



THE LEGAL BASIS OF THE CONSIGNEE'S STATUS IN THE MARITIME CARRIAGE OF GOODS CONTRACT

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Abstract:

It is legally established that a contract has a relative effect. If it is issued fulfilling its elements and conditions for its validity, its effects will extend to its contracting parties without extending to others. The principle of proportionality of contracts represents the legal barrier to existing contractual ties in a way that does not allow its effects to extend except to its contracting parties only, or to their public and private successors under certain conditions.

However, despite this, we find that the judiciary has exceeded this principle in some cases, and departed from the general rule, and the most important of these cases is the position of the addressee in the maritime transport contract. Although he is not a party to the contract that was originally concluded between the carrier and the shipper, but rather he is from the group of third parties. However, the judiciary has recognized his rights and imposed on him obligations arising from this contract. Therefore, a great controversy has arisen in jurisprudence and judiciary about the position of the addressee in the maritime transport contract.

Keywords: The consignee – the Maritime Carriage of Goods Contract.

Introduction:

The status of the consignee in the maritime carriage of goods contract raises numerous questions regarding legal relationships. When the person combines the capacities of both shipper and consignee, no legal issue arises; in such a case, they are known to the carrier as a direct party to the contract. However, the complication arises in the event that the consignee is considered a third party

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(*penitus extranei*) relative to the contract of carriage. In this scenario, the conditions contained within the Bill of Lading may not be invoked against them, nor would their contractual liability be established.

The consignee in a carriage contract is undoubtedly a "third party" regarding the original contractual relationship existing between the carrier and the shipper, as they are not a party to this relationship simply because they did not participate in its formation. Nevertheless, practical necessities and the need to stimulate maritime trade have necessitated the establishment of direct relations between the consignee and the carrier, even without a clear legal justification.

Consequently, the legal problem lies in identifying the legal basis that entitles the consignee to claim rights against the carrier and demand the execution of obligations arising from the contract of maritime carriage. Determining this basis is not merely a theoretical matter; it entails significant practical and legal consequences. Can traditional legal frameworks explain this phenomenon, or does its unique nature call for reliance on alternative concepts?

To address this problem, we shall divide this research paper into two primary axes:

-The First Axis: The position of Traditional Jurisprudence regarding the status of the consignee.

-The Second Axis: The position of Modern Jurisprudence regarding the status of the consignee in the maritime carriage of goods contract.

Undoubtedly, the objective of studying this precise topic the legal basis of the consignee's status is to establish a sound and logical conceptualization of the consignee's overlapping and complex relationships in the field of maritime transport operations. This raises a jurisprudential and judicial issue due to the significant practical results that follow whether we consider the consignee a party or a third party to the carriage contract. This is particularly vital since the Algerian Legislator has not intervened by enacting decisive provisions as some other national legislations have to grant a direct right of action between the consignee and the parties of the contractual relationship. Furthermore, this subject has not received specialized, in-depth, and integrated legal study. In this research, we will follow a



descriptive-analytical approach to diagnose the subject across its various dimensions and facets.

Body (The Text):

1- The Position of Traditional Jurisprudence Regarding the Status of the Consignee:

Traditional jurisprudence took a specific stance in its attempt to establish a direct personal right for the consignee against the carrier. This right is justified by the consignee's legal status through two primary legal lenses:

Firstly, through traditional theories formulated in this regard. Some jurists rely on the Theory of Stipulation for the Benefit of a Third Party (*Stipulation pour autrui*), based on the premise that when the shipper concludes the contract of carriage with the carrier, they stipulate a benefit for the consignee, whereby the latter acquires the right to receive the goods. Others justify the consignee's status through the Theory of Imperfect Agency (*Représentation Imparfait*), considering the shipper to be an agent acting on behalf of the consignee upon the conclusion of the contract. Meanwhile, another group explains the consignee's status based on the Theory of Singular Succession (*L'ayant-cause à titre particulier*), on the basis that the holder of the Bill of Lading is a singular successor to the shipper in their capacity as the purchaser of the goods

Secondly, another segment of jurisprudence has moved toward a domain distinct from these traditional theories, explaining the legal status of the consignee by relying on the Principle of the Enforceability and Validity of Contracts (*Opposabilité du contrat*). This is examined within the framework of relationships that may arise within Contractual Groups (*Groupes de contrats*) involved in the maritime transport process.

1.1- Traditional Theories in Determining the Consignee's Status:

Numerous theories have addressed this subject, attempting to establish a legal foundation for the consignee's status by anchoring it within the contractual system. These theories aim to strip the consignee of their "third-party" (*penitus extranei*) character and integrate them as a party to the contractual

relationship between the carrier and the shipper (يسعيد، 2012، صفحة 209)

1.1.1- Theory of Stipulation for the Benefit of a ThirdParty:

The framework of stipulation for the benefit of a third party serves as an exception to the Principle of Privity of Contract (Relativity of Contracts). In practice, there are many instances where contracting parties arrange for a right or benefit to be granted to a stranger to the contract through a specific provision included within their agreement (ترك، 2007، صفحة 90).

A. The Concept of Stipulation for the Benefit of a Third Party.

The general rule is that a contract does not create an obligation for a third party; however, it may grant them a right. In other words, a third party may validly acquire a right from a contract to which they were not a party (الفضل، 2012، صفحة 196). This is based on the text of Article 113 of the Algerian Civil Code, which provides: "A contract does not create an obligation for a third party, but it may grant them a right." Thus, while the beneficiary is not a party to the contract, its effects extend to them.

Stipulation for the benefit of a third party is a contract concluded between two persons: the Stipulator (le stipulant) and the Promisor/Obligor (le promettant). By virtue of this contract, a third person, known as the Beneficiary (le tiers bénéficiaire), acquires a direct right against the promisor and may demand its performance (السعدي، 2004، صفحة 354). The clearest example is a life insurance contract; suppose a husband insures his life with an insurance company for a sum of 10,000 DZD to be paid to his wife. The husband is the Stipulator, the insurance company is the Promisor (or Undertaker), and the wife is the Beneficiary. The insurance contract between the husband and the company creates a direct right to the insurance sum for the wife without her being a party to the contract (منصور، 2006، صفحة 331).

Consequently, stipulation for the benefit of a third party is an exception to the principle of relativity of contracts. For such a stipulation to produce its legal effects, specific conditions must be met. Article 116 of the Algerian Civil Code states: "A person may contract in their own name for obligations they stipulate for the benefit of a third party if they have a personal, material, or moral



interest in the performance of such obligations." From this article, it is evident that the law requires three conditions for a valid stipulation:

Condition One: The stipulator must contract in their own name, not in the name of the beneficiary. This condition distinguishes stipulation for the benefit of a third party from Agency (Représentation). An agent does not contract in their own name but in the name of the principal, whereas the stipulator contracts in their own name. It also distinguishes it from officious management (Gestion d'affaires/Negotiorum gestio), as the manager acts as a representative of the owner (dominus), not in their own name. Furthermore, if the stipulator includes the beneficiary as a formal party to the contract, it ceases to be a stipulation for a third party, as the beneficiary becomes a direct contracting party bound by its obligations and entitled to its rights (سليمان، 2005، صفحة 92).

Condition Two: The intent of the contracting parties must be to create a direct right for the beneficiary. If the will of the parties is not directed toward creating a direct right for the third party, the arrangement does not constitute a stipulation for the benefit of a third party. This condition is the core essence of the theory, as the stipulation leads to the emergence of a direct right for the beneficiary despite them not being a party to the contract. This constitutes the departure from the Principle of Privity of Contractual Effects. (السعدي، 2004، صفحة 365).

