



CARRIER LIABILITY IN SUCCESSIVE CARRIAGE UNDER THE IRAQI TRANSPORT LAW

Ahmed Amer Abdulameer

University of Baghdad, College of Law, Iraq.
Ahmed.Aamer1201a@colaw.uobaghdad.edu.iq

Article history:	Abstract:
Received: 14 th June 2025 Accepted: 11 th July 2025	This study investigates successive carriage, a distinct legal and commercial form of international transport, arising from the absence or irregularity of direct transport routes. Under this system, multiple carriers perform consecutive stages of transport under a single document, with the first carrier fully liable to the consignor or passenger, including breaches in subsequent stages. The research examines the role of direct and indirect transport documents and the concept of recourse, allowing a carrier who has compensated an injured party to seek reimbursement from other carriers. It highlights carriers' duties to inspect goods, document their condition, and collect freight, and critically analyzes maritime carrier liability under Iraqi Transport Law No. 80 of 1983, noting conflicts with the Civil Code and gaps in harmonization. The findings confirm that liability requires fault, damage, and a causal link, and underscore the need for a comprehensive Iraqi maritime code to ensure legal clarity, protect stakeholders, and align with international standards.
Keywords: Successive Carriage; Maritime Carrier Liability; Recourse; Iraqi Transport Law; Direct Transport Document; Contractual Obligations; Legal Protection.	

1. INTRODUCTION:

Successive carriage, also known as consecutive or direct carriage, is a distinct form of transport. It arises primarily due to practical challenges, especially the lack or irregularity of direct transport routes between most countries. This contract is executed by multiple carriers sequentially, each responsible for a specific stage of the transport, under a single transport document covering the entire journey for a unified freight, whether the subject of transport is goods or persons. The carriage is conducted with the knowledge or express authorization of the consignor or passenger, aiming to deliver goods or passengers safely to the agreed destination at the stipulated time. Consequently, the operation is regarded as a single legal transaction, forming a unified contractual framework binding all parties involved. Successive carriage extends to the transport of persons as well, not merely goods.

The terms of the direct transport document or direct bill of lading govern both the transport operations and the legal relationship between the first carrier and the consignor or passenger. Consequently, even if the last carrier enters into an agreement with a subsequent carrier under conditions different from those agreed with the first carrier, the first carrier remains liable to the consignor, passenger, or consignee. Moreover, each successive carrier is jointly and severally liable with the others as if they had executed the contract individually. This framework grants the injured party the right to claim compensation from all successive carriers or from any single carrier for the full amount of damages, without affecting the right of recourse among the carriers themselves.

While direct transport documents regulate successive stages of carriage, the relationship between the first carrier and secondary carriers is governed by indirect transport documents issued by secondary carriers to the principal carrier. Under these documents, secondary carriers bear responsibility toward the principal carrier for any damage to the goods occurring during the stage of transport they execute.

The term recourse action (subrogation) refers specifically to the right of a carrier who has compensated an injured party—whether a passenger, consignor, or consignee—to recover the amount paid. This right allows the carrier to claim reimbursement from other carriers involved in the successive carriage. In a broader sense, recourse encompasses any claim by the injured party against any carrier who fails to achieve the intended contractual purpose, namely, delivering the passengers or goods safely and on time, whether by custom or agreement. Recourse also includes the carriers' obligations to inspect the goods, record their condition, note any reservations, and collect freight and other entitlements.

Significance of the Study:

Transport constitutes a critical pillar of contemporary commerce, serving as the lifeline of trade and the foundation of international commerce. Maritime carriers, in particular, play a central role in this context. The Iraqi legislator has organized carrier liability under the Iraqi Transport Law No. 80 of 1983, in alignment with relevant international

agreements, including the Hamburg Rules and the Brussels Convention, both ratified by Iraq to regulate international transport, including successive carriage.

Research Problem:

The rationale for selecting the topic of recourse in successive carriage stems from the conflicts between the provisions of the Iraqi Civil Code and the Iraqi Transport Law, as well as the lack of harmonization between these two legal frameworks regarding carrier liability and exemption conditions in successive carriage. The study further aims to provide scientific clarification and delineate the practical contours of successive carriage, as other types of transport may legally be conflated with it.

Methodology:

This research employs an analytical approach, examining and dissecting relevant provisions of the Iraqi Transport Law in detail, with critical reference to applicable legal principles and scholarly commentary.

Structure of the Study:

The study is organized into three main chapters:

1. Chapter One: Analyzes the concept of successive carriage from contractual and legal perspectives.
2. Chapter Two: Examines the legal status and obligations of the carrier in successive carriage under the Iraqi Transport Law.
3. Chapter Three: Addresses the liability of the carrier in successive carriage according to Iraqi legislation.

The research concludes with a summary of findings and practical recommendations, aiming to enhance legal clarity and ensure coherence between legislative provisions governing successive carriage.

2.1. Definition of Successive Carriage:

Successive carriage refers to transportation carried out by several carriers in succession under a single contract of carriage¹. It may also be understood as transportation executed in multiple successive stages, either by different carriers or by the same carrier performing it in distinct stages².

This type of carriage is one of the most prominent forms of transportation. Scholars also call it 'consecutive' or 'direct' carriage. It typically arises from commercial exchange and the successive movement of goods or passengers across countries separated by international borders. Such exchange occurs through the import and export of raw materials, goods, merchandise, and other movable property. In this framework, the passenger or consignor engages the services of a carrier (the first carrier) and contracts with him to deliver the passenger or the goods to a specified destination. The first carrier, in turn, selects suitable successive carriers to perform the remaining stages of the carriage—resorting, where necessary, to carriers who are more specialized or better positioned to complete the journey. The operation continues in this manner until the last carrier delivers the passenger or goods to the agreed destination. The first carrier thereby bears a dual liability: responsibility for his own actions and for the actions of the successive carriers.

Successive carriage has emerged as a practical necessity, particularly in situations where direct transport routes between countries are absent or irregular. Some scholars have defined it as follows: "*A contract executed by several carriers, each performing a successive part of the journey, under a single transport document covering the entire route and subject to a single freight. This applies regardless of whether the subject matter is passengers or goods, and whether the transport occurs with the knowledge or authorization of the passenger or consignor. The objective is to deliver the passengers or goods safely to the agreed destination within the designated time, thereby treating the operation as a single transaction and binding all parties within a unified contractual framework*"³.

