

The Liability of Freight Forwarding Agents as Middlemen in International Transactions: The Case of Cameroon

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Abstract

International trade relies heavily on effective logistics intermediaries, notably freight forwarding agents, who play a pivotal role in facilitating cross-border transactions. In Cameroon, the complex interplay between legal frameworks, industry standards, and operational realities shapes the liability faced by these agents as middlemen. Despite the foundational legal structures, the liability of freight forwarders in Cameroon is often ill-defined due to fragmented legislation, ineffective implementation, and inconsistent industry practices. Ambiguities in the law and lax enforcement mean stakeholders face uncertainty about the standards of responsibility, compensatory mechanisms, and dispute resolution processes in cases of cargo loss, damage, or delay. The primary aim of this article is to critically assess the legal basis, scope, and practical effectiveness of the liability regime governing freight forwarding agents in Cameroon's international transactions environment. The methodology adopted is purely qualitative research methodology. The method is doctrinal engulfing an in depth analysis of both primary and secondary sources of data. The primary sources of data are gotten from laws, case law why the secondary sources of data are gotten from books, journal articles, reports, newspapers. Finding reveal that Freight forwarders in Cameroon are generally liable for loss or damage to cargo under a presumption of fault, although liability can be limited or excluded by contract, statutory exemptions (such as force majeure), and international convention provisions. The article concludes the current regime governing the liability of freight forwarding agents in Cameroon broadly supported by domestic and international legal instruments, is hampered by inconsistencies, enforcement gaps, and operational ambiguities. This results in uncertainty for parties and impedes effective recourse in the event of disputes or losses. The article recommends that there is the need for the Government of Cameroon to harmonize and clarify liability standards within Cameroonian law and align them more closely with international conventions.

Keywords: liability, freight forwarding agents, middlemen, international transactions

1. Introduction

Since ancient times, mankind has embarked on the path of international trade and transactions. Naturally, with the geographical expansion of the market came the development of transport¹. In the conditions of modern

¹ Cain P., (2014). Complexity, Confusion and the Multifaceted Legal Roles of the international Freight Forwarder. *Macquarie Law Journal*, 13-14, pp. 12-45: 12.

globalization and large flows of goods, the demand for forwarding companies is huge.¹ The continuous flow of movement of goods on the world market forces manufacturers to turn to intermediaries or middlemen who are able to organize cargo transportation services. At the moment, the most common intermediary when it deals with International Transactions is a freight forwarder². The freight forwarder is an intermediate link between the client and the cargo carrier.³ The tasks of the forwarder may include such tasks as the organization of loading and unloading of goods, storage, consolidation, packaging, labelling, selection of performers, documentation, carrying out operations during customs control.⁴

The development and historical evolution of middlemen can be traced to ancient times⁵ and has undergone notable transformations over the centuries. During the ancient times and the early days of International trade,⁶ middlemen were referred to as “Phoenician merchants”⁷ who acted as intermediaries by linking different regions thereby facilitating the exchange of goods and services.⁸ They were in charge of transporting goods across long distances and often by Sea, performed functions such as negotiating prices, ensuring quality of goods, and managing logistics.⁹ As time elapse, middlemen continued to play a crucial role in the trade between China, Central Asia and Europe during the period called “Silk Road Era”.¹⁰ These middlemen men were referred to as intermediaries who organized caravans and facilitated the exchange of goods including spices, precious metals, silk and other commodities. They navigated the logistics challenges of crossing vast distances and cultural barriers.¹¹

During the colonial period¹², and before the industrial revolution¹³, the main person that exercises the place of middlemen was “Grand Distributor”.¹⁴ The grand distributor sold all types of goods and performed all kinds of commercial transactions as “exporter, wholesaler, importer, retailer, ship-owner, banker and insurer”¹⁵. This middleman selected goods from small scale manufacturers and supplied consumers. These conditions changed considerably around the 1800s. One reason was the industrial revolution that over time resulted in substantial

¹ Hesse, M & Rodrigue, J-P, (2004). The Transport Geography of Logistics and Freight Distribution. *Journal of Transport Geography*, 12(3), pp. 171-184: 173.

² Poliak M, Šimurková P, Mrníková, M and Komačková L., (2016). Market Access in Freight Forwarding and Responsibility of Freight Forwarder Transport and Communications. *International Transport Journal*, 2, pp. 67-98: 67.

³ Murphy, PR & Daley, JM, (1995). International Freight Forwarders: Current Activities and Operational Issues. *International Journal of Purchasing and Materials Management*, 31(2), pp. 21-27: 22.

⁴ Cain P., 2014, *Op.cit* p.1.

⁵ Ancient time generally refers to the time period before the Middle-Ages and can be classified as the time period from around 3000 BCE to 500 CE.

⁶ Abhiroop M., (2004). Essays in international trade. The Pennsylvania State University.

⁷ A “Phoenician merchant” refers to a trader from the ancient civilization of Phoenicia, known for their extensive maritime trade across the Mediterranean Sea, particularly famous for their trade in purple dye derived from murex shells, which made them renowned as “traders in purple” in the ancient world; essentially, a Phoenician merchant was a seafaring trader who transported goods across the Mediterranean using their advanced sailing skills.

⁸ Ayelet G., (2022). The Southern Levantine Roots of the Phoenician Mercantile Phenomenon. *Bulletin of the American Society of Overseas Research*, 3(4), pp. 381-405: 382.

⁹ Agbebi F., Fagbote T., (2012). The role of middlemen in fish marketing in Igbokoda fish market, Ondo-state, South Western Nigeria. *International Journal of Development and Sustainability*, 1(3), pp. 880-888: 882.

¹⁰ Adams T., (1988). *The development of Middlemen in international commercial transactions in Europe*. Oxford: Oxford Publishing House, p. 4.

¹¹ Marzena K., Joanna F., Roksana P., (2018). The challenges for Logistics in the aspect of industry. *Journal of Multidisciplinary Aspects of Production Engineering — MAPE*, 1(1), pp. 553-559: 555.

¹² The Colonial period typically refers to the time period in which European powers established colonies and settlements in North and South America, Africa, and Asia from the 15th century to the late 19th century. This period saw significant expansion of European influence and control over various regions around the world.

¹³ The industrial revolution period is typically considered to be the time between the late 18th and early 19th centuries when significant advances in technology, manufacturing, and transportation transformed the economic and social landscape in many parts of the world. This period is often associated with the rise of factories, mass production, and the mechanization of industry.

¹⁴ *Ibid*.

