

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 12 September 1979.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

*House of Representatives, 24 October 1979.*

Words struck out by the Committee are shown in italics within double bold round brackets, or with double black rules at beginning and after last line; words inserted are shown in roman underlined with a triple rule, or with triple rules before first line and after last line.

*Hon. Mr McLay*

## CARRIAGE OF GOODS

### ANALYSIS

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### A BILL INTITULED

An Act to restate and reform the law relating to the carriage of goods within New Zealand

BE IT ENACTED by the General Assembly of New Zealand  
5 in Parliament assembled, and by the authority of the same, as follows:

No. 54—3

**1. Short Title and commencement**—(1) This Act may be cited as the Carriage of Goods Act ~~(1977)~~ 1979.

(2) This Act shall come into force on the 1st day of ~~(July 1978)~~ June 1980.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,— 5

*Struck Out*

“Actual carrier”, in relation to the carriage of any goods, means the carrier who, at any material time, is in possession of the goods for the purpose of performing the carriage or any stage of it: 10

*New*

“Actual carrier”, in relation to the carriage of any goods, means every carrier who, at any material time, is or was in possession of the goods, or of any container, package, pallet, item of baggage, or any other thing in or on which the goods are or were believed by him to be, for the purpose of performing the carriage or any stage of it or any incidental service; and includes the contracting carrier where he performs any part of the carriage: 15 20

*Struck Out*

“Carriage” includes a bailment preliminary or incidental to the performance of a contract of carriage:

*New*

“Carriage” includes any incidental service; and “carry” has a corresponding meaning: 25

*Struck Out*

“Carrier” means any person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person, whether or not as an incidence of the carriage of passengers, but otherwise than as an incidence of the performance by him of any service with or in respect of the goods; and includes every employee and agent of that person in respect of that business: 30 35

*New*

5 "Carrier" means a person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person, whether or not as an incident of the carriage of passengers; and, except in sections 18 to 21 of this Act, includes a person who, in the ordinary course of his business, performs or procures to be performed any incidental service in respect of any such goods:

10 "Checked baggage" means baggage, personal effects, or other articles, checked or registered with the carrier (*or handed over to*), or put in any place at the carrier's direction, or in any other way handed over to ((or)) and accepted by, the carrier (whether or  
15 not a check or form of receipt is issued) as baggage intended to be carried (*under*) incidental to a contract for carriage of a passenger:

*Struck Out*

20 "Consignee" and "consignor" include the respective employees and agents of the consignee or consignor:  
"Container" includes a railway wagon:  
"Contracting carrier", in relation to a contract of through carriage, means the carrier who enters or has entered into the contract with the contracting party:

25 *New*

30 "Contracting carrier", in relation to a contract of carriage, means the carrier who, whether as a principal or as the agent of any other carrier, enters or has entered into the contract with the contracting party:

35 "Contracting party", in relation to a contract of carriage, means the consignor or (as the case may require) the consignee of the goods who enters or has entered into the contract with the contracting carrier:

35 *Struck Out*

40 the contract with—  
(a) The contracting carrier, in the case of a contract of through carriage; or  
(b) Every successive carrier, in the case of a contract of successive carriage:

*Carriage of Goods*

“Contract of carriage” means a contract (*entered into*)  
for the carriage of goods:

*Struck Out*

“Contract of successive carriage” means—

(a) A contract of carriage entered into by the 5  
contracting party and 2 or more carriers under which  
the carriage is to be performed in successive stages:

(b) A series of contracts of carriage that together  
provide for the carriage of the goods in successive 10  
stages where—

(i) Each contract is entered into by the contracting  
party and one or more of the carriers who  
is or are to perform any stage of the car-  
riage; and

(ii) The carriage of the goods pursuant to all the 15  
contracts is regarded by the contracting  
party and all the carriers as one opera-  
tion;—

but does not include a contract of through carriage:

“Contract of through carriage” means a contract of car- 20  
riage entered into by the contracting party and one  
carrier under which that carrier undertakes the whole  
of the carriage, whether or not the carriage is per-  
formed in stages, and whether or not that carrier  
performs the carriage or any stage of it: 25

“Court” means any Court of competent jurisdiction:

*Struck Out*

“F.C.L. (Full Container Load or Lot) container”  
means—

(a) In the case of goods packed outside New 30  
Zealand, a container that holds the goods of 1 con-  
signee only; or

(b) In every other case, a container that holds the  
goods of 1 consignor only:

“Goods” means goods, baggage, and chattels of any 35  
description; and includes animals and plants; and  
also includes money, documents, and all other things  
of value:

“Hand baggage” means baggage, personal effects, or 40  
other articles, not being checked baggage (*in the*  
*possession of a passenger during the carriage of that*  
*passenger*):

*New*

5 “Incidental service”, in relation to any goods, means any service (such as that performed by consolidators, packers, stevedores, and warehousemen) the performance of which is to be or is undertaken to facilitate the carriage of the goods pursuant to a contract of carriage:

“International carriage”,—

10 (a) In relation to the carriage of goods by air, means carriage in which, according to the contract of carriage, the place of departure and the place of destination (whether or not there is a break in the carriage or a transshipment) are within the territories of two countries, or within the territory of a single  
15 country if there is an agreed stopping place within the territory of another country:

(b) In relation to the carriage of goods by sea, means carriage from any port in New Zealand to any port outside New Zealand, or to any port in New Zealand from any port outside New Zealand,  
20 commencing when the goods are loaded onto a ship and ending when they are discharged from a ship:

*Struck Out*

25 “L.C.L. (Less than Full Container Load or Lot) container” means a container that holds the goods of 2 or more consignors:

“Loss”, in relation to any goods, includes the non-delivery or destruction of the goods:

30 “Passenger” means a person carried pursuant to a contract of carriage of that person:

*New*

“Ship” means any vessel used for the carriage of goods by sea:

*Struck Out*

35 “Successive carrier”, in relation to a contract of successive carriage, means every carrier who is a party to the contract:

40 “Through carrier”, in relation to the carriage of any goods pursuant to a contract of through carriage, means every carrier, other than the contracting carrier, who undertakes any stage of the carriage.

*Struck Out*

(2) Notwithstanding anything in subsection (1) of this section, where a through carrier or a successive carrier under a contract of carriage enters into a subcontract of carriage in respect of any stage or part of a stage of the carriage that he has undertaken under the contract, the subcontract shall be deemed to be a contract of through carriage between the through carrier or successive carrier as contracting party and the subcontractor as contracting carrier, and, as between the carrier and subcontractor, the provisions of this Act shall apply accordingly.