Under this arrangement, the first carrier transports the goods for part of the journey using his own means, and for the remaining parts he contracts with other carriers. Each successive carrier is entitled to examine and verify the condition of the goods upon receiving them from the preceding carrier. If the goods are accepted without reservation, it is presumed that they have been received in good condition and in conformity with the particulars stated in the transport document, unless evidence to the contrary is established⁴.

2.2. Conditions of Successive Carriage:

The contract of successive carriage does not differ in its formation requirements from other contracts. It is consensual and based on the free will of the parties, aiming for a lawful purpose. Its conclusion requires only mutual consent—the simple exchange of offer and acceptance—without any further formalities⁵.

Article (6) of the Iraqi Transport Law provides that: "*The contract of carriage is concluded by mere agreement and may be evidenced by all means.*" Nevertheless, it should be noted that the delivery of goods to the carrier constitutes a form of acceptance of the offer

¹ . Jumaa, Abdul Mousa. Legal Provisions of the International Multimodal Transport Convention. Al-Sabah Library, Baghdad, 2111, p. 34.

² . Al-Anbaki, Majid Hameed. Iraqi Transport Law: Principles and Provisions. University of Baghdad, 1984, p. 27.

³ . Jumaa, Abdul Mousa. Ibid., p. 34.

⁴ . Houthi, Fatima Abbas. "Recourse Among Carriers in Successive Transport under Iraqi Transport Law No. 81 of 1983." Message of Rights Journal, College of Law, University of Karbala, 2112, p. 153.

⁵ . Al-Anbaki, Majid Hameed. Iraqi Transport Law: Ibid., p. 28.

made by the carrier in a contract for the carriage of goods, and similarly, a passenger's boarding of the means of transport constitutes acceptance of the carrier's offer in passenger carriage.

Carriage does not constitute a transaction affecting ownership of a thing; therefore, the required capacity for the consignor or passenger is limited to the age of discernment. It is understood, however, that the carrier cannot generally verify the legal capacity of all persons with whom he contracts. A deficiency in the capacity of the consignor or passenger does not cause any prejudice, provided the contractual terms are uniform for all parties.

For the carrier, the required legal capacity is the attainment of majority if he is a natural person. In the case of a legal person, which is the prevailing scenario, capacity is satisfied if the corporate purpose of that entity includes carrying out transportation activities⁶.

Regarding the consignee—the third party in the contract of carriage, whose name is inserted in the transport document and who acquires the right to act in his own name—the carrier is obligated to deliver the goods to him at the agreed destination. From the moment the consignee expressly or implicitly declares his consent to join the contract, whether immediately or subsequently, his rights and obligations are established. He is thereby placed in a direct contractual relationship with the carrier, assuming the same legal position as the consignor. The effects of the contract (rights and obligations) extend to him from the moment of the contract's conclusion, not from the date of his accession. The law does not specify any particular age for his capacity, except that he must be competent to receive the goods⁷.

Defects of consent may arise in the context of goods carriage, though generally not in passenger carriage. For instance, an error might occur regarding the nature of the goods being transported—for example, if items are delivered under the belief that they are of a certain type and later found to differ. In such cases, the contract is suspended, and general rules regarding ratification or annulment apply.

The subject matter of the contract is fundamental. In goods carriage, it must be tangible, movable property legally capable of trade; in passenger carriage, it includes the passenger and luggage. The contract is invalid if the subject matter is absent or unlawful. Defining the subject matter merely as transportation itself could wrongly legitimize contracts for illicit goods, which is clearly unacceptable⁸.

Iraqi law has explicitly resolved this issue by stipulating that the subject matter of the contract is the person or the goods transported, as stated in Article (5) and reinforced in Article (73/2), which provides for optional particulars in the transport document, including "*the value of the goods forming the subject of the contract of carriage.*"

The contract is void if the subject matter is unlawful, such as where it involves smuggled or stolen goods, prohibited items, or the unlawful transportation of a kidnapped or detained person⁹.

The cause (*causa*) of a successive carriage contract is the immediate purpose which the obligor intends to achieve through his undertaking. The cause must satisfy the conditions of validity prescribed in civil law: it must be real and lawful, and the contract remains valid even if the cause is not explicitly stated.

The cause, as an essential element of the contract, is defined by the obligations of each party. Since carriage contracts are commutative, the carrier's obligation to transport the goods or passenger constitutes the cause of the consignor's or passenger's obligation to pay freight. Conversely, the obligation of the consignor or passenger to pay freight constitutes the cause of the carrier's obligation to perform the transport. The cause must be lawful; otherwise, the contract is void. An example of an unlawful cause would be an agreement to transport stolen goods or a kidnapped person¹⁰.

Regarding formality, as previously indicated, the contract of successive carriage is consensual, and the mutual consent of the parties suffices for its formation. Writing serves, under general principles, merely as evidence of the contract and does not constitute a condition for its validity. Therefore, writing is required only for evidentiary purposes, and the contract may also be proven through equivalent means, such as judicial admission or an oath¹¹.

2.3. Distinction of Successive Carriage from Other Types of Carriage:

Carriage, in all its forms, is fundamentally a contract under which the carrier undertakes to transport a person or goods from one place to another in return for a specified remuneration. Carriage is a bilateral commutative contract and may be executed via land, maritime, or air transportation. In what follows, we distinguish successive carriage from other types of carriage, specifically multimodal domestic carriage and international multimodal carriage.

a. Distinction from Multimodal Domestic Carriage:

Domestic carriage occurs entirely within the territorial limits of a single state and is governed by the relevant national legislation. This type of carriage varies according to the mode of transport used. It may involve at least two different means of transport under a single carriage contract and a single transport document, but it remains domestic since it occurs within the state's territorial boundaries and is subject to national legal rules.

⁶ . Saleh, Bassem Mohammed. *Maritime Law, Part One*. College of Law, University of Baghdad, 1984, P55.

