

7. Law of Carriage

7.1 Meaning and Importance of Law of Carriage

A person or company agrees to carry goods or people from one place to another in return for a payment are known as a contract of carriage. The party who undertakes to carry the goods or people for payment is called the carrier. Carriage means the acts of carrying goods from one place to another. It is a branch of a business carriage is the most important basis for the management and regulation of a business properly. It is the factor of a business which helps to mobilize labor, tools and machinery. Modern business is based on system of exchange or transportation. The term 'carriage' means transporting goods or passengers from one place to another that may be within or outside the country. The law which regulates the relationship between the carrier and the owner of goods is called; law of carriage. In a broad interpretation of law of carriage, it includes carriage through land, water, sea or air. The receipt issued by the carrier to the owner of goods at the time of delivery of goods (to the carrier) is recognized as proof of contracts between the owner and the carrier.

Contract of carriage, means; a contact between a carrier and owner of goods for the purpose of carrying goods from one place to another is called the contract of carriage.

According to the Contract Act of Nepal, 2056 Sec. 65 (1), "A contact relating to carriage shall be deemed to have been concluded if it provides for the transportation of goods from one place to another."

Sec. 65(2) states, "The receipt of the transporter (carrier) issues to the owner of goods for transportation should be recognized as proof of contract between them."

The Act has made provisions only for land transport and not for marine and air transport as the Act states; the term transporter means a person operating a transport service through land, internal water ways or rope ways or through animals or any other means other than air or marine transport.

Thus, the Act, carriage includes only the act of carrying goods from a place to another for money and it includes only land transport other than marine and air transport. The person or firm who receives the goods for the purpose of carriage or transportation as a profession is called carrier. Sec. 65 of NCA expressly declares that the person employed for carriage on wage, or agent or person acting under him are not the carrier for the purpose of the Act. In other words, any natural person or legal person or firm who does the profession of carrying goods as a business is carrier.

7.2 Features of Carrier

A carrier has the following features:

- A carrier may be any person or firm or organization.
- A carrier carries goods or passengers.
- Generally a carrier acts for fare or money.
- A carrier acts within the country or abroad.
- Providing carriage service at a proper place and time is the major duty of a carrier.
- Goods or passengers are carried through land, sea or air carriers.

7.3 Importance of Law of Carriage

Transport plays a vital role in the economic development of country. It facilitates the movement of goods and labor. Modern commerce based entirely on a system of exchange. The role of the transport is very important in the development of commerce. Hence the importance of the study of law relating to contract of carriage of goods is great.

The carriage of goods may take place either by land or by sea or by air.

The vast system of collection of raw materials and distribution of goods wouldn't possible without carriers. Carrier business is the most important activity of today business which can lead the whole business to stability and development.

The following points can be noted regarding the importance of a carrier.

- To regulate and control transportation business.
- To settle disputes legally that arise in carrier business
- To facilitate, regulate and regularize the relation between the owners and carriers.
- To make carrier accountable for the carriage of goods.
- To make liable to the carrier for loss or damaged caused to the goods during carriage.
- To limit the liability of carrier in ordinary contact of carriage.
- To impart the knowledge of legality of business of carriage.
- To save the agent and porters from the liability as a carrier.
- To provide remedy in the breach of contact of carriage.
- To provide healthy environment for the carrier to perform their business.

7.4 Classification of Carriers

- **Carriage by land:** Carriage service that is provided through land. E.g. truck, bus, train, cars, ropeway, cable car, trolley etc.
- **Carriage by sea:** Carriage that run water like, ship, boat they are the carriages by sea.
- **Carriage by air:** The carriers which provide services by air like, aero planes, helicopters are air carriers.

