



## Rulings on Liability Lawsuits: Legal Framework of the Land Transport Contract

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### Abstract:

To pursue compensation for damages to goods or person sustained as a passenger in land transport, the aggrieved party initiates legal action through a lawsuit adhering to legal conditions and procedures. The Algerian legislator has codified specific procedures for liability lawsuits against carriers under transport contracts, requiring claimants to undertake prescribed actions within specified timeframes to prevent claim dismissal.

**key words:** Land transport of persons, land transport of goods, liability lawsuit, judicial jurisdiction, prescription.

### Introduction:

The conveyance of goods and persons via land transport is integral to the economic framework of nations, facilitating the preponderance of domestic and regional trade. This fundamental role in commercial support has engendered substantial regulatory interest, with stakeholders seeking harmonization of governing rules, encompassing foundational principles, operative provisions, and dispute resolution mechanisms.

Carrier liability constitutes a salient legal consideration, particularly in relation to contractual performance. Articles 47 to

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55 and Articles 62 to 68 of the Commercial Code delineate this liability, wherein general principles posit the carrier's<sup>i</sup> contractual liability as a consequence of non-performance of the transport contract. (El-Manji, 2014, p. 285) This obligation is characterized as a duty of result. Failure to achieve said result establishes prima facie evidence of carrier fault attributable to claimant damages, absent a demonstrably extraneous cause beyond the carrier's control, subject to specified exceptions.<sup>ii</sup>

This study seeks to analyze specific legal questions pertaining to carrier liability under land transport contracts, with the principal inquiry being: To what degree has Algerian legislation addressed the liability arising from such contracts?

This central query engenders the following subsidiary questions:

- What are the grounds for establishing carrier liability in a land transport contract?
- How does Algerian law regulate actions for liability, and what are its pertinent provisions?
- What are the grounds for the extinguishment of a carrier liability action in a land transport contract?

The methodology employed herein is descriptive, incorporating an analytical component, which entails delineating the circumstances of liability establishment, elucidating the procedural requirements and conditions for the institution of a liability action by the interested party, and examining the application of the legal norms governing liability. The scope of this study is confined to carrier liability in land transport contracts for both goods and passengers.

The study's significance is demonstrated by:

- The fundamental and prevalent nature of land transport as a commercial activity, with land transport contracts serving as the primary transactional instrument.
- The elucidation of the distinct and intricate legal provisions governing liability actions arising from

land transport contracts for both goods and passengers.

- The subject's interrelation with ancillary legal domains, notably the carrier's liability in traffic accident.

This study aims to:

- Delineate the legal prerequisites for establishing carrier liability under a land transport contract.
- Analyze the unique characteristics of this liability regime.
- Clarify the legal ramifications of a liability action upon the carrier and the aggrieved party, be it a passenger, consignor, or consignee.
- Outline the specific legal stipulations governing liability actions.

This study is structured around three principal axes:

- **Axis One: The establishment of liability within land transport contracts for goods and passengers.**
- **Axis Two: Procedural aspects of initiating a liability action within land transport contracts for goods and passengers.**
- **Axis Three: The termination of the liability action.**

## **SECTION I : Cases in Which Liability Is Established in a Land Transport Contract for Goods and Passengers:**

A land transport contract delineates obligatory duties upon contracting parties, encompassing the carrier and consignor within a contract of carriage of goods such as instances of loss, damage, or delay in delivery or the carrier and passenger within a contract of carriage of persons, wherein the passenger or their baggage may sustain injury due to the carrier's conduct or tardy arrival. Consequently, where the carrier contravenes one or more



of these obligations, and such contravention is attributed to their actions, contractual liability accrues, thereby compelling the carrier to render indemnification. The following delineates the principal circumstances wherein the carrier's liability is established.

### **First Requirement: Cases in Which the Carrier's Liability Is Established in a Land Transport Contract for Goods :**

Pursuant to Article 47 of the Commercial Code, "The carrier shall be liable, commencing upon receipt of the goods for transport, for any total or partial loss, damage, or delay in delivery thereof".