⁷ . Jumaa, Abdul Mousa. *Ibid.*, p. 28.

⁸ . Sawadi Al-Hamdi, Baraq Jawad. *Agreements Modifying the Liability of Container Carriers*. PhD diss., University of Baghdad, 2004, p. 4.

⁹ . Iraqi Civil Code No. 41 of 1952, arts. 1, 3, 2, cl. 3.

¹⁰ . Saleh, Bassem Mohammed. *Ibid.*, p. 186.

¹¹ . Turak, Mohammed Abdul Fattah. *The Maritime Transport Contract*. Cairo: Dar al-Nahda al-Arabiya, 1985, P 92.

For example, goods may be transported within Iraq using two different means of transport, or even the same type of transport, across various stages from one location to another, under the responsibility of a single carrier until delivery at the agreed destination. Such carriage does not constitute successive carriage, which is defined by the use of a single mode of transport across successive stages between different countries. Successive carriage is thus governed by international conventions, such as the Hamburg Rules, to which Iraq is a party, regulating international maritime carriage of goods¹².

b. Distinction from International Multimodal Carriage:

International multimodal carriage is conducted under a single transport document covering all parts of the journey and employing multiple modes of transport. By contrast, successive carriage (or consecutive carriage) involves several carriers transporting goods successively, yet using a single mode of transport throughout. Each carrier concludes a contract for the specific stage of the journey that he undertakes.

For instance, if goods are transported by air from Airport (A) to Airport (B), then by a different airline from (B) to (C), and finally by aircraft from (C) to (D), this constitutes successive carriage. Similarly, if goods are transported by sea, the mode of transport (ship) remains unchanged throughout all stages of the journey. The classification as successive carriage does not change even if the goods traverse multiple countries during transportation¹³.

It is noteworthy that Iraqi Transport Law provides detailed provisions on successive carriage, particularly concerning reservations, the right of lien over goods, the determination of liability, and methods of calculating compensation¹⁴.

What distinguishes a carriage contract from other types of contracts is that it is both a contract of means and a contract of result. The carrier is obliged to employ suitable means capable of ensuring the safe transport of goods from the place of dispatch to the place of destination (obligation of means) and to deliver the goods to the consignee in the same condition in which they were received (obligation of result). Failure to meet these obligations renders the carrier liable for any discrepancies in condition, quantity, or weight of the goods.

Moreover, responsibility for the goods throughout all stages of carriage rests upon a single carrier, who manages and executes the entire transport operation. The carrier is liable toward the owners of the goods for any loss, damage, or delay. This principle is codified in Article (56) of the Iraqi Transport Law: *"Where several carriers undertake the carriage of goods successively under a single contract, the consignor shall have recourse against the first carrier, and the consignee shall have recourse against the last carrier. Both may also have recourse against the carrier in whose stage of carriage the loss, damage, or delay occurred. These carriers shall be jointly and severally liable toward the consignor and the consignee."*

In addition, successive carriage offers reduced costs and higher efficiency by enabling the selection of optimal routes for transporting goods. This advantage enhances the competitive capacity of production enterprises.

Finally, a distinctive feature of successive carriage is that freight is paid comprehensively, covering all stages of the journey, from the place of dispatch in one country to the place of delivery in another¹⁵.

3. Legal Status of the Carrier in Successive Carriage:

The legal status of the carrier is one of the most critical issues in maritime law, given the sensitive role this party plays in the transportation process. The carrier concludes the contract in his own name, either personally or through an authorized representative, acting as a principal and not as an agent for the consignor or for other carriers involved in the transport operation. The carrier assumes responsibility for the contract throughout all stages.

Due to the carrier's position as the economically dominant party, this chapter addresses the liability of the carrier and successive carriers toward the consignor and the consignee, followed by an analysis of the rights and obligations of the carrier, and the nature of recourse claims among carriers, structured under three subsections.

3.1. Liability of the Carrier and Successive Carriers toward the Consignor and Consignee:

Where goods are transported by several carriers successively under a single contract of carriage, the consignor may seek recourse against the first carrier, while the consignee may seek recourse against the last carrier. Both the consignor and the consignee may also pursue claims against the carrier responsible for loss, damage, or delay during his stage of the journey. These carriers are jointly and severally liable toward the consignor and the consignee¹⁶.

Each successive carrier has the right to examine and verify the condition of the goods upon receipt from the preceding carrier. This right serves as a mechanism for the carrier to exonerate himself from liability; the carrier is discharged if he proves that the loss or damage did not occur during his stage of carriage.

The last carrier is liable toward the preceding carriers for claims made by the consignee concerning freight charges¹⁷. These claims are exercised on the basis of subrogation, and the carrier may take legal measures to recover the amounts

¹² . Iraqi Maritime Transport Law No. 81 of 1983, art. 5.

¹³ . Sawadi, Baraq Jawad. Legal System of Multimodal International Transport of Goods. Master's thesis, College of Law, University of Baghdad, 2015, p. 31.

¹⁴ . Iraqi Transport Law, Ibid., arts. 56, cl. 3,2,1; arts. 58; arts. 59.

¹⁵ . Jumaa, Abdul Mousa. Ibid., p. 21.

¹⁶ . Iraqi Transport Law, Ibid., art. 56.

¹⁷ . Al-Kandari, Mahmoud Ahmed. "The Legal System of International Air Transport under the Montreal Convention 1999: Updated Warsaw System." Journal of Law, Scientific Publishing Council, Kuwait, 2000, p. 50.

due, including exercising a lien over the goods. A notable advantage of successive carriage is that the consignor can obtain a single transport document from the outset, facilitating access to credit and relieving him of the burden of contracting individually with each successive carrier¹⁸.

If one of the successive carriers pays compensation or is formally required to do so, he is entitled to seek recourse from the other carriers proportionally according to each carrier's share of the freight. A carrier is exempt from sharing liability if he proves that the loss or damage did not occur during his portion of the carriage¹⁹.

