

TABLE OF CONTENTS

TRANSPORTATION, LOGISTICS AND THE LAW

	PAGE NO.
Objectives of this Text	1
Laws Governing the Carriage of Goods To, From and Within the United States	3
A. Federal Jurisdiction	3
1. An Overview of the Statutory Scheme	3
2. Interstate vs. Intrastate Commerce	5
3. Foreign Commerce	6
4. National Transportation Policy	7
5. How Transportation Laws are Created	7
a. Common Law	7
b. Statutory Law	7
B. Regulation of the Railroad Industry	8
1. The Evolution of Regulation	8
2. Jurisdiction of the Surface Transportation Board	10
3. Line Construction	11
4. Line Acquisition	12
5. Line Abandonment	13
6. Railroad Mergers and Captive Shippers	15
7. Railroad Rates	16
8. Competitive Access	20
9. Railroads' Liability for Loss, Damage and Delay	20
a. The Carmack Amendment	20
b. Released Rates	21
c. Alternatives to Carmack Liability	23
d. Deductibles	25
e. Defenses to Liability and Burdens of Proof	25
f. Venue	26
10. Bills of Lading	27
a. Interpretations of Bills of Lading	28
11. Fines and Penalties	30
12. Other Reference Materials on Railroads	30
13. Rail Consumer Assistance Program	30
C. Regulation of the Motor Carrier Industry	31
1. History of Motor Carrier Regulation	31
2. Current Motor Carrier Regulation	32
a. Entry Requirements	33
(1) U.S. Domiciled Motor Carriers	33
(2) Mexican Motor Carriers	34
b. Insurance Requirements	36
(1) Public Liability and Property Damage	36
(2) Cargo Insurance	38
c. Safety	40
d. Process Agents	42
e. Exemptions from Federal Motor Carrier Regulations	42
f. Fines and Penalties	43
3. Rates, Rules and Classifications	44
a. The "Filed Rate Doctrine"	44
b. The Repeal of Rate and Tariff-Filing Requirements	46
c. Common v. Contract Carriage	47
d. "Truth-in-Billing" Regulations	48
e. Antitrust Immunity for "Collectively-Made" Rates and Classifications	49

(1) Rate Bureau Rates	49
(2) The Classification System.....	50
(3) Problems With the Classification System	52
(i) Liability Limits	52
(ii) Notice to Shippers	53
(iii) Appellate Procedures	53
(4) The Future of the Classification System	54
f. Liability for Freight Charges.....	55
(1) The Basics - Shipper vs. Consignee Liability	55
(2) Bankrupt Carrier v. Shipper	55
(3) Jurisdiction over Freight Charge Disputes.....	56
(4) Federally Legislated Time Limitations	57
(i) The 180-Day Rule	57
(ii) The 18-Month Statute of Limitations	58
(iii) Overcharge Regulations.....	58
g. Disputes Over Who is Liable for Freight Charges	59
(1) Shipper v. Consignee Liability	60
(2) Shipper v. Freight Bill Payment Company.....	61
(3) Shipper Liability When Using Intermediaries	62
(i) Brokered Shipments.....	62
(ii) Surface Freight Forwarder Shipments	64
(iii) Ocean Freight Forwarder Shipments	66
(iv) Airfreight Forwarders Shipments.....	69
h. Violation of Carriers' Credit Rules	69
i. Carrier Liens	72
j. Collect on Delivery (COD)	73
4. Principles of Contract Law	74
a. In General	74
(1) Duty of Good Faith	75
(2) Third Party Beneficiary Contracts	76
(3) Reformation	77
(4) Electronic Signatures.....	78
b. Transportation Contracts	78
c. Bills of Lading	80
d. ATA's Proposed Uniform Contract	83
e. Pro Stickers	84
5. Motor Carrier Liability for Loss, Damage and Delay.....	85
a. Statutory Liability (The Carmack Amendment).....	85
b. Released Rates on Used Machinery	92
c. The Erosion of "Full Actual Loss" Liability	92
d. "Notice" of Carriers' Tariff Limitations	93
(1) When No Notice Was Given	93
(2) When Constructive Notice Was Given.....	96
e. Burdens of Proof.....	98
f. Measure of Damages	102
(1) General vs. Special Damages	102
(2) Freight Charges as Recoverable Damages.....	105
(3) Replacement Shipments (Manufactured Cost v. Invoice Price)	105
g. Claim and Suit Filing Requirements	107
(1) Claim Requirements	107
(2) Amount of the Claim	107
(3) Claims for Uncertain Amounts.....	109
(4) Claim Filing Time Limits.....	110
(5) Suit Filing Time Limits.....	111
(6) Disallowances.....	112
(7) Depositing Claim Checks.....	113

