

# Moving Forward

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The Dubai First Instance court recently issued a decision, in favour of one of our clients, quashing the claimant's claim of compensation for damaged cargo after it fell from one of the port's cranes. This verdict is so important, because for the first time, the court followed a different approach whereby they accepted that actual delivery is delivery stipulated in the Bill of Lading as opposed to construing physical delivery as the only legal delivery. Indeed, the Dubai First Instance court has deviated from the previous established legal court doctrine which separated the "discharge" operation from the "delivery", whereby it was considered that delivery could take place "by placing the cargo, in its B/L described status, at the actual possession of the receiver or its agent in manner which would enable such receiver or agent to examine the cargo even if the cargo was not yet discharged."<sup>1</sup>

According to previous Dubai Court of Cassation rulings, delivery is not:

- a. the notification of the receiver that its cargo has arrived;
- b. the hand over of the DO to the receiver;
- c. the discharge of the cargo at the port which would constitute a delivery as per the terms of Article 275 of the Law.

"The responsibility of the carrier on the cargo shall end by placing such cargo, in its Bill of Lading described status, at the actual possession of the receiver or its agent in manner which would enable such receiver or agent to examine the cargo."<sup>2</sup>

The Court went even further by considering that "the action of discharging the cargo, in itself, and placing it at the port shall not be considered as a delivery which would relieve the carrier from its responsibility of preserving the cargo. Also, the non-attendance of the receiver to take delivery shall not relieve the carrier from its responsibility to preserve the cargo until such time delivery has taken place or the carrier has placed the cargo under the hands of a court appointed custodian as per article 269<sup>3</sup> of the Law."<sup>4</sup>

The consequence of this principal extended the carrier's liabilities towards the receiver and the non-direct responsibility of port authorities on any damages on the cargo even if such cargo "was delivered to the port authorities and stored at its storage" as long as the cargo was not physically delivered to the receiver.

However; this has clearly been changed by Dubai First Instance Court ruling No. 812/2009 Plenary Commercial dated 22/12/2010 when the court considered cargo delivery legally, physically and actually performed and concluded by the carrier when the cargo was delivered to the receiver as per the terms of the B/L. The verdict went on further to consider the cargo damage as the responsibility of the receiver and port authorities as the carrier handed over the cargo safe and sound as per the terms of the B/L. This decision disregarded the actual delivery principal followed previously by the courts and has finally accepted the B/L as a contract determining the carrier's liability towards the receiver.

Although this decision is not yet final, it is considered a very welcomed development confirming the carrier's liabilities towards the receiver.

<sup>1</sup> Dubai Cassation Court ruling No. 268/1997 dated 8/11/1997.

<sup>2</sup> Dubai Cassation Court ruling No. 268/1997 dated 8/11/1997.

<sup>3</sup> When a party having the right to take delivery of the goods does not attend to take delivery or if such party refuses to take delivery of the same the carrier shall have the right to apply to the competent court for an authorization to place the cargo with a custodian appointed by the court. The carrier shall have the right request the sale of all or part of the cargo against its freight.

<sup>4</sup> Dubai Cassation Court ruling No. 268/1997 dated 8/11/1997.