¹⁵ Chandler, A., (1977). *The Visible Hand. The Managerial Revolution in American Business*. Cambridge: Harvard University Press, p. 15.

expansion of the size of companies in the manufacturing sector, consequently enhancing manufacturers' powers.¹ During the industrial revolution in the 18th and 19th centuries, the role of middlemen in International commerce was transformed². Due to the technological advancements which facilitated greater productivity and transportation capabilities, middlemen became involved in a broader range of transactions. They coordinated supply chains³, managed distribution networks, and handled import-export activities.⁴

The first international freight forwarders were innkeepers in London, England who held and re-forwarded the personal effects of their hotel guests in the early 1800s.⁵ One of the earliest freight forwarders was Thomas Meadows⁶ and Co. Ltd., established in 1836.⁷ With the increase in trade between Europe and United States, Medows served as an intermediary to arrange for the transportation of freight from the manufacturers to customers through rail transport and steamships. The services were later expanded to cover consultative solutions and handling customs requirements⁸. Their services can be sought irrespective of the mode of transportation to be used by the shipper. In this light, the use of air freight dramatically reduced transit times, allowing goods to be transported across the globe in a matter of hours.⁹ This development was a game-changer for the international freight forwarding industry, and air freight quickly became a popular choice for time-sensitive and high-value goods.

It is no doubt that middlemen have contributed to the development of trade in Cameroon and therefore have a great impact on the economic landscape of the country. However, some scholars¹⁰ have argued that, middlemen extract excessive profits leaving producers with minimal returns and the presence of multiple intermediaries can lead to a lack of transparency and traceability, making it challenging to ensure fair trade.¹¹ In recent years, there has been a growing trend towards direct trade, with producers seeking to by-pass middlemen and engage directly with consumers. This shift has been facilitated by the rise of e-commerce platforms and social media, allowing producers to market their products and reach a wider audience directly.¹²

Cameroon has several ports, Douala being the major one, followed by the smaller ports of Limbe, Kribi, and Garoua. Doula port has served Central Africa since the 19th century, and although it handles 95 percent of Cameroon's port cargo volume, is also known for its inefficiency.¹³ In an effort to improve the efficiency

¹ Hale U., (2017). Characteristics of international trade intermediaries and their location in the supply chain. *Globalization: Strategies and Effects*, pp. 207-241: 234.

² Carmen P., (2013). Middlemen, informal trading and its linkages with IUU fishing activities in the port of Progreso, Mexico. *Marine Policy*, 39, pp. 135-143: 138.

³ Schramm H., (2007). *The role of Freight Forwarders in International Logistics Chains*. Dresden, Germany: Dresden University of Technology, Faculty of Transportation Sciences, p. 23.

⁴ Pranab B., Dilip M., Masatoshi P., (2013). Middlemen margins and globalization. *American Economic Journal: Microeconomics*, 5(4), pp. 81-119: 96.

⁵ Jackson, Sarita., (2021). *International Trade in Services Effective Practice and Policy*. Taylor & Francis, p. 12.

⁶ Thomas Meadows (1815–1889) was a British artist and writer known for his contributions to the field of Chinese art and culture. He served as an official in the British consulate in China during the 19th century. Meadows is particularly recognized for his watercolor paintings and illustrations depicting Chinese landscapes, architecture, and everyday life. His notable work includes “Chinese and Other Sketches,” which reflects his deep appreciation for and understanding of Chinese culture. Meadows played a significant role in bridging Western and Eastern artistic traditions during a period of significant intercultural exchange.

⁷ U.S. Government Printing Office, (2013). How Logistics Facilitate an Efficient Freight Transportation System, p. 5.

⁸ Mac S, Dennis W, Zheyuan T., (2021). The Evolution of Freight Forwarding Sales. *The Digital Transformation of Logistics: Demystifying Impacts of the Fourth Industrial Revolution*, pp. 329-344: 337.

⁹ Markides V. and Holweg M., (2006). On the diversification of international freight forwarders — A UK perspective. *International Journal of Physical Distribution and Logistics Management*, 36(5), pp. 336-359 :339.

¹⁰ Some scholars who argued that middlemen extract excessive profits include Karl Marx, Adam Smith, and John Maynard Keynes. These scholars emphasized that middlemen were able to exploit their position in the supply chain to charge higher prices and extract more profits for themselves, often at the expense of producers and consumers. They believed that middlemen played a significant role in exacerbating inequalities and inefficiencies in the economy.

¹¹ Rabiya H., Edward K., (2016). Analysis of transport logistics challenges affecting freight forwarding operations in Malawi. *African Journal of Business Management*, 10(24), pp. 607-614: 612.

¹² *Ibid* at p. 5.

¹³ NgonjiNjungwe E., (2008). *Picam position statement: The political economy of sustainable development in Cameroon*. Cameroon: PICAM, p. 24.

indicators, ports were granted administration autonomy in 2000. Transport efficiency however, relies on the state of the infrastructure.¹

As Cameroon experienced economic growth and increased participation in global trade, the role of middlemen continued to evolve. They became more diversified in their activities, adapting to changing market demands and adopting new technologies. Within the agricultural sector, middlemen played a critical role in the trade of cash crops like cocoa, coffee and palm oil.² The middlemen acted as intermediaries between small-scale farmers and exporters, facilitating the purchase, storage and transportation of these commodities.

2. The Legal Status of Freight Forwarding Agents

A forwarder, or forwarding agent is a person or company that organizes shipments for individuals or other companies and may also act as a carrier.³ A forwarder is often not active as a carrier and acts only as an agent, in other words as a third-party logistics provider, they have the expertise that allows them to prepare and process the documentation and perform related activities pertaining to international shipments.⁴ Freight forwarding is a crucial component of the global trade industry, facilitating the movement of goods across borders and between countries. However, this business sector faces several challenges, including operational, economic, and regulatory hurdles.⁵

A forwarder does not directly undertake the moving of goods but acts as an expert in the logistics network. The carriers can use a variety of shipping modes, including ships, airplanes, trucks, and railroads, and often use multiple modes for a single shipment.⁶ For example, the freight forwarder may arrange to have cargo moved from a plant to an airport by truck, flown to the destination city and then moved from the airport to the customer's building by another truck. Some of the typical information reviewed by a freight forwarder is the commercial invoice, shipper's export declaration, bill of lading and other documents required by the carrier or country of export, import, or transshipment. Much of this information is now processed in a paperless environment.⁷

Under the OHADA Uniform Act on General Commercial Law⁸, the forwarding commission agent or the agent responsible for transportation who, for remuneration and in his own name, undertakes to send or forward goods on behalf of his principal, shall be considered as a commission agent but shall be no less subject to the provisions governing the contracts for the carriage of goods.⁹ These forwarding commission agents can be likened to a freight forwarding agent. The forwarding commission agent or agent responsible for transportation shall, inter alia, be liable for the arrival of the goods within the agreed time limit and for any damages and missing goods, except where this results from the act of a third party or an act of God.¹⁰ The customs clearing agent shall be bound to pay, on behalf of his client duties, taxes or fines charged by customs services. The customs clearing agent who has paid, for a third party, duties, taxes or fines charged by customs services shall be subrogated to the rights of the customs services.¹¹ The customs clearing agent shall be accountable to his principal for any error in the customs declaration or in the implementation of customs tariffs, and for any loss which may arise from delay in the payment of duties, taxes or fines. He shall be liable to the Customs and

¹ *Ibid.*

² *Ibid.*

³ Opinions on the value added by freight forwarders varied. While some viewed them as necessary facilitators, others criticized them for potential exploitation and lack of direct accountability to clients. This split perspective suggests a need for a clearer definition of the role and responsibilities of middlemen in the logistics chain. Interview Conducted on the 18/4/2025 in Douala Cameroon.

