of the sea or other navigable waters;

- (d) act of God;
- (e) act of war;
- (f) act of public enemies;
- (g) arrest or restraint of princes, rulers, or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) act or omission of the shipper or owner of the goods, his or her agent or representative;
- (j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight of any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (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.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his or her agents, or his or her servants.

4. 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 these Rules or of the contract of carriage and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding \$200 per package or 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 bill of

lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier and the shipper another maximum amount than that mentioned in this rule may be fixed:

PROVIDED THAT such maximum shall not be less than the figure above named. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average if any.

ARTICLE V

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

A carrier shall be at liberty to surrender in whole or in part all or any of his or her rights and immunities or to increase any of his or her responsibilities and liabilities under the Rules contained in any of these Articles:

PROVIDED such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master, or agent of the carrier, and a shipper, shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his or her obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his or her servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

PROVIDED THAT this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE VII

Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII

Limitation of Liability

The provisions of these rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

ARTICLE IX

The monetary units mentioned in these Rules are to be taken to be Samoa currency.

REVISION NOTES 2008 – 2019

This is the official version of this Ordinance as at 31 December 2019.

This Ordinance has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Part numbering changed to decimal & Part 3 re-titled as ‘MISCELLANEOUS’

There were no amendments made to this Ordinance since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Ordinance is administered by
the Ministry of Works, Transport and Infrastructure*
