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## Book Reviews

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### **Sze Ping-Fat *Carrier's Liability under the Hague, Hague-Visby and Hamburg Rules*, Kluwer Law International, 2002**

**Paul Willee\***

This compact tome forcefully argues its main contention that the Hamburg Rules do not change the carrier's liability at large in favour of cargo interests vis-à-vis the Hague/Hague Visby Rules. First, because the 'charge' provision in article 4 of the Hamburg Rules, does not practically extend the carrier's period of responsibility which will probably remain "tackle to tackle". Next, given the overriding obligations of the carrier and the limited extent of the exceptions allowed by the strict interpretation of the courts under articles III and IV of the Hague/Hague-Visby Rules, the apparently more exacting requirement of article 5 (1) of the Hamburg Rules is unlikely to expand the carrier's general liability. The author further supports this contention with research demonstrating that despite the express limitation in article III (1) that the undertaking as to seaworthiness be limited to the commencement of the voyage; under the Hague/Hague-Visby Rules it is continuous. As causes lying quite beyond the carrier's power and control, the majority of the exceptions set out in article IV (2) of the Hague/Hague-Visby Rules continue to be available under the Hamburg Rules pursuant to article 5 (1). Third, the principle of "presumed fault" under the Hamburg Rules reinforces rather than changes current practice imposing on the carrier a condition precedent to negative any negligence (or breach of "overriding" obligations) before allowing reliance on any of the exceptions in article IV (1) and (2) of the Hague/Hague-Visby Rules. Fourth, the practical value of the deletion of the exception of "nautical fault" appears to have been over-stated as a factor possibly increasing the carrier's exposure, because the cases show the Courts are more prepared to find that the error was committed in respect of the cargo as distinct from the ship and thus amounted to a breach of the "overriding" obligations. Fifth, notwithstanding that both the contracting and actual carriers are prima facie liable jointly and severally for the latter's act or omission, the contracting carrier is not necessarily worse off because much still depends on the terms of the contract and with a through bill liability may still be limited to the period when the goods are in the contracting carrier's custody. Finally, the author draws on some provisions of the Hamburg Rules apparently lying in the balance against the cargo interest.

Seven chapters carry through the process of developing each proposition in a most scholarly way. The author's challenges to some fundamental precedents, which might once have been thought sacrosanct, are not only courageous but supported by rigorous analysis of the basis of underlying judicial pronouncements. In turn, some of these are flayed open to expose the bones of the misapplied principles of Roman Law used to support them.

To what end? It will undoubtedly be said that it is now too late to persuade any court to alter these fundamental precepts so that the book will appeal mainly to

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academics. To my mind however it has just as much to offer the practicing advocate. So often for the advocate, the genesis of a really telling case develops from an idea germinated by just such arguments as this book portrays in just this way. Moreover, there is a certain utility for the practitioner in having access to a compendium of each regimen in a single place particularly a work with so strong an Australian bent. Finally, it will be a significant addition to the material to be considered by those who are apparently involved in rekindling interest in perfecting a single regime acceptable to the whole maritime community.