⁴ The Role Of Freight Forwarders In The Global Supply Chain <https://globalshopaholics.com/blog/role-of-freight-forwarders-in-global-supply-chain/> (Accessed on 18/11/2024)

⁵ Radesh D., Gupta S., Illinish S., Singh N., (2023). An Assessment of Challenges and Factors influencing the Freight Forwarding Businesses in the Logistics Industry. *Economic, Finance and Management Review*, 2(2), pp. 4-23: 5.

⁶ Understanding the Role of Freight Forwarding in Global Trade <https://www.linkedin.com/pulse/understanding-role-freight-forwarding-global-trade-versaclouderp-vwmte> (Accessed on 12/11/2024)

⁷ *Ibid.*

⁸ Hereinafter referred to as UAGCL.

⁹ UAGCL, article 172.

¹⁰ *Ibid* Article 173.

¹¹ *Ibid* Article 174.

Treasury Authorities for customs operations carried out by him.¹

In addition to attracting third-party performers, freight forwarders can carry out cargo transportation by their own forces and vehicles. In the process of transportation, road, rail, water, and air transport can be used separately or in any combination thereof². In addition to the service role, it is necessary to study the legal role of the forwarder.³ The main factor determining the legal role of the forwarder is the entire course of business relations between the forwarder and the shipper, including the contractual terms of the contract.⁴ This means that in any specific claim against the freight forwarder after damage or loss of cargo, the court is likely to consider a general or comprehensive agreement(s) between the shipper and the freight forwarder and a specific contract(s) of carriage related to the carriage of the relevant cargo. The freight forwarder may act contractually as a principal, agent, carrier, or some other legal mixture or hybrid⁵.

Determining the status of the forwarder is further complicated when a third party performs the actual carriage. In the case of *Colverd v. Anglo Overseas*⁶ the court went through the various criteria, no bill of lading was issued but the parties had extensive past dealings. In this case watches were stolen from the vehicle (due to the negligence of the driver) owned and operated by the third party. This 3rd party had been contracted by the defendant forwarders to carry their goods. The plaintiffs, in this case, claimed that the first defendants were under an obligation to fulfill the contract notwithstanding that they had sub contracted the transport to a third party - the second defendants. The judge agreed that the first defendants would be vicariously liable for the acts or omissions of the second defendant's driver but declined after examination of the past dealings to find that the first defendants were negligent.⁷

Generally, Freight Forwarders can act in three legal statuses:

a) Proxy

In this legal status, they (Freight Forwarder) act as direct representatives, working on behalf of and for the account of the shipper or consignee. Here, legal relationships are established directly between the shipper or consignee and the actual service providers.⁸ The freight forwarder is responsible for professionally selecting subcontractors and representing the shipper or consignee during negotiations, contracting, and the execution of services. Payments for these services are made directly by the shipper or consignee to the subcontractors, while the freight forwarder receives separate compensation from the customer.⁹

b) Forwarding agents

In this capacity, the freight forwarder acts as an indirect representative, operating on their own behalf but for the account of the shipper or consignee. Consequently, the legal relationships are established between the freight forwarder and the actual service providers. The freight forwarder is responsible for delivering the services to the shipper or consignee according to the forwarding contract. Payments to subcontractors are made through the freight forwarder, who assumes the risk if the shipper or consignee fails to pay. Besides managing payments, the freight forwarder is also accountable for organizing the entire transportation process and bears the risks associated with delays and other costs resulting from poor coordination.¹⁰

c) Transport Operator

Under this status, the freight forwarder acts as a contractual carrier and issues house shipping documents to the shipper or consignee. The subcontractor issues the master shipping documents in the name of the freight forwarder. Beyond the risks and responsibilities associated with forwarding, the transport operator is also liable for any cargo damage or loss and has the right to pursue claims against subcontractors.

¹ *Ibid* Article 175.

² Gnap J, Poliak M, Sosedová J and Jagelčák J., (2021). *Zasielateľstvo* (Žilina: EDIS-vydavateľské centrum ŽU), p. 262.

³ *Ibid*.

⁴ Smeele F., 2023, *Op.cit*, p.11.

⁵ Cain P., (2014). Complexity, Confusion and the Multifaceted Legal Roles of the international Freight Forwarder. *Macquarie Law Journal*, 13-14, pp. 12-45: 34.

⁶ [1961], 2 Lloyd's Rep. 352.

⁷ *Ibid*.

⁸ Donau Transit Internationale Spedition, *The role of freight forwarder*. Available at <https://donau.bg/en/article/useful/the-role-of-the-freight-forwarder-published-on-30/12/2024> (Accessed on 18/1/2025)

⁹ *Ibid*.

¹⁰ *Ibid*.

Freight forwarders can offer global logistics services without limitations on geographic area, transport mode, or cargo type. Due to their specialized expertise, they often collaborate with other freight forwarding companies, which explains the high level of cooperation within the freight forwarding industry.

3. Liability of Freight Forwarding Agents in Cameroon

Freight forwarders in Cameroon are typically held liable for the period from acceptance of goods to delivery, assuming responsibility for any loss or damage that occurs during this time, as well as for the actions of their chosen substitutes or subcontractors. Their liability extends only so far as they exercise discretion in appointing parties involved in the transaction. The liability regime draws upon domestic regulations, the OHADA Uniform Act, and international conventions such as the CMR, Hague-Visby Rules, or the Montreal Convention, often limiting liability based on contractual terms or exonerating the agent for losses due to force majeure or inherent vice in the goods. Freight forwarders must exercise reasonable care and skill in their duties, selecting competent carriers and acting in good faith. Failures in this fiduciary duty such as negligence or intentional misconduct—may increase or remove statutory protections, exposing the forwarder to broader liability.

