

TRANSPORTATION OF FREIGHT BY A MOTOR CARRIER
General Overview
Part One

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A. Contractual Relationships / General Principles:

I. Shipper / Carrier / Receiver

Consignor / Shipper – K→	Carrier →	Consignee / Receiver	
Freight Charges \$→	Carrier		Carrier Paid

1. Shipper may contract with Carrier.
2. Is Carrier registered and licensed?
 - a. Registration – operating authority not revoked / not placed out of service – Federal Motor Carrier Safety Administration (“FMCSA”) Safer Site
<https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>
 - b. Licensing – State Transportation Department (Motor Carrier Division).
3. Tort liability – is Carrier adequately trained and operating proper equipment?
4. The Bill of Lading may be used as the contract for carriage between the Shipper and the Carrier.
5. Shipper is primarily liable for payment of freight charges to carrier unless “non-recourse” provision signed or other arrangements are made. *Oak Harbor Freight Lines, Inc. v Sears Roebuck & Co.*, 513.3d 949 (9th Cir. 2008).
 - a. The consignee is liable unless the bill of lading is marked “prepaid” and the consignee already has paid the shipper/consignor.
 - b. The consignee is liable if the bill of lading is marked “collect”.
6. The Bill of Lading may also state the party responsible for payment.

7. Carrier has a possessory lien for payment of its charges before unloading; however, the typical arrangement is for a carrier to deliver on credit – invoice the responsible party.

8. Carrier is liable for loss (similar to *res ipsa loquitur*); however, it may limit the amount to be paid as damages under its tariffs, carrier agreement, or in the bill of lading.

9. Shipper and carrier may enter into shipper-carrier agreement that alters the amount for freight damages.

10. Consequential damages (*Hadley v Baxendale*) – specify anticipated damages.

11. Carrier may be domiciled in a state besides that of the shipper.

a. Jurisdiction:

- which state law governs.

- which state has personal jurisdiction.

II. Shipper / Broker / Carrier / Receiver

Shipper --K→	Broker →	Carrier →	Receiver	
Freight Charges \$→	Broker \$→	Carrier		Carrier Paid

1. Shipper may engage a broker to locate a carrier to haul a load.

a. Carrier may engage a broker to locate a load to be hauled.

2. Shipper is liable for payment of the freight charges to the Carrier unless other arrangements are made.

3. Carrier invoices the Broker who collects from the Shipper.

4. Tort liability – Broker may be liable for the selection of a carrier.

5. Broker may be deemed the agent of the shipper – may negotiate binding terms.

6. Carrier may agree to look only to the Broker for payment which may negate shipper liability for payment.

III. Shipper / 1st Carrier / 2nd Carrier / Receiver

Shipper – K→	1 st Carrier ↓			Load “subcontracted”
Freight Charges \$↗				Shipper pays to 1 st Carrier
	2 nd Carrier →	Receiver		1 st Carrier does not pay 2 nd Carrier

1. Carrier may “assign” the load to another carrier.
 - a. Contractually restrict such assignment.
2. Carrier would also need to have broker authority from FMCSA.
3. 2nd Carrier will attempt to invoice Shipper.
4. Shipper may be required to pay freight charges a second time.

IV. Shipper / Broker / Carrier / Receiver

Shipper – K→	Broker →	Carrier →	Receiver	
Freight Charges \$↗				Shipper pays 1 st Broker
	Broker \$			Carrier Not Paid

1. Shipper pays the Broker who keeps the money instead of paying the Carrier.
2. Shipper may be required to pay freight charges to the delivering Carrier.

V. Shipper / 1st Broker / 2nd Broker / Carrier / Receiver

Shipper →	1 st Broker ↓			Load “re-brokered”
Freight Charges \$↗	Broker \$			Shipper pays 1st Broker
	2 nd Broker →	Carrier →	Receiver	Carrier Not Paid

1. Broker passes the load to 2nd Broker.
2. Shipper pays the Broker who keeps the money instead of paying the 2nd Broker.

3. Shipper may be required to pay freight charges a second time.

B. Liability for Loss of or Damage to Cargo –

1. Interstate Cargo Liability: Carmack Amendment, 49 USC § 14706:

- establishes that a carrier is liable for the actual loss or injury to the property that occurs during shipping;

- time limitations:

- no less than 9 months to present a claim

- no less than 2 years after written notice of disallowance of claim to file a lawsuit

2. Intrastate Cargo Liability (analogous to Federal Carmack) – Idaho Code § 28-7-309(a):
A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances.