Consequently, carrier liability arises under three distinct circumstances: loss of the goods, damage to the goods, and delay in the delivery of the goods.

#### **Paragraph1: Case of Loss of Goods :**

Loss of goods denotes the complete or partial non-delivery of the consignment, wherein the carrier fails to tender to the consignee the precise quantity of goods, by weight and number, as recorded in the transport document. Such loss may be total, encompassing all goods transported, as in instances of fire, disappearance, or theft, or partial, affecting only a portion of the consignment. (Gohary, 2009, p. 326)

Loss is demonstrable through the transport document, which obligates the carrier to deliver the specified quantity. (/ & Law., p. 78)

Exoneration from liability is permissible for the carrier upon proof that the loss, damage, or delay resulted from an extraneous cause beyond their control. The characterization of an alleged incident as an extraneous cause is a factual determination within the purview of the trial judge. (Taha, 2005, p. 174)

Furthermore, the legislator exempts the carrier from liability for any deficiency in the transported goods where the reduction in weight, volume, or quantity arises from the inherent nature of said goods. This exemption is inapplicable if the deficiency is

attributable to causes outside permissible tolerances, such as negligence by the carrier or its agents, as prescribed in Article 51 of the Commercial Code. Additionally, specific rules for calculating permissible deficiencies in multi-consignment transport documents are established, as per Article 51(3). (Al-Ayashi, The Contract of Road Transport of Goods, 2004/2005, p. 78)

### **Paragraph2 : Case of Damage to Goods :**

Damage to goods denotes a condition wherein transported items arrive in a defective or impaired state, irrespective of the integrity of weight, volume, or quantity. This encompasses instances such as breakage or putrefaction of perishable goods. (Al-Jawhari, p. 362) During transit, damage to goods is a common occurrence, and the carrier bears liability for any impairment affecting the goods, whether such damage is total or partial. Nevertheless, the carrier may be exonerated from liability upon the establishment of specific reservations regarding the condition of the goods at the time of receipt, as duly recorded within the transport document. (Al-Ayashi, The Contract of Road Transport of Goods, 2004/2005, p. 79)

### **Paragraph1 : Delay in Delivery of Goods :**

A delay in delivery materializes upon the arrival of goods subsequent to the stipulated contractual deadline or, absent such stipulation, following the period prescribed by established trade usage. In the absence of such usage, delay is ascertained by the arrival of goods beyond the reasonable timeframe expected of a prudent carrier under comparable circumstances.

Given the carrier's duty to ensure the secure delivery of transported goods to the consignee constitutes an obligation of result, the establishment of damages may be effectuated by all admissible forms of evidence, thereby simplifying the evidentiary process. Frequently, an expert is appointed to assess the condition of the goods prior to receipt, pursuant to a petition submitted to the presiding judge of the competent court, as mandated by Article 54 of the Commercial Code.



Furthermore, the consignee bears the onus of demonstrating the damages incurred as a direct consequence of the delayed arrival of the goods. (El-Gohary, 2009, p. 362) (Al-Ayashi, The Contract of Road Transport of Goods, 2004/2005, p. 80)

**Paragraph4: Carrier's Liability in Successive Transport:**

Successive transport denotes a scenario wherein multiple carriers perform a singular contract of carriage in a sequential manner. Notwithstanding the involvement of multiple carriers, the transport operation is construed as a unitary process from the perspective of the consignor and consignee. In such instances, the initial carrier enters into a contract of carriage with the subsequent carrier, and so forth. (Al-Ayashi, The Contract of Road Transport of Goods, 2004/2005, p. 82)

In the event of a liability issue concerning loss, damage, or delay, the allocation of responsibility amongst the carriers engaged in the successive transport operation shall be determined by the provisions of Article 49 of the Commercial Code.

**Second Requirement: Cases in Which the Carrier's Liability Is Established in a Land Transport Contract for Persons:**

Carrier liability is established under two circumstances:

**Paragraph1 : Carrier Liability for Passenger and Luggage Damages:**

Pursuant to the terms of the transport contract, the carrier bears the obligation to guarantee the safety of the passenger and their registered luggage for the duration of transport. Failure to discharge this obligation renders the carrier liable for consequential damages.