Nepal Carrier and Transportation Act, 2049 provides the following classification of carriers:

- Common or public carriers
- Private carriers
- Tourist carriers
- Government carriers
- Corporation carriers

7.4.1 Public or common carrier

Nepal Carrier and Transportation Act, 2049, Sec. 2(6) defines a public carrier. Thus carrier which is used for transportation services is a public carrier. Transportation service means carrying goods for passengers from one place to another place for a fare. Thus a common carrier means, "Any individual, firm or company other than

governmental, who transport goods, as a business, for money over land or inland, waterways, without discrimination between different consignors, is called common carrier."

A common carrier can be classified into two classes:

- Carrier for passengers, and
- Carrier for goods, goods means non living things and living things (animals, birds) except man.

According to above definition, a public carrier must be ready to carry goods or any body (public) without any discrimination and are entitled to get remuneration or charges for the services.

7.4.2 Characteristics of a Public Carrier

- A public carrier must be ready for general carrier business. The carrier which carries goods occasionally is not a public carrier.
- A public carrier has to carry goods for any body, indiscriminately.
- A public carrier provides goods by land, sea and air.
- Only carriers of goods come under this definition (In Indian Law). It does not carry passengers.
- A public carrier provides services regularly through its customary rate, route etc.
- A common carrier may be an individual, a firm or a company. It does not include government carrier.
- Carrying goods is a regular business. It always carries goods for payment. So if one carries goods occasionally or if one carries goods free of charge, it is not a common carrier.
- A common carrier is bound to carry goods of any person. Generally, he cannot refuse carrying goods of any consigner; there are certain conditions where a common carrier can lawfully refuse to carry goods of some consigners.

7.4.3 Exceptions of Public Carrier

Generally, a public carrier is supposed to be ready to carry goods regularly and indiscriminately, but they can reject to provide services in the following exceptional circumstances.

- If the goods are illegal.
- If the carrier has no more vehicles or space to carry.
- If the destination is out of route or of a customary route.
- If goods are not packaged properly and safely.

- If goods are of dangerous nature.
- If the carrier is fully loaded and there is no more accommodation to keep other goods in it.
- If the goods are risky enough.
- If the consignor refuses to pay its lawful and reasonable charges.

7.4.4 Private carrier

Private carrier is one who does not regular business as a carrier but occasionally carry goods for money. The private carrier does not carry the goods a regular business. It uses to carry its own goods but he may also carry the goods of others for money. He could not be compelled to carry the goods of the others. It is his discretions whether or not to carry the goods of others.

Generally, the private carrier uses the vehicles to carry his own goods. When he does not have his goods to carry, he may carry the goods of others also for money. It is not his regular business to carry goods of other people. He is not bound to carry goods of all and sundry. So, no one can compel him to carry goods without his own option. He may or may not carry goods of others. Thus, he enjoys the discretion of accepting or rejecting any offer made by either gratuitously or not gratuitously.

7.4.5 Difference between common carrier and private carrier

Common carrier	Private carrier
1. To carry goods of other for money is the regular business of common carrier.	1. Carrying goods for others is not the regular business of private carrier.
2. Common carrier should carry goods of all the people without discrimination.	2. A private carrier can make discrimination in carrying goods of the consignors.
3. No discrimination of the rate of carriage.	3. Discrimination in carriage.
4. Carriage through customary route.	4. Carriage through different route.
5. Common carrier carries only goods and no passengers.	5. Private carrier may carry either goods or passengers.
6. A common carrier is governed by the Carriers Act, 1865 of India.	6. A private carrier is governed by the Contract Act and not by the Carrier's Act.
7. A common carrier is always non gratuitous. It carries goods only for money. It is regular business of carrier to carry goods on hire.	7. A private carrier may be either gratuitous or non gratuitous as the case may be.