C. LIABILITY FOR FAILURE TO DELIVER IN REASONABLE TIME

1. Carriers ordinarily are not required to deliver in time to meet any specific market.
2. Two types of delay:
 - a. Physical damage – deterioration
 - c. Economic damage – loss of market or loss of profit
3. Prima facie case: proof of delivery of the goods to the carrier by the shipper in good condition and delivery at destination in damaged condition
4. Defense: damaged from an excepted condition
5. There are 5 common law exceptions to carrier liability:
 - (a) act or default of shipper;
 - (b) an act of God;
 - (c) the public enemy;
 - (d) the "public authority"; or
 - (e) the inherent vice of the commodity.

6. Analysis under Carmack Amendment – subject to exceptions, if a shipper can prove that the carrier received the shipment in good condition and delivered it short or damaged, the carrier is liable for the loss regardless of whether the shipper can prove the carrier was negligent.

7. General damages – liable for actual loss or injury to the property except as limited to a value established by written agreement between the carrier and shipper.

8. Special or Consequential Damages – under Carmack and the common law, a carrier is not liable for damages which are not reasonably foreseeable.

9. Pecuniary losses are limited to instances where the consequences can be foreseen prior to or at the time of making the contract.

10. Notice

a. Carrier is liable for special damages caused by an unreasonable and unnecessary delay only if it has notice of the special circumstances leading to those damages.

b. Unless there is a special agreement to deliver at or within a particular time, the imposition of damages for failure to make such delivery would be to hold the carrier liable for special damages not foreseeable by the carrier.

11. Reasonable Dispatch – unless otherwise agreed in writing, the implied agreement of a carrier is to deliver the load within a reasonable period.

12. Bill of Lading

a. – examples of bill of lading language regarding reasonable dispatch:

1 – trucker agrees to arrive at destination within the normal period recognized as standard arrival from the same shipping district unless for reasons beyond his control;

2 – if no specific delivery is stated in the contract, then timely delivery of the property will be based on the carrier's usual and normal schedule for perishable shipments transported with reasonable dispatch between the points shown on this contract; and

3 – no carrier is bound to transport property by any

particular or vehicle or in time for any particular market, or in any manner other than with reasonable dispatch.

b. – examples of bill of lading language regarding notice:

1 – carriers shall be liable for special, incidental and consequential damages for which they have actual or constructive notice

2 – special damages will be incurred if delivery is not made on _____ / _____ / _____ due to (reason)

13. Measure of damages – difference in the market value on the date it should have been delivered and its market value on the date it was actually delivered subject to any applicable limitation of liability.

14. Cases:

Premier Graphics, Inc. V. Western Express, Inc., 2008 WL 4415773, No. M2007-02761-COA-R3-CV (Tenn. Ct. App. July 15, 2008) – shipper recovered the costs of printed directories, emergency airfreight services, lost profit, and damage to its reputation/goodwill for the untimely delivery of time-sensitive materials where the delivery date was noted on the rate confirmation, bill of lading, and verbal instructions to drivers.

Paper Magic Group V. JB Hunt Transport, 318 F.3d 458 (3d Cir. 2003) – shipper recovered invoice price as general damages, not as special damages, where carrier delivered holiday related materials four (4) months late notwithstanding that the bill of lading did not specify a delivery time or indicate that the goods were time-sensitive.

Starmakers Pub. Corp. v. Acme Fast Freight, Inc., 615 F. Supp. 787 (S.D.N.Y. 1985) – shipper not allowed to recover special damages for posters it deemed worthless that were delivered 31 days after receipt instead 4 days. The Court’s analysis was:

“Reason to foresee damages will exist where the damages occur in the ordinary, natural course of the typical breach (“ordinary damages”).”

“Reason to foresee will also arise where the damages do not ordinarily and naturally occur, provided that the breaching party had notice, at the time of contracting, of the special circumstances which made such unusual damages probable in the event of a

breach.”

“Ordinarily, one would not expect a three week delay in delivery of printed matter in general, or of posters in particular, to result in a total, or even appreciable, loss of value of the goods themselves.”

“Acme will be liable for the loss claimed by Starmakers only if Acme had notice that Starmakers was shipping time-sensitive posters that would suffer a catastrophic loss of value if not delivered in time for the movie opening.”

The notations on the bill of lading did not even remotely suggest that untimely delivery would result in a total loss of value and there was no reason to believe the parties prior dealing should have put the Acme on notice of the consequences of delay.