(8) Concealed Loss and Damage Claims	113
(9) Carriers' Claim Requirements.....	114
(10) Non-Deliveries	114
(11) Motor Carriers' Claims Statistics	115
h. Litigation Issues.....	115
(1) Legal Basis for Suits Against Carriers and Warehousemen.....	117
(2) Where to Institute Suit.....	119
(i) Jurisdiction	119
(ii) Venue	123
(3) The Carmack Amendment's Preemption of State Law Remedies	124
(i) Federal Regulatory and Legislative Background.....	124
(4) Prejudgment Interest.....	130
(5) Attorney Fees.....	131
(6) Private Enforcement Actions ("Self-help")	132
(7) Arbitration and Mediation	132
(8) Fundamental Breach and Rescission	134
(9) Spoilation of Evidence	135
(10) Freedom of Information Act	136
(11) Expert Testimony	136
i. Department of Transportation's Cargo Liability Study.....	138
j. Waivers in Contracts	138
6. Cargo Insurance.....	140
a. "Traps for the Unwary"	140
b. Motor Carriers' and Freight Forwarders' Insurance Policies.....	141
c. Brokers' Policies	143
d. Parcel Express Carriers' Insurance	144
e. Shipper's Remedies	145
7. Household Goods Carriers	146
a. Statutory Regulation.....	146
b. Household Goods Loss and Damage Claims	148
c. Household Goods Arbitration	150
d. Proposed Remedial Legislation	151
8. Parcel Express Carriers	153
a. In General:	153
b. Liability Limitations and Rates	154
c. Guaranteed Service Offerings	156
d. Parcel Packaging Stores.....	157
9. Preemption of State Regulation and Laws Relating to Rates, Routes And Services.....	158
a. Breach of Contract Claims.....	159
b. State Tort Laws.....	162
10. Exemption from Federal Trade Commission Jurisdiction	162
D. Shippers and Carriers' Duties, Responsibilities & Exposure to Lawsuits	163
1. Shippers' Responsibilities	163
a. Packaging of Goods	163
b. Terms of Sale	163
c. Duty to Accept Goods on Delivery and Mitigate Loss	164
d. Liability for Injury & Death Actions by Third Parties	165
e. Determining the Status of Parties to Transportation Arrangements.....	168
f. Duty to Accurately Describe Goods.....	169
2. Carriers' Duties, Responsibilities and Exposure to Lawsuits.....	169
a. Inspection of Goods Loaded by a Shipper	169
b. Duties in Loading and Unloading.....	171
c. Reasonable Dispatch.....	171