Condition Three: The stipulator must have a personal interest in the stipulation for the benefit of a third party, whether this interest is material or moral. However, this condition has been subject to criticism, as it is inconceivable that a person would arrange a right for another without having at least a moral interest. Nevertheless, the legal evolution of the system of stipulation for the benefit of a third party has necessitated this condition; modern laws have evolved to settle for the stipulator having a moral interest. If no such interest exists, the stipulation does not stand and is considered null and void (سليمان، 2005، صفحة 93).

B. The Status of the Consignee Based on the Theory of Stipulation for the Benefit of a Third Party

Proponents of this trend rely on the idea of stipulation for the benefit of a third party as a legal basis to explain the status of the consignee in a contract for the carriage of goods by sea. This is based on the

premise that when the shipper concludes the contract of carriage with the carrier, they stipulate for the benefit of the consignee, whereby the latter acquires the right to receive the goods. Their acceptance is naturally realized when they come forward to take delivery of these goods. Furthermore, the consignee's acceptance of this stipulation implies their acceptance of performing the obligations associated with it, such as the obligation to pay freight, adherence to the conditions stated in the Bill of Lading, and so forth(94 صفحة، 2002، المصري). The French Court of Cassation adopted this trend as early as 1891 in its decision dated December 2, 1891, where it affirmed that the consignee has a direct right against the carrier that is independent of the shipper's right(9 صفحة، 2011، حوباد).

However, several criticisms have been directed at this theory, the most important of which are:

-Absence of Obligations: The legal framework for stipulation for the benefit of a third party according to the articles regulating it in both Algeria and France results in the third party acquiring a right without being burdened by any obligations. Consequently, applying this theory cannot explain, for instance, the consignee's obligation to pay freight or their commitment to other conditions present in the Bill of Lading.

Invocation of Defenses: The legal system of stipulation allows the promisor (carrier) to invoke against the beneficiary (consignee) any defenses arising from the contract. This means that if the Bill of Lading was issued based on a Charter party, the conditions contained in said Charter party could be invoked against the holder of the Bill, even if the Bill itself did not include or refer to them

(ترك، عقد النقل البحري، 2005، صفحة 177).

-Letters of Indemnity: The carrier could invoke Letters of Indemnity (LOIs) against the consignee, which may have been drafted between the carrier and the shipper to issue a "clean" Bill of Lading. This certainly contradicts the established rule regarding negotiable instruments (which extends to Bills of Lading) concerning the non-opposability of defenses against a bonafide holder

(الحوسني، 2007، صفحة 106).

-The "Intent to Stipulate": The system assumes the existence of a fundamental psychological element, namely the "intent to stipulate" for the benefit of a third party rather than the stipulator themselves.



Therefore, the provisions of stipulation do not apply if the stipulator intended the right for themselves and then transferred it to the beneficiary, as is the case when a Bill of Lading is issued "to order" or "to bearer" (المصري، 2002، صفحة 98).

It is evident from the foregoing that the idea of stipulation for the benefit of a third party cannot be agreed upon as a legal basis to justify the direct recourse between the consignee and the carrier. This necessitates the search for another basis for this tripartite relationship, away from this traditional concept.

1.1.2 Theory of Imperfect Agency:

Imperfect Agency is a legal mechanism whereby a person, known as the agent (*le représentant*), concludes a legal act for the account of another person, known as the principal (*le représenté*). The effects of this act accrue to the latter. In other words, agency involves the substitution of the agent's will for that of the principal in creating a legal act whose effects transfer to the principal's financial liability. Agency is divided into two categories: Contractual Agency (Power of Attorney/Mandate) and Legal Agency, which is established by law, such as the representation of a minor by a guardian or tutor (السعدي، 2004، صفحة 143).

Some jurists contend that the shipper, when contracting with the carrier, is considered an agent for the consignee. However, this agency is "imperfect" because the shipper remains committed to paying the freight, similar to a principal to whom the effects of a contract concluded by an agent accrue under the rules of agency. Specifically, the concept of imperfect agency implies that the party contracting in their own name the shipper in this instance with the permission and for the account of a third party (the consignee) is considered an agent for that third party while remaining personally liable to the carrier. Consequently, the shipper is viewed as an agent for the consignee, yet they remain a party to the carriage contract at the same time the consignee becomes a party to it, in accordance with agency rules that dictate the transfer of contractual effects to the principal (ترك، عقد النقل البحري، 2005، صفحة 182).

However, the theory of imperfect agency as a basis for determining the consignee's legal status in maritime carriage has not been immune to criticism. The most significant critiques include:

-Initial Assumption: The theory relies on an initial assumption that makes the consignee a party to the contract of carriage despite being considered a third party. When concluding the contract, the shipper does not consciously assume a dual capacity as both principal and agent for the consignee; their intent is not directed toward this dual status, rendering this assumption incorrect(89 صفحة، 2006، جاسم).

-Negotiability Constraints: Adopting this theory leads to the inability to change the beneficiary of the Bill of Lading. Since the rights and obligations within the Bill would belong only to a specific person (the principal for whom the agent contracted), this contradicts the established principle of the Bill of Lading's negotiability. Frequently, the lawful holder who presents the Bill to the Master to claim the goods is someone other than the original consignee for whom the shipper initially contracted(101 صفحة، 2002، المصري).

Timing of Contractual Boundness: If the consignee is a party to the contract, they would be bound by it not from the moment the Bill of Lading reaches them, but from the moment the contract is concluded between the carrier and the shipper. Furthermore, this theory fails to justify the rule regarding the non-opposability of defenses existing between the shipper and carrier when facing a *bona fide* consignee(87 صفحة، 2007، عقود البیوع البحرية الدولية، 2007، صفحة 87).

It is noted from the above that the theory of imperfect agency has failed to explain the consignee's status in the contract of carriage. Consequently, another jurisprudential trend emerged, relying on the concept of singular succession.

1.1.3 Theory of Singular Succession :

Article 109 of the Algerian Civil Code provides: *"If a contract creates personal obligations and rights related to a thing that is subsequently transferred to a singular successor, then these obligations and rights transfer to said successor at the time the thing is transferred, provided they are essential elements of the thing and the singular successor was aware of them at the time of transfer."*

A singular successor is defined as one who succeeds a person in a specific thing, such as a buyer who succeeds the seller in the ownership right of the sold item. Proponents of the singular succession theory, therefore, view the consignee (as the holder of the Bill of Lading) as a singular successor to the shipper, in their capacity



as the purchaser of the goods. Since the shipper (the predecessor) concluded a contract related to these goods, the rights and obligations arising from that contract transfer to the consignee in their capacity as a singular successor(سليمان، 2005، صفحة 87).

Based on Article 109 of the Algerian Civil Code, we can infer that the singular successor receives from the predecessor a specific right that existed in the latter's liability, whether that right is in rem (*droit réel*), in personam (*droit personnel*), or pertains to an intangible asset. According to the same article, the effects of the contract extend to the singular successor upon the fulfillment of the following conditions:

- The contract must have been concluded regarding the specific thing transferred: That is, the predecessor's legal act must pertain to the exact same object received by the successor.
- The contract must be concluded prior to the transfer of the thing: The obligations and rights must exist before the succession takes place.
- The successor must have knowledge of these rights and obligations at the time of transfer: This specifically applies to obligations that burden the transferred thing; a successor cannot be bound by something they were unaware of. The registration of an original right *in rem* or the recording of an accessory right *in rem* is considered sufficient for legal knowledge(السنهوري، 1952، صفحة 552).