The Freight Forwarder's liability to the customer may vary, depending on the conditions of the shipment. The freight forwarder as an intermediary (direct representative) shall also be liable for any other party to the contract, which is involved in the execution of the shipment on its behalf, and shall be liable for all services rendered by them in accordance with the regulations. Freight Forwarders will be held liable as a carrier, following pertinent provisions, if they arrange transportation of the shipment in accordance with freight forwarding contract, assume contractual responsibility for its fulfillment, and come to an explicit agreement with the principal. In running a freight forwarding business, contractual liability is extremely important to clarify its duty, responsibility, and accountability. Without definite liability in contracts, freight forwarders will be exposed to higher risks in operations.¹ Contractual liability in the operational context is often described in Standard Trading Conditions (STC) or General Terms and Conditions (GT&Cs). These are crucial for risk management for freight forwarding business. It is important to discuss the grounds for establishing liability and the types of liability.

Grounds for Establishing Liability of Freight Forwarding Agents

Generally, the creditor² of an unfulfilled obligation is entitled to an execution by equivalent to what was supposed to be performed to his benefit. This makes tortious liability different from liability for contractual non-performance. Indeed, the emergence of professional obligations in freight forwarding agent relationship has given rise to a professional responsibility on the agent that must adapt to the framework of the activity. The freight forwarding agent thus responds to because of the contract he enters into with his clients that is the principal, and because of his general obligation, safety and prudence towards third parties. This section seeks to determine whether, the liability is an indirect liability, a borrowed liability or shared liability. The notion of indirect liability is mostly used to qualify the liability of the managing organs for wrongs committed by its agents. The head of the enterprise is considered as the indirect person to the crime while the agent is the author of the crime.³ Delimiting the scope of liability of commercial intermediaries is a cause for concern and has never been as daunting as it is today.⁴

a) Fault (by Commission or by Omission)

Fault includes both acts (commission) and failures to act (omission) by intermediaries that lead to damage or loss. This standard holds intermediaries accountable when their actions or inactions deviate from accepted practices or contractual obligations⁵. The determination of fault can hinge on the reasonable standards of care expected in international contexts, which might vary significantly across jurisdictions.⁶ Establishing fault may be complicated by the complexity of international transactions and the varying roles intermediaries may play, complicating expectations of performance or knowledge. Intermediaries may argue mitigating circumstances (e.g., reliance on third-party information) to offset claims of fault.⁷ Freight forwarders are liable for damages

¹ Risks and Liabilities of a Freight Forwarder, <https://www.shippingandfreightresource.com/risks-and-liabilities-of-a-freight-forwarder/> (Accessed on 15/9/2024)

² Creditors in this context are referred to commercial agents.

³ *Ibid.*

⁴ Riordan J, (2016). *The liability of internet intermediaries*. Oxford University Press, p. 8.

⁵ *Ibid.*

⁶ The Strict Liability in Fault and the Fault in Strict Liability. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5250&context=flr> (Accessed on 18/5/2025)

⁷ Koelman J., (2000). "Online Intermediary Liability" Copyright and Electronic Commerce (Ed. by P. Bernt Hugenholtz), *NXB Kluwer Law International*, London, UK, pp. 7-57: 28.

caused by their own fault, whether by commission (active wrongdoing) or omission (failure to act). This liability arises when their negligent actions result in breach of contract or harm to the principal's interests. For example, failure to properly select a competent carrier or to supervise third parties can constitute fault leading to liability¹. The forwarder must exercise due diligence in all activities to avoid liability.

b) Negligence

Negligence is a central ground for liability. Negligence is defined as the failure to take reasonable care resulting in damage or injury. For intermediaries, proving negligence typically requires showing that they owed a duty of care, breached that duty, and caused harm as a result.² The standard for negligence can depend on the industry norms and expectations, which can be fluid in international environments. The intermediary's role is crucial; a broker may have different liabilities than an agent or distributor, affecting how negligence is assessed. Intermediaries can argue about the foreseeable nature of harm, potentially limiting their liability when outcomes were unexpected or 'beyond their control.'³ Freight forwarders are expected to act with the care of a prudent businessman in organizing transport and handling goods. Negligence includes failure to comply with instructions, improper choice of transport, failure to provide advice, or failure to track shipments.⁴ Even if unintentional, negligence can lead to liability unless the forwarder proves due diligence or force majeure⁵. Negligence also extends to the acts of third parties the forwarder engages, as the forwarder is responsible for selecting competent service providers.⁶

c) Abuse of Functions

Abuse of functions occurs when intermediaries exceed their authority or act in their own interest, contrary to their obligations to contracting parties. This ground focuses on the misuse of the position granted by a business arrangement. The definition of "abuse" may vary across legal systems, thus complicating claims related to abuse of functions in international transactions.⁷ Demonstrating intent or knowledge of improper conduct can be challenging, creating a higher burden of proof for claimants.⁸ Effective mechanisms for oversight and compliance are critical in preventing abuse and ensuring accountability; however, these mechanisms can be inconsistent in international transactions.⁹ Abuse of functions occurs when the freight forwarder exceeds the scope of their agency or intermediary role, acting beyond their contractual authority or engaging in improper conduct. This can lead to liability if the forwarder acts in bad faith or causes damage by misusing their position. For instance, if a forwarder acts as a carrier without proper authorization or issues documents improperly, they may be liable as a carrier rather than just an agent¹⁰. Abuse of functions undermines trust and breaches the fiduciary duties owed to the principal.

d) Breach of Contractual Duties (Bad faith, Disclosure of Information)

Breach of contractual obligations can lead to liability, especially when intermediaries act in bad faith or fail to fulfill their duties, such as disclosure of material information. Contractual duties are generally more straightforward to enforce given their specificity; however, cultural differences in business practices may complicate interpretations of good faith and disclosure requirements.¹¹ Issues arise concerning the enforceability

¹ Borka Tushevska, (2014). The Liability of the Freight Forwarder, PhD Thesis submitted to the Department of Law, University of Burlington, p. 11. Available at <https://core.ac.uk/download/pdf/35340895.pdf> (Accessed on 19/5/2015)

² Ansgar O., (2021). The liability of intermediaries for trade mark infringement. *Research Handbook on Trademark Law Reform*, 2, pp. 396-431: 401.

³ *Ibid.*

⁴ Risks and Liabilities of a Freight Forwarder. <https://www.shippingandfreightresource.com/risks-and-liabilities-of-a-freight-forwarder/> (Accessed On 19/5/2025)

⁵ The liability of the freight forwarder: scope and limits — Solent Avocats. <https://solent-avocats.com/en/freight-forwarders-liability/> (Accessed on 19/5/2025)

⁶ *Ibid.*

⁷ Guadamuz A., (2014). Developments in intermediary liability. *Research Handbook on EU Internet Law*, pp. 312-336: 318.