Cf. 1948, No. 66, s. 2; 1967, No. 151, s. 18

**3. Meaning of “unit of goods”**—(1) In this Act, unless the context otherwise requires, “unit of goods” or “unit”,—

- (a) In relation to bulk cargo, means the customary freight unit; that is, the unit of bulk, weight, or measurement upon which the freight for that type of cargo is customarily computed or adjusted:

*New*

Provided that, where the freight payable under a contract of carriage is computed or adjusted upon a specified unit of bulk, weight, or measurement, references in this Act to “unit of goods” or “unit” shall be deemed, for the purposes of the carriage of goods pursuant to that contract, to be references to that specified unit:

- (b) In relation to goods contained in (*an F.C.L.*) a container, means the container load of goods; and includes, where a container is provided by the contracting party, the container:

*Struck Out*

- (c) In relation to goods contained in an L.C.L. container, means each item, each package (other than a package contained in a larger package), each container, and each loaded pallet contained in that container:

- (d) In relation to goods loaded on a pallet, means the pallet load of goods; and includes, where the pallet is provided by the contracting party, the pallet:
- 5 (e) In relation to goods contained in a package that is not contained in a larger package or in a container, nor loaded on a pallet, means the package of goods:

*Struck Out*

- (f) In relation to baggage, means each item of baggage:
- 10 (g) In relation to goods (other than baggage) not contained in a package or container, nor loaded on a pallet, means each item of the goods:
- (h) In relation to goods that are unitised for the purposes of carriage in any manner not referred to in any of the preceding paragraphs of this subsection, means the unit of goods as so unitised.
- 15

*New*

- (f) In relation to goods that are unitised for the purposes of carriage in any manner not referred to in any of the preceding paragraphs of this subsection, means the unit of goods as so unitised:
- 20 (g) In relation to goods (other than baggage) not referred to in any of the preceding paragraphs of this subsection, means each item of the goods:
- (h) In relation to baggage, means each item of baggage.

*Struck Out*

- (2) For the purpose of determining the limit of the liability of any carrier, the limit of liability prescribed by section 11 of this Act in respect of each unit of goods—
- 30 (a) Carried pursuant to a contract of through carriage, relates to the unit of goods as first accepted for carriage by that carrier (whether he is the contracting carrier or a through carrier), whether or not he subsequently repacks that unit; or
- 35 (b) Carried pursuant to a contract of successive carriage, relates to the unit of goods as first accepted for carriage by the first successive carrier, whether or not that unit is subsequently repacked by any of the carriers.

*New*

(2) For the purpose of determining the limit of the liability of any carrier, the limit of liability prescribed by section 11 of this Act in respect of each unit of goods relates to the unit of goods as accepted for carriage by the actual carrier or, where the carriage is undertaken by more than one carrier, by the first actual carrier, whether or not that unit is subsequently packed, repacked, or unpacked, or otherwise aggregated with or segregated from any other goods, at any stage of the carriage.

**4. Act to bind Crown**—(1) Subject to subsection (2) of this section, this Act binds the Crown.

(2) Nothing in this Act applies to—

(a) The carriage of goods by any member of the Armed Forces, or any civilian employee of the Ministry of Defence, in pursuance of any function imposed on him by or under the Defence Act 1971, except as provided in section 79 (6) of that Act:

(b) The carriage of goods by the Post Office (or its agents), whether by its agents or otherwise.

Cf. 1948, No. 66, s. 9; 1967, No. 151, ss. 2, 19 (3)

**5. Application of Act**—(1) Subject to subsection (5) of this section and to section 4 ((and 6)) of this Act, this Act applies to every carriage of goods, not being international carriage, performed or to be performed by a carrier pursuant to a contract entered into after the commencement of this Act, whether the carriage is by land, water, or air, or by more than one of those modes.

*Struck Out*

(2) Subject to subsection (1) of this section, this Act applies to a carriage of goods notwithstanding that the contract of carriage pursuant to which it is performed may subsequently be held void or avoided or rescinded.

(3) Subject to subsection (1) of this section, this Act applies to every carriage of goods whether the carriage is or is not incidental to the carriage of passengers.

(4) Subject to subsection (1) of this section, this Act applies to every carriage by air or by water whether or not the aircraft or ship by which the carriage takes place is at the same time also engaged in international carriage.



(5) This Act does not apply to any carriage by air performed as part of an air transport service for the carriage of passengers operated by any club that is affiliated with the Royal New Zealand Aero Club (Incorporated), if the carriage  
 5 is performed in an aircraft owned or hired by the club, and if all persons carried on the aircraft, whether as crew or passengers, are members of the club with full rights of membership:

Provided that the provisions of this subsection do not apply in any case where any such passenger is not carried by  
 10 reason of the fact that he is a member of the club but for the purpose of carrying out a function not related to his membership.

(6) Notwithstanding anything in subsection (1) of this section, this Act applies to the carriage of goods between any  
 15 place in New Zealand and any place in the Cook Islands or in Niue or in Tokelau.

Cf. 1940, No. 31, s. 2; 1967, No. 151, s. 19 (1), (2), (4)

*New*

**5A. Other remedies affected**—Notwithstanding any rule of  
 20 law to the contrary, no carrier shall be liable as such, whether in tort or otherwise, and whether personally or vicariously, for the loss of or damage to any goods carried by him except—

- (a) In accordance with the terms of the contract of carriage and the provisions of this Act; or  
 25 (b) Where he intentionally causes the loss or damage.

**5B. Contracting out**—The parties to a contract of carriage are free to make their own terms in respect of any matter to which any of sections 9, and 13 to 25 of this Act apply; and,  
 30 where they do so, the relevant section or sections shall, in relation to that matter, have effect subject to those express terms.

*Struck Out*

**6. Contracting out**—(1) Subject to the succeeding provisions of this section, the provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement or any contract of carriage.

*Struck Out*

(2) The parties to a contract of carriage may agree that any specified provision or provisions of this Act shall not apply where, because of the special nature of the goods or of the route over which the carriage is to take place, the application of that provision or those provisions would be unjust or unreasonable. 5

(3) In such a case the contract shall not be sufficient to exclude any of the provisions of this Act unless—

(a) Every provision to be excluded is identified and expressly excluded in the contract; and 10

(b) The contract is in writing, and is signed by both parties; and

(c) The special nature of the goods or of the route is expressly stated in the contract. 15

(4) If, in the course of any proceedings or on an application made to it by any party to a contract to which subsections (2) and (3) of this section apply, the Court is satisfied that neither the nature of the goods nor the nature of the route justified the exclusion of any of the provisions of this Act that were excluded in the contract, and that the exclusion of any such provision is unconscionable, it may make such order in respect of the contract and grant such relief to any party to the contract as it thinks just. 20

Cf. 1940, No. 31, s. 4; 1948, No. 66, ss. 4, 5; 1967, No. 151, s. 30 25

*New*

**6. Kinds of contract of carriage—**(1) For the purpose of determining upon whom liability for the loss of or damage to any goods is to fall, every contract of carriage shall be one of the following kinds: 30

(a) A contract for carriage “at owner’s risk”, under which the carrier shall not be liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier: 35

(b) A contract for carriage “at limited carrier’s risk”, under which the carrier shall be liable for the loss of or damage to any goods in accordance with sections 7, 10B, and 11 of this Act:

(c) A contract for carriage “at declared value risk”, under which the carrier shall be liable for ((loss)) the loss of or damage to any goods up to an amount specified in the contract and otherwise in accordance with sections 7, 10B, and 11 of this Act: 40

## New

(d) A contract for carriage “on declared terms”, under which the carrier shall be liable for the loss of or damage to any goods in accordance with the specific terms of the contract.

(2) Subject to the succeeding provisions of this section, where in any contract of carriage the term “at owner’s risk” or the term “at limited carrier’s risk” or the term “at declared value risk” or the term “on declared terms” is used, the contract shall be deemed for the purposes of this Act to be one to which paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) (as the case may require) of subsection (1) of this section applies.

(3) Subject to the succeeding provisions of this section, the kind of contract of carriage to be entered into in a particular case is a matter for agreement between the parties.

(4) Where the contract ((is not expressed)) does not purport to be of a particular kind, it shall be deemed for the purposes of this Act to be a contract for carriage “at limited carrier’s risk”.

