# A NEW LOOK AT THE LAW ON COMMON CARRIERS

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## INTRODUCTION

Since common carriers are principally regulated by the Civil Code,[1] it would be an appropriate source for an initial study of the laws governing common carriers. This article is an attempt to examine a number of articles dealing with the carrier's responsibilities and liabilities with emphasis, in some instances, on their practicability as rules of commercal behaviour.

## THE DOCTRINE OF EXTRA ORDINARY DILIGENCE — OBSERVATIONS

Article 1733 lays down the basic principle underlying a common carrier's obligation with respect to passengers and cargo. It prescribes a standard, that of extraordinary diligence, which must be observed by the carrier in the performance of the contract of carriage. However, Article 1744 allows a reduction of this standard as far as cargo is concerned provided the conditions imposed by said article are complied with.

One of the conditions is that the stipulation which limits the carrier's liability to a degree less than extraordinary diligence must be reasonable, just and not contrary to public policy. But Article 1733 provides that, **for reasons of public policy,** common carriers "are bound to observe extraordinary diligence in the vigilance over the goods . . . transported by them . . . according to all the circumstances of each case." One wonders how the stipulation contemplated in Article 1744 can fulfill the requirement of conformity to public policy when common carriers are bound by reason of public policy to be extraordinarily diligent under all circumstances.

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1 Republic Act 386, August 30, 1950. **See Article 1766.** New Civil Code.



This apparent contradiction may be resolved by reference to the principles of statutory construction which provide, inter alia, that legal provisions should be construed with a view towards harmonizing discordant elements.[2]

Thus, Article 1744 should first be interpreted in conjunction with Article 1745 which enumerates the stipulations that are considered contrary to public policy, with particular attention to paragraph 3. This paragraph prohibits the common carrier from contracting out of any obligation to observe diligence in the custody of the goods. If the carrier agrees to observe some degree of diligence (which could be less than extraordinary), presumably the stipulation is not contrary to public policy.

To reconcile Article 1733 with Articles 1744 and 1745, it may be necessary to infer a proviso to the former article by adding to the last word of the first paragraph thereof the phrase "without prejudice to the provisions of Article 1744 and 1745." This would serve to modify the harsh implications of the preceeding phrase "according to all the circumstances of each case."

Article 1734 lists the causes which apparently exempt the common carrier from liability for loss, destruction or deterioration of the goods. These occurences apparently do not provide a complete defense to the carrier for the following reasons:

First, Article 1735 merely waives the presumption of negligence on the carrier's part in the cases mentioned under Article 1734. The mere fact that the loss or damage was brought about by said causes does not **ipso facto** relieve the carrier from liability. Only proof of the exercise of extraordinary diligence is dispensed with.

Second, the above interpretation is supported by Articles 1739 to 1743.

1. Article 1739 requires the carrier to prove that it has exercised due diligence to prevent or minimize the loss during the natural disaster and, furthermore, that said natural disaster was the proximate and sole cause of the loss.

2 Araneta v. Concepcion, 99 Phil. 709, 712.

2. The same article imposes on the carrier the same duty to exercise due diligence in case of an act of a public enemy with the corresponding burden of proof.

3. With respect to case No. 3, the carrier must show that the act or omission of the shipper or owner of the goods was the proximate cause of their loss or damage. Otherwise, under Article 1741, the carrier would be liable for damages if its negligence is the proximate cause.

4. Article 1742 confers on the carrier the obligation to exercise due diligence to forestall or lessen the loss if the loss or damage due to inherent vice of the goods or improper packing. Needless to say, proof of the performance of such obligation would be required.

5. Should the goods be seized by order of a public authority, it is necessary under Article 1743 to prove that such public authority was competent to issue the order.

Therefore, in all the cases mentioned under Article 1743, mere proof of the occurence of the incident is not sufficient. Further evidence, e.g. of the carrier's due diligence, is necessary.

A review of the policy on the carrier's liability contained in Articles 1734 to 1735 and 1739 to 1743 reveals a curious circumstance. It seems that common carriers are expected to be extraordinarily diligent under normal conditions but, on the other hand, are allowed to exercise due diligence under conditions that can hardly be classified as normal. As Article 1735 requires proof of extraordinary diligence in all cases other than those mentioned under Article 1734, it may be inferred that the carrier can only be less than extraordinarily diligent under the circumstances cited in Article 1734. Natural calamities and wartime incidents are occasions that may be difficult to categorize as normal situations. Yet, the carrier need only prove the exercise of due diligence should it become involved in any of these events in the course of a marine adventure.

As a legal construct, it may not be such an oddity if one were to assume that the framers of Article 1734 and 1735 believed that, in the face of situations covered by Article 1734, even the exercise of extraordinary diligence may not prevent the loss of or damage to the goods.



But as a practical matter, is it not a natural tendency for one's guard to be up when disaster threatens or war breaks out? Is it not a reasonable reaction to exercise care and caution commensurate with the demands of a given situation?

It is not the purpose of this article to discredit the rationale behind the policy which ordains an exacting standard on the carrier for the values which it seeks to promote, i.e., the safety and welfare of passengers and cargo, are most imperative.

What it suggests is perhaps another look at the scope of the liability of the carrier with a view towards effecting a more equitable balance between the interest of the carrier vis-a-vis that of the passengers and cargo owners. In an economic environment of ever-increasing costs and rapid inflation, the task of maintaining extraordinary diligence in all but a few instances may prove to be too burdensome for the carrier and convert a useful undertaking into a commercially unviable enterprise.