⁸ Module 10 Insurance – Traceca. https://traceca-org.org/fileadmin/fm-dam/TAREP/42jram/ps_lib/42_68_AN11_ENG_83.pdf (Accessed on 19/5/2025)

⁹ *Ibid.*

¹⁰ The Liability Of Freight Forwarder - Kılınç Hukuk & Danışmanlık. <https://kilinclaw.com.tr/en/the-liability-of-freight-forwarder/> (Accessed on 19/5/2025)

¹¹ Husovec M., (2016). *Accountable, not liable: Injunctions against intermediaries*. TILEC discussion paper, p. 18.

of contracts in jurisdictions where certain practices (e.g., oral agreements or expectations of disclosure) are not uniformly recognized. Claimants must balance the proof of a breach with potential defenses by intermediaries arguing the ambiguity in contract terms or differing interpretations of “bad faith.”¹ Freight forwarders owe contractual duties including good faith, proper disclosure, and adherence to agreed terms. Breach of these duties, such as acting in bad faith, withholding critical information, or failing to comply with contract terms, grounds liability.² Bad faith may involve misleading the principal or acting for personal gain at the expense of the client. Failure to disclose relevant information affecting the shipment or delivery can cause damage and result in claims against the forwarder³. Contractual breaches are often coupled with fault or negligence to establish liability.⁴

4. The Basis of Liability of Freight Forwarding Agents

Whenever a contract has been formed by employing an agent, issues arise as to the liability of the three parties. Since the agent is only a conduit or means to bring about the contract, the agent does not normally fact legal liability to the third party. The legal liability is between the third party and principal. Accordingly, when the agent discloses to the third party that he is contracting as agent for a named principal, only the principal and not the agent, may sue and be sued on the contract. The Freight Forwarder is liable if he fails to exercise due diligence and take reasonable measures in the performance of the Freight Forwarding Services, in which case he, subject to Art 8, shall compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from breach of his duty of care.⁵ The Freight Forwarder is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.⁶

Freight forwarders owe an obligation of results to ensure goods arrive on time and in good condition⁷. Liability arises upon proof of damage or loss without needing proof of fault. They are personally liable for their own faults, such as failure to comply with instructions, improper transport choice, failure to advise, or documentary errors.⁸ They also have vicarious liability for acts of substitutes (carriers, warehousemen, handlers) they freely choose, covering all damage caused by these substitutes- Liability covers the period from acceptance of goods to delivery; damage before or after this period is generally excluded.

a) Regime of Liability before the Contracts

The silence of the legislator on the subject of the responsibility of the commercial intermediary towards the third party appears in fact to be a detrimental oversight. Its contract shows in reality a legal relationship turned towards the third party in the pursuit of the economic interests of the principal. The responsibility of the commercial intermediary towards the third party thus deserved special attention. If it is possible to admit that the contractual fault is then doubled by a tort fault, the latter however remains independent of the former. Far from identifying with it and being a necessary consequence of it, tortious fault only coincides, so to speak by chance, with a contractual non-performance, because it is not as a contractual breach that it is usefully and very often invoked by third parties, but as a breach of an extra-contractual duty. It will not be a question here of studying the different forms of liability that can be envisaged with regard to a professional. The business of the commercial intermediary works in two directions. Its intervention is made for the benefit of a principal and a

¹ *Ibid.*

² Limited Freight Liability - DHL Global Forwarding - Cameroon
<https://www.dhl.com/cm-en/home/global-forwarding/freight-forwarding-education-center/limited-freight-liability.html> (Accessed on 20/5/2025)

³ Freight Forwarder Liability and Handling of Claims Sample Clauses | Law Insider
<https://www.lawinsider.com/claue/freight-forwarder-liability-and-handling-of-claims> (Accessed on 18/5/2025)

⁴ Liability of carriers and shipping companies. <https://www.gabler-hendel.de/en/haftung-von-frachtfuehrer-und-spedition/> (Accessed on 20/5/2025)

⁵ Article 6.1.1 of FIATA Model Rules for Freight Forwarding Services as adopted by Bahri 2019 (Hereinafter referred to as the FIATA Model Rule). The Model Rules are not mandatory international law but a recommended framework; adoption depends on national associations or individual companies incorporating them into contracts.

⁶ *Ibid*, article 6.1.2.

⁷ The liability of the freight forwarder: scope and limits - Solent Avocats <https://solent-avocats.com/en/freight-forwarders-liability/> (Accessed on 18/4/2025)

⁸ *Ibid.*

third party. The liability regime resulting from his contract will thus be questioned in this double sense.¹

The activity of the freight forwarding agent is deployed through the contractual link that he will forge with his customers. The contract that he enters into with this clientele must then set out the various prerogatives and essential obligations of the stakeholders. It is actually a multitude of contracts between the professional intermediary and the various contractors. It is the agency contract which thus forms the basis of the contractual liability of the commercial agent when it is established that the non-performance of an obligation arising from it is established. This is why the non-performance or improper performance of its obligations may result in its liability. This is fault liability.²

Before any contractual relationship is established, liability of freight forwarders is generally limited or non-existent because no formal obligations have been assumed. However, if the forwarder acts negligently even in preliminary negotiations or arrangements, some jurisdictions may impose liability under tort principles (e.g., fault-based liability). Still, without a contract, claims are difficult to enforce, and liability depends on proving fault or negligence outside contractual duties. In practice, liability mainly arises once a contract is in place, defining the forwarder's obligations and responsibilities.³

It is obvious that the exercise of a profession imposes on a man an activity which is productive for him, and sometimes harmful for the others. There are thus cases where this activity must be allowed despite the dangers it presents, for example that of the doctor trying a treatment; there are cases where it is necessary to oblige to repair, because it is too embarrassing for others: the example of the industrialist who annoys his neighbors. In other words, you cannot treat the professional like a normal man.⁴ The professional's responsibility will thus be considered differently depending on the nature of his activity, his field of action and above all by an appreciation of the rules which govern the exercise of the profession.⁵

The finding is clear. A professional may be held liable for the non-performance of the contract or the poor performance of the contract; but also, a liability established outside the contract that binds it to its co-contracting party. In the case of the OHADA commercial agent in law, the foundations of his contractual liability of the commercial agent have been framed by the texts of uniform law. The implementation of this responsibility remains subject to the classic rules of ordinary law.

b) The Regime of Liability when the Contract is a Going Concern

The regime of liability when the contract is a going concern refers to the legal responsibilities and obligations that parties have under a contract that involves an ongoing business or operation. When a contract is characterized as a "going concern," it means that the business is expected to continue operating indefinitely and is not in the process of being liquidated or terminated.

Once a freight forwarding contract is concluded, the forwarder's liability regime becomes active and is primarily governed by the terms of that contract and applicable law.⁶ The forwarder may be liable:

- As an agent who arranges carriage on behalf of the client, limiting liability to failure to properly select carriers or advise the client.
- As a principal, especially when issuing their own transport documents, assuming full carrier-like liability for loss, damage, or delay of goods in transit.⁷

Courts tend to hold forwarders liable under an obligation of result, meaning proof of damage is sufficient to establish liability, shifting the burden to the forwarder to prove exemption (e.g., force majeure)⁸. The contract's nature, whether a single shipment or ongoing relationship, affects the scope and duration of liability.