(5) No contract of carriage purporting to be a contract for carriage “at owner’s risk” shall have effect as such (but instead shall have effect as a contract for carriage “at limited carrier’s risk”) unless—

(a) The contract is—

(i) In writing; and

(ii) Expressed to be “at owner’s risk”; and

(iii) Signed by the parties or their agents; or

(b) Before, or at the time when, the goods are ((consigned)) accepted for carriage, the contracting party or his agent signs a statement in the following terms:

“These goods are to be carried at ‘owner’s risk’. This means that the carrier will pay no compensation if the goods are lost or damaged, unless he intentionally loses or damages them.”

For the purposes of this paragraph, that statement may be included in the consignment note or any other document relating to the carriage, but in that case the statement shall be conspicuous and shall be separately signed by the contracting party or his agent.

(6) No contract of carriage purporting to be a contract “at declared value risk” shall have effect as such (but instead shall have effect as a contract for carriage “at limited carrier’s risk”) unless the contract is in writing.

*New*

(7) No contract of carriage purporting to be a contract for carriage “on declared terms” shall have effect as such (but instead shall have effect as a contract for carriage “at limited carrier’s risk”) unless the contract is— 5

- (a) Freely negotiated between the parties; and
- (b) In writing; and
- (c) Signed by the parties or their agents.

(8) Where, in any proceeding, the question of whether any contract of carriage was or was not freely negotiated is in issue, the Court in determining that question shall have regard to the following matters: 10

- (a) The respective bargaining strengths of the parties;
- (b) The course of dealing between the parties in respect of the particular transaction in question, and any other transactions between them: 15
- (c) The value of the transaction;
- (d) Any extraordinary features of the goods to be carried or the route over which they are to be carried;
- (e) Any other matters that the Court considers may properly be taken into account,— 20

and either party may adduce evidence relating to any such matter.

(9) No contract of carriage “at owner’s risk” or “at declared value risk” shall have effect as such (but instead shall have effect as a contract for carriage “at limited carrier’s risk”) unless the amount by which the freight charged by the contracting carrier under the contract differs from the amount that he would have charged for the same carriage “at limited carrier’s risk” is fair and reasonable, having regard to the difference in the risk actually undertaken by the carrier and the risk that he would have undertaken if the carriage had been “at limited carrier’s risk”. 25 30

(10) For the purposes of subsection (9) of this section, any rate of freight prescribed by or under any enactment in respect of any mode of carriage pursuant to any kind of contract of carriage shall be deemed to be a fair and reasonable rate to charge for such carriage. 35

(11) Any contract of carriage entered into by a contracting carrier with an actual carrier, or between actual carriers, may be of any kind, regardless of the kind of contract that subsists between the contracting carrier and the contracting party; but subsections (5) to (8) of this section shall not apply in respect of any such contract. 40

*New*

(12) The provisions of sections 7, 10B, and 11 of this Act apply to contracts for carriage “at limited carrier’s risk” and to contracts for carriage “at declared value risk”.

5 (13) Sections 7 (1), 10B, and 11 of this Act do not apply to contracts for carriage “at owner’s risk” or to contracts for carriage “on declared terms”.

(14) Notwithstanding anything in section 5B of this Act, the provisions of subsections (2) to (7) of section 7 of this  
 10 Act apply to contracts for carriage “at owner’s risk” and to contracts for carriage “on declared terms”, subject to any express term in the contract.

*Liability of Carriers*

**7. Liability of contracting carrier—**(1) Subject to the  
 15 other provisions of this Act, a contracting carrier is liable as such to the contracting party for the loss of or damage to any goods occurring while he is responsible for the goods in accordance with the succeeding provisions of this section,  
 (and for delay in completing the carriage of any goods  
 20 pursuant to a contract of through carriage,) whether or not the loss or damage (or delay) is caused wholly or partly by  
 (the negligence or wilful default of the carrier or of any  
 through) him or by any actual carrier.

(2) The responsibility of the contracting carrier for goods  
 25 begins when the goods are accepted for carriage in accordance with the contract.

(3) Subject to subsection (4) of this section, the responsibility of the contracting carrier for goods ends—

(a) In a case where the goods are to be delivered (by the  
 30 carrier) to the consignee,—

(i) When they are tendered to the consignee in (accordance with) the manner expressed or implied in the contract; or

(ii) Where any amount by way of freight is due  
 35 and payable to or on behalf of the contracting carrier at any time before, or at the time at which, the goods are to be tendered to the consignee under the contract and that amount has not been paid in full, when the contracting carrier or (as the  
 40 case may require) the last (through) actual carrier

is capable of tendering the goods to the consignee in accordance with the contract and (*notifies the*) gives notice to any person liable to pay the amount or (as the case may require) the balance of the amount that he is so capable: 5

(b) In a case where the goods are to be collected by the consignee,—

(i) When the goods are collected by the consignee; or

(ii) On the expiry of the 5th day (excluding any 10 day on which the carrier's premises are not open for the collection of goods) after the date on which the contracting carrier or (as the case may require) the last (*through*) actual carrier notifies the consignee that the goods are available for collection. 15

(4) In any case where, at the time when the contracting carrier or (as the case may require) the last (*through*) actual carrier is able to tender the goods to the consignee in accordance with the contract, the consignee's whereabouts are unknown (*to the carrier, the responsibility of the carrier for 20 the goods ends when the carrier has taken reasonable steps to find the*) to that carrier, the responsibility of the contracting carrier for the goods ends when he or (as the case may require) the last actual carrier has taken reasonable steps to find the consignee and notify him of the matters referred 25 to in paragraph (a) (ii) or (as the case may require) paragraph (b) (ii) of subsection (3) of this section.

*New*

(5) No notice referred to in subsection (3) (a) (ii) of this section shall take effect until it is received by the person 30 liable to pay the freight.

(6) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods to a destination outside New Zealand ends for the purposes of this Act at the time 35 when the international carriage of those goods begins.

(7) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods from a destination outside New Zealand to a destination in New Zealand begins for 40 the purposes of this Act at the time when the international carriage of those goods ends.

*Struck Out*

**8. Liability of successive carriers—**(1) Subject to subsection (2) of this section and to the other provisions of this Act, the successive carriers under a contract of successive carriage are  
5 jointly and severally liable as such to the contracting party for the loss of or damage to any goods occurring while the carriers are jointly responsible for the goods in accordance with subsection (3) of this section, and for delay in complet-  
10 ing the carriage of any goods pursuant to the contract, whether or not the loss or damage or delay is caused wholly or partly by the negligence or wilful default of the carriers or of any of them.

(2) No successive carrier is liable under subsection (1) of this section if he proves that the loss or damage or delay  
15 occurred otherwise than while he was separately responsible for the goods in accordance with subsection (4) of this section.

(3) The successive carriers are jointly responsible for the goods from the time when the goods are accepted by the first successive carrier for carriage in accordance with the contract  
20 until the time when, if the contract were a contract of through carriage, the contracting carrier's responsibility would end in accordance with subsection (3) or subsection (4) of section 7 of this Act.

(4) Each successive carrier is separately responsible for  
25 the goods from the time when the goods are tendered to him in accordance with the contract until the time—

- (a) When they are duly tendered by him to the next successive carrier in accordance with the contract of carriage; or  
30 (b) In the case of the last successive carrier, when, if the contract were a contract of through carriage and he were the contracting carrier, his responsibility would have ended in accordance with subsection (3) or subsection (4) of section 7 of this Act.