From the aforementioned conditions, it is clear that relying on the theory of singular succession as a legal basis for the consignee's status overburdens the theory with considerations it cannot sustain and stretches it beyond its designated framework(بسعيد، 2012، صفحة 218). This is due to the following reasons:

- Nature of Obligations: Obligations created by the predecessor on the transferred thing do not pass to the singular successor unless they restrict the use of the thing or limit the owner's authority over it. If the predecessor created a personal obligation, such as the payment of freight, it does not transfer to the singular successor except through a specific agreement between the successor and the predecessor as is the case between the shipper and consignee in maritime carriage or based on a statutory provision, such as those governing lease, labor, or fire insurance contracts.
- The Debtor's Defenses: The debtor (the carrier) can invoke against the singular successor all defenses that may have existed in the

relationship between the debtor and the predecessor (the shipper). This contradicts the established rules regarding the consignee's rights against the carrier, applying the principle of non-opposability of defenses against a bonafide holder(13 صفحة، 2011، حوباد).

-The Meaning of Succession: The concept of succession implies a transfer, which in turn implies the discharge of the predecessor (the shipper) from their obligation to the creditor (the carrier). The successor replaces the predecessor to become the sole debtor, and the predecessor's personality vanishes from the relationship. This conflicts with the tripartite relationship under study; the carrier can still seek recourse against the shipper for freight if the consignee fails to pay, and may indeed hold the shipper liable for all matters permitted by their original relationship(108 صفحة، 2002، المصري).

It is evident from the above that the theory of singular succession fails to explain the legal status of the consignee in a contract of maritime carriage, much like the theories of imperfect agency and stipulation for the benefit of a third party. Despite all attempts to clarify the legal basis of the consignee's status, these traditional theories have proved insufficient.

However, some scholars argue that the consignee's legal status can still be explained through the General Rules of Civil Law, but without straining or overstepping these rules. This is achieved by relying on a distinct domain: the Enforceability of the Contract through the concept of Contractual Groups. This will be addressed in the second requirement.

2.1.1-The Theory of Enforceability in Determining the Consignee's Status:

The sensitive problem facing a researcher seeking a legal basis for the direct relationships that arise within the framework of a maritime carriage contract between the **consignee** and those associated in one way or another with this contract (whether the actual carrier, successive carriers, or stevedoring contractors) lies in the necessity of burdening a third party with obligations for the benefit of another party in a contractual relationship that was concluded without their participation. As previously demonstrated, traditional legal concepts such as stipulation for the benefit of a third party, imperfect agency, and singular succession have fallen short of providing a



comprehensive and definitive legal basis to justify such legal positions.

As a result of the aforementioned, the Theory of the Enforceability and Validity of Contracts (*Opposabilité du contrat*) emerged as a legal basis for the consignee's status in maritime carriage, within the framework of relationships that may exist inside the contractual group of the maritime transport process.

2.1- The Concept of Contractual Groups:

We shall address the concept of contractual groups through two fundamental points: an overview of the concept of contractual groups on one hand, and the nature of the relationship within these groups on the other.

A. Overview of the Concept of Contractual Groups

As the name suggests, this refers to a set of contracts. The concept of a contractual group takes one of two forms: the first exists in practice as a Contractual Ensemble (*Les ensembles de contrats*), while the second exists in the form of a Contractual Chain (*Les chaînes de contrats*).

-The Contractual Ensemble comprises several contracts sharing a single primary objective. This type of arrangement appears most frequently in interconnected and interdependent international contracts that relate to one another and aim to achieve a single goal; each contract therein is considered an integral part of this totality (بودالي، 2014-2015، صفحة 307).

-The Contractual Chain, on the other hand, is formed differently. Although the specific objective of each act may not be identical or may be of minor importance, the chain is formed around the same subject matter (*le même objet*) for which the contracts were organized. In other words, the contracts in a chain do not necessarily form a collective aiming for a single goal, but rather follow in successive links around the same object. Examples include the sale and subsequent circulation of a specific item in markets carrying with it the concepts of warranty against eviction and warranty against hidden defects or multimodal transport contracts aimed at completing a multi-stage transport operation (where one stage is by sea or air, another by rail, and a fourth by road/vehicle) (الحوسني، 2007، صفحة 124).

Reflecting on the relationships arising from a maritime carriage contract, we find an original contract for the sale of goods between the

shipper and the consignee, followed by subsidiary contracts clustered around this original contract to achieve a single operation: ensuring the transport of the sold goods to reach the hands of the consignee. These contracts include the contract for the carriage of these goods, the stevedoring (loading and unloading) contract, the marine insurance contract, and successive carriage contracts (which may involve the issuance of a Through Bill of Lading, whether issued "to order" or "to bearer"). Consequently, this form of contractual group falls under the category of a Contractual Ensemble of several contracts governed by a single goal and performed to realize one operation: ensuring the arrival of the sold goods to the consignee in good and sound condition (المصري، 2002، صفحة 194).

B. The Nature of Relations within Contractual Groups

Based on the phenomenon of contractual groups, we find that direct relationships exist between their members even when there is a significant legal "distance" between them. Examples include the relationship between the ultimate purchaser and the manufacturer, the main contractor and the subcontractor, or the consignee against the carrier. The basis for this is that the legislator has enacted provisions for direct actions (*actions directes*) that allow for direct recourse on a contractual basis within groups between participating members, or by one against another

(ترك، شرط التحكيم بالإحالة وأساس التزام المرسل اليه بشرط التحكيم، 2006، صفحة 442).

As Professor Teyssié stated, the concept of a contractual group should justify the existence of direct relationships of a contractual nature between members participating in the same group. He based his idea on the fact that such groups have long been addressed by jurisprudence and the judiciary, considering the relationships within them as contractual. Professor Teyssié views the basis of these relationships as a single composite contract (*contrat complexe*), even if multiple contracts exist in reality (المصري، 2002، صفحة 144).

However, this trend is problematic: how can several contracts be considered a single contract, even if they form a contractual group? Furthermore, how can a claim be brought against a person based on



the rules of contractual liability when they are considered a "third party" in the strict technical sense?

Accordingly, if the principle of enforceability generates an obligation upon third parties to respect the contracts of others and refrain from anything that would breach the rights and obligations contained therein, then this obligation of respect should also be established in direct right relationships between members of a contractual group—whether based on the unity of subject matter (*unité d'objet*) or unity of cause (*unité de cause*). This is facilitated by the force of enforceability within this group and the existence of a "vested interest" for one member against another (حوباد، 2011، صفحة 144).

1.2.1-Enforceability as a Legal Basis for the Consignee's Status:

The concept of enforceability (*opposabilité*) or "invocation" is a legal concept from which arises an obligation to respect the contracts of third parties and to refrain from anything that would impair the rights and obligations they contain. This obligation of respect must also be established in direct right relationships between members of the contractual group governed by unity of subject matter or unity of cause, thanks to the force of enforceability within the group, coupled with the fulfillment of the interest requirement for group members toward one another (ترك، عقد النقل البحري، 2005، صفحة 145).

Studying this principle requires an explanation of the relativity of contracts versus their enforceability, identifying the scope of a contract's enforceability, and finally, the necessity of actual knowledge (notice) to give effect to the principle of enforceability. We shall present these through the following points:

This part of the research is pivotal as it transitions from the traditional view of contracts to a more dynamic, modern interpretation of how they affect third parties.