**1.1 Carrier's Liability for Passenger Damages :**

The carrier bears liability for all damages endangering passenger safety during the course of transit. Algerian law, specifically Article 65 of the Commercial Code, underscores the carrier's responsibility for bodily injuries sustained by the passenger.

While the transport contract establishes the foundation of the carrier's liability, the duty to ensure passenger safety is

operative solely during contract execution. Consequently, the carrier's obligation to safeguard passengers terminates upon contractual fulfillment and passenger disembarkation from the conveyance within a reasonable period.

### **1.2 Carrier Liability for Luggage Damage :**

With respect to hand luggage, also denoted as personal effects or unregistered luggage, the carrier bears no liability, as expressly stipulated in Article 67 of the Commercial Code. Conversely, registered luggage is, pursuant to Article 68 of the Commercial Code, assimilated to goods, thereby subjecting it to the liability regime applicable to the carrier's obligations under a contract of land carriage of goods.

#### **Paragraph2 : Carrier's Liability for Delay :**

Pursuant to Article 16 of Law 01-13, a carrier bears the obligation to effect timely passenger transport and to provide notification of transport schedules, timing, and frequency. Consequently, the carrier shall incur liability for damages sustained by a passenger due to non-performance of transport within the stipulated time frame. (Abdullah, 2013/2014, pp. 32-35) (El-Gohary, 2009, p. 351)

### **SECTIONII : Procedural Prerequisites for the Institution of a Liability Action Arising from a Land Transport Contract for Goods and Passengers**

The commencement of any litigation mandates the satisfaction of prescribed conditions, encompassing those pertaining to the litigants, the subject matter of the action, and the adjudicating judicial body. Consequently, the formal admissibility of a liability action is contingent upon the requisite legal standing and interest of the parties, the inclusion of essential particulars within the statement of claim, and the submission of the action before the competent judicial authority, consistent with the rules governing both territorial and subject-matter jurisdiction, as hereinafter delineated.

#### **First Requirement: Requisite Conditions for Litigants:**



### **Paragraph1 : Plaintiff and Defendant in Carrier Liability Actions Originating from Land Transport Contracts for Goods or Passengers:**

As with any legal action, a liability suit necessitates the presence of litigants, specifically the plaintiff and the defendant. Furthermore, each party must satisfy the requirements of legal capacity and a legitimate interest, as mandated by Article 13 of the Code of Civil and Administrative Procedure. (08-09, 1429 / 2008)

#### **1-The Plaintiff :**

A transport contract, being fundamentally formed between the shipper/passenger and the carrier, generally vests the right to initiate a liability action with the shipper or passenger. As original parties to the contract, each may assert a contractual liability claim against the other for non-performance, defective performance, or delayed performance, (Al-Kilani, 2001, p. 50) enabling either specific performance or damages.

The shipper's standing is determined by their designation in the shipper's field of the transport document. This right persists even where a transport commission agent concluded the contract without expressly naming the shipper on the transport ticket, and similarly, where an agent acted on the shipper's behalf.

Furthermore, the consignee, notwithstanding their status as a third party to the contract, (Fouda, 1995, p. 171) possesses the right to file a liability claim against the carrier or its representative. This right accrues solely upon the consignee's express or implied acceptance of the obligations arising from the land transport contract for goods, pursuant to Article 39 of the Commercial Code. The consignee's standing is established by their designation in the consignee's field of the transport document or through an authorized agent for receipt of the goods. (Al-Ayashi, The Contract of Road Transport of Goods, 2004/2005, p. 93)

The passenger, as well as their heirs, retains the right to initiate a liability claim against the carrier (El-Gohary, 2009, p.

353), as original contracting parties. Either may pursue a contractual liability action against the other for non-performance, defective performance, or delayed performance by the carrier.

## **2- The Defendant :**

The defendant's culpability originates from the perpetration of a tortious act culminating in detriment. A liability action is instituted against the party vested with the juridical capacity of the obligated carrier or its agent, in respect of any losses or damages incurred by cargo or passengers. The carrier's responsibility persists from the commencement of the transport operation to its termination, encompassing the consignment of goods or the passenger's arrival at the designated locale.