7.4.6 Rights of Common Carrier

The common carrier shall have the following rights:

- **Right to get remuneration:** When something is done as a profession, he must do so for his living. So that he has the right to get the reasonable remuneration for the service he has provided.
- **Right of lien:** If any consigner does not pay the charges of his service, the common carrier may exercise the right to lien over the goods he had carried unless such charges are paid to him.
- **Right to recover damage:** If the goods are of dangerous nature or they are not properly packed and the carrier suffers any loss, it may recover from the consigner.
- **Right to limit his liability:** Sec. 68(1) of Contract Act limits the liability of carrier to the amount of Rs. 10,000. But this could be altering by declaring the valuable goods in the contract by express provision (Sec. 68(2) of NCA.
- **Right to recover expenses:** The common carrier may recover the expenses he had incurred for the safe carriage of goods.
- **Right to refuse to carry goods:** Generally common carrier can not refuse to carry goods discriminately. But he can refuse to carry goods if there is no space in the vehicle or the consigner refuses to pay the charges of the carrier etc.
- **Right to sell:** A common carrier cannot usually sell the goods in transit. But under the following circumstances, he may enjoy a right to sell them either:
 - If the goods are of perishable nature.
 - If they are supposed to be perished by the time when they arrive at the place of delivery.
 - If it is not possible to inform the sender of such matter.
- **Right to take necessary action:** The duty of the carrier is to carry goods and deliver them to the said person in the said destination. The consignee should take delivery of goods when they arrive at the concerned station. Now if the consignee does not accept delivery, the carrier will be entitled to take any of the following steps:
 - If the goods are perishable, he can, by informing the sender, sell them in the market.
 - If the goods are not perishable but are refused to be accepted by the consignee, he can, until he gets further instruction from the sender, keep the goods in a nearly go down for necessary protection.
 - He can recover from the sender the sums paid by him to the go down keeper or other necessary expenses incurred by him for the protection of goods.

7.4.7 Duties of Common Carrier

A common carrier has certain duties to be fulfilled. They are as following:

- **To carry goods without discrimination:** The first duty of the common carrier is that he has to carry goods of all the people of charging a reasonable charge. Until the vehicle is fully loaded, he has to accept to keep the goods of all the people in the carrier and carry them without any discrimination.
- **To carry goods through customary route:** A common carrier has its regular route to carry goods and it always carries goods through the same route. If the route is closed due to some unavoidable reasons, only then it can use some alternate route. Otherwise, no consignor can ask him to carry goods through the route other than its customary route.
- **Duty to deliver the goods in proper condition:** Under the Sec. 66(1) of proper condition, of which he had received from the consigner.
- **Duty to compensate:** In case goods received from the consigner are lost, destroyed or damaged or do not reach their destination in proper condition for any reason, the carrier will be held responsible and he had to compensate to the consigner or his representatives.
- **Duty to carry goods within reasonable time:** Under Sec. 68(3) of NCA, the carrier must carry goods within the time mentioned in the contract and if not time is mentioned in the contract then, has to deliver the goods within reasonable time.
- To carry goods to the said place and deliver them to said person within a specific time.
- **To take proper care of the goods carried:** Common carrier has to take proper care of the goods carried by it, so that they may be safely delivered to the consignee in time. If due to carelessness or negligence of the carrier, the goods are loss or damaged or perished or evaporated or stolen in transit, the carrier himself will be held responsible to bear such loss. He has to pay compensation to the consigner for such loss or damage.
- To follow the instruction of consignor.
- To inform the sender about the goods to be sold in transit.

7.4.8 Liabilities of a Common Carrier

The contract Act, 2056, has mention some liabilities under the section 66 to 70. According to the Act, the liabilities of a carrier are as follows:

- **To carry goods are specific place:** It is a liability to a carrier to carry goods safely to the determined destination and deliver than to the said person or his representative.
- **To delivery goods within a prescribed time:** If the date of delivery is mentioned in the contract, the carrier must deliver the goods carried to the consignee or his agent within the mentioned time. If the time is not mentioned in this respect, he should deliver then to the consignee or his agent within the reasonable time.
- **To pay compensation:** If the goods received from the owner for transportation are lost, destroyed, harmed or damaged or if they do not reach their destination in proper condition, the carrier itself shall be responsible for such loss.
- **Liability of the first carrier:** If the goods are carried through two or more carriers or through two or more means of transport and if the goods are cost or damaged in transit, the first carrier, on less otherwise mentioned in the contract, shall be liable for such loss.
- **Liability in case of negligence:** It due to negligence or carelessness of the carrier, the goods are lost or damaged in transit, he shall compensate the owner of the goods in a way as mentioned in the contract.