A. Relativity of Contracts and their Enforceability

It is legally established that the binding force of a contract is limited exclusively to its contracting parties and does not extend to others unless the law provides otherwise. This is known as the principle of Privity of Contract (*Relativité des conventions*), based on the text of Article 113 of the Algerian Civil Code.

Despite this, the judiciary whether in France, Algeria, or Egypt has bypassed this principle in certain cases, foremost among

them being the status of the consignee in a contract of maritime carriage. We find that the judiciary has recognized rights for the consignee and imposed obligations upon them arising from the carriage contract, even though they are not an original party to the agreement concluded between the carrier and the shipper. The consignee is categorized as a "third party," except in the exceptional case where the shipper and the consignee are the same entity. However, there exists another principle: the Principle of Enforceability (*L'opposabilité du contrat*), sometimes referred to as the "Principle of Validity" or "Invokability." This means that while the boundaries of a contract are relative and confined to its parties in terms of its binding effect, there is another framework concerning the indirect effects of the contract. This involves the enforceability of the contract in terms of its invokability against everyone (*erga omnes*) and the requirement that they respect it (بودالي، 2014-2015، صفحة 310).

The enforceability of a contract, as a legal fact, imposes a general negative duty upon third parties to respect the contracts of others. In essence, it constitutes an obligation to refrain from acting in any way that violates the contracts of others through subsequent actions that might affect the contractual stipulations. Such interference could lead one of the contracting parties to breach their obligations toward the other. This duty is unrelated to the principle of privity; rather, this "duty of respect" is an external or indirect effect of the contract viewed as a legal fact (حوباد، 2011، صفحة 18).

If a third party interferes with an enforceable contract and its stipulations through a physical act rather than a legal one, they move beyond the strict technical framework of contract law. Here, enforceability signifies the effectiveness of a primary contract against a secondary contract. The second contract may emerge as a violation of the stipulations of the first, leading a party in the first contract to breach their obligations, or it may appear as a subsequent act lacking priority or preference over a preceding contract (ترك، عقد النقل البحري، 2005، صفحة 197).

Professor Abbas Mustafa Al-Masri argues that, parallel to this negative obligation to respect the contracts of others, enforceability also operates within a contractual group as previously clarified provided the element of interest is present. This reveals a new type of



obligation within the group that is not merely negative, but positive in nature. This is logical; otherwise, what would be the form of the "obligation of respect" dictated by the idea of enforceability within a contractual group?

Consequently, it is illogical to claim that this obligation is purely negative. Respecting the contract of a third party within a contractual group, by virtue of the force of enforceability therein, requires a group member to recognize a special right held by another member with a vested interest. This allows the interested member to demand that another member of the group respect their interest and perform an act in their favor based on the original contractual relationship. If we acknowledge a negative obligation for third parties to respect contracts and hold them liable for breaches through the concept of collusion (*La complicité*), it is inconsistent to reject the existence of a positive obligation for a group member to respect the rights of another member within the same group due to the force of internal enforceability. The underlying logic is the same, and the answer must be identical in both cases(المصري، 2002، صفحة 146).

B. The Scope of a Contract's Enforceability

The enforceability of a contract as a social fact differs from its enforceability as a legal fact. From the first perspective, a contract can be relied upon as a source of information or a means of evidence. This degree of enforceability is multifaceted, characterized by simplicity and clarity, and benefits all categories of third parties whether they are true third parties (*extranei*) or pseudo-third parties(حوياد، 2011، صفحة 19).

An example of this is the ability of ordinary creditors to initiate a Paulian Action (*Action paulienne*) when they discover that an act concluded by their debtor is prejudicial to their rights. Although they derive this information from a contract to which they are not a party (the agreement between the debtor and a third party), they use it as evidence of fraud. Similarly, an injured party can invoke a contract to demonstrate the vicarious relationship between an employee who committed a fault and the employer responsible for their subordinate's actions under general rules. Here, the third party invokes the contract not as a legal act per se, but as evidence of the existence of a subordinate relationship a prerequisite for vicarious liability.

From the second perspective enforceability as a legal fact the contract produces legal effects that may grant a right to a third party or burden them with an obligation. Enforceability here implies a duty upon the third party to respect the contracts of others and to refrain from any act that would impair the rights and obligations contained therein(الحوسني، 2007، صفحة 139).

The scope of this enforceability and the nature of the resulting obligations depend on the category of the third party:

-True Strangers: For those completely foreign to the original contractual relationship with no direct interest, enforceability imposes only a negative duty to respect the contracts of others.

-Pseudo-Third Parties: While this group is generally bound by the duty of respect arising from the contract as a legal fact (generating a negative obligation not to violate others' rights), they enjoy a significant advantage not available to absolute strangers: any member of this group may request that a contract be deemed unenforceable (*inopposable*) against them if it prejudices their interests (المصري، 2002، صفحة 148).

Furthermore, the duty of respect arising from enforceability may take a positive form within contractual groups unified by subject matter or cause. In this context, the nature of enforceability shifts to become a positive obligation to perform an act. The force of enforceability within these groups, coupled with the vested interest of a member, creates a direct right of recourse between members to claim rights or assume obligations. In other words, the interested third party acquires a specific, independent right provided by their membership in the contractual group. This allows them to demand that another member of the same group respect their interest and perform the obligation promised in the original relationship between that member and their creditor.

This direct recourse between group members can serve as the legal basis for the consignee's status in a maritime carriage contract. However, a fundamental element must be present: Knowledge.To assert that a contract is enforceable against a third party, that party must have had knowledge of said contract (ترك، شرط التحكيم بالإحالة وأساس التزام المرسل إليه بشرط التحكيم، 2006، صفحة 463).

This is detailed as follows:



- Knowledge as a Vital Prerequisite for the Principle of Enforceability

For the principle of enforceability or validity to operate within a contractual group, the individual from whom performance is required must be aware that their contract forms part of a group comprising other contracts. Furthermore, they must be aware of the rights held by other members of the group against them-2011 (زروالي، صفحة 137) 2012.

If we examine the contractual group comprising the carrier, the shipper, and the holder of the Bill of Lading (whether they are the original consignee or a holder "to order" or "to bearer"), these individuals possess the requisite knowledge that their contracts constitute part of a contractual group. This knowledge is established through various laws, regulations, and systems, as well as the terms and guarantees stipulated in the Bill of Lading. Consequently, enforceability is generated within this group, creating a positive obligation to respect the rights of third parties therein (الحوسني، 2007، صفحة 140).

Thus, once the knowledge requirement is met whether regarding the contract's status as part of a group or regarding each member's specific rights and the boundaries thereof enforceability within the group is established, creating a positive duty to respect the rights of third parties (بودالي، 2014-2015، صفحة 312).

Conversely, if the knowledge requirement is not met, we are faced with non-enforceability (*inopposabilité*). There are several applications of this concept:

-Letters of Indemnity: LOIs drafted between a carrier and a shipper to issue a "clean" Bill of Lading despite observations regarding the goods are not enforceable against a *bona fide* consignee who has no knowledge of them.

-Judicial Precedent: The Egyptian Court of Cassation, in its judgment of February 7, 1967, refused to bind a consignee to a contractual clause not mentioned in the Bill of Lading. The basis for this was the non-enforceability of the clause against the consignee due to a lack of knowledge, which is an essential condition for invocability (ترك، شرط التحكيم بالإحالة وأساس التزام المرسل اليه بشرط التحكيم، 2006، صفحة 648).