¹ Riordan J, 2016, *Op.cit.*, p.12.

² Ansgar O., 2012, *Op.cit.*, pp. 396-431: 415.

³ Risks and Liabilities of a Freight Forwarder. <https://www.shippingandfreightresource.com/risks-and-liabilities-of-a-freight-forwarder/> (Accessed on 21/5/2025)

⁴ *Ibid.*

⁵ Labarthe F, Noblot C, *Traité des contrats, Le contrat d'entreprise, op. cit.*, p. 374.

⁶ Freight forwarder: status, contract and liability - Solent Avocats. <https://solent-avocats.com/en/freight-forwarder-complete-guide/> (Accessed on 21/5/2025)

⁷ Freight-forwarder liability at a glance – Interlegal. <https://interlegal.com.ua/en/freight-forwarder-liability-at-a-glance/> (Accessed on 21/5/2025)

⁸ Freight forwarder's liability insurance. <https://ergo.ee/en/corporate-clients/freight-forwarders-liability-insurance> (Accessed on 21/5/2025)

While legal liability regimes cannot create intermodal transport hubs and transport corridors,¹ it is suggested that they can gently encourage or hinder choices of intermodality by transport users compared to, for example, using a door-to-door road service only.² The complex liability regime resulting from multimodal transportation in particular was subject to a number of investigations and reports, and has been subjected to a number of failed attempts at harmonization. The latter fate is shared by an earlier attempt at regulating contracts of agency for forwarding agents relating to international carriage of goods, making good contracting key to successful troubleshooting when the transaction runs into difficulties and for effective recourse for damages claims.³

Liability can arise from multiple sources and contractual obligations, and each type of freight forwarder liability carries its own legal risks,⁴ which is why having the right contractual protections and insurance coverage is critical.⁵

- Contractual Liability of Freight Forwarding Agent as Commercial Intermediaries

Contractual liability arises from the freight forwarding contract between the forwarder and their client.⁶ The forwarder undertakes an obligation to arrange or perform the carriage of goods, and if they fail to meet these contractual obligations-such as delivering goods late, damaged, or lost-they can be held liable for breach of contract⁷. This liability is governed by the terms agreed upon in the contract and may include limits or exclusions specified therein. The freight forwarder's responsibility here is primarily to fulfill the agreed services with due care.⁸

This type of liability is based on agreements between freight forwarders, shippers, and carriers. Forwarders are legally bound by the terms and conditions of their contracts, including service levels, liability limitations, and dispute resolution mechanisms.⁹

Subject to an obligation of safety and diligence in a general way, and more specifically, to the various obligations resulting from the contract that it enters into with the principal, the commercial intermediary saw the regime of its responsibility in the regard to the co-contracting party will strengthen over time. This strengthening, which stems from the professionalization of the mandate on which its activity is based, seems to be perfectly balanced with the rights recognized to it and the various obligations placed on the principal. Freight forwarders, as commercial intermediaries, have their liability increasingly anchored in contractual terms that explicitly define their duties, limits, and responsibilities. This contractual liability is "consecrated" by:

- Clear service agreements specifying the forwarder's role (agent or principal).
- Standard trading conditions or FIATA Model Rules often incorporated to regulate liability.
- Courts enforcing these contracts strictly, especially when forwarders issue their own transport documents, thereby assuming principal liability.¹⁰

This contractual framework ensures predictability and risk allocation between parties in international trade logistics.

On its part, the OHADA general commercial law establishes the mandate conferred on the agent as the

¹ And these must be created by other methods such as the CT Directive and other initiatives.

² In preparation of the Proposal studies undertaken, albeit having a very different focus, issues of the liability regime were nevertheless mentioned as causing problems in unifying transport documentation (see And REFIT ex-post evaluation of Combined Transport Directive 92/106/EEC Final Report, SWD (2016) 140 final, p. 38, <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=17165337> (Accessed on 18/2/2025))

³ Tushevska B., (2015). Liability Of The Freight Forwarders according To National And International Law. *Iustinianus Primus Law Review*, 6(1), pp. 1-15: 2.

⁴ *Ibid.*

⁵ Miloš P, Ekaterina S., (2023). Research of the relevance of changing the liability limit of freight forwarders in selected countries. *Transportation Research Procedia*, 74, pp. 88-92: 89

⁶ *Ibid.*

⁷ Rogers W., (1980). Two Statutory Strict Liabilities. *The Cambridge Law Journal*, 39(1), pp. 124-136: 127.

⁸ Sheinman H., (2020). Contractual liability and voluntary undertakings. *Oxford journal of legal studies*, 20(2), pp. 205-220: 211.

⁹ Ben-Shahar O., (2003). Contracts without consent: exploring a new basis for contractual liability. *University of Paris Law Review*, 152, pp. 1829-1856: 1835.

¹⁰ *Ibid.*

foundation on which the responsibility of the commercial agent must be established.¹ But it should be noted that this liability goes beyond the responsibility derived from the mandate. The commercial agent liability may also be engaged when he has not performed his contractual obligations, or when he has performed them poorly, as required by the principles of law. This led us to question on the extent of the liability of commercial agent. In clarifying this extent of liability, classically, the liability of the agent in its contractual dimension refers to a jungle of very dense special regimes², but which it is nevertheless possible to cross with complete assurance by examining on the one hand the non-performance of contractual clauses and, on the other hand, the poor execution of contractual clauses.³

It is a general rule that the freight forwarding agent contract, once validly formed, must be performed under the terms stipulated by the parties and in accordance with custom, good morals and legal requirements.⁴ This is expressed in the Latin maxim *pacta sunt servanda*. The principle of *pacta sunt servanda* is literary interpret to mean “promises must be kept”.⁵ This principle requires the parties to comply with their freely expressed will at the time of the formation of their contract by performing it in good faith. The *pacta sunt servanda* principle is the direct corollary of the doctrine of sanctity of contract and presupposes that contracts made by solemn promises by the parties must be respected. Under French contract law, the principle of the binding force of contracts is formally recognised and given a prominent place in the “*Code Civile*”. Article 1103 reuses almost identically the near sacrosanct wording of old article 1134, paragraph 1, that legally formed agreements have the force of law between the parties. This means that contracts must be given effect and adhered to: *pacta sunt servanda*, one must perform that which one has promised. It is a principle that is perceived to promote legal certainty and justify the centrality of specific performance as a remedy for breach.⁶

Forwarders are liable for breaches of specific contractual clauses, which may include:

- Failure to deliver goods on time or in good condition.
- Non-compliance with client instructions.
- Inadequate disclosure or misrepresentation.
- Improper selection or supervision of carriers and subcontractors.