35 Cf. 1967, No. 151, s. 21

**9. Liability of through carriers—**(1) Subject to subsection (2) of this section and to the other provisions of this Act, a through carrier is liable as such to the contracting carrier for the loss of or damage to any goods occurring while he  
40 is the actual carrier of the goods, and for delay in completing

*Struck Out*

the carriage, or any stage of the carriage, of any goods pursuant to a contract of through carriage, whether or not the loss or damage or delay is caused wholly or partly by the negligence or wilful default of the carrier.

(2) No contracting carrier shall be entitled, in respect of the loss of or damage to or delay in completing the carriage of any goods, to recover from a through carrier any sum in excess of the amount payable by the contracting carrier to the contracting party in respect of that loss or damage or delay.

*New*

**9. Liability of actual carrier—**(1) The provisions of this section apply, subject to the other provisions of this Act, where a contract of carriage is to be or is performed wholly or partly by 1 or more actual carriers other than the contracting carrier (whether or not the contracting carrier himself performs part of the carriage).

(2) In any case to which this section applies where 1 actual carrier is involved, that carrier is, subject to the terms of his contract with the contracting carrier, liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carrier is separately responsible for the goods in accordance with subsection (6) of this section, whether or not the loss or damage is caused wholly or partly by the actual carrier.

(3) In any case to which this section applies where more than 1 actual carrier is involved,—

(a) Subject to subsection (4) of this section, the actual carriers are, subject to the terms of their respective contracts, jointly liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carriers are jointly responsible for the goods in accordance with subsection (5) of this section, whether or not the loss or damage is caused wholly or partly by the actual carriers or any of them:

(b) Each actual carrier is, subject to the terms of his contract, separately liable as such to the contracting carrier for the loss of or damage to any goods occurring while he is separately responsible for the goods in accordance with subsection (6) of this



*New*

section, whether or not the loss or damage is caused wholly or partly by the actual carrier.

5 (4) No actual carrier is liable under subsection (3) (a) of this section if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6) of this section.

10 (5) For the purposes of subsection (3) (a) of this section, the actual carriers are jointly responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted for carriage until the time when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 7 of  
15 this Act.

(6) For the purposes of subsections (2) to (4) of this section, each actual carrier is separately responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on  
20 which the goods are believed to be) are accepted by him for carriage until the time—

(a) When they are duly tendered by him to the next actual carrier in accordance with the contract of carriage; or

25 (b) In the case of the last actual carrier, when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 7 of this Act.

30 (7) For the purposes of subsection (3) (a) of this section, the actual carriers shall be liable in proportion to the amount of freight or other consideration payable to each of the actual carriers for the carriage performed by him.

35 (8) For the purposes of subsection (7) of this section, where the contracting carrier himself performs any part of the carriage, the amount of freight or other consideration payable to him shall be the difference between the total amount payable under the contract of carriage and the aggregate amount payable to the actual carriers.

40 (9) For the purposes of ( (subsection (7)) ) subsections 7 and 8 of this section, where any actual carrier (in this sub-  
section referred to as the secondary actual carrier) performs any part of the carriage pursuant to a contract with any

*New*

other actual carrier (in this subsection referred to as the primary actual carrier) (and not pursuant to a contract with the contracting carrier), the amount of the freight or other consideration payable to the primary actual carrier shall be the difference between the amount actually payable to him and the amount payable by him to the secondary actual carrier. 5

**9A. Rights of contracting party where contracting carrier insolvent or cannot be found—**(1) Notwithstanding anything in section 9 of this Act, where the contracting carrier is liable to the contracting party for the loss of or damage to any goods but the contracting carrier is insolvent or cannot with reasonable diligence be found, the contracting party shall be entitled to the same rights (if any) against the actual carrier as the contracting carrier has under section 9 (3) (b) of this Act. 10 15

(2) Where the liquidator or assignee in bankruptcy of an insolvent contracting carrier brings any proceeding against an actual carrier in respect of any right referred to in subsection (1) of this section, the sum recovered from the actual carrier, less all costs and expenses reasonably incurred by the liquidator or assignee in bringing and prosecuting the proceeding and not recovered by him from the actual carrier, shall be held by the liquidator or assignee upon the following trusts: 20 25

(a) For or towards the payment of the whole of the sum payable by the contracting carrier to the contracting party in respect of the loss of or damage to the goods: 30

(b) Subject to that payment, as an asset in liquidation or bankruptcy.

(3) Where the contracting party brings any proceeding against an actual carrier in respect of any right referred to in subsection (1) of this section,— 35

(a) The actual carrier shall have the same rights (if any) against the contracting party (including the right of set-off) as he would have had under the contract if the proceeding had been brought against him by the contracting carrier: 40

(b) If judgment in the proceeding is awarded against the actual carrier, that judgment shall be an absolute bar to the bringing by the contracting carrier, or

*New*

by any person claiming through the contracting carrier, of any proceeding to enforce the same right.

(4) This section applies notwithstanding anything in the Companies Act 1955 or the Insolvency Act 1967 or any other enactment.

**10. Special rules relating to liability of carriers in respect of baggage—***(1) Nothing in section 7 or section 8 of this Act applies with respect to baggage that is left in the custody of the carrier in exchange for a left-baggage check or other form of receipt pending its receipt for carriage or its collection by or on behalf of the owner.)*

*New*

(1) A carrier is not liable as such with respect to baggage that is left in his custody pending his acceptance of it for carriage, or pending its collection from him after the completion of the carriage.

*Struck Out*

*(2) In respect of hand baggage, the provisions of sections 7 to 9 of this Act shall be read subject to the succeeding provisions of this section.*

*New*

(2) Nothing in section 6, or in subsections (1) to (5) of section 7, or in sections 9, 9A, and 10A of this Act shall apply to the carriage of hand baggage.

(2A) Subject to subsection (2) of this section, in respect of the carriage of hand baggage and checked baggage, the provisions of this Act shall apply, with the necessary modifications, as if that carriage were or were to be performed pursuant to a contract of carriage of goods.

(3) A carrier is liable as such for the loss of or damage to any hand baggage occurring during the period in which the passenger is on board the mode of transport or in the course of any of the operations of embarking or disembarking, if the loss or damage is caused wholly or partly by the negligence or wilful default of the carrier.

*Struck Out*

(4) A carrier is not liable as such for delay in completing the carriage of any hand baggage.

(5) Without limiting section 17 of this Act, if, in respect of loss of or damage to any hand baggage, the carrier proves that the loss or damage was contributed to by the negligence or wilful default of the passenger, the Court may, in

accordance with the provisions of the Contributory Negligence Act 1947, exonerate the carrier from any part of his liability.

Cf. 1967, No. 151, ss. 23, 24

*New*

**10A. Contracts of successive carriage by air—**(1) In this section the term “contract of successive carriage” means a contract or contracts for the carriage of any goods exclusively by air, where the carriage—

(a) Is or is to be performed by 2 or more carriers in successive stages; and

(b) Is regarded by the parties as a single operation;—  
and the term “successive carrier” has a corresponding meaning.

(2) Nothing in sections 6 to 10 of this Act applies in respect of a contract of successive carriage.