-Incorporation by Reference: In another ruling (February 25, 1965), the Egyptian Court of Cassation bound a consignee to an arbitration clause provided for in a Charterparty, despite it not being explicitly stated in the Bill of Lading. This was because the Bill of Lading contained a reference (*clause de référence*) to the Charterparty; thus, the consignee had the means to know its terms and conditions. Under the concept of enforceability, the knowledge requirement was satisfied, making the arbitration clause enforceable against the consignee.

While the principle of enforceability offers a logical legal basis for the consignee's status by acknowledging their direct relationships with the parties to the carriage contract despite their "third-party" status it remains subject to criticism. Its primary weakness lies in making the consignee's obligations contingent upon the subjective condition of "knowledge" (زروالي، 2011-2012، صفحة 140).

It can be concluded that the position of traditional jurisprudence regarding the consignee's status evolved through two distinct stages. Initially, it relied on the principles of the binding effect of contracts and privity of contract, attempting to resolve the issue without disrupting traditional civil law doctrines. This involved assigning the "party" status to the consignee through the theories of stipulation for the benefit of a third party, imperfect agency, and singular succession. However, the strict adherence to legal logic which dictates that the consignee is a "third party" to the carriage contract in reality led to the failure of these theories under the weight of extensive legal criticism.

Consequently, enforceability in this capacity can function as a source of obligation. On one hand, it generates a negative obligation to refrain from infringing upon the contracts of others and to avoid impairing the rights and obligations contained therein. On the other hand, it may generate a positive obligation within the context of a contractual group, provided a member has a vested interest in demanding that another member of the same group perform a specific act in their favor. Through this, the member obtains their private and independent right in accordance with the structured relationships within said group.



2- The Position of Modern Jurisprudence Regarding the Status of the Consignee:

In light of the failure of traditional theories to establish a legal basis for the consignee's status in the contract for the carriage of goods by sea, modern jurisprudence has introduced alternative theories to justify the subject under study. It relies on the Theory of Rights Derived from Possession of the Bill of Lading, positing that the consignee derives rights and obligations from the document itself.

Conversely, some jurists notably Professors J.P. Tosi and F. Petit—justify the consignee's legal status based on the Theory of Joinder (*Adhésion*) to the Carriage Contract. This is examined through two fundamental points: first, consent and will as the basis for the consignee's joinder via the theory of offer and acceptance; and second, the consignee's joinder based on the contract of sale. These will be addressed in the following requirements.

1.2- The Theory of Rights Derived from Possession of the Bill of Lading:

Proponents of this trend utilize the concept of rights derived from the possession of the Bill of Lading to provide a legal foundation for the consignee in a carriage contract. This is achieved through the Theory of Symbolic Possession of Goods (Branch I), whereby the consignee derives their right from the Bill of Lading itself; thus, possession of the Bill generates a personal right against the carrier. Proponents also clarify the relationship between the Bill of Lading and the symbolic possession of the goods (Branch II).

1.1.2- The Theory of Symbolic Possession of Goods:

In maritime practice, the carrier issues a receipt and delivers it to the shipper upon receiving the goods; this receipt is known as the Dock Receipt or the Bill of Lading. It is customary to send this document to the consignee so they may take delivery of the goods at the port of destination(40 دويدار، 2008، صفحة 40).

Before delving into this theory, light must be shed on the role of the Bill of Lading as a Document of Title. Such a document represents the items specified therein and can substitute for those items while they are in the hands of a third party. The holder of such a document is deemed to have symbolic possession of the goods.

Professor Rodière notes that the Bill of Lading has undergone significant evolution in maritime trade. Its use was

unknown in ancient times; it evolved from a mere receipt proving the delivery of goods into an instrument to prove the contract of carriage and its terms, eventually becoming a document representing the shipped goods. Consequently, the goods are traded by negotiating the document, and the delivery of the document constitutes the delivery of the goods. Thus, the Bill of Lading has two facets:

- A Real Facet (*Aspect Réel*): Representing the shipped goods.
- A Personal Facet (*Aspect Personnel*): Granting the holder the right to demand delivery of the goods(220 صفحة، 2012، (يسعيد).

A significant number of jurists have embraced the Theory of Symbolic Possession as the foundation for the rights of a third-party holder of the Bill of Lading against the carrier. Under this theory, the Bill of Lading provides its lawful holder with an autonomous right (*droit propre*), independent of the original contract of carriage concluded between the shipper and the carrier(319 صفحة، 2008، (الفاقي). Consequently, the consignee's possession of the Bill of Lading is the source of the rights and obligations contained therein and the basis for their direct action against the carrier(38 صفحة، 2002، (حمدي). Proponents of this view argue that while the contract of carriage establishes the link between the shipper and the carrier, it does not govern the relationship between the consignee and the carrier; rather, that relationship is governed exclusively by the Bill of Lading (خالد، 2000، صفحة 74).

The French judiciary affirmed this in a decision by the Court of Cassation on November 5, 1951, ruling that the lawful holder of the document derives their right from the document itself. Therefore:

- If the Bill of Lading is Straight (Nominative), the person named therein holds the right to sue the carrier for liability.
- If the Bill is to Bearer, the action is open to the lawful holder.
- If the Bill is to Order, the right of recourse belongs to the endorsee.

In another ruling, the French judiciary held that the lawful holder or the final endorsee is the party entitled to file a liability claim against the carrier, to the exclusion of the endorser, as the principle of the holder's right to sue must be applied strictly.



A. Requirements for a Document to Represent the Goods

For a document to be legally considered a Document of Title representing goods transported by sea, several conditions must be met:

-Precise Identification: It must designate the goods accurately, making it easy to verify their weight, quantity, and type. It must also clearly state the distinctive marks placed on the goods, as symbolic possession can only pertain to ascertained goods (*choses certaines*).

-Entitlement to Delivery and Disposal: The document must grant its holder the right to take delivery of the goods described therein at the port of discharge, the right to dispose of them during the maritime voyage, and the right to claim compensation for any damage affecting the cargo.

-Sufficiency for Symbolic Possession: The possession of the document itself must be sufficient to produce the legal effects of symbolic possession of the goods. This third condition leads to a distinction between the three types of Bills of Lading

(جاسم، 2006، صفحة 112):

-Straight (Nominative) Bill of Lading: This document specifies the name of a particular person. The person named is the sole party entitled to bring a direct action against the maritime carrier for cargo damage. This right does not transfer to a third party unless the formal procedures for a Civil Assignment of Debt (*Cession de créance*) are followed. Consequently, the right to receive or dispose of the goods during transit is contingent upon these assignment procedures (ترك، شرط التحكيم بالإحالة وأساس التزام المرسل اليه بشرط التحكيم، 2006، صفحة 420).

-Order Bill of Lading: This is issued either to the order of the shipper or the order of the consignee. It is negotiated like any commercial or civil instrument containing an "order" clause via endorsement (*l'endossement*).

-Bearer Bill of Lading: This is transferred by mere delivery (*la tradition*). A Bill of Lading is considered a bearer instrument if it lacks an order clause or does not specify the name of a consignee (الحوسني، 2007، صفحة 38).

B. Rights Transferred by the Bill of Lading to its Holder

The Bill of Lading creates for its holder a personal right (*droit personnel*) against the carrier on one hand, and a real right (*droit réel*) over the goods on the other.

-The Bill of Lading Creates a Personal Right Against the Carrier

Some jurists have attempted to categorize the possession of the Bill as granting the holder merely a personal right, entitling them to take delivery of the goods from the carrier. Their argument is that the delivery of goods to the carrier creates an obligation upon the latter—by virtue of the Bill of Lading issued making the carrier a debtor obligated to deliver the cargo to the lawful holder at the port of discharge. Conversely, it creates a right of debt (créance) for the holder to receive the goods. According to this view, the Bill of Lading grants the lawful holder only a personal right, excluding any real rights such as ownership of the goods(حوباد، 2011، صفحة 26).