Such breaches expose the forwarder to claims for damages, including direct losses and consequential damages, depending on the contract terms and governing law⁷.

- **Tortious/ Civil Liability**

Tort liability arises when a freight forwarder is found responsible for negligence, misrepresentation, or failure to exercise due diligence in handling cargo or providing logistics services.⁸ To establish the tortious liability of a freight forwarder, the following conditions must be critically examined:

- **Conditions to establish Tortious Liability**

Tortious liability of a freight forwarder is established by proving the existence of a duty of care, breach of that duty, resulting damages, and a direct causal link between the breach and the damages.⁹ The scope of liability depends on the nature of the forwarder’s role-whether purely intermediary or also acting as a carrier-and the terms of the contract. See the case of *Donoghue v Stevenson*.¹⁰

i) The Duty of Care owed by the Agent

A freight forwarder owes a duty of care to the consignor or cargo owner to handle goods with due diligence and

¹ Article 182 of UAGCL.

³ Nguiffeu Tajouo E. L., (2015), *op. cit.*, p.

⁴ Article 177 of the UAGCL.

⁵ This entails that obligations in the terms of the contract must be honoured since they were entered into voluntarily and thus, must be enforced by the courts.

⁶ Rowan, S., (2001). The new French law of contract Review. *International & Comparative Law Quarterly*, 3, pp. 1-21: 24.

⁷ General conditions for Freight Forwarding, available at <https://www.mauriceward.com/gr/trading-terms.pdf> (Accessed on 22/5/2025)

⁸ Yadav V., (2023). Essentials for the Formation of Tortious Liability. *Indian Journal of Law & Legal Research*, 5(2), pp. 1-22: 5.

⁹ Jeremiah S., (1911). Legal cause in actions of tort. *Harvard Law Review*, 25, pp. 303-334: 305.

¹⁰ [1932] AC 562.

protect them during transit.¹ This duty arises from the contractual relationship and the nature of the forwarding service, which involves either arranging or sometimes directly undertaking carriage of goods. The duty includes selecting competent carriers and ensuring proper handling of cargo. Therefore, anyone claiming compensation from the freight forwarder needs to establish that, the Freight Forwarder owes him/her a duty of Care and not directed to someone else.²

ii) The Breach of the Duty

A breach occurs when the freight forwarder fails to exercise the required standard of care, such as negligence in handling, improper packaging, or failure to prevent loss or damage. Courts often assess whether the forwarder acted reasonably under the circumstances and fulfilled contractual obligations.³ If the forwarder acts beyond intermediary roles and assumes carriage, their liability may be akin to that of a carrier. It is not only sufficient for anyone claiming Compensation to show that the forwarder not only owes him a duty of care but that he (the freight forwarder) has breach that duty owed to him. The breach of duty here might entails and act or omission committed by the Freight Forwarder.⁴

iii) Consequential Damages suffered as a result of the breach

Damages must be actual and quantifiable losses resulting from the breach, such as loss, damage, or delay of goods. The freight forwarder is liable for damages directly linked to their failure unless they prove the damage was unavoidable or caused by factors outside their control (e.g., force majeure). So, the person claiming Compensation must show that as a result of that breach of duty, he has suffered some consequential damage. Some authorities have held that the damage must be access in financial calculations.⁵

iv) Link between the Breach of Duty and the Damages suffered

There must be a causal connection between the breach and the damages. The plaintiff must prove that the damage was caused by the freight forwarder's negligence or failure to meet the duty of care⁶. This causal link is essential for liability; without it, the forwarder cannot be held responsible. Most of the time, for the person to recover damages, he or she must show a closed link between the breach of duty and the damage suffered by the person. This is so because failure to establish the causal link might lift the person uncompensated.

- Criminal Liability of the Freight Forwarder

Criminal liability of a freight forwarder arises when the forwarder violates specific laws or regulations related to transportation, customs, or other statutory duties. Unlike civil liability, which usually involves compensation for loss or damage, criminal liability involves penalties such as fines or prosecution for unlawful acts.⁷

- Conditions Necessary before Criminal Liability is Imposed

Criminal liability of a freight forwarder is imposed only when there is a clear breach of statutory duties involving unlawful acts, supported by intent or negligence, causation of harm or risk, and compliance with procedural rules. It differs from civil liability by focusing on penal sanctions rather than compensation and requires strict proof of illegal conduct beyond contractual or tortious breaches.⁸

i) Existence of a Criminal Offense (Actus Reus)

The freight forwarder must have committed an act that is expressly prohibited by law, such as fraud, smuggling, violation of cabotage regulations, or operating without required licenses or authority. For example, ordering cabotage transport in violation of regulations can trigger criminal liability only if the transport has been fully carried out unlawfully. The act must have been made an offence.⁹

¹ Krvavac M., (2010). Tortious Liability and Conflict of Laws. *Acta Universitatis Danubius Juridica*, 6(2), pp. 109-126: 115.

² *Ibid.*

³ Goodhart A., (1938). The Foundation of Tortious Liability. *Model Law Review*, 2(1), pp. 2-15.

⁴ *Ibid.*

⁵ Forell C., (1990). The Statutory Duty Action in Tort: A Statutory/Common Law Hybrid. *Indiana Law Review*, 23, pp. 781-803: 781.

⁶ Glanville W., (1939). The foundation of Tortious liability. *The Cambridge Law Journal*, 7(1), pp. 111-132: 115.

⁷ Minchenko R, Lutsyuk P, Dmitriy K, et al., (2021). Civil and criminal liability in the field of transport relations: the impact of the Covid-19 pandemic. *Amazonia Investiga*, 10(40), pp. 212-221: 212.

⁸ *Ibid.*

⁹ As expressed in the Latinism "Nullum Crimen Nolla peona Sine Lege" meaning there is no punishment for an act which has not been recognized as crime. Also as enshrined under Section 17 or the Cameroon Penal Code i.e. Law No. 2016/007 of July 12, 2016, relating to the Penal Code.

ii) Breach of Legal Duties or Regulations

The forwarder must have breached specific statutory duties, such as failing to report theft or accidents to authorities, or engaging in interstate operations without proper registration or operating authority. Such breaches may lead to criminal penalties, including fines up to \$10,000 or more depending on jurisdiction and severity.¹

iii) Mens Rea (Intention)