It is evident that a single contract exists between the consignor and the first carrier. If, however, the consignor has entered into separate contracts with subsequent carriers, each such contract governs the relationship with that specific carrier and is not subject to Article 56 (1) of the Iraqi Transport Law, which applies only when a single contract exists and imposes joint and several liability among all successive carriers vis-à-vis the consignor and consignee, as if the contract were performed by a single carrier.

Consequently, the consignor or consignee has the option to claim compensation from all successive carriers collectively or from any one carrier for full compensation, without the burden of proving which carrier caused the loss, damage, or delay. Article 56(1) is of public policy importance, as it protects the consignor or consignee, who may not know some of the carriers involved or may be unable to identify which carrier caused the loss or delay. Additionally, carriers may attempt to shift blame onto each other, complicating the burden of proof²⁰.

It should also be noted that the consignee must be ready to accept delivery. The carrier is not liable if he unloads the goods at the port of arrival despite the consignee's request to wait, and any damage occurring after unloading does not render the carrier liable²¹.

A distinctive scenario arises when the carrier delegates the execution of the entire carriage or part of it to another person (the actual carrier), whether authorized under the contract or not. In such cases, the distinction between the contracting carrier and the actual carrier becomes important.

- The contracting carrier is the person who enters into the contract of carriage in his own name.
- The actual carrier is the person entrusted by the contracting carrier to perform all or part of the carriage.

In this scenario, the contracting carrier remains fully responsible for the carriage, including any errors or negligence committed by the actual carrier and his assistants within the scope of their duties. Where liability is established for both the contracting and actual carriers, it is joint and several, and both may seek recourse against each other.

If the transport contract explicitly assigns a specific portion of the carriage to an unnamed third party as the actual carrier, the contracting carrier may stipulate that he bears no liability for loss, damage, or delay arising during the actual carrier's custody of the goods. The burden of proof lies on the contracting carrier to demonstrate that the loss, damage, or delay resulted from an incident during the actual carrier's handling.

This stipulation, however, does not absolve the contracting carrier from liability if the actual carrier cannot be brought before a competent court, leaving the contracting carrier with dual liability for his own actions and those of his delegates vis-à-vis the consignor and consignee²².

3.2. Nature of Recourse Claims Among Successive Carriers:

As previously discussed, successive carriers are jointly and severally liable toward the consignor and consignee. Therefore, any carrier who has fully discharged the liability may seek recourse against the other carriers for the amount exceeding his proportional share. If a carrier is insolvent, the paying carrier's loss is redistributed proportionally among the remaining carriers. This section addresses recourse claims among successive carriers when a carrier has satisfied the obligation, which typically consists of compensation payable to the consignor or consignee in case of a breach of the carriage obligation by the carrier(s).

Article 56, Paragraph 2 of the Iraqi Transport Law stipulates: "Any carrier who pays compensation or is formally required to do so may seek recourse against the other carriers ..." This provision establishes that the first carrier, or any subsequent carrier including the last carrier, has the right to claim recourse against the other carriers by one of two methods:

1. Subsequent (or ancillary) recourse claim: The carrier waits until the entitled party (consignor, consignee, or passenger) files a claim for liability, after which the carrier may seek recourse from the carrier responsible for the loss. Payment is thus based on a final judicial decision, and the claim is called a *subsequent recourse claim*.
2. Original recourse claim: The carrier may compensate the entitled party amicably. Payment in this case is based on a private agreement with the entitled party. The carrier may then file a claim against the responsible successive carrier who actually caused the loss.

It should be noted that any recourse claim, whether subsequent or original, must be preceded by a primary compensation claim filed by the consignor, consignee, or passenger against the carrier who seeks recourse. This primary claim forms the basis for the subrogated recourse. If the entitled party secures a final judgment for compensation

¹⁸ . Al-Anbaki, Majid Hameed. Iraqi Transport Law, p. 28.

¹⁹ . Iraqi Transport Law, Ibid., art. 56, cl. 2.

²⁰ . Al-Tabakh, Sharif Ahmed. Compensation in Land, Maritime, and Air Transport. Cairo: Dar Al-Nahda Al-Arabiya, 2009, P81.

²¹ . Mousa, Talib Hassan. Maritime Law. PhD dissertation, Faculty of Law, University of Paris, 1978, P 83.

²² . Al-Anbaki, Majid Hameed. Iraqi Transport Law, p. 31.

without the fault of the carrier who paid, the paying carrier still retains the right to file a subsequent recourse claim against the carrier at fault²³.

The court must verify the fact and extent of payment, whether full or partial, and grant recourse only for the amount exceeding the carrier's proportional liability. If the recourse claim is initiated, the carrier may request a deferral to join the other successive carriers, provided that it is proven the loss occurred during the stage handled by the latter. The entitled party may not oppose this procedure; Article 69 of the Iraqi Civil Procedure Law No. 83 of 1969 provides: "Any party may request the court to summon any person who should be joined in the lawsuit at the time of filing or to preserve the rights of either party."

The court may, on its own motion, order the inclusion of all other carriers in the lawsuit. Carriers may also join the proceedings voluntarily to protect their rights and prevent collusion between the entitled party and the defendant carriers²⁴.

The purpose of requesting deferral to join all successive carriers is not only to discharge the carrier's own liability but also to obtain a judicial ruling regarding his right to recourse, even if the debt is inherently payable only by that specific carrier, reflecting a personal consideration.

In an original recourse claim, the carrier generally prefers to compensate the entitled party amicably to maintain commercial relations, without resorting to litigation. The carrier may then seek reimbursement from successive carriers who are liable for the compensated amount. However, this may expose the first carrier to challenges, as other carriers might claim that:

- The first carrier overcompensated the entitled party without justification, potentially covering what other carriers could have paid according to their liability.
- The damage claimed by the entitled party was not justified.

To prevent such defenses, the carrier may file a "state verification claim" (*proving the condition of the goods*) against successive carriers without claiming any amounts. This claim functions solely as a declaration of responsibility, ensuring that if the entitled party files a claim against the first carrier, the latter's recourse rights are protected²⁵.

Recourse claims among successive carriers prescribe ninety (90) days from the date of the formal compensation claim or from the date of payment, according to Iraqi law. The law does not differentiate between subsequent and original recourse claims regarding the limitation period, but the commencement differs:

- Subsequent recourse claims: Begin after the primary compensation claim has been adjudicated.
- Original recourse claims: Commence from the date the carrier compensated the entitled party amicably.