However, this view has faced several criticisms:

- While the Bill of Lading indeed grants the lawful holder a right of debt against the carrier who issued it, the holder is a creditor of a specific, ascertained thing(corps certain) that is in the carrier's custody during the transit period.

- The Bill of Lading grants its lawful holder two primary rights: the first is a personal right to receive the goods arising from the carriage contract; the second is a real right, namely ownership and all derivative real rights. This holds true as long as the document represents the goods, and the holder of the document is legally deemed the holder of the goods themselves.

- The Bill of Lading Grants the Consignee a Real Right over the Goods.

The holder of the Bill of Lading is considered the possessor of the goods. Since goods are tangible movables, general legal principles apply: "In movables, possession is equivalent to title"(En fait de meubles, la possession vaut titre), provided possession is based on a valid legal ground and held in good faith. This highlights the importance of possession in movables as a primary method of acquiring ownership(جاسم، 2006، صفحة 116).

2.1.2- The Relationship Between the Bill of Lading and Symbolic Possession:

Possession consists of two elements:

- The Material Element (Corpus): The physical control of the goods, which is held by the Master of the vessel.



-The Mental Element (Animus):The intent of the shipper to remain the legal possessor of the goods, even though they cannot physically dispose of them while they are under the Master's control.

The Master plays a dual role toward both the shipper and the carrier. On one hand, he represents the shipper by receiving the goods and acts as the shipper's agent in exercising the material element of possession as long as the Bill of Lading remains with the shipper. On the other hand, the Master holds the goods as a subordinate of the Ship-owner/Carrier who is contractually bound to the shipper. The Master is further obligated to preserve the cargo. When the shipper relinquishes the Bill of Lading delivered to them in exchange for the goods, they effectively waive the mental element of possession. At that point, the Master becomes obligated to deliver the goods to whoever presents the document(الحوسني، 2007، صفحة 118).

Consequently, most legal opinions agree that the Master is a precarious possessor (posseur précaire) in his relationship with the shipper. He exercises physical control on behalf of the shipper, who remains the "true possessor" as long as they hold the Bill of Lading the evidence of the mental element of possession. Through the Master, the shipper maintains physical control over the goods. The Bill of Lading grants the shipper the right to receive the goods and, more importantly, the right to dispose of them by transferring possession of the document, since physical disposal of the goods is impossible while they are on a merchant vessel at sea. Naturally, the process of transferring the Bill of Lading from hand to hand will make true possession be transferred with every transfer of the document, even if physical control of the goods remains with the Master. Consequently, this transfer of possession is deemed symbolic transfer (ترك، شرط التحكيم) بالإحالة وأساس التزام المرسل اليه بشرط التحكيم، 2006، صفحة 422). Among the most vital characteristics of this possession are the right of delivery and the right of disposal. The party to whom the Bill of Lading is transferred acquires the right to claim the goods and the right to dispose of them, despite the fact that the transfer of the document does not shift physical control, as the goods remain in the Master's custody.

Thus, possession of the Bill of Lading represents possession of the goods themselves when the rights of delivery and disposal are transferred without any intervention from the Master. This occurs as the document moves from hand to hand via endorsement (if to order)

or delivery (if to bearer). For the nominative (straight) Bill, this is achieved by following civil assignment procedures (الحوسني، 2007، صفحة 119).

Criticisms of the Theory of Symbolic Possession

Despite its practical merit, several points of contention have been raised:

-Practical Necessity vs. Legal Foundation: While recognizing the Bill of Lading as a representative of the goods is a practical necessity for economic operations (such as pledging goods via possessory lien or selling them mid-voyage), the question remains: What is the actual legal basis for the consignee's right to demand performance of a contract to which they were not a party, and their subsequent obligation to its terms(40 صفحة، 2011، حوياد،)?

-Lack of Identification: While it is logical to say the Master holds goods for a named consignee (nominative bill), Dr. Mohamed Abdel Fattah Turk argues it is illogical to claim the Master holds goods for a consignee under an "order" or "bearer" bill when that person's identity is unknown to the Master until they present the bill at the port of discharge.

-Absence of the Document: It is difficult to rely on this theory in maritime transport cases where no standard Bill of Lading is issued. Professor **Rodière** noted that while this theory works when the consignee holds the Bill, it remains undoubtedly deficient in cases where no such document exists(120 صفحة، 2002، المصري).

2.2-The Theory of Joinder to the Contract:

Given the failure of the "Rights Derived from Possession" theory particularly its inability to cover transport cases lacking a standard Bill of Lading modern jurisprudence shifted toward the concept of Joinder (*Adhésion*) to the Contract. This is examined through two branches:

1.2.2-Consent and Will as the Basis for Joinder:

In the late 20th century, the French Court of Cassation adopted the idea that the consignee's consent is the basis for their joinder to the maritime carriage contract.

-Initial Stage: In a decision dated May 20, 1912, the Civil Chamber considered that by taking delivery of the goods, the consignee accepts the contract as it is, with all its terms and causes specifically the obligation to pay freight.



-Second Stage: In 1970, the French Court of Cassation embraced the idea that the consignee is "merged" into the maritime carriage contract.

Ultimately, the French judiciary considered the consignee a "joined party" to the contract. However, as the Court of Cassation did not explicitly define the technical meaning of "Joinder" (*Adhésion*), French jurisprudence took on this task. The majority of scholars affirm that will (intent) is essential for the consignee's participation. They analyzed this by proposing that the consignee's status as a "party" be justified through the rules of contract formation—specifically the Theory of Offer and Acceptance under the general theory of obligations(223 بسعيد، 2012، صفحة).

This segment delves into the academic debate between two prominent French scholars regarding how the consignee transitions from a "third party" to a "contracting party."

First: Justifying the Consignee's Joinder through the Theory of Offer and Acceptance

The Theory of Offer and Acceptance was adopted as a justification for the consignee's joinder (*adhésion*) to the maritime carriage contract by two French researchers: Professor Jean-Pierre Tosi and Professor Florent Petit.

A. The Theory of Professor J.P. Tosi

In a published article, Professor Tosi posited that the status of the consignee remains one of the unresolved dilemmas in transport law, as neither the legislator nor the judiciary has found a definitive legal justification for the consignee's rights and obligations.

Tosi began with the Principle of Acceptance, arguing that the consignee joins the carriage contract by their own consent and thus becomes a party to it. This implies that the mechanism of "joinder" is essential for the consignee to participate in the contract concluded between the shipper and the carrier. Regarding the nature of this joinder, Tosi suggests that the consignee is initially a third party but undergoes a sequential transformation from one status to another to eventually become a party to the contract. He explains this transformation as a result of the consignee performing a positive act to join the contract(224 بسعيد، 2012، صفحة).

From Tosi's perspective, the consignee as a third party initially benefits from a stipulation for the benefit of a third party to

justify their specific right at the time the contract is formed between the shipper and the carrier. The consignee is thus a "creditor" of this offer, as if it were a bilateral promise to contract in their favor, allowing them to eventually become a party.

Consequently, carriage is not a tripartite contract by nature; it only becomes so upon the consignee's joinder via their acceptance of the offer. However, because this theory implies a successive and sequential formation of the contract, it was subjected to a critique by Professor Petit.

