

## Style Template – longer and more complex heading structure

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# CRITIQUE OF ARTICLE 3 RULE 2 OF THE HAGUE-VISBY RULES

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## 1. The Rule

Article 3 Rule 2 of the Hague-Visby Rules impose a duty on the carrier to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried. It is subject to the provisions of Article 4 of the Hague-Visby Rules.

The Hague-Visby Rules are incorporated in a modified form into Australian domestic legislation.<sup>1</sup>

### 1.1 Carefully

Imposes a duty of reasonable care upon the carrier.

### 1.2 Properly

In Article 3 Rule 2, “properly” has been held to mean ‘in accordance with an efficient and sound system’.<sup>2</sup> It is distinct from ‘carefully’, but it is uncertain whether it imposes something more than a mere duty of reasonable care.<sup>3</sup>

## 2. Period of Obligation

The carrier’s obligation to properly and carefully care for goods is subject to limits under statute and common law.

### 2.1 Common Law

The carrier’s obligation at common law lasts from loading to discharge only.

### 2.2 Statute

Article 1(e) combined with Article 1 Rule 3 of modified Hague Visby extends the carrier’s obligations of care to from the time the carrier is in charge of the goods at delivery to time of discharge to the consignee.

The carrier may evade the extended limits by invoking Article 7 which permits a carrier to contract out of liability before loading and after discharge.

## 3. Academic Discussion

This provision of the Hague-Visby Rules has been the subject of much academic discussion.<sup>4</sup>

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<sup>1</sup> *Carriage of Goods by Sea Act 1991* (Cth).

<sup>2</sup> *Albacora SRL v Westcott and Laurance Line Ltd* [1966] 2 Lloyd’s Rep 53, 58 confirmed in *Shipping Corp of India Ltd v Gamlen Chemical Co (A/Asia) Pty Ltd* (1980) 147 CLR 142, 163. Provision was discussed recently in *Stemcor (A/sia) Pty Ltd v C.V. Scheepvaartonderneming Ankergracht* [2005] FCA 1808 (Unreported, Emmett J, 16 December 2005).

<sup>3</sup> Davies, M and Dickey, A, *Shipping Law* (3<sup>rd</sup> Ed. 2004), 209.

<sup>4</sup> Karan, H, ‘The Carrier’s Liability for Breach of the Contract of Carriage of Goods by Sea under Turkish Law’, 33 *J. Mar. L. & Com.* (2002) 91, Tetley, W, *Marine Cargo Claims 4<sup>th</sup> Ed.* (2008), Tetley’s Maritime & Admiralty Law, <http://www.mcgill.ca/maritimelaw/chp24.pdf>, 27 March 2006 .