(3) Subject to subsection (4) of this section and to the other provisions of this Act, the successive carriers under a contract of successive carriage are jointly and severally liable as such to the contracting party for the loss of or damage to any goods occurring while the carriers are jointly responsible for the goods in accordance with subsection (5) of this section, whether or not the loss or damage is caused wholly or partly by the carriers or any of them.

(4) No successive carrier is liable under subsection (3) of this section if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6) of this section.

(5) The successive carriers are jointly responsible for the goods from the time when the goods are accepted by the first successive carrier for carriage in accordance with the contract until the time when, if the contract were not a contract of successive carriage, the contracting carrier’s responsibility would end in accordance with subsection (3) or subsection (4) of section 7 of this Act.

(6) Each successive carrier is separately responsible for the goods from the time when the goods are tendered to him in accordance with the contract until the time—

(a) When they are duly tendered by him to the next successive carrier in accordance with the contract of carriage; or

(b) In the case of the last successive carrier, when, if the contract were not a contract of successive carriage and he were the contracting carrier, his responsibility would have ended in accordance with subsection (3) or subsection (4) of section 7 of this Act.

*New*

10B. Carrier not liable in certain circumstances—Notwithstanding any of the other provisions of this Act, a carrier is not liable as such for the loss of or damage to goods occurring while he is responsible for them under a contract of carriage to the extent that he proves that the loss or damage resulted directly and without fault on his part from—

- (a) Inherent vice; or
- 10 (b) Any breach of either of the terms implied in the contract by section 12 of this Act; or
- (c) Seizure under legal process; or
- (d) Saving or attempting to save life or property in peril.

## 11. Limitation of amount of carrier's liability—

15 *Struck Out*

(1) Subject to the succeeding provisions of this section, the liability of a carrier (whether under this Act or otherwise) in respect of each unit of goods carried by him is limited in amount to the sum of \$1,000.

*New*

(1) ~~(In respect of a contract of carriage,))~~ For the purposes of this Act,—

- 25 (a) The liability of the contracting carrier to the contracting party; and
- (b) The separate liability of any actual carrier to the contracting carrier; and
- (c) The joint liability of any actual carriers (where there are more than 1) to the contracting carrier; and
- 30 (d) The joint and several liability of every successive carrier under a contract to which section 10A of this Act applies,—

is limited in amount in each case to the sum of \$500 for each unit of goods lost or damaged or, in the case of a contract "at declared value risk", the amount specified in the contract.

(1A) The limitation of amount for the time being specified in subsection (1) of this section does not apply to—

- 40 (a) Any liability for the loss of or damage to any goods intentionally caused by the carrier; or
- (b) Any liability arising out of the terms of the contract for damages other than for the loss of or damage to the goods; or
- 45 (c) Any liability arising out of the terms of the contract for ~~(loss or damage))~~ damages consequential upon the loss of or damage to the goods.

*Struck Out*

(2) The Governor-General may from time to time, by Order in Council, amend subsection (1) of this section by omitting the sum for the time being specified in that subsection in respect of the limit of a carrier's liability under this Act, and substituting such greater sum as may be specified in the order. 5

(3) By written agreement (whether incorporated into any document evidencing the contract of carriage or otherwise) between the parties to a contract of carriage, the liability of the contracting carrier or (as the case may require) the successive carriers to the contracting party in respect of any specified unit of goods to be carried pursuant to the contract may be fixed at such amount (in excess of the sum for the time being specified in that behalf by subsection (1) of this section) as may be specified in the agreement. 10 15

(4) Nothing in section 6 of this Act shall apply in respect of any agreement entered into for the purposes of subsection (3) of this section.

*New**Liability of Employees*

**11A. Liability of carrier's employee—**(1) Every employee of a carrier who, in the course of his employment, intentionally causes the loss of or damage to any goods being carried by the carrier, shall be liable to the owner of the goods for that loss or damage. 25

(2) Subject to subsection (1) of this section, no employee of a carrier shall be liable as such, whether under this Act or otherwise, to the owner of any goods being carried by the carrier for the loss of or damage to any of those goods. 30

Cf. 1940, No. 31, s. 6; 1948, No. 66, s. 6; 1967, No. 151, s. 28

*Warranty by Contracting Parties**Struck Out*

**12. Obligation of contracting parties to warrant condition of goods, etc.—**In every contract of carriage there shall be implied on the part of the contracting party a term— 35

(a) That, except as disclosed in writing by the contracting party to the contracting carrier or (as the case may require) each of the successive carriers before the goods are accepted for carriage, the goods are fit to be carried and stored in accordance with the contract in the condition and packed in the manner in which they are tendered for carriage: 40

*Struck Out*

- 5 (b) That he has complied with the requirements of every other enactment (if any) relating to the consignment for carriage of goods of the class that are to be carried pursuant to the contract.

*New*

- 12. Obligation of contracting party to warrant condition of goods, etc.**—(1) In every contract of carriage there shall be implied on the part of the contracting party a term—
- 10 (a) That, except as disclosed in accordance with subsection (2) of this section, the goods are fit to be carried and stored in accordance with the contract in the condition and packed in the manner in which they are tendered for carriage:
- 15 (b) That, except as disclosed in accordance with subsection (2) of this section, the provisions of every other enactment (if any) that he is required to comply with relating to the consignment for carriage of the goods to be carried pursuant to the contract have been complied with.
- 20 (2) If, before the goods are accepted for carriage, the contracting party notifies the contracting carrier or the first actual carrier of any material particular that would otherwise constitute a breach of either of the terms specified in
- 25 subsection (1) of this section, the carrier may refuse to carry the goods, or undertake to carry them subject to such reasonable terms and conditions as he may require having regard to the circumstances of the case.
- 30 (3) Notwithstanding anything in section 5B of this Act, the provisions of this section apply, with the necessary modifications, to contracts of carriage between contracting carriers and actual carriers, and between actual carriers, subject to any express term in the contract.

*Actions Against Carriers*

- 35 **13. Notice of claim of damage or short delivery to be given within 30 days**—(1) Subject to the succeeding provisions of this section, and except in the case of fraud by the carrier, no action may be brought against a contracting carrier for damage to or (*short delivery*) partial loss of goods occurring
- 40 while he is responsible for them under this Act unless written notice giving reasonable particulars of the alleged damage or (*short delivery*) partial loss is given, in accordance with subsection (3) of this section, within 30 days after the date

on which, in accordance with section 7 (or (as the case may require) section 8) of this Act, the carrier's responsibility for the goods ceased.

*New*

(1A) Subject to the succeeding provisions of this section, and except in the case of fraud by the actual carrier, no action may be brought by the contracting carrier against an actual carrier for damage to or partial loss of goods occurring while the actual carrier is responsible for them under this Act unless the contracting carrier, within 10 days after receiving notice of a claim under subsection (1) of this section, notifies the actual carrier of that claim. 5 10

(2) No notice is required if it is apparent from all the circumstances of the case that the carrier is or ought to be aware of the damage or (*short delivery*) partial loss. 15

*Struck Out*

(3) Notice for the purpose of this section shall be given—  
 (a) To the contracting carrier, if the contract is one of through carriage; or  
 (b) To the last successive carrier or (at the claimant's option) the actual carrier, if the contract is one of successive carriage. 20

*New*

(3) Notice for the purpose of subsection (1) of this section shall be given— 25  
 (a) Where the contract was performed entirely by the contracting carrier, to that carrier; or  
 (b) Where the contract was not performed entirely by the contracting carrier, to—  
     (i) The actual carrier or, as the case may require, the last actual carrier; and 30  
     (ii) The contracting carrier, unless (where notice of the claim is to be given by the consignee) the identity of the contracting carrier is unknown to the consignee. 35

(4) A carrier may consent to an action being brought against him notwithstanding that notice of the claim was not properly given ((*to him*)).

