

Liability for the load

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The carriers' statutes allocated the risk of loss. As a general rule, a carrier who received goods at a *Sust* was liable for their safe delivery at the next *Sust* unless the loss was caused by force majeure (avalanche, flood, war) or by the defective packing of the goods. The community stood behind its members: if a carrier could not pay, the *Port* or the *vicinanza* was liable in his place, or at least it undertook to pursue him.¹ This collective liability made the carriage of goods through several jurisdictions possible at a time when a merchant from Basel or Nuremberg could hardly sue a peasant in the Leventina. The merchant's claim was against the community and, through the treaties, against the government that protected it.

The modern Swiss law of carriage follows the same allocation of risk. Under the Code of Obligations, a carrier is a person who undertakes to carry goods for a fee (Art. 440 CO). The carrier is liable for the loss or destruction of the goods unless it proves that the loss was caused by the nature of the goods, by the fault or instructions of the sender or consignee, or by circumstances that could not have been avoided with the diligence of a prudent carrier (Art. 447 CO).² The medieval statutes did not use this language, but they solved the same problem: they placed the risk on the party that controlled the goods and gave the owner a reliable debtor.

1 The decline of the corporations

From the seventeenth century the carrying corporations came under pressure. Merchants and forwarders demanded through transport, while the growing volume of goods exceeded the capacity of peasant carriers who worked only part of the year. Uri and the Leventina allowed more *Strackfuhr* against fees, and professional carriers with larger trains appeared. Forwarding firms, whose agents at the junctions of the route were at first Italian factors and from the seventeenth century local citizens of places such as Lucerne, Altdorf and Bellinzona, took over the

organization of whole journeys. The final blow came with the carriage road, whose sections through the Tremola on the Ticino side and from Hospental to the pass and through the Schöllenen on the Uri side were completed in 1827–1830. From 1831 the post and passengers were carried in ordinary coaches and from 1835 in stagecoaches. From 1842 a stagecoach ran daily in both directions between Chiasso and Flüelen.³ Wagons could carry many times the load of a mule train without stopping at every *Sust*. The Helvetic Republic of 1798 had already proclaimed freedom of trade and abolished many of the old privileges. The federal constitution of 1848 made customs a federal matter and empowered the Confederation to abolish the internal tolls and the road and bridge money against compensation, which removed the legal basis of most local transit charges.⁴ The carriers' associations and the transport functions of the *vicinanze* disappeared within a generation. The Gotthard railway of 1882 ended the pack-animal trade altogether (see Chapter C.III).

Essentials. Transit on the Gotthard was organized by territorial carriers' associations, the counterparts of the *Porten* of the Grisons: the carriers of Uri and Urseren, where the carrying right belonged to the members of the commons, and the *vicinanze* and *degagne* in the Leventina. Each held the exclusive right to carry goods over one stage of the road and distributed loads among its members in rotation (*Rod*). Goods changed hands at public warehouses (*Susten*, *soste*) run by a *Sustmeister*, who recorded, stored and forwarded them. Through transport (*Strackfuhr*) was permitted against a fee (*Fuhrleite*). Liability for the load rested on the carrier and, behind him, on the community. The system survived until the carriage road of 1830 and is the institutional ancestor of the regulated carrier, the warehouse keeper and the bonded warehouse of modern law.

2 Notes

1. The liability of the carrier and of his community: Schulte (as above), vol. 1. ↩
2. Code of Obligations of 30 March 1911, SR 220, Art. 440 para. 1 (French text at droit-bilingue.ch, <https://droit-bilingue.ch/fr-en/2/22/220-440-655.html>: "Le voiturier est celui qui se charge d'effectuer le transport des choses moyennant salaire") and Art. 447 para. 1 (English translation at lawbrary.ch, <https://lawbrary.ch/law/art/OR-v2024.01-en-art-447/print>). ↩
3. HLS, art. "Transportgewerbe" (Fritz Glauser, version of 11.02.2015), <https://hls-dhs-dss.ch/de/articles/014052/2015-02-11/>: "Ab ca. 1520 setzten sie an den Verkehrsknotenpunkten sogenannte Faktoren ein,

die aus Italien stammten"; from the seventeenth century the posts were filled "mit örtlichen Bürgern", who developed into independent forwarders (the article names Basel, Chur, Lucerne, Altdorf and Bellinzona). HLS, art. "Gotthardpass" (as above): "1827-1830 wurde nach Plänen der Ingenieure Francesco Meschini, Carlo Colombara und Karl Emanuel Müller auf der Tessiner Seite das Strassenstück durch die Tremola und auf der ernerischen die Abschnitte von Hospental auf die Passhöhe und durch die Schöllenen fertiggestellt" and "Ab 1831 wurde der Post- und Personentransport zunächst mit normalen Kutschen und ab 1835 mit Postkutschen durchgeführt; von 1842 an verkehrte zwischen Chiasso und Flüelen täglich eine Postkutsche in beiden Richtungen." ↩

4. Federal Constitution of the Swiss Confederation of 12 September 1848, Art. 23 ("Das Zollwesen ist Sache des Bundes") and Art. 24 (abolition of land and water tolls and road and bridge money, wholly or partly, against compensation), in Bundesblatt 1849, <https://www.parlament.ch/centers/documents/de/verfassung-bundesblatt-1849.pdf>. See Chapter C.I. ↩

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