Article 91 of the Iraqi Transport Law provides: "Recourse claims of successive carriers against one another shall prescribe ninety (90) days from the date of the formal compensation claim or from the date of payment." A notable limitation of the Iraqi legislation is that Article 91 addresses successive carriage of goods only, excluding successive carriage of persons. It is therefore recommended that the Iraqi legislator amend Article 91 to encompass both successive carriage of persons and goods²⁶.

3.3. Carrier's Rights and Obligations in Successive Carriage:

When goods are loaded onto a means of transport, the carrier is obliged to commence the journey on the agreed-upon date or within a reasonable timeframe determined by the circumstances of the journey. Often, the contract does not specify the precise start time, instead relying on the period during which transportation occurs. In such cases, the carrier is free to determine the starting time of the transport²⁷. The main obligations of the carrier include the following:

A. Issuance of the Bill of Lading:

Article (72) of the Iraqi Transport Law defines the bill of lading as: "A document evidencing the contract of carriage, serving as proof of receipt of the goods by the carrier in the condition stated, and conferring upon its lawful holder the right to receive the goods"²⁸.

Issuing the bill of lading is one of the carrier's most important obligations, as the document represents the cargo. It is essential to distinguish between a bill representing the shipped goods and a bill representing goods generally. A bill does not necessarily imply that the goods have been loaded onto the vessel; its value increases once it indicates "shipped" status. Since the bill represents the goods, whether loaded or not, it can serve as the subject of sale, creating constructive possession of the goods. Consequently, the bill has become a vital tool in international trade. Certain international banking contracts, such as letters of credit, cannot be executed without presenting this document. Bills of lading may be order, bearer, or nominative²⁹.

The bill of lading also functions as proof of receipt of goods by the carrier, evidences the carriage contract and its conditions, and represents the goods if marked accordingly. Ownership merges with the document, allowing legal acts

²³ . Iraqi Civil Code, Ibid., art. 334.

²⁴ . Hassouni, Fatima Abbas. Ibid., p. 157.

²⁵ . Iraqi Transport Law, art. 91: "The recourse claim among successive carriers expires ninety days from the official date of compensation claim or the date of payment."

²⁶ . Hassouni, Fatima Abbas. Ibid., p. 166.

²⁷ . Al-Anbaki, Majid Hameed. Iraqi Maritime Law, Ibid., p. 179.

²⁸ . Definition taken from Hamburg Convention 1978, ratified by Iraq.

²⁹ . Dr.S.Girvin and Mr.HN . Bennett, law of international carriage of goods by sea, London, 2001, P3.

such as sale or pledge without actual delivery. This function evolved from maritime trade practices, granting the lawful holder the right to receive goods at the discharge port and facilitating access to banking credit. The document may be transferred by assignment (for nominative bills), endorsement (for order bills), or delivery (for bearer bills)³⁰.

B. Receipt of the Goods:

The carrier must take delivery of the goods to execute the transport. However, this obligation is not absolute: the carrier may refuse goods that do not conform to the agreement. Upon receipt, the carrier must ensure the goods are fit for transport; otherwise, the carrier is liable for any damages resulting from the poor condition of the goods at the time of delivery³¹.

C. Loading of the Goods:

Loading involves placing the goods in the designated area of the transport means, preparing them for carriage. It is a physical operation that generally requires appropriate equipment. Proper stowage ensures that the goods, the transport vehicle, and other property are not damaged, nor is harm caused to third parties. If loading or stowage is improper, the carrier is liable for resulting damage. The contract may, however, assign loading responsibilities to the consignor or a third party, in which case the carrier is not liable for damage unless he accepted the goods without reservation.

D. Transportation of the Goods:

The carrier must transport the goods according to the agreed conditions, observing the agreed route, the time required, and the transport means. Deviations from the route are permissible only for necessity, such as providing assistance, legitimate acts, or force majeure. The carrier is not liable for delays or other damages unless gross negligence or fraud is proven by the carrier or their agents³².

E. Care of the Goods:

The carrier is responsible for the goods from the time they are in his custody until delivery to the destination. The carrier must exercise due diligence—the standard of a prudent person—including all daily maintenance required by the transport process, and bear related expenses. The carrier is not obliged to perform unusual acts, such as watering plants, feeding animals, or providing medical care, unless explicitly agreed.

F. Unloading of the Goods:

Unloading is the removal of goods from the transport means for delivery. It is part of the carriage process but distinct from delivery, as the contract is not concluded until delivery. The carrier bears unloading costs unless responsible for damage during unloading³³.

G. Delivery of the Goods:

Delivery completes the carrier's contractual obligations, terminating the contract. Once the goods leave the carrier's custody and enter the recipient's or agent's custody, the statute of limitations begins for claims related to loss, damage, or delay. Delivery may be actual, to the consignee or their agent, or constructive, to authorities or a court-appointed custodian.

The carrier is entitled to freight, the remuneration for performing the transport. The contract determines the amount, timing, and place of payment. Generally, the consignor is obliged to pay, typically upon delivery of the goods, though the consignee may be contractually liable, in which case payment occurs upon arrival. The carrier may claim unpaid freight from the consignor if the consignee fails to pay. Additional expenses incurred by the carrier, such as weighing, counting, or measurement costs, are added to the freight³⁴.

The carrier has a special lien on the goods until payment of freight and other amounts due, according to Article 39 of the Iraqi Transport Law: "The carrier has the right to retain the goods in his possession until payment of the freight and other amounts due for transport."

The law does not grant the carrier privilege rights over the sale proceeds of the goods. Freight, or part thereof, may be forfeited only in the following circumstances:

- A. Total loss of goods due to force majeure.
- B. Force majeure preventing commencement of transport.
- C. Transport commenced but could not continue due to force majeure, in which case the carrier is entitled to freight for the portion of transport completed.

Forfeiture of freight does not affect the carrier's right to claim other necessary expenses, such as loading and unloading costs³⁵.