(5) Where the carrier does not consent, application may be made to the Court, after notice to the carrier, for leave to bring the action at any time before the expiration of the period prescribed by subsection (1) or (as the case may require) subsection (2) of section 14 of this Act. 40



(6) On an application under subsection (5) of this section, the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the failure to give notice was  
 5 occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the intended defendant was not materially prejudiced in his defence or otherwise by the failure to give proper notice.

10 Cf. 1950, No. 34, s. 262A; 1967, No. 151, s. 38

**14. Limitation of actions**—(1) Subject to subsections ~~(3)~~ (2) to (5) of this section, and except in the case of fraud by the carrier, no action may be brought against a carrier for the loss ~~(otherwise than by short delivery) or~~  
 15 *delay in completing the carriage* of any goods occurring while he is responsible for them under this Act after the expiration of a period of 12 months from the date on which the carriage should have been completed in accordance with the contract.

20 (2) Subject to subsections (3) to (5) of this section, and except in the case of fraud by the carrier, no action may be brought against a carrier for damage to or *(short delivery)*  
partial loss of any goods occurring while he is responsible for them under this Act after the expiration of a period of  
 25 12 months from—

(a) The date on which notice is served on the carrier under subsection (1) or (as the case may require) sub-  
section (1A) of section 13 of this Act; or

30 (b) Where no such notice is served in proper reliance on subsection (2) of that section, the date on which, in accordance with section 7 ~~(or (as the case may require) section 8 of this Act, the)~~ of this Act, the contracting carrier's responsibility for the goods ceased.

35 (3) A carrier may consent to an action being brought against him notwithstanding that the period specified in subsection (1) or subsection (2) of this section has expired.

(4) Where the carrier does not consent, application may be made to the Court, after notice to the carrier, for leave to  
 40 bring the action at any time within 6 years after the relevant date referred to in subsection (1) or subsection (2) of this section.

(5) On an application under subsection (4) of this section, the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the intended defendant was not materially prejudiced in his defence or otherwise by the delay. 5

Cf. 1967, No. 151, s. 39 10

**15. Actions by consignee if not contracting party—**  
*(1) Notwithstanding anything in this Act or any rule of law to the contrary, an action against a contracting carrier or a successive carrier in respect of the loss of or damage to any goods occurring while he is responsible for the goods in accordance with section 7 or (as the case may require) section 8 of this Act, or for delay in completing the carriage of any goods pursuant to a contract of carriage, may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought by the consignee.)* 15 20

*New*

**(1)** Notwithstanding anything in this Act or any rule of law to the contrary, an action against a contracting carrier in respect of the loss of or damage to any goods occurring while he is responsible for the goods in accordance with section 7 of this Act may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought by the consignee. 25

**(2)** Where the consignee brings an action in accordance with subsection (1) of this section,— 30

(a) He shall be deemed to be the contracting party and be entitled to sue and recover under the contract accordingly:

(b) The **(defendant)** contracting carrier shall be entitled to raise the same defences and to make the same counterclaims as he would have been entitled to raise or make if the action had been brought against him by the contracting party. 35

*Struck Out***16. Procedure where contract one of successive carriage—**

- (1) The contracting party under a contract of successive carriage may bring an action for the loss of or damage to any goods occurring while the successive carriers are jointly responsible for the goods in accordance with section 8 of this Act, or for delay in completing the carriage of any goods pursuant to the contract, against the last successive carrier or the actual carrier.
- (2) Where the action is brought against the last successive carrier (not being the actual carrier), all or any of the other carriers may be joined as defendants; and, in such a case, the provisions of section 17 of the Law Reform Act 1936, so far as they relate to contribution, shall apply as if each successive carrier were a joint tortfeasor.

**17. Defences—**(1) Notwithstanding any of the other provisions of this Act, a carrier is not liable as such for loss of or damage to goods occurring while he is responsible for them under a contract of carriage to the extent that he proves that the loss or damage resulted directly and without fault on his part from—

- (a) Any breach by the contracting party of either of the terms implied in the contract by section 12 of this Act; or
- (b) Seizure under legal process.
- (2) Notwithstanding any of the other provisions of this Act, a carrier is not liable for delay in completing the carriage of any goods to the extent that he proves that the delay resulted directly and without fault on his part from—
- (a) Meteorological conditions; or
- (b) Saving or attempting to save life or property in peril.

Cf. 1940, No. 31, s. 3; 1967, No. 151, ss. 25–27

*Rights of Carriers*

**18. Right to sue for freight—**(1) The right to sue for the recovery of freight payable under a contract of carriage arises—

- (a) In the case of a contracting carrier, when he ceases to be responsible for the goods in accordance with section 7 of this Act:

- (b) In the case of *(a successive)* an actual carrier, when he ceases to be separately responsible for the goods in accordance with section (8) 9 of this Act:

*Struck Out*

- (c) In the case of a through carrier, when he ceases to be the actual carrier. 5

(2) Nothing in subsection (1) of this section shall limit or affect the right of any carrier to refuse to accept any goods for carriage unless the freight is prepaid.

**19. Actions for recovery of freight**—(1) Notwithstanding anything in this Act or any rule of law to the contrary, an action for the recovery of freight may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought against the consignee. 10

(2) Where the action is brought against the consignee in accordance with subsection (1) of this section,— 15

- (a) He shall be deemed to be the contracting party and be liable for the payment of freight under the contract accordingly:
- (b) He shall be entitled to raise the same defences and to make the same counterclaims as the contracting party would have been entitled to raise or make if the action had been brought against him. 20

**20. Carriers' liens**—(1) In this section,—

“Owner”, in relation to any goods, means the person whom, under any contract of carriage or in accordance with section 19 of this Act, the carrier is entitled to sue for recovery of freight due in respect of the carriage of those goods: 25

“Recoverable expenses”, means all expenses and charges that the carrier, in accordance with subsection (6) (b) of this section, is entitled to recover from the owner of any goods in respect of which the carrier is exercising or has exercised a lien in accordance with this section. 30

(2) As from the time when, in accordance with section 18 (1) of this Act, a carrier's right to sue for the recovery of freight arises, the carrier is entitled to an active and particular lien over the goods, which may be exercised in accordance with this section. 35

(3) Every carrier claiming a lien over any goods under this section shall give notice of his claim to the owner of the goods, specifying the amount and particulars of his claim, and requiring the owner to pay or secure to the carrier the amount of  
5 the freight claimed and all recoverable expenses.

(4) Pending settlement of the claim,—

(a) The carrier may remove the goods to any suitable premises for storage (such premises being reasonably convenient to enable the owner of the goods, or any  
10 other person entitled to the goods, to collect them on payment of all freight owing and recoverable expenses so far incurred), and shall notify the owner of the goods of the address of the premises:

(b) The carrier shall take all reasonable steps to preserve  
15 the goods.

(5) If, within 2 months after the date on which the carrier serves notice of his claim on the owner of the goods in accordance with subsection (3) of this section, payment in full of all freight owing and recoverable expenses so far incurred has not  
20 been tendered to the carrier, he shall be entitled to sell the goods by public auction.