It is often said that an act alone does not make a man guilty unless his mind is blameworthy. This simply means that for someone to be held liable for a criminal offense, the person must have intended his or her actions that accompanied the act.² Criminal liability generally requires proof that the freight forwarder acted knowingly, recklessly, or negligently in violating the law. Mere accidental or unavoidable events typically do not incur criminal liability.³ As earlier mentioned, a freight forwarder can be an individual who personally engaged in contracts or it may take the form of a Corporate Body. Where it operates as individual, in case of Criminal offense, the punishment is that subject to natural persons under the Penal Code.⁴ However where the Freight Forwarder operates as a Corporate Body with Separate Legal Personality, in case where the corporation is used to commit offense, the courts can impose the punishment prescribed under Section 25-2 and Section 25-3 of the Penal Code.⁵ Corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives.⁶ The provisions of the subsection above shall not apply to the State and its agencies.⁷ The criminal responsibility of natural persons who are authors of reprehensible acts may be compounded with that of corporate bodies.⁸

- Statutory Liability

Statutory liability is defined by international transport laws and conventions that regulate the liability of freight forwarders based on the mode of transport used. Defined under CMR Convention, Hague-Visby Rules, Montreal Convention, and Rotterdam Rules.⁹

Statutory liability is imposed by laws and regulations that govern freight forwarding operations. This includes compliance with customs laws, transportation regulations, licensing requirements, and safety standards.¹⁰ If the forwarder violates these statutory duties—such as failing to comply with customs declarations, operating without proper licenses, or breaching safety regulations—they may face fines, penalties, or other legal sanctions. Statutory liability ensures the forwarder adheres to mandatory legal frameworks beyond contractual terms¹¹.

Under maritime law, the concept of General Average applies when a voluntary sacrifice is made to save a vessel and its cargo from peril. Freight forwarders may be required to contribute to these costs, making it essential to understand their potential financial exposure under international regulations.¹²

- The Liability of the Agent to Third-Party (Third Party Liability)

Freight forwarders often subcontract warehousing, trucking, and last-mile delivery services, which can expose them to liability if third parties fail to meet their obligations¹³. Freight forwarders must ensure that contracts with subcontractors include contractual defenses in freight claims, limiting their liability for third-party actions.¹⁴

¹ Rahman F, (2018). *Shipper liability for cargo*. City, University of London, p. 11.

² This is enshrined in Section 74(2) of the above cited Cameroon Penal Code which states that “Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it.”

³ *Ibid*.

⁴ Section 23, 24, and 25-1 of the Penal Code which talks about principal penalties like death penalty, imprisonment term or fine.

⁵ Dissolution, permanent or temporary close up, fines.

⁶ Cameroon Penal Code 2016, Section 74-1(a).

⁷ *Ibid*, Section 74-1(b).

⁸ *Ibid*, Section 74-1(c).

⁹ Kamaluddin A, Vandawati C., (2025). Liability of Freight Forwarding Companies for Losses on Delivery of Fishery Products Due to Container Shortage Effects. *Media Juris*, 8(1), pp. 23-54: 50.

¹⁰ Davies M., (1997). Common law liability of statutory authorities. *UW Australia Law Review*, 27, pp. 21-47: 21.

¹¹ Roger's W., 1980, *Op.cit*, pp.124:136:129.

¹² *Ibid*.

¹³ Brishen R., (2010). Toward third-party liability for wage theft. *Berkeley Journal of Employment and Labor Law*, 31(1), pp. 1-64: 29.

¹⁴ Goldberg V., (1988). Accountable accountants: Is third-party liability necessary? *The Journal of Legal Studies*, 17(2), pp. 295-312: 299.

Third-party liability covers claims arising from damage or injury caused to persons or property not directly involved in the freight forwarding contract. For example, if the forwarder's operations cause bodily injury to a third party or damage to third-party property (such as accidents involving cargo handling equipment), the forwarder can be held liable. This liability protects against legal claims from external parties and often requires specific insurance coverage to mitigate financial and reputational risks.

The Freight Forwarder is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.¹

The liability of a freight forwarding agent to third parties is complex and depends on the agent's role, contractual terms, and applicable laws. A freight forwarder may act as an agent arranging transport through third parties (carriers, warehousemen, customs brokers), or as a principal if they undertake carriage themselves, issue their own transport documents, or use own equipment². When acting as an agent, the forwarder's liability to third parties is generally limited; they are responsible for exercising due diligence in selecting and supervising third parties but not for the third parties' acts unless negligent in oversight³. As a principal or contracting carrier, the forwarder assumes full carrier liability akin to that of a carrier, responsible for loss, damage, or delay of goods.⁴

If the agent claims that he is acting as an agent but in fact has no authority to enter into the contract in question, the agent can be sued by the third party for the untrue representation of authority he made. See *Collen v Wright*⁵. A commercial intermediary, who acts without authority or beyond the scope of his authority shall, in the absence of ratification, be bound to compensate the third party so that the latter is put back in the position in which he would have been if the commercial intermediary had acted with authority and within the scope of such authority. The commercial intermediary shall, however, incur no liability where the third party knew or should have known that the intermediary had no authority or was acting beyond the scope of his authority.⁶ The principal shall reimburse the commercial intermediary, in terms of principal and interest, any advances paid and costs incurred by the latter in the normal performance of the mandate, and shall release him from obligations entered into.⁷

5. Conclusion

The liability of middlemen in international transactions, particularly freight forwarding agents in Cameroon, is shaped by a combination of legal frameworks, contractual obligations, and industry practices. Freight forwarders occupy a crucial intermediary role in the logistics chain, navigating between importers, exporters, customs, and carriers to ensure timely delivery and compliance with regulatory requirements.

In Cameroon, issues such as customs delays, regulatory fragmentation, and the presence of unlicensed operators heighten the complexity of freight forwarding. New initiatives, such as the unification of forwarders under organizations like Gotram, reflect industry efforts to advocate for better practices, reduce disputes, and increase operational transparency. However, while freight forwarding agents in Cameroon benefit from certain legal protections and limitations, their intermediary status imposes a duty to diligently manage the risks inherent in international transactions. Compliance with statutory, contractual, and ethical standards remains critical for protecting both their interests and those of their clients in the increasingly dynamic landscape of global trade. It is recommended that, there is the need for the Government of Cameroon to harmonize and clarify liability standards within Cameroonian law and align them more closely with international conventions; enhance judicial specialization in transport law to promote consistent and timely dispute resolution; encourage professionalization and licensing of freight forwarding agents to enforce higher standards of diligence and accountability; and to promote sector-wide adoption of best practices and transparent risk management tools, such as comprehensive cargo insurance policies, to safeguard stakeholders.

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¹ FIATA Model Rules, Article 6.1.2.

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³ Freight Forwarding – Bahri. <https://www.bahri.sa/en/logistic-services/freight-forwarding/> (Accessed on 20/5/2025)

⁴ The Liability Of Freight Forwarder - IR Global. <https://irglobal.com/article/the-liability-of-freight-forwarder/> (Accessed on 20/5/2025)

⁵ (1857) 8 E & B 647.

⁶ UAGCL *Op.cit*, Article 153.

⁷ *Ibid* Article 154.

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