## **Paragraph 2 : Legal Standing and Interest of the Parties in the Lawsuit :**

Pursuant to Article 13 of the Code of Civil and Administrative Procedure, both the plaintiff and the defendant must demonstrate legal standing and a cognizable interest. In order to possess a legal interest to institute a liability action arising from a road transport contract, two fundamental conditions must be satisfied:

**1- Existence of a Road Transport Contract:** The primary evidentiary instrument for establishing the existence of a transport contract is the transport document/ticket. Absent a transport document, the contract may be substantiated by alternative documentation issued by the parties upon the formation of the transport agreement, such as a consignment note or a transport contract.

**1.12- Breach of Performance in the Transport Contract:** In addition to establishing the breach, the plaintiff bears the burden of demonstrating the damages sustained to substantiate a claim for compensation.



Furthermore, a carrier liability action is initiated exclusively by a statement of claim, as prescribed by Article 14 of Law No. 08-09 (as amended and supplemented by the Code of Civil and Administrative Procedure). The statement of claim must contain all mandatory information delineated in Article 15 of the same law; failure to comply renders the claim procedurally inadmissible. (Belfadel, June 2023, pp. 616, 617)

### **Second Requirement: Judicial Jurisdiction: Paragraph 1 : Local Jurisdiction:**

Pursuant to Article 37, Paragraph 1 of the Algerian Code of Civil and Administrative Procedure, jurisdiction vests in the court of the defendant's domicile, typically the carrier's principal place of business. Absent a known domicile, jurisdiction is conferred upon the court of the defendant's last known domicile. Where a chosen domicile has been designated, jurisdiction resides with the court of the chosen domicile, unless otherwise provided by law.

Additionally, in accordance with Article 39, Paragraph 4, the plaintiff, whether the sender or the consignee, possesses the right to initiate proceedings before the court within whose jurisdiction the place of delivery of the goods is situated.

This evinces an expansion of local jurisdiction by the Algerian legislature, affording the plaintiff an elective forum. However, parties are precluded from contractually stipulating an exclusive jurisdiction, thereby excluding other legally mandated courts, either prior to or subsequent to the emergence of a dispute.

### **Paragraph 2 : Subject-Matter Jurisdiction :**

The court of first instance exercises general jurisdiction over matters within the ordinary judiciary, adjudicating all disputes

involving private law persons, pursuant to Article 32 of the Code of Civil and Administrative Procedure. Accordingly, subject-matter jurisdiction in disputes arising from land transport contracts is contingent upon the plaintiff's legal status:

Where the plaintiff is a merchant, the action must be instituted before the commercial division of the competent court.

Where the plaintiff is a private individual, the plaintiff may elect to institute the action before either the commercial division or the civil division. This election arises from the characterization of commercial courts as courts of exceptional jurisdiction, which may be unfamiliar to non-commercial parties. (Zare, 2014, pp. 36-38)

It is imperative to note that, in accordance with Articles 531 and 534 of Law No. 22-13, amending Law No. 08-09, the Algerian legislator has mandated compulsory judicial mediation as a prerequisite to the institution of any commercial dispute before the commercial division. Consequently, the judge is obligated to appoint a judicial mediator. (Law No. 22-13 dated Dhu al-Hijjah 13, 1443/ 2022)

### **Third Requirement: Assessment of Compensation :**

Algerian law encompasses diverse legal provisions concerning the quantum of compensation payable for injuries incurred by a passenger during the performance of the carrier's contractual transport obligation. Absent specific contractual provisions governing the assessment of compensation for such injuries, the determination thereof falls within the purview of the trial judge, who shall assess compensation in accordance with the general principles of civil law.