(6) From the proceeds of such sale, the carrier shall be entitled to deduct—

(a) The amount of freight owing to him in respect of the  
25 carriage of the goods; and

(b) All expenses reasonably incurred by him in removing, preserving, and storing the goods pending settlement of his claim, and in arranging and conducting  
the sale of the goods,—

30 and shall pay the balance (if any) to the owner of the goods.

(7) Where the amount of the proceeds is less than the amount of freight owing to the carrier and all recoverable expenses, the deficiency constitutes a debt due to the carrier by the owner of the goods.

35 (8) Nothing in this section shall limit or affect the right to have and enforce a general lien over any goods to which a carrier may be entitled by virtue of any provision expressed or implied in the contract of carriage.

**21. Demurrage and disposal of unclaimed or rejected**  
40 **goods—**(1) Where, under any contract of carriage,—

(a) Any goods are to be collected by the consignee and they are not collected by him forthwith after the

responsibility of the contracting carrier (or (as the case may require) the successive carriers) for the goods ends in accordance with section 7 (or section 8) of this Act; or

- (b) Any goods are to be delivered to the consignee and he cannot be found or (otherwise than because of any default by the carrier) he refuses to accept the goods,—

the carrier is entitled to remove the goods, at the consignee's expense, to suitable premises for storage.

(2) In respect of any goods held by the carrier under this section, the carrier is entitled to an active and particular lien over the goods, which may be exercised in the same manner and to the same extent as if it were a lien to which section 20 of this Act applies, and the provisions of that section, so far as they are applicable and with the necessary modifications, shall apply accordingly.

(3) Notwithstanding any of the foregoing provisions of this section, before selling any goods to which this section applies the carrier shall offer to carry the goods to, or to the order of, the consignor, at the cost in all things of the consignor.

*Struck Out*

(4) Any such carriage pursuant to subsection (3) of this section shall be deemed to be the subject of a contract of through carriage between the carrier and the consignor.

Cf. 1967, No. 151, s. 41

**22. Disposal of perishable goods**—(1) Notwithstanding any of the other provisions of this Act, if, at any time while any perishable goods are subject to a contract of carriage (including any time while they are held under section 20 or section 21 of this Act), the goods appear to be deteriorating and likely to become offensive, the carrier may—

- (a) Sell the goods to the best advantage; or  
 (b) If sale is not reasonably practicable, destroy or otherwise dispose of the goods.

*Struck Out*

(2) If the goods are sold, the carrier may deduct from the proceeds of sale all reasonable expenses incurred by him in the conduct of the sale, and shall tender the balance (if any) to the consignee.

*New*

5 (2) If the goods are sold, the carrier may deduct from the proceeds of sale the amount of freight or other consideration owing to him in respect of the carriage of the goods and all reasonable expenses incurred by him in holding the goods and in conducting the sale, and shall tender the balance (if any) to the consignee.

10 (3) If the goods are destroyed or otherwise disposed of, the reasonable expenses incurred by the carrier shall be recoverable by him from the contracting party.

Cf. 1967, No. 151, s. 42

15 **23. Disposal of dangerous goods**—(1) Notwithstanding any of the other provisions of this Act, if, at any time while any goods are subject to a contract of carriage (including any time while they are held under section 20 or section 21 of this Act), the (*actual*) carrier believes on reasonable grounds that the goods are in or are about to enter a dangerous state and that it is necessary, in order to avoid the threat of harm to any persons or property, to destroy or otherwise dispose of  
20 the goods forthwith, he may do so.

(2) In any such case, the reasonable expenses incurred by the (*actual*) carrier in destroying or otherwise disposing of the goods shall be recoverable by him from the contracting party.

25 **24. Liability of carriers extinguished**—Notwithstanding any of the other provisions of this Act, where any goods are sold or destroyed or otherwise disposed of under and in accordance with any of sections 20 to 23 of this Act, (*the liability (whether under this Act or otherwise) of the contracting carrier and every through carrier, or (as the case may require) every successive carrier, shall be extinguished*) neither  
30 the contracting carrier nor any actual carrier shall be under any liability (whether under this Act or otherwise) in respect of that sale, destruction, or other disposition; but  
35 that sale, destruction, or other disposition shall not affect any liability for any loss or damage that had already occurred in respect of the goods before the sale, destruction, or other disposition.

*Struck Out*

**25. Actual carrier may sue for damage to property, etc.**—Every actual carrier shall be entitled to recover damages from the contracting party in respect of any damage to any premises, vehicles, containers, pallets, or other equipment owned by the carrier where that damage results directly and without fault on the carrier's part from a breach by the contracting party of either of the terms implied in the contract of carriage by section 12 of this Act, whether or not the actual carrier is a party to the contract of carriage.

*Miscellaneous Provisions*

**26. Common carrier of goods abolished**—(1) Notwithstanding any rule of law, but subject to the provisions of any enactment and of any contract entered into by the carrier, no carrier is under any duty or obligation to accept or carry goods that are offered to him for carriage.

(2) Every reference in any other enactment to the liability of common carriers as such shall be deemed to be a reference to the liability of carriers under this Act.

*New*

**26A. Proceedings against New Zealand agent of overseas carrier**—Subject, in the case of a contract for carriage by sea, to section 11 of the Sea Carriage of Goods Act 1940, proceedings arising out of a contract of carriage may be brought in accordance with the provisions of this Act against a New Zealand agent, whether acting under general or special authority, of an overseas contracting carrier if—

(a) The contract is or is to be performed wholly or partly in New Zealand; and

(b) The agent plays some part in relation to the contract.

**27. Certain other Acts not affected**—Nothing in this Act shall limit or affect any of the provisions of the Explosives Act 1957, the Poisons Act 1960, the Radiation Protection Act 1965, the Dangerous Goods Act 1974, or any other enactment relating to goods of a particular nature or class; and in any case where any of the provisions of this Act are inconsistent with any of the provisions of any such other enactment, the provisions of that other enactment shall prevail.



*Struck Out*

28. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- 5 (a) Prescribing the classes and maximum amounts of expenses that a carrier is entitled to recover under section 20 or section 21 of this Act.
- 10 (b) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and prescribing the amount of any fine that may be imposed in respect of any such offence, being an amount not exceeding \$200:
- 15 (c) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act.
- 20 (2) Any such regulations may be made in respect of the carriage of goods within New Zealand generally, or in respect of the carriage of any specified class or classes of goods, or in respect of the carriage of goods by any specified mode or modes of transport.

Cf. 1967, No. 151, s. 44

29. Amendments and repeals—(1) The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

- 25 (2) The enactments specified in the Second Schedule to this Act are hereby repealed.

