

*The Hong Kong Polytechnic University
Department of Logistics and Maritime Studies
Research Seminar*

**The Indemnity Principle in Cargo Insurance in Multimodal Transport:
A Comparative Study of English and Chinese Law**

by

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(Conducted in English)

Abstract:

With the growth of multimodal transport, there is a pressing need for insurance to fully cover the risks of loss of and damage to goods in transit against perils from the sea, air, rail and road, as well as during cargo operation and temporary storage whilst switching transport modes. China has become one of the major exporting and importing countries in the world. Stakeholders in China have taken various ways of insuring their goods in both domestic and foreign insurance markets. In China, the laws applicable to marine and non-marine insurance are separate. This poses a real dilemma in the application of law, since the insurance of goods in multimodal transport may or may not fall within the bounds of marine insurance. Due to the complexity of multimodal transport, such insurance issues keep arising; however, there has thus far been no dedicated research into the insurance of goods in multimodal transport.

The fundamental principle in insurance law is that of indemnity, under which the assured who suffers a loss caused by the insured contingencies shall be indemnified by the insurer for his loss, such indemnity being limited to his loss. This principle is closely allied with those of insurable interest, measure of indemnity, and subrogation regarding the object, content, and aftermath of indemnity, respectively.

Given the above, this thesis investigates the application of the indemnity principle in the insurance of goods in multimodal transport in China, mainly by conducting a comparative analysis with English insurance law. Its key findings are as follows:

- (1) The classification of the insurance of goods in multimodal transport and its applicable law depend on the employment of a sea leg.
- (2) The seller, buyer, carrier and freight forwarder all have insurable interests in goods in multimodal transport, subject to the satisfaction of the proposed pecuniary interest approach.
- (3) There are inconsistencies between Chinese general insurance law and marine insurance law relating to total loss and its valuation, and also ambiguities regarding the extent of loss and deductibles.
- (4) Whether the carrier or actual carrier are regarded as the "third party" under subrogation depends on individual insurance and carriage arrangements. Where recovery from the third party is insufficient to compensate the paid indemnity, the pro rata approach best reflects the legal basis of subrogation.

The contributions of this thesis are twofold. Firstly, it provides a complete picture of how goods are insured in multimodal transport and analyses the classification and applicable law of contemporary insurance contracts for goods in multimodal transport. Secondly, it comprehensively examines the principle of indemnity under Chinese law with regard to the insurance of goods in multimodal transport, and identifies the ambiguities and inconsistencies in current Chinese law and regulations. This thesis is the first piece of dedicated scholarly work on the insurance of goods in multimodal transport, from the perspective of the most fundamental principle of insurance law – the principle of indemnity. It pinpoints specific suggestions for drafting insurance contracts for goods in multimodal transport, as well as for better coordinating the laws relating to marine and non-marine insurance contracts in China.

Bio:

Ms Mingzhao Zhang received her LLB in Dalian Maritime University and MSc in the Hong Kong Polytechnic University. She has several years working experience in marine claims handling and research field. She is currently pursuing her PhD under the supervision of Dr Zhu Ling.

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All are welcome!