

(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 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.

(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—

- (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:

- (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;
- (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—and either party may adduce evidence relating to any matter."

20.3 Liability

Section 9, 14 and 15 of the Carriage of Goods Act 1979 provide as follows in respect of the liability of the Corporation:

20.3.1 "9. Liability of contracting carrier—(1) Subject to the 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, whether or not the loss or damage is caused wholly or partly by him or by any actual carrier.

(2) The responsibility of the contracting carrier for goods 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 to the consignee—
 - (i) When they are tendered to the consignee in the manner expressed or implied in the contract; or
 - (ii) Where any amount by way of freight is due 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 case may require) the last actual carrier is capable of tendering the goods to the consignee in accordance with the contract and 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:
- (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 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 actual carrier notifies the consignee that the goods are available for collection.

(4) In any case where, at the time when the contracting carrier or (as the case may require) the last actual carrier is able to tender the goods to the consignee in accordance with the contract, the consignee's whereabouts are unknown 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 to in paragraph (a)(ii) or (as the case may require) paragraph (b)(ii) of subsection (3) of this section.

(5) No notice referred to in subsection (3)(a)(ii) of this section shall take effect until it is received by the person 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 the Act at the time 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 the purposes of this Act at the time when the international carriage of those goods ends."