## SCHEDULES

Section 29 (1)

## FIRST SCHEDULE

## ENACTMENTS AMENDED

Enactment	Amendment
1952, No. 49—The Shipping and Seamen Act 1962 (Reprinted 1965, Vol. 3, p. 1631)	<p>By adding to section 460 the following subsection:  “(7) Nothing in this section applies to any carriage of goods to which the Carriage of Goods Act 197(7)9 applies.”</p> <p style="text-align: center;"><i>Struck Out</i></p>
1949, No. 40—The Government Railways Act 1949 (Reprinted 1973, Vol. 2, p. 1403)	<p>By omitting from section 2 the definition of the term “goods”, and substituting the following definition:  “‘Goods’ means goods, baggage, and chattels of any description; and includes animals and plants:”.</p> <p style="text-align: center;"><i>New</i></p>
	<p>By omitting from section 2 the definition of the term “goods”, and substituting the following definition:  “‘Goods’ means goods, baggage, and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value:”.</p> <p>By omitting from section 13 (4) (as amended by section 2 of the Government Railways Amendment Act 1962) the words “notwithstanding anything to the contrary in the Sea Carriage of Goods Act 1940 and the Carriers Act 1948”.</p> <p>By repealing section 17.</p> <p style="text-align: center;"><i>Struck Out</i></p>
	<p>By repealing section 23, and substituting the following section:  “23. Carriage of Goods Act 1977 to apply—(1) The provisions of the Carriage of Goods Act 1977, so far as they are applicable, shall apply with respect to the receipt, custody, carriage, and delivery of goods under this Act.  (2) For the purposes of the Carriage of Goods Act 1977, where any goods are received, held, carried, or delivered under this Act the Minister shall be deemed to be the carrier, but any power conferred on him as carrier by that Act may be exercised on his behalf by the General Manager.</p>

FIRST SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<i>Struck Out</i>	
	<p>“(3) Nothing in <u>subsection (1)</u> of this section shall limit or affect the provisions of sections 24 and 25 of this Act.</p> <p>“(4) Sections 17 to 19 of this Act shall be read subject to the provisions of the Carriage of Goods Act 1977.”</p>
<i>New</i>	
	<p>By repealing section 23, and substituting the following section:</p> <p>“23. Carriage of goods—(1) The provisions of the Carriage of Goods Act 1979, so far as they are applicable, shall apply with respect to the receipt, custody, carriage, and delivery of goods under this Act, and, in respect of such matters, the provisions of this Act shall be read subject to the provisions of that Act.</p> <p>“(2) Nothing in <u>subsection (1)</u> of this section shall limit or affect the provisions of sections 24 and 25 of this Act.</p> <p>“(3) All goods received by the Department shall, subject to any conditions or regulations in that behalf, be deemed to be in the custody of the Minister until delivered to the consignee.</p> <p>“(4) No person shall be entitled to recover from the Crown or the Department or the Minister or any employee, or from any agent for the purposes of this Act of the Crown or the Department or the Minister, for any loss of or damage to or in connection with any goods any greater amount than that provided for in the Carriage of Goods Act 1979.</p> <p>“(5) When any goods have been received by the Department for carriage, and the time during which the goods may, in accordance with any contract or under any terms and conditions imposed by the Minister under <u>section 33 of this Act</u>, remain on the premises of the Department has expired, then, notwithstanding anything in this Act, the Crown shall be responsible only as a warehouseman for any loss of or damage to the goods that may occur between the time of the expiry and the time of their removal by the consignee or owner of the goods:</p>

*Carriage of Goods*FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<i>New</i>	
	<p>“Provided that nothing in this Act shall impose on the Crown any liability in respect of the goods left on the premises of the Department if, by virtue of any such terms and conditions, they are so left, or deemed to be so left, at the risk of the person leaving them.</p> <p>“(6) The Minister may make special agreements with any person for insuring any goods delivered on the railway against all loss or damage from any cause whatever, or for insuring the Crown against all liability in respect of any such loss or damage; and, for the purposes of the premiums in respect of any such insurance, may increase or diminish the charges payable on the goods.</p> <p>“(7) The Minister may enter into any kind of contract for the carriage of goods described in <u>section 6</u> of the Carriage of Goods Act 1979.”</p>
<i>New</i>	
	<p>By repealing paragraph (k) of section 33 (1), and substituting the following paragraph:</p> <p>“(k) Insurance (in addition to any other charges payable) in respect of goods carried or to be carried pursuant to a contract for carriage ‘at declared value risk’ (within the meaning of the Carriage of Goods Act 1979).”</p> <p>By omitting from subsection (5A) of section 33 (as inserted by section 3 (2) of the Government Railways Amendment Act 1963) the words “and notwithstanding anything to the contrary in section 23 of this Act”.</p>
<i>New</i>	
<p>1950, No. 34—The Harbours Act 1950 (Reprinted 1966, Vol. 3, p. 2395)</p>	<p>By inserting, after section 262A as inserted by section 3 of the Harbours Amendment Act 1962), the following section:</p> <p>“262B. <b>Application of Carriage of Goods Act 1979</b>—(1) Where the Board performs the carriage of any goods, the provisions of the Carriage of Goods Act 1979 shall apply notwithstanding anything to the contrary in this Act or in any regulations or bylaws made under this Act.</p>

FIRST SCHEDULE—*continued*  
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<i>New</i>	
	<p>“(2) For the purposes of subsection (1) of this section, ‘carriage’ includes any service (such as that performed by consolidators, packers, stevedores, and warehousemen) the performance of which is necessary for the carriage of any goods pursuant to a contract of carriage.”</p>
<p>1962, No. 13—The Government Railways Amendment Act 1962 (Reprinted 1973, Vol. 2, p. 1516)</p>	<p>By repealing sections 2 and 3.</p>
<p>1963, No. 124—The Government Railways Amendment Act 1963 Reprinted 1973, Vol. 2, p. 1517)</p>	<p>By repealing section 2.</p>
<p>1967, No. 151—The Carriage by Air Act 1967</p>	<p>By omitting from subsection (1) of section 18 the definition of the term “air transport service”, and substituting the following definition:</p> <p>“‘Air transport service’ means any service by aircraft, whether regular or casual, for the carriage of passengers for hire or reward.”.</p> <p>By omitting from that subsection the definitions of the terms “animal”, “baggage”, “cargo”, and “checked baggage”.</p> <p>By omitting from the definition of the term “contracting carrier” in that subsection the words “or consignor” in both places where they occur.</p> <p>By omitting from section 19 (1) the words “or cargo”.</p> <p>By omitting from paragraph (a) of section 20 the words “or consignor”.</p> <p>By omitting from paragraph (d) of that section the words “or any special declaration of the nature and value of checked baggage or cargo contemplated by subsection (2) of section 28 of this Act”.</p> <p>By omitting from paragraph (a) of section 21 the words “or of damage to or loss of baggage other than checked baggage”.</p> <p>By repealing paragraph (b) of that section.</p> <p>By repealing sections 23 and 24.</p> <p>By omitting from section 25 (1) the words “, baggage, or cargo”.</p> <p>By omitting from section 27 the words “the consignor, or the consignee”.</p> <p>By repealing subsections (2) and (3) of section 28.</p> <p>By repealing subsection (2) of section 30.</p> <p>By repealing section 38.</p>

*Carriage of Goods*FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1967, No. 151—The Carriage by Air Act 1967— <i>continued</i>	By repealing the proviso to section 40. By repealing sections 41 to 43. By omitting from paragraph (a) of section 44 the words “, consignors”; and also by omitting from that paragraph the words “, baggage, and cargo”. By omitting from paragraph (b) of that section the words “, baggage, or cargo”.

Section 29 (2)

## SECOND SCHEDULE

## ENACTMENTS REPEALED

- 1940, No. 31—The Sea Carriage of Goods Act 1940: Part I. (1957 Reprint, Vol. 13, p. 709.)
- 1948, No. 66—The Carriers Act 1948. (Reprinted 1966, Vol. 3, p. 2011.)
- 1962, No. 14—The Carriers Amendment Act 1962. (Reprinted 1966, Vol. 3, p. 2015.)