The problem of extraordinary diligence is that it is not a quantitative norm but a qualitative concept and therefore difficult to measure. How can one calibrate extraordinary diligence to distinguish it from ordinary diligence? How can one gauge the level of the carrier's operations under a given set of circumstances to determine whether or not it reaches the degree of diligence required by law, aside from the blatantly obvious cases of gross incompetence?

By way of illustration,[3] let us suppose that a ship in port is unloading cargo and simultaneously undergoing urgent repairs. Part of the cargo which has been completely unloaded consists of chemicals which emit fumes that are highly volatile. The hold which contained this particular cargo has a small ventilator through which the fumes escape. The filtering process has to be done gradually to prevent the envelopment of the ship within a highly inflammable atmosphere.

[3] The sequence of events in the illustration was substantially inspired by the facts of the English case, (1921) 8 Lloyd's List Law Reports 351.

A crew member accidentally dropped a wrench which by sheer chance fell through the small ventilator into the hold still filled with fumes. The wrench struck the bottom of the hold and caused a spark which in turn ignited the fumes. The ship caught fire and the remaining cargo on board was totally lost.

One could argue that the repair work should have been undertaken after the hold had been completely cleared of fumes. Yet a legal requirement, such as the obligation to exercise extraordinary diligence in maintaining the seaworthiness of the vessel which could be jeopardized by delay, may have contributed to the decision to conduct repair work sooner.

Since the cause of the loss is not among those enumerated in Article 1734, the carrier has the unenviable prospect of proving that it was its efforts to be extraordinarily diligent which led to the loss. However, one should not overlook the fact that the casualty was the result of an ill-fated combination of chance and coincidence. Had the wrench fallen into the opening in the hold a little later, it could well be that the volume of gas therein had been reduced to a non-inflammable level and the spark could have done no harm.

## PROPOSAL: REASONABLE FORESEEABILITY

If extraordinary diligence is not a satisfactory standard when applied to a situation fraught with elements similar to those cited above, what could be a viable alternative?

The following incident[4] may suggest a workable substitute standard, that of **reasonable foreseeability.**

An oil slick emanated from a vessel anchored in a harbour, a common enough occurence among stationary ships. The oil was not highly inflamable in the sense that prolonged exposure to heat is required to ignite it. This slick was carried by the actions of the wind and waves to the other side of the harbour where a ship repairer's yard was located. As it crossed the harbour, the slick gathered some debris including a small piece of cotton cloth. It just so happened that a ship was undergoing repairs in the yard when the slick entered its premises. An acetylene torch was being used to effect repairs and molten metal from the ship under repair fell on the cotton cloth and set it afire. The cloth burned long enough to ignite the oil which subsequently burst into flames that seriously damaged the ship repairer's yard and the equipment on his wharf.

The Judicial Committee of the Privy Council[5] exempted from liability the charterers of the vessel which was the source of the slick on the ground that they could not have reasonably foreseen that the damage to the yard and the equipment therein was a probable consequence of the release of the slick for it could not be denied that there was an unusual concurrence of several factors over which the charterers had no control such as the weather, the presence of the cotton cloth and the time the slick entered the yard's premises.

**The doctrine of reasonable foreseeability** does not necessarily negate the obligation of the common carrier to be diligent in the performance of its obligations. What it provides is another point of view in determining whether or not damages are recoverable. The carrier, instead of proving that it was extraordinarily diligent at the time the casualty transpired, must show that the damages that actually resulted were not capable of being reasonably anticipated in the light of all the circumstances surrounding the occurence in question. For the doctrine recognizes that it is not the absence of diligence, extraordinary or otherwise, that creates liability but the presence of damages. It is not the act but its consequences on which liability is founded. And the basis for holding a man responsible for the consequences of his act is that he could have reasonably foreseen them.

[4] The facts of the incident are substantially those of the Wagon Mound 1961) Appeal Cases 388.

[5] The Judicial Committee of the Privy Council is the final court of appeal from the courts of some countries of the British Commonwealth. It is normally composed of five Lords of Appeal.

## CONCLUSION

When a legal provision decrees a mode of human behaviour, it should not lose sight of the fact that the objects of regulation are people, not supermen. To require extraordinary diligence even under ordinary circumstances may prove too taxing even for the most conscientious carrier. The law should recognize the vagaries of luck and life to which commerce is subject. Plainly stated, the law should be reasonable not only in its conception but, more importantly, in its appreciation of the realities of commercial existence.



# THE CONSCIENTIOUS OBJECTOR UNDER THE NEW LABOR CODE

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## PREFATORY STATEMENTS

The Constitution guarantees the right to worship: "x x x The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. "[1] In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.[2]

The constitution also guarantees "(t)he right to form associations or societies for purposes not contrary to law."[3] All it means is that the right to form associations shall not be impaired without due process of law. It is therefore an aspect of freedom of contract, and in so far as associations may have for their object the advancement of beliefs and ideas, freedom of association is an aspect of freedom of expression and of belief.[4]

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[1] Section 8, Article IV, Bill of Rights, 1973 Constitution.

[2] Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., 51 SCRA 189, citing American Com. v. Douds, 339 U.S. 382, 421.

[3] Section 7, Article IV, Bill of Rights, 1973 Constitution.

[4] Bernas, The 1973 Philippine Constitution, Notes and Cases, 1974 Edition, p. 330.