4. Rules of Carrier Liability in Successive Carriage:

The liability of the maritime carrier is primarily contractual in nature, arising from the carriage contract. It is based on the principle of presumed fault—fault is presumed on the carrier's part merely upon the occurrence of damage. The

³⁰ . Mousa, Talib Hassan. *Ibid.*, p. 111.

³¹ . Pierre Bonassies, *Le Droit Maritime Francais*, Dalloz, Paris, 2000, P 78.

³² . Iraqi Transport Law, *Ibid.*, arts. 73–74.

³³ . Iraqi Transport Law, art. 28.

³⁴ . Saleh, Mohammed Bassem. *Ibid.*, p. 195.

³⁵ . Jacques David mclean ,shaw cross and Beaumont (Airlaw ,issue 88),Fourth Edition,london ,Butterworth,2002, P 93.

carrier is obligated to achieve the result of delivering the goods safely to the port of destination. If the goods arrive in an unsatisfactory condition, the aggrieved party may file a claim against the carrier to seek compensation. Such compensations, however, may sometimes involve substantial financial sums, potentially leading to the carrier's insolvency.

To mitigate this risk, the law provides specific regulations limiting the carrier's liability, which we examine in this section.

4.1. Nature of Maritime Carrier Liability:

Maritime carrier liability is contractual and arises from the carrier's breach of obligations toward the contracting party, whether consignor or passenger. The carrier's duty is an obligation of result, and liability is triggered upon failure to achieve the contractual objective. The claimant need only present the bill of lading and demonstrate the extent of the damage. The carrier (the defendant) may only avoid liability by proving the occurrence of force majeure.

Thus, carrier liability is founded on a presumption of fault, which is a simple presumption. The carrier is required to exercise reasonable diligence before and during the voyage. Fault occurs if the carrier fails to exercise such diligence. In such cases, the carrier cannot exonerate themselves from liability if the cause of damage remains unknown.

As a general rule, carrier liability encompasses total loss, partial loss, damage, and delay, as follows:

A. Total Loss:

Total loss occurs when the carrier is unable to deliver the goods to the consignee at the port of destination, and it is impossible to locate them elsewhere for delivery. Total loss does not necessarily require the physical destruction or disappearance of the goods (e.g., by fire or sinking). It may be constructive, arising from the expiration of the agreed delivery period without the goods being locatable³⁶.

B. Partial Loss:

Partial loss, also called shortage, occurs when a portion of the goods is missing, provided it is not due to the inherent nature of the goods (natural wastage). The carrier is not liable for such inherent losses. Partial loss is deemed to occur, for example, when goods are delivered in less weight or quantity than stated in the bill of lading, or when certain accessories are missing—e.g., a vehicle delivered without its spare tire, ignition key, or rear-view mirror, even if not mentioned in the shipping document. Partial loss may also include cases where the goods are delivered in full but with substitution, even if of superior quality³⁷.

C. Damage:

Damage refers to the deterioration of the goods upon arrival compared to their condition at shipment, or further deterioration during transit. Establishing damage is usually straightforward, as the carrier typically notes reservations upon receipt of the goods. Absent such reservations, the goods are presumed to have been received in good condition. The carrier may defend against claims for damage using any legally recognized means of proof³⁸.

D. Delay:

The carrier is liable for losses arising from delay in fulfilling contractual obligations, unless the delay is caused by a foreign cause beyond their control. Delay occurs when the goods do not arrive within the agreed time or the customary period according to commercial practice.

It is insufficient merely to prove the delay to claim compensation. The claimant must also demonstrate:

1. The actual damage suffered by the consignee, and
2. The causal link between the damage and the delay.

Delay compensation applies only to the undestroyed portion of goods in cases of partial loss and cannot exceed the compensation due in cases of total loss.

The carrier's liability is contractual and not tortious. Given that the carrier's relationship with the consignor arises from a transport contract, liability stems exclusively from breach of contractual obligations. Tort rules do not apply, even in cases of fraud or gross negligence, as contractual liability is more specific and directly applicable, identifying the responsible party as the carrier. Tort rules impose a general duty not to harm others, but contractual liability governs the carrier's duties to the consignor.

Specifying carrier liability in statutory provisions does not convert it into tort liability; rather, it enforces contractual obligations. While parties are free to enter into or abstain from the contract, once the contract is concluded, the carrier's liability is governed by the contract and statutory obligations, and the bill of lading serves as proof of the carriage contract³⁹.

4.2. Basis of Liability in Successive Carriage:

The basis of liability refers to the reason why the law places the burden of compensating for damages on a specific person. Accordingly, the basis may arise from:

- A. Fault on the part of the carrier or their agents, causing damage;
- B. Risk, irrespective of fault;
- C. The damage itself, without investigating whether the perpetrator was at fault; or
- D. Assumption of responsibility, where the liable party is designated to bear the consequences.

³⁶ . Saleh, Mohammed Bassem. *Ibid.*, p. 211.

³⁷ . Al-Anbaki, Majid Hameed. *Iraqi Maritime Law*, *Ibid.*, p. 131.

³⁸ . Komani, Latif Jaber. *Ibid.*, p. 126.

³⁹ . Al-Anbaki, Majid Hameed. *Iraqi Maritime Law*, *Ibid.*, p. 141.

The prevailing view is that carrier liability is contractual, founded upon the bill of lading. Liability arises automatically upon breach of the carrier's obligation, without the need to prove fault or negligence. It is sufficient that loss, damage, or impairment occurs, which constitutes a failure to fulfill the contractual obligation⁴⁰.

When the basis of the carrier's liability is contractual, liability for acts of subordinates arises through an expanded notion of agency. Agency is not limited to legal acts but extends to physical acts performed on the carrier's behalf. Any person employed by the carrier to perform contractual obligations acts as their agent. Consequently, errors committed by subordinates are treated as the carrier's own errors, in line with the Roman principle: "He who acts through another is considered to have acted himself."

As the carrier derives benefit from the subordinate's acts, they must bear responsibility for any damage caused by the subordinate's errors. Thus, the carrier is directly liable for acts of agents or assistants under the law. This liability exists because the carrier has chosen to delegate performance of contractual duties to others. Accordingly, they must guarantee protection to consignors and consignees against any harm arising from errors committed by subordinates or persons engaged for the performance of the transport obligations.