- Compensation up to ten thousand: The carrier for any loss or damage is not clearly mentioned in the contract, the carrier will not be liable for a sum of more than Rs. 10,000/-
- Liability to insurance: The carrier should insure the goods against the risk either through the owner or his agent or himself by collecting fees separately for the purpose or take necessary arrangement to avoid the risk.

7.4.7 Limited Liability of Carrier

According to Sec. 69 of Contract Act, the carrier must pay reasonable compensation to the concerned owner for any loss or damage caused to goods during transportation. But Sec. 68(1) limits the liability of carrier for any loss or damage caused to goods during transportation, on Rs. 10,000 except when the owner of goods or his agent has clearly declared at the time of concluding the contract that the goods to be carried worth more than Rs. 10000.

7.4.8 Exceptions (liabilities of a common carrier)

The liability of common carrier is strict in case of goods received from the owner for carriage is lost, destroyed, broken, harmed or damaged or in case they do not reach their destination in proper condition for any other reason. Nepalese Contract Act does not mention about the exception of liability of carrier. According to English law if the damage or harm is caused on these exceptional circumstances, the common carrier would not be held liable:

- If damage is caused by act of natural cause.
- If damage is caused by declared enemies of the state. This does not include loss or damage to the goods by strike or rebellions during internal riots.
- Inherent vice in the goods carried. A carrier is not liable for losses arising from inherent vice in the goods carried over which he has no control and against which he can not guard. Example liquid goods may evaporate.
- If the damage has been caused due to defective packaging of goods, the carrier cannot be held liable.
- If the damage has been caused due to fault or fraud of consigner, the carrier cannot be held liable.
- In the circumstance where the law has clearly exempted the liability of carrier, the carrier cannot be held liable.

7.4.9 End of Carrier's Liability

Except otherwise provided in the contract the liability of carrier comes to an end in any of the following circumstances.

- When carrier delivers the goods to the owner or consignee or person designated by consigner.
- When the consigner takes back the goods.
- When the carrier returns the goods to the consigner stating the reason why the goods cannot be transported because of fundamental changes in the situation.

7.5 Contract of Affreightment (Charter Party and Bill of lading)

A contract for the carriage of goods by sea is called a contract of affreightment. The law relating to carriage by the sea is guided by recommendations of the International Conference on 'Maritime Law' held in Brussels in 1922. It tries to secure uniformity of laws relating to the rights and liabilities of the sea carriers. In Nepal maritime law 2072 has been enacted. In India, the Merchant Shipping Act, 1958 is applied.

The contract between the ship owner and the goods owner for the purpose of carrying goods from one port to another port is known as a contract of affreightment.

7.5.1 Charter Party Contract

A written agreement for hiring a ship or certain portion thereof for the purpose of carrying goods through sea routes is called charter. The charter party must be made in a written form which contains the terms between the agreed parties. The charter may hire the ship to carry his own goods or to use the ship as a general ship for carrying the goods of other under bill of lading.

The charter party can be classified into two classes.

- **Voyage charter party:** Where the charter party hires the ship to transport from one particular place to another particular place is called voyage charter party.
- **Time charter party:** Where the charter party hires the ship to transport from one particular time to another particular time it is called time charter party. During this period of time charter he may take the ship anywhere he decides. Where a contract of affreightment exists for a certain period of time that is called a time charter. In this type of affreightment the shipper may use the ship all over the time contracted.