This principle is codified in Article 182 of the Algerian Civil Code, which stipulates:

Where compensation is neither contractually stipulated nor legally prescribed, the judge shall determine its quantum. The compensation shall encompass both the loss sustained by the creditor and the lost profits, provided they constitute a natural



consequence of the non-performance or delay in performance of the obligation. Damage is deemed a natural consequence if the creditor could not have averted it through reasonable diligence. However, in contractual obligations, a debtor, absent fraud or gross negligence, shall be liable only for damages reasonably foreseeable at the time of contracting.

Pursuant to general principles, the carrier bears an obligation to indemnify the passenger for both actual loss and loss of profit, contingent upon such losses being a direct and proximate consequence of the breach of obligation. As the carrier's liability arises from contract, compensation is limited to damages foreseeable at the time of contract formation. However, in cases of proven fraud or gross negligence by the carrier, liability extends to all damages, irrespective of foreseeability at the time of contracting, as provided by Article 182(2) of the Civil Code.

Quantification of damages for delay is determined by reference to Articles 182, 176, and 131 of the Civil Code, wherein the measure of compensation encompasses both actual damage sustained by the passenger and lost prospective gains. Transport entities customarily impose a limitation on liability for damages resulting from delays, which is inapplicable in instances of established fraud or gross negligence on the part of the carrier. (Abdullah, *The Contract of Road Transport of Persons*, 2013/2014, pp. 51-54) Baggage claims are subject to the aforementioned provisions governing the carriage of goods by road.

In respect of contracts for the carriage of goods by road, the court evaluates compensation for total or partial loss based on the actual value of the goods at the time of their intended arrival, utilizing expert appraisal, unless the value of the goods is explicitly specified in the transport document.

Regarding damages, compensation shall be determined by the court based upon the differential between the value of the

goods at the place of arrival and their value had they arrived in an undamaged state.

In instances of delay in delivery beyond the stipulated or customary time, the court possesses discretion to assess compensation, considering the circumstances and causes of the delay, and any consequential harm incurred by the claimant.

The principle of non-duplication of compensation is paramount, whether concerning separate claims against successive carriers in successive transport, or concurrent claims for damage and delay. In such instances, the claimant is restricted to a singular form of compensation, either for loss or for delay. (Al-Yashi, 2004/2005, p. 93 to 95)

The claimant may elect to abandon the goods in return for compensation predicated on total loss or damage. However, should lost goods be subsequently located post-compensation, the carrier shall notify the claimant for inspection. Absent a response within the carrier's prescribed timeframe, or upon refusal to reclaim, the carrier is authorized to dispose of the goods.

Legal doctrine and general principles of law affirm that compensation, irrespective of its basis, is contingent upon prior formal notice to the carrier, which may be effected by any legal means, given the commercial nature of transport operations. (Fadhel, June 2023, p. 621)

### **SECTION □: Procedural Prerequisites for the Institution of a Liability Action Arising from a Land Transport Contract for Goods and Passengers**

Carrier liability claims may be extinguished through either dismissal for inadmissibility or by prescription, as delineated hereunder.

#### **First Requirement : Dismissal of the Lawsuit Due to Inadmissibility :**

Pursuant to Article 55 of the Commercial Code: "Receipt of the transported goods effectuates the extinction of all claims against the carrier for damage or partial loss, save where the



consignee, sender, or their representative serves a substantiated protest upon the carrier within three days of receipt, excluding legal holidays, by extrajudicial notice or registered mail."

A protest is valid regardless of form, provided the carrier's receipt acknowledges it was made within the prescribed period. A request for expert assessment under Article 54 by either party, before receipt or within three days thereafter, constitutes a protest, obviating the need for procedures in the final paragraph of this article. (75-59, 1395/ 1975)

Under this article, a carrier liability lawsuit shall be dismissed upon the carrier's plea of inadmissibility, if:

1. The sender, consignee, or their agent effected actual receipt of the transported goods, allowing inspection and verification against the transport document.
2. The dispute concerns partial loss or damage. Total loss, precluding receipt, is excluded, (Al-Ayashi, *The Contract of Road Transport of Goods*, 2004/2005, pp. 96, 97) aligning with the Egyptian legislator's limitation of inadmissibility to damage or partial loss. (Taha, 2005, p. 192)
3. The sender or consignee failed to lodge a protest regarding<sup>iii</sup> defects within three days, excluding holidays, as affirmed by the French Court of Cassation.
4. Neither party requested an expert assessment under Article 54 of the Commercial Code, before receipt or within three days thereafter; such a request constitutes a protest, barring the carrier's plea of inadmissibility.
5. The consignee expressed no reservations upon receipt. Unreserved acceptance implies receipt in full, in good condition, and conforming to the transport document (Taha, 2005, p. 193).