B. The Theory of Professor F. Petit

Professor Florent Petit dedicated his doctoral thesis to the study of the consignee's status, beginning with a critical analysis of all existing jurisprudential theories, including Tosi's. Petit rejected the recourse to "stipulation for the benefit of a third party" as a means to justify the obligation of the offer to join the contract, arguing that the carrier is already bound to perform the obligation by proposing the joinder to the consignee.

Furthermore, Petit criticized Tosi's theory for effectively splitting the carriage operation into two separate contracts: a first contract between the shipper and the carrier, and a second between the carrier and the consignee upon the carrier's offer.

In response, Petit proposed two fundamental ideas:

-The Successive Formation of the Carriage Contract: The contract is not completed in a single moment but through a sequence of stages.

-Voluntary Joinder: The consignee joins the existing contract through their own will(بسعيد، 2012، صفحة 225).

• The Successive Formation of the Carriage Contract

Professor Petit focused on the concept of will and its role in extending the effects of a contract to a third party. Since the consignee, as a third party, joins a contract previously concluded between the shipper and the carrier, Petit observed that the traditional approach to mutual consent viewed as the simultaneous meeting of two wills must be set aside. This is because civil code provisions primarily address bilateral contracts, and general rules of consent are designed for the formation of new contracts.



In a carriage contract, the offer is not about forming a new agreement; the agreement has already been struck between the shipper and the carrier and has produced effects before the consignee ever expresses their will. Furthermore, performance begins before the consignee joins, as the carrier fulfills the obligation to transport the goods to the place of delivery.

According to Petit, this "will" does not intervene to create the carriage contract but leads to the joinder of the consignee to an agreement that already exists. Therefore, the traditional theory of offer and acceptance is incapable of justifying the consignee's consent, prompting the proposal of a new definition of joinder tailored to the specificities of maritime law.

- **New Definition of Joinder**

Professor Petit argues that the consignee's joinder to the carriage contract requires the fulfillment of two conditions: the meeting of the wills of the consignee, shipper, and carrier; and the extension of the effects of the pre-existing contract to the consignee.

He proposed a renewal of the concept of mutual consent. While the object of consent is usually the creation of a new contract, there are cases where a contract is already concluded, and the offer consists of inviting a third party to participate in the agreement. Thus, joinder requires:

- A contract already concluded according to general rules.
- A Collective Offer (*Offre collective*) for joinder, followed by the third party's acceptance.

The original parties (carrier and shipper) must propose that the consignee join their contract. This collective offer must meet all legal requirements: it must be final and specific.

The French Court of Cassation adopted the idea that the consignee is "merged" into the contract through this joinder. This is not merely the result of the consignee's acceptance but stems from a collective offer by the original contractors. The offer consists of the possibility of taking delivery of the goods under the conditions set in the contract and according to the law. The consignee only becomes a party upon acceptance, which must be final and simple. This intent to join can be express or implied, most notably through the act of accepting delivery of the goods(بسعيد، 2012، صفحة 227).

- **Second: Assessment of this Theory**

Professor Petit's theory, which incorporates elements of Professor Tosi's work, merits serious consideration. It aligns with current French judicial trends and the intrinsic nature of carriage contracts. It provides a legal justification for including the consignee by explaining the successive and sequential formation of the contract, while highlighting the consignee's will as the basis for joinder.

The consignee absent when the shipper and carrier first met is initially a third party. The justification for their joinder explains how they become a creditor and debtor of the resulting obligations. While their will is essential, relying on it alone is insufficient; one must return to general rules, specifically the theory of offer and acceptance.

The shipper and carrier offer the third party the opportunity to join as a party, subjecting them to the contract's effects as both a creditor and a debtor. In the second stage, the third party accepts the offer, thus becoming the "consignee." However, a question remains: Why do the original parties propose this joinder to a third party? And why does this third party accept an offer that brings both privileges and the weight of obligations?(228 صفحة، 2012، بسعيد).

- **The Position of Algerian Judiciary and Legislation on the Consignee's Status**

The Position of the Algerian Judiciary:

The primary challenge in researching the Algerian judiciary's stance on the consignee's status in maritime carriage contracts is the scarcity of published decisions. However, several rulings previously referenced serve as a basis for determining this position.

In Algeria, the trends adopted by the Supreme Court have varied (Decision No. 439517, issued on April 9, 2008, by the Commercial and Maritime Chamber). At times, the Court considers the consignee a party to the maritime carriage contract by granting them the ability to invoke an arbitration clause, as stated in the following ruling:

"Whereas the reference to the Charterparty in the Bill of Lading makes the respondent consignee in the present case a party to this contract, and they have the right to utilize the arbitration clause... should they wish to invoke it."



In another ruling (Decision No. 145015, December 27, 1996), the Court linked the consignee's status directly to the Bill of Lading, stating:

"The entries recorded in the Bill of Lading are what grant the consignee the right to claim compensation against the carrier."

Notably, in the decision of April 9, 2008, the Supreme Court simultaneously characterized the consignee as a third party who *can* become a party, noting:

"It must be said that while the consignee is not bound by the arbitration clause referred to in the Bill of Lading, this, in turn, does not prevent them from invoking it, provided the Bill of Lading refers to the Charterparty."

By argumentum a contrario, the Supreme Court views the consignee as a third party who transitions into a "party" upon invoking the arbitration clause. This suggests that the Supreme Court has adopted the Theory of Joinder (*Adhésion*) in this framework. Regarding the form of acceptance, the Court did not specify a formal requirement; even if the reference in the Bill of Lading implies implied acceptance, it suffices that the consignee had knowledge of the clause to be bound by it (زروالي، 2012-2011، صفحة 144).

The Position of the Algerian Legislator:

The Algerian legislator has not provided an explicit text regarding the status of the consignee in the Bill of Lading. However, an interpretation can be derived from the Commercial Code. Article 39 of the Algerian Commercial Code states:

"If the consignee is someone other than the shipper themselves, the obligations arising from the carriage contract do not fall upon the consignee unless they issue an express or implied acceptance to the carrier."

-Express Acceptance: Occurs when the consignee declares their acceptance of the Bill of Lading verbally, in writing, or via modern means of communication.

-Implied Acceptance: Is established if the consignee takes delivery of the goods, demands delivery from the carrier, requests an inspection before unloading, or does not dispute the carrier's claim for freight.

It is inferred from this article that the Algerian legislator places the consignee outside the contractual relationship initially, but

they become a party through express or implied acceptance. This effectively adopts the Theory of Joinder. Furthermore, Article 739/2 of the Maritime Code states:

"Delivery is a legal act whereby the carrier undertakes to deliver the transported goods to the consignee or their legal representative, upon their acceptance of them, unless otherwise provided in the Bill of Lading."

This confirms the adoption of the Joinder theory, as delivery is contingent upon the condition of acceptance. Upon acceptance, the consignee becomes a party; if they refuse, they remain outside the contractual relationship (حوباد، 2011، صفحة 59).

In contrast, other maritime legislations provide more explicit texts. For example, the Kuwaiti legislator considers the consignee a party by granting them a direct right of recourse against the carrier. Similarly, the Iraqi legislator explicitly states that the Bill of Lading defines the legal ties between the carrier and the consignee and serves as *prima facie* evidence of the carrier's receipt of the goods in the condition described therein.

2.2.2- The Contract of Sale as the Basis for the Consignee's Joinder

Commercial practice and international trade in general demonstrate that most carriage contracts are concluded to execute a contract of sale; the latter usually precedes the former.