7.5.2 The Bill of Lading

The ship owner or carrier issues a receipt of goods in which some necessary terms are contained that is called bill of lading. It will have three copies. Each of them is for the ship owner, goods owner and the goods receiver. A bill of lading is kind of receipt which is treated as a contract between consigner and carrier. A bill of lading is issued when the goods are delivered for carriage to a general ship. It is a document signed by the ship owner or his agent on his behalf, or by the charter party, which states that certain goods have been boarded for shipment on a particular place to a particular place. A bill of lading, as a document of title to the goods, can be transferred to another person by endorsement. If the goods are deliverable merely on proof of bill of lading can be delivered to another party by the endorsement of the consignee.

1.1.1 7.5.2.1 Feature of Bill of Lading

- Bill of lading is a receipt of the goods shipped or loaded in the ship.
- Bill of lading is itself a contract document of the carriage of goods.
- It deals with the rights and liabilities of the agreed party.

In a bill of lading the matters relating to name, fare, date of receipt of goods, condition of goods, qualities of goods, lading port and the time to deliver the goods are mentioned.

7.6 Airway Bill, Other Document Relating to Carriage by Air

If goods or passengers are carried by airway by the means of aircraft it is called carriage by air. The law relating to the carriage by air is guided by the International Conference of Warsaw 1929 and Hague Protocol 1955. In Nepal Civil Aviation Act, 2015 and Nepal Airline Service Corporation Act, 2019 have been enacted. Airway bill is one of the documents made as a contract relating to carriage by air. It is known as the Air consignment note when goods are transferred to the air carrier for the purpose of carriage, the carrier issues the airway bill to the consigner. The airway bill is issued in triplicates. Each of them will be with the carrier, goods receiver and the consigner respectively.

The document is regarded as a contract between the carrier and the consignor. The following particulars contain the airway bill.

- The place and date of issue of the bill.
- The place of departure name and address of the consignor.
- Nature of goods and the packing method.
- Weight and quality of the goods.
- Carrying route, period and stopping place.

7.6.1 Passenger Ticket

It is also a document which is regarded as a contract between the carrier and passenger. It is issued by the air carrier or his agent to the passenger after paying the fare. It contains the following matters.

- Name and address of the airline company and the airplane.
- Name the address of the passengers, issue date of the ticket, date and time of departure, fare, arrival time of airport, and liability of the company

7.6.2 Luggage Tickets

The ticket that is issued by the carrier to a passenger with a permission to carry goods by air is called 'luggage ticket' and that is regarded as a document of a contract. It is in duplicate one is for the consignor or passengers the other is for the carrier. Portable and small goods are carried by the passengers in their hands. But large and non portable goods are delivered to the carrier, the receipt issued by the carrier is the luggage ticket. It contains the matter of the number of baggage and their weight, place of the departure and arrival ticket number, date and place of luggage to be received, and liabilities of the carrier and so on.

1.1.2

1.1.3 Short and Questions

1. Explain briefly the different modes of winding up of a company. [10]
2055
2. What is annual general meeting? Explain the purpose and the procedure of annual general meeting of company. [3+3+4]
2056
3. Explain the procedure of registration of company. [10]
2057
4. What is minute? How minutes are kept in a company meeting. [4+6]
2060
5. What is the different modes of winding up of a company in Nepal? Explain. [10]
2061
6. Define the term 'minutes' and explain the provisions regarding the keeping of minutes. [3+7]
2062
7. Point out the various of company meeting and distinguish between ordinary and explain ordinary general meeting. [3+7]
2063
8. Explain the provisions of the company Act relating to the rights and power of an auditor. [5+5]
2064

9. Describe the procedure relating to incorporation of company in Nepal. [10]
2065
10. Explain the rights and powers of auditor under Company Act of Nepal. [5+5]
2065
11. State and explain the modes of winding up of a Company in Nepal. [10]
2066
12. What are the various kinds of company meeting? Explain the provisions of Company Act in Nepal relating to extraordinary general meeting. [5+5]
2066
13. What are company meetings? Explain the legal formalities to be fulfilled for an annual general meeting of a company. [3+7]
2067
14. What is a special meeting? When and how such meeting is conducted in a company. [3+7]
2068