The law explicitly imposes liability on the carrier for the acts of subordinates. Article (56) of Iraqi Transport Law No. 30 of 1983 provides: "If the transport of goods is undertaken by several successive carriers pursuant to a single carriage contract, the consignor may seek recourse against the first carrier and the consignee against the last carrier. Both have the right to recourse against the carrier responsible for loss, damage, or delay during their stage of transport. These carriers are jointly and severally liable to the consignor and consignee. Any successive carrier who compensates or is formally required to compensate may seek recourse against the other carriers proportionally to their respective freight, and the insolvent carrier's share is distributed among the others in the same proportion."

This provision primarily organizes and enforces the rules but does not create the substantive basis of liability. The underlying principle lies outside the statutory text, rooted in the carrier's failure to perform contractual obligations.

In general contractual liability principles, the burden of proof favors the creditor. The creditor (consignor or consignee) bears the responsibility to prove the claim, including the essential elements of liability, such as fault. However, in contractual liability, the evidentiary burden is simplified: the claimant only needs to prove:

1. The source of the obligation (i.e., the carriage contract), and
2. The damage suffered due to non-performance or defective performance.

Upon establishing these elements, fault is presumed on the part of the carrier. Since maritime carrier liability is contractual, arising from failure to fulfill obligations imposed by the contract, the claimant is not required to prove the carrier's personal fault—presentation of the bill of lading and evidence of damage suffices.

4.3. Conditions for Exemption from Liability:

How may a carrier discharge his liability once it has been established? The answer depends on the basis on which the liability is founded and the extent of protection the legal system seeks to provide to the aggrieved party. If liability is based on risk, the carrier is obliged to compensate the damage regardless of the cause. If liability is based on fault, the carrier may discharge his liability by proving the absence of fault when it is presumed, or by demonstrating a foreign cause in the case of established fault.

If the Transport Law establishes liability on the basis of custody, then the carrier is only exempted from liability for causes beyond his control or supervision of the goods. The law specifies these causes in paragraph one of Article 46 of the Transport Law, limiting them to force majeure, inherent defects in the goods, or fault of the consignor or consignee⁴¹.

The standard of custody adapts according to the nature of the carrier's obligation—whether it is an obligation to achieve a specific result or merely to exercise due care. Since the law defines the obligation of a maritime carrier as one of due care, in line with international conventions in this field, the custody standard additionally imposes on the carrier the duty to take all possible measures to prevent loss, damage, or delay and to mitigate their consequences⁴².

Referring to the provisions of the Iraqi Civil Code No. 40 of 1951, the parties to a contract may agree to exempt the debtor from liability resulting from breach of a contractual obligation. Article 259 provides for several scenarios:

1. The debtor may agree not to be liable for damages arising from his own personal errors or the errors of his subordinates.
2. The debtor (carrier) may not contractually exempt himself from liability for damages resulting from fraud or gross negligence.
3. It is permissible to agree on non-liability for damages arising from fraud or gross errors committed by subordinates.

The rationale behind these provisions is that a contract is born of the parties' mutual will, allowing them to increase, reduce, or nullify obligations arising therefrom. However, exemption from liability for the carrier's own fraud or gross negligence is prohibited, as fraud implies intent, and intent makes performance contingent upon the unilateral will of the debtor, potentially rendering the contract void. Gross negligence is treated similarly to fraud.

Fraud or gross negligence by subordinates does not equate to fraud or gross negligence by the carrier himself. As noted by Al-Sanhouri, the intent of a third party does not have the same legal effect as a purely voluntary contractual

⁴⁰ . Jumaa, Abdul Mousa. *Ibid.*, p. 93.

⁴¹ . Al-Tabakh, Sharif Ahmed. *Ibid.*, p. 516.

⁴² . Komani, Latif Jaber. *Ibid.*, p. 31.

term. Since carrier liability is contractual, the carrier may, under general legal rules and in the absence of specific statutory provisions, agree to limit liability.

Given that transport is often carried out by large companies employing numerous subordinates, it can be argued that the performance of contractual obligations may become dependent on the carrier's discretion, allowing him to stipulate exemption from liability for errors of subordinates—whether minor or gross—or even for fraud committed by them, as permitted under general principles.

General legal rules also allow limitation of liability through a penalty clause, as set out in Article 171 of the Civil Code⁴³. Such clauses require the presence of the elements of liability: fault, damage, and causal link, since a penalty clause constitutes compensation and is only due if liability exists. The amount of the penalty is reduced if it exceeds the actual damage, reflecting the principle that compensation should match the harm suffered. If partial performance occurs, the debtor should not be unjustly enriched at the creditor's expense. The contractual compensation amount may be increased in two cases: in the event of fraud or gross negligence by the debtor, in which case full compensation is due; or if the agreed compensation is nominal, making it effectively close to an exemption from liability⁴⁴.

Referring to Iraqi Transport Law No. 80 of 1983, exemptions from liability are stipulated as follows:

1. The carrier is exempt if he proves that loss, damage, or delay was due to force majeure, inherent defects of the goods, or fault of the consignor or consignee⁴⁵.
2. The carrier is not liable for natural loss in weight or volume of the goods during transport⁴⁶.
3. The carrier is not liable for loss or damage if the goods were transported under the supervision of the consignor or consignee, unless the cause of the loss or damage is related to transport risks, fraud, or fault of the carrier or his subordinates⁴⁷.
4. The carrier is not liable for shortages in goods transported in containers or similar units prepared and sealed by the consignor if delivered to the consignee with the seal intact⁴⁸.
5. The carrier is not liable for delays if these are justified and within reasonable limits⁴⁹.

Furthermore, the Transport Law permits the parties to agree on limiting the carrier's liability for total or partial loss, damage, or delay in transport between Iraq and abroad, subject to legal provisions. However, such limitation cannot be invoked if fraud or gross negligence by the carrier or his subordinates is established⁵⁰.