d.	Mitigation of Loss.....	171
e.	Duty to Charge the Lowest Rate	171
f.	Leasing Owner-Operators' Equipment	172
g.	Liability for Injury and Death of Third Parties ("Logo Liability").....	173
h.	Exposure to Product Liability Suits on Salvaged Goods	176
i.	Liability for Damages for Violating the I.C. Act	176
j.	Interchange of Freight with Interline Carriers	176
k.	Driver Hours of Service Regulations	177
E.	Regulation of The Airline Industry.....	177
1.	Domestic Statutes and Regulations.....	177
a.	Airline Regulations under the Former CAB	177
b.	Deregulation of the Airline Industry	178
c.	Intermodal Traffic (Air-Truck).....	181
d.	Foreign Airlines' Trucking Operations.....	184
e.	Preemption of State Laws.....	185
2.	International Treaties	186
a.	The Warsaw Convention	186
b.	The Montreal Protocol No. 4.....	187
c.	"The Hague Protocol" Air Treaty of 1955.....	190
F.	Regulation of the Ocean Shipping Industry	191
1.	Domestic Statutes.....	192
a.	Regulatory Functions of the Federal Maritime Commission.....	192
b.	The Ocean Shipping Reform Act of 1998.....	192
c.	Intermodal Safe Container Act of 1992	193
d.	The Jones Act.....	194
2.	Ocean Cargo Liability Regimes (Domestic and International).....	195
a.	The Harter Act.....	195
b.	The Carriage of Goods by Sea Act (COGSA)	196
c.	Burdens of Proof.....	202
d.	The Visby Amendment (Hague-Visby Rules)	203
3.	Security	204
a.	Container Security Initiative (CSI)	204
b.	Advance Cargo Manifest Rules (Ocean)	205
c.	Required Advanced Electronic Presentation of Cargo Information; Proposed Rule (Importing).....	206
d.	Proposed Advance Cargo Manifest Reporting (Exporting)	208
e.	Food Safety and Inspection Service Guidelines (All Modes)	210
f.	Public Health Security and Bioterrorism Preparedness and Response Act.....	212
g.	Customs-Trade Partnership Against Terrorism (C-TPAT)	215
h.	Free and Secure Trade (FAST) Program.....	215
G.	Multimodal Arrangements	216
1.	Multimodal Bills of Lading.....	216
2.	Through Bills of Lading.....	217
3.	Case Law on Liability for Loss and Damage for Multimodal Movements	218
a.	Truck-Air.....	218
b.	Ocean-Truck.....	219
c.	Ocean-Rail.....	220
H.	Regulation of Intermediaries.....	221
1.	Surface Transportation.....	221
a.	Brokers.....	221
(1).	Regulation of Brokers	221
(2).	Liability of Brokers for Claims and Charges	222
(3).	Brokers Insurance.....	223
(4).	Broker's Liability for Negligence	224
(5).	Brokers' "No Back Solicitation" Provisions	228

(6). Ownership of Brokers' Funds	228
b. Freight Forwarders (Surface)	229
c. Intermodal Marketing Companies (IMC's).....	230
d. Third Party Logistics Providers	230
(1) The 3PLP's Legal Status	231
(2) The Potential for a Conflict of Interest	231
(3) Financial Responsibility	232
(4) Disruption of Shipper's Supply Chain if a 3PLP Fails to Perform	232
(5) Production of Governing Tariffs and Contracts.....	232
2. Airfreight Forwarders.....	233
3. Ocean Transportation Intermediaries.....	233
a. Ocean Freight Forwarders	234
b. Non-Vessel-Operating Common Carriers (NVOCC).....	235
I. Importing and Exporting	237
1. Importing Procedures.....	237
a. Customs and Importers	237
b. Entry of Goods.....	238
c. Customs Examination of Entry Goods/Documents	239
d. Importer Obligations	239
e. Penalties	240
2. Customs Brokers.....	240
3. Customs Compliance Activities.....	242
4. Customs Classifications	242
5. Foreign Trade Zones	242
J. Exporting.....	244
K. Terms of Sale for Domestic and International Contracts	246
1. Domestic Sales Contracts	246
2. Factors for Deciding on Terms of Sale	248
3. International Sales Contracts (Incoterms)	249
4. The Difference Between Terms of Sale in the UCC and Incoterms.....	250
L. Pending International and Domestic Laws and Treaties.....	250
1. The Hamburg Rules	251
2. The International Multimodal Transport Convention	252
3. The MLA's Revision of COGSA.....	252
a. Applicability	253
b. Scope of Coverage	253
c. Carrier Defenses to Liability	253
d. Standard of Liability.....	253
e. Liability Limit.....	253
f. Modification of Liability Limit by Agreement.....	254
g. Apportionment of Liability.....	254
h. Time Limit for Loss or Damage Suits/Arbitration	254
i. Shipper Liability	254
j. Notification of Loss or Damage	254
k. Bills of Lading	254
l. Forum Selection Clauses	254
4. NITL/WSC's Proposed Amendments to COGSA.....	255
5. Cross-Border Trucking Under the North American Free Trade Agreement (NAFTA).....	256
6. National Law Center's No. American Uniform Through Bill of Lading.....	259
7. Inter-American Convention on the International Carriage of Goods by Road.....	261
M. Introduction to Hazardous Materials Regulations	262
1. Identification of Materials.....	263
2. Classification of Materials.....	263

3. Quantities	264
4. Samples.....	264
5. Packaging.....	264
6. Package Marking.....	264
7. Labeling	264
8. Placarding	264
9. Shipping Papers	265
10. Emergency Response Information.....	265
11. Certification	265
12. Training and Testing	265
13. Registration	266
14. Security Requirements for Offerers of Hazardous Materials	266