

Секция «Актуальные вопросы права Англии и США (на английском языке)»

Common law exceptions of the carrier in the carriage of goods by sea

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Historically the liability of the carrier under a bill of lading was strict, subject only to what were known as the common law exceptions, namely, act of God, Queen's enemies, inherent vice, and a general average sacrifice. the carrier is allowed to invoke these four common law exceptions even in the state of absence of any express stipulations in the contract. Nowadays, contracts of carriage invariably include clauses expressly excluding liability. However, it is essential to know these common law exceptions when the carrier loses the protection of the contract as the result of a deviation or some other fundamental breach[n1].

Act of God. This exception can only be invoked where the damage or loss is solely attributable to natural causes independent of any human intervention. As James LJ in the early case of *Nugent v Smith* stated A common carrier is not liable for any accident as to which he can show that it is due to natural causes, directly and exclusively without human intervention, and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him. Thus damage caused by storm, frost, lightning or high wind would fall within this exception even though they may be relatively common occurrences.

Act of the Queen's enemies. This exception is designed to cover acts committed by states, or their subjects, with whom the Sovereign is at war and is traditionally justified on the ground that otherwise the carrier would have no recourse since the parties involved are outside the jurisdiction of the national courts. The exception also extends to reasonable steps taken by the carrier to avoid an imminent threat of such action. Where the carrier is a foreign national or company, the exception will cover the activities of enemies of the state to which the carrier owes allegiance. A somewhat similar exception is incorporated into bills of lading by Art IV rule 2(g) of the Hague/Visby Rules under the title of 'act of public enemies'

Inherent vice. A carrier is not liable at common law for loss or damage which results exclusively from some inherent characteristics or defect of the cargo carried. Many of these characteristics are well known in the trade and the carrier, in accepting delivery of such cargo, is expected to exercise that degree of care which the nature of the goods demand. The degree of care expected of the carrier will, of course, vary depending on the extent of his knowledge of the characteristics of the particular cargo. Whether there is an inherent defect or vice must depend on the kind of transit required by the contract. The corresponding exception made applicable to bills of lading by Art IV rule 2(m) of the Hague/Visby Rules is expressed to cover: 'Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.'

General Average. A long-established principle of Maritime Law which requires contribution from all whose goods were saved to the losses of those whose goods were sacrificed at time of common peril[n2].

Источники и литература

- 1) Wilson, John Furness, 1924–Carriage of goods by sea / John F. Wilson. – 7th ed.

- 2) Lexology: <https://www.lexology.com/library/detail.aspx?g=57b75396-b70e-4890-8061-6a35786d7681>