Finally, it is important to note that contractual exemptions between parties to the transport contract are void, as liability provisions under this law are of public order. Article 46 explicitly states: "Any clause exempting the carrier from liability for total or partial loss or damage of goods, as well as any clause exempting the carrier from liability arising from acts of his subordinates, shall be void."

Given the explicit nature of Article 46 in the special Transport Law, it is not permissible to rely on Article 259 of the general Civil Code to justify exemption from liability, even if general provisions might suggest otherwise.

CONCLUSION:

The liability of the maritime carrier for goods, under Iraqi law, fundamentally aligns with the principles of general civil liability. It constitutes a civil liability that arises only upon the fulfillment of three essential elements: fault, damage, and a causal link connecting them. Liability is triggered when the carrier breaches its contractual obligations—particularly the duty to safeguard goods from the moment of receipt from the consignor until delivery to the consignee, in accordance with the condition specified in the transport document. Accordingly, the carrier may be held accountable, and recourse claims may be pursued. This highlights the critical importance of maritime carrier liability in Iraqi maritime law, given the widespread reliance on maritime transport both domestically and internationally.

FINDINGS:

Iraq currently lacks a unified maritime code encompassing all facets of maritime law, as exists in certain other jurisdictions. This dispersion of rules across multiple statutes is not, per se, a legislative deficiency. However, a significant challenge lies in the outdated nature of many provisions and the evident lack of coordination among them. For instance:

⁴³ . Al-Anbaki, Majid Hameed. *Iraqi Maritime Law*, Ibid., p. 131.

⁴⁴ . Komani, Latif Jaber. Ibid., p. 57.

⁴⁵ . Iraqi Transport Law, art. 46: "The carrier guarantees the safety of the cargo during the execution of the transport contract and is liable for any damage, unless caused by force majeure, inherent defects, or sender/consignee error."

⁴⁶ . Al-Anbaki, Majid Hameed. Ibid., p. 245.

⁴⁷ . Komani, Latif Jaber. Ibid., p. 111.

⁴⁸ . Iraqi Civil Code, art. 171: "The parties may pre-determine the value of compensation in the contract or a subsequent agreement, in accordance with arts. 168, 258, 257, 625."

⁴⁹ . Iraqi Maritime Trade Law, art. 281, cl. 1: "The carrier may limit or define liability for total or partial loss, provided compensation is no less than one-third of the standard claim. Conditions must be written and clear, and cannot be used in cases of fraud or gross negligence."

⁵⁰ . Kumani, Latif Jabr. *The Liability of the Carrier in the Transport of Goods under Iraqi Law*. Master's thesis, College of Law, University of Baghdad, 1978, P 112.

- Transport Law No. 81 of 1983 (special law), Article 46, provides: "Any clause exempting the carrier from liability for total or partial loss or damage to goods, or from liability arising from acts of his agents, is null and void."
- Civil Law No. 41 of 1951, Article 259, allows exemptions in situations that Article 46 of the Transport Law prohibits, permitting contractual clauses that exempt the debtor from liability for accidents or force majeure, and under certain conditions, from the acts of employed persons, except in cases of fraud or gross negligence.

Although Civil Law predates the Transport Law, the latter applies as a special law, overriding general provisions where conflicts arise.

RECOMMENDATIONS:

The latest Iraqi maritime law drafts, completed in 1987 and 1974, have yet to be enacted for reasons that remain unclear. Claims that Iraq is not a maritime state are unfounded, particularly given the country's substantial naval capacity. Such arguments should not hinder the legislative development of a comprehensive maritime framework.

While Transport Law No. 81 of 1983 provides a foundational legal framework for maritime transport contracts, its scope remains limited. Critical areas of maritime law—such as legal relations of maritime persons, ship ownership, maritime incidents, and marine insurance—remain underdeveloped, despite significant practical advancements internationally.

Therefore, there is a compelling need for the enactment of a comprehensive and modern Iraqi maritime code, informed by systematic legal research and the expertise of scholars, to ensure coherence, clarity, and alignment with contemporary international maritime standards.

REFERENCES:

1. Al-Anbakki, Majid Hameed. *Iraqi Transport Law: Principles and Provisions*. College of Law, University of Baghdad, 1984.
2. Al-Kandari, Mahmoud Ahmed. "The Legal System of International Air Transport under the Montreal Convention 1999: Updated Warsaw System." *Journal of Law*, Scientific Publishing Council, Kuwait, 2000.
3. Al-Tabakh, Sharif Ahmed. *Compensation in Land, Maritime, and Air Transport*. Dar Al-Fikr Al-Jamii, Alexandria, 2015.
4. Bonassies, Pierre. *Le Droit Maritime Français*. Dalloz, Paris, 2000.
5. Girvin, S., and H. N. Bennett. *Law of International Carriage of Goods by Sea*. London, 2001.
6. Houthi, Fatima Abbas. "Recourse among Carriers in Successive Carriage under Iraqi Transport Law No. 81 of 1983." *Journal of Message of Rights*, College of Law, University of Karbala, 2012, pp. 153–166.
7. Jomaa, Mousa. *The Legal Provisions of the 1989 Convention on International Multimodal Transport of Goods*. Al-Sabah Library, Baghdad–Karrada, 2011.
8. Kumani, Latif Jabr. *Liability in Maritime Transport*. Master's thesis, College of Law, University of Baghdad, 2011.
9. McClean, Jacques David, Shawcross, and Beaumont. *Airlaw*. 4th ed., Butterworth, London, 2002.
10. Mousa, Talib Hassan. *Maritime Law*. Faculty of Law, University of Paris, Dar Al-Thaqafa for Publishing and Distribution, 2017.
11. Saleh, Bassem Mohammed. *Maritime Law: Part One*. Al-Sanhouri Library, Baghdad, 2016.
12. Sawadi Al-Hamdi, Baraq Jawad. *Agreements Modifying the Liability of Container Carriers*. PhD diss., University of Baghdad, 2004.
13. Sawadi, Baraq Jawad. *The Legal System of International Multimodal Transport of Goods*. Master's thesis, College of Law, University of Baghdad, 1999.
14. Turak, Mohammed Abdul Fattah. *Maritime Transport Contract*. New University Publishing House, Alexandria, 2015.