The plea of inadmissibility constitutes a general defense capable of being asserted at any procedural juncture, irrespective of the case's current posture. This defense, however, is precluded in instances of gross negligence or fraud attributable to the carrier or its agents, and similarly, in cases of deliberate concealment of damage or partial loss. (Al-Ayashi, *The Contract of Road Transport of Goods*, 2004/2005, pp. 96, 97)

### **Second Requirement : Extinguishment of Claims by Prescription :**

Concerning contracts for the road transport of goods, Article 61 of the Commercial Code of Algeria stipulates a one-year prescriptive period for all claims arising therefrom, encompassing both contracts of carriage and freight forwarding. This principle is similarly established by Article 254(1) of the Egyptian Commercial Code. (Taha, 2005, p. 194) The Algerian legislator, however, distinguishes the commencement of the limitation period as follows: for total loss, the period initiates from the date of scheduled delivery; for partial loss, damage, or delay, from the date of actual delivery to the consignee or the date of tendered delivery.

Regarding contracts for the road transport of persons, claims are exclusively extinguished by prescription. Pursuant to Article 74 of the Commercial Code, the Algerian legislator prescribes a three-year limitation period for all claims arising from such contracts, including passenger transport agency contracts, commencing from the date of the incident giving rise to the claim.

### **Conclusion:**

In conclusion, this study demonstrates the Algerian legislator's general conformity with comparative legislative frameworks in the regulation and governance of road transport contract provisions, acknowledging its distinct characteristics. Nevertheless, specific elements, notably the carrier's liability claim, remain subject to general legal principles. However, the



Algerian legislator has diverged from general rules in certain respects, specifically by subjecting the carrier's liability claim in road transport contracts to a one-year limitation period and by prescribing the extinction of said liability claim through inadmissibility, mirroring the Egyptian legislative approach.

It is, however, acknowledged that deficiencies and lacunae exist within the legal regime governing road transport contracts for goods and passengers in general, and carrier liability in particular. While the Algerian legislator has regulated transport contracts and their attendant obligations, these legal provisions have remained unaltered since the promulgation of the Commercial Code. Furthermore, the carrier's liability claim has not been expressly addressed by specific legal provisions within the Commercial Code.

### **Findings:**

- The carrier's liability within a road transport contract constitutes contractual liability, embodying an obligation of result. Consequently, the consignor or passenger need only demonstrate damage incurred during contractual performance, without establishing fault on the part of the carrier.
- The Algerian legislator distinguishes between goods and passenger road transport contracts regarding the extinguishment of the carrier's liability claim. For goods transport, extinguishment may occur through the carrier's plea of inadmissibility or prescription. Conversely, passenger transport liability claims extinguish solely through prescription.
- The Algerian legislator has facilitated the evidentiary burden for establishing carrier liability by permitting proof through all means of evidence, consistent with the principle of free proof in commercial transactions. Moreover, the burden of proof

rests with the custodian of the transported item, as affirmed by the Supreme Court decision dated May 14, 1986.

- The quantification of damages falls within the discretionary purview of the adjudicating judge, who determines compensation for carrier liability damages based on the principle of "damnum emergens and lucrum cessans," subject to any prior contractual agreements regarding compensation amounts.

### **Recommendations:**

- It is imperative to address legislative lacunae impacting commercial contracts generally, and road transport contracts specifically, by enacting legal provisions regulating such contracts, given their pivotal role in individual and commercial activities.
- International and national fora should be convened to deliberate and resolve issues pertaining to these commercial transactions.
- Scientific and academic research in the legal and economic domains should be promoted to further investigate and refine the regulatory framework governing transport contracts.

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