In international sales, transport is essential for the execution of the economic operation the legal and physical transfer of goods from the seller's liability to the buyer especially when the buyer is located thousands of kilometers away. The contract of carriage serves as the economic complement to the contract of sale. Consequently, this leads to specific outcomes, including the designation of the consignee by the shipper and the consignee's subsequent joinder to the carriage contract (بسعيد، 2012، صفحة 228).

A. Designation of the Consignee by the Shipper (Seller)

When concluding a carriage contract with the carrier, the shipper must necessarily specify the place of delivery. While the consignee's name might not be essential at the very beginning, it is typically determined at the time the carriage contract is formed due to the underlying contract of sale between the shipper and the buyer.



The shipper possesses the "right of disposal" or, as termed in the Rotterdam Rules, the "Right of Control." Article 1(12) defines it as: *"the right under the contract of carriage to give the carrier instructions in respect of the goods."* The shipper is deemed the party with the primary interest in the transport operation unless they waive this right in favor of the consignee or the documentary shipper. Accordingly, the right of control allows the shipper to change the place of delivery or the name of the consignee, provided the latter has not yet manifested their will to accept the contract concluded in their favor.

Although the right of control or disposal is extrinsic to the contract of sale as it pertains to the execution of transport rather than ownership it necessitates a reciprocal link between the two contracts. Regarding the right of disposal, the seller (shipper) is the one with the authority to designate the consignee for delivery; they either designate them at the time of contracting or retain the possibility of identifying them during transit.

In the absence of a designated consignee, it is interpreted that the shipper is the one who will take delivery, thereby benefiting from the transport operation. Furthermore, the seller (shipper) may change the consignee during transit; if the buyer fails to pay the price or declares bankruptcy, the seller can instruct the carrier to change the destination, divert the shipment to another person, or return it

(بسعید، 2012، صفحة 232).

B. The Consignee's Joinder to the Carriage Contract

At the moment the seller (shipper) identifies the buyer (consignee) to the carrier, the latter is invited to participate in the carriage contract and become a party to it. If they join, it is for the sake of the proper execution of the contract of sale; refusal to do so may result in penalties.

- Reason for the Consignee's Joinder:

The consignee becomes a party to the carriage contract upon joining it. Although they are a "third party" during the contract's initial formation, they join by accepting delivery of the goods. This is a direct consequence of their status as a buyer in the contract of sale; they accept and join the carriage contract because they are presumed to be well aware of its terms, having negotiated them with the seller during the sale process.

Sale and carriage are two legal instruments utilized in a single operation: ensuring the delivery of goods to their owner. The commercial function of the carriage contract imposes an obligation to deliver and dispatch the goods, just as the seller is obligated to deliver the sold item to the buyer under the contract of sale.

Despite sale and carriage being legally distinct contracts, their functional integration explains the economic framework and reflects on the consignee's joinder. When the carriage contract allows the buyer to take delivery, the buyer joins the contract; if they refuse, they risk bearing penalties arising from the contract of sale

(بسعيد، 2012، صفحة 233).

If the consignee refuses delivery without cause simply because they do not view themselves as the consignee they place themselves outside the carriage contract. However, if the refusal is for a "serious cause" related to the carrier's performance (such as delay or damage), they are not rejecting the contract itself, but rather its subject matter (the goods).

Consequently, they retain their status as a party and their right to file a contractual liability claim against the maritime carrier, while simultaneously bearing the obligations arising from the contract

(حوياد، 2011، صفحة 50).

This concludes the analysis of the Theory of Joinder, focusing on the legal consequences of the consignee's refusal and the final synthesis of the relationship between the sale and carriage contracts.

- Penalties for the Consignee's Failure to Join the Carriage Contract:

After concluding the carriage contract, the seller informs the buyer that the ordered goods have been delivered to a carrier for transport and that they have been designated as the "consignee" in the transport document. However, the buyer may not become aware of this delivery until the carrier actually offers the goods at destination. In both scenarios, the buyer (consignee) is called to join the carriage contract to facilitate the execution of the seller's obligation to deliver.

While in carriage contracts not preceded by a sale, the consignee is generally free to refuse joinder, a buyer cannot refuse to become a consignee without breaching their obligations under the contract of



sale. A distinction must be drawn between accepting the contract and accepting the delivery:

-In the latter case, the buyer may join the contract while simultaneously rejecting the goods themselves due to loss or damage, thereby avoiding penalties under the contract of sale.

-However, if the buyer rejects delivery within the framework of the carriage contract without a valid reason, they are simultaneously rejecting delivery under the contract of sale, thereby breaching a core contractual obligation: the duty to take delivery of the sold item.

Under general rules, an aggrieved party (the seller) has the choice between specific performance or rescission (*résolution*). Notably, rescission resulting from the failure to take delivery of goods can be extrajudicial; it may occur by operation of law (*ipso jure*) without prior formal notice to the buyer. Furthermore, the seller retains the right to claim compensation for damages resulting from the non-performance.

Additionally, the buyer may be held liable based on the Abuse of Right (*Abus de droit*). Since the seller and buyer agreed to hand over the goods to a carrier, they are presumed to have agreed on the conditions of transit and pre-determined that they would both become parties to the carriage contract. If the refusal to join is unjustified, the buyer is deemed to have abused their contractual freedom. Although courts are often hesitant to apply "abuse of right" to the act of contracting, the Lyon Court of Appeal previously ruled that a buyer's refusal to be recognized as a consignee constituted an abuse of right, as they had previously ordered the goods themselves. Thus, any assessment of the consignee's (buyer's) behavior must be made in the light of the contract of sale(234 بسعيد، 2012، صفحة 234).

Conclusion:

Through our study of the legal basis for the consignee's status in the contract for the maritime carriage of goods, we arrive at several key findings and recommendations:

1. Specialized Nature: The status of the consignee in maritime carriage possesses unique characteristics that distinguish it from the general provisions of civil law, rendering it a framework of a *sui generis* (special) nature.
2. Failure of Traditional Theories: Traditional theories failed to find a solid legal foundation for the consignee's status because

they attempted to resolve the issue without infringing upon the general principles of civil law most notably the Privity of Contract. This resulted in an undue strain on civil law rules and a distortion of its doctrines.

3. Limitations of the Bill of Lading Theory: While the Theory of the Bill of Lading can define the consignee's status in cases where a standard document is issued, it is difficult to rely upon in modern maritime transport scenarios that occur without a traditional Bill of Lading.
4. Sequential Formation: The maritime carriage contract is not a tripartite agreement from its inception. The consignee is not an original party because they do not participate in the initial conclusion of the contract between the carrier and the shipper.
5. Superiority of Joinder Theory: The Theory of Joinder (*Adhésion*) is the most suitable legal basis for determining the consignee's status. It makes the consignee a party to the contract upon their acceptance of the goods, providing a clear justification for their right to bring a contractual liability claim against the carrier.
6. The Algerian Legislative Stance: The Algerian legislator's position suggests that whether a consignee is considered a party or a third party is contingent upon two factors: their acceptance of the goods and their acceptance of the terms stipulated in the Bill of Lading.
7. Arbitration Clauses by Reference: The consignee's commitment to an arbitration clause by reference stipulated in a Charter party and referred to in the Bill of Lading is dependent on their knowledge of said clause. Furthermore, the reference must be clear and specific. However, even with knowledge, the Algerian judiciary grants the consignee the choice to either invoke or waive the arbitration clause.
8. Legislative Gaps: There is a notable deficiency in Algerian maritime legislation, as the legislator has not provided a formal definition of the "consignee." This creates a legal vacuum that necessitates a revision of maritime transport provisions to establish a precise definition, aligned with international conventions, particularly the "Rotterdam Rules."



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