The Effect of Intentional or Gross Fault on the Contractual Limitation of the Multimodal Transport Operator's Liability under International Multimodal Transport Documents and Iranian Law

1. Amirhossein Shabahang: PhD Candidate, Department of Private Law, SR.C., Islamic Azad University, Tehran, Iran
2. Hassan Badini*: Associate Professor, Department of Private Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran
3. Nejad Ali Almasi: Professor, Department of Private Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran

*Correspondence: hbadibi@ut.ac.ir

Abstract

Under multimodal transport documents, the transport operator bears integrated liability for the occurrence of any loss, and liability is presumed against the operator. Nevertheless, by concluding a liability limitation agreement with the cargo owner, the multimodal transport operator determines a ceiling for liability with respect to potential future losses. Pursuant to international multimodal transport instruments, such an agreement is deemed ineffective and unenforceable against the cargo owner in cases where intentional misconduct or gross fault is attributed to the operator. Where intentional or gross fault is committed by the servants, agents, or representatives of the multimodal transport operator, these instruments adopt differentiated approaches depending on the nature of the claim. If a claim for damages is brought on a contractual basis, the limitation of the multimodal transport operator's liability is not available. However, where a claim for damages is brought on a non-contractual (tortious) basis against the servants, agents, or employees involved in multimodal transport operations, only the culpable individuals are deprived of the right to invoke the limitation of liability, while the multimodal transport operator retains the right to rely on the liability limitation agreement. In all cases, in assessing the concept of gross fault, due regard must be paid to its objective characterization as well as to the level of expertise and professional skill of the transport operator and its agents.

Keywords: Limitation of liability; intentional fault; gross fault; multimodal transport of goods

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1. Introduction

International multimodal carriage of goods is a process whereby goods are transported from origin to destination without interruption in the state of carriage, by different modes of transport and under the responsibility of a single person (the

multimodal transport operator), involving the use of at least two different modes of transport governed by distinct legal regimes (Etape, 2012). In this manner, a combination of unimodal transport methods is employed for the carriage of cargo; however, the liability rules and governing conditions differ for each transport mode. The primary objective of multimodal transport is the optimal utilization of various transport facilities, coupled with the principle that the multimodal transport operator bears integrated liability for any loss or damage occurring during the transport.

In international multimodal transport instruments, including the 1980 Convention on International Multimodal Transport of Goods and the UNCTAD–ICC Rules of 1992, liability for any loss or damage to the cargo is presumed against the multimodal transport operator as the legal basis of responsibility. In such cases, the operator must prove the absence of fault in order to be exempted from liability; otherwise, the obligation to compensate for damage remains (Feizi-Chakab & Mardani, 2020). For this reason, international multimodal transport operators frequently seek to conclude agreements with cargo owners to reduce liability and transfer risk in relation to potential hazards. Today, liability limitation agreements have become common contractual instruments in various fields, including multimodal transport. Such agreements are defined as arrangements that modify the scope of the carrier's liability, so that even where breach of contract and the obligation to compensate damages are established, the carrier's liability is nevertheless limited (Khajezadeh, 2022). Accordingly, liability limitation agreements alter the conditions for claiming damages and deprive the injured party of the right to claim full compensation beyond the amount stipulated in the contract.

However, the legal regime of the Multimodal Transport Convention, contrary to the principle of full compensation, prescribes a liability cap for damages caused by the transport operator. Pursuant to Article 16 of the Convention, the operator's liability is limited to 920 units of account per package or other shipping unit, or 2.75 units of account per kilogram of gross weight of the lost or damaged goods. In any event, liability limitation agreements—irrespective of this mandatory rule—result in the substitution of a voluntary liability regime in place of the statutory liability regime.

In Iranian law, a similar approach is reflected in Article 386 of the Commercial Code, which provides that if the goods are lost or destroyed, the carrier is liable for their value unless it proves that the loss or destruction resulted from the inherent nature of the goods, the fault of the consignor or consignee, instructions given by either of them, or unavoidable events that even a diligent carrier could not have prevented. The provision further allows the parties to agree on an amount of compensation lower or higher than the full value of the goods. This position is also reflected in many international conventions on the carriage of goods, including Article 18 of the 1980 Multimodal Transport Convention, under which the parties may agree on the nature and extent of their liability for potential future losses.

Consequently, based on the principle of freedom of contract, liability limitation agreements of carriers are, in principle, valid. Nevertheless, their validity cannot be unlimited. The legal validity of such agreements has consistently been subject to scrutiny, and contemporary legal systems—while accepting their general validity—have introduced numerous exceptions on grounds of public order and social interests, particularly in light of the historical abuse of such clauses by carriers. The primary rationale behind these exceptions is to prevent obligors from being encouraged to exercise minimal care in performing their obligations, as well as to uphold considerations of public order, prohibit abuse of rights, and protect the weaker party to the contract (Izanloo et al., 2016).

This approach is also reflected in the implied understanding of the parties themselves. By agreeing on liability-related clauses, the parties implicitly accept that the agreement must be free from fraud and deceit. Accordingly, where, at the time of conclusion or performance of a liability limitation agreement, the obligor abuses its position and acts contrary to its obligations, such conduct constitutes a breach of contract. In such circumstances, the consent of the other party cannot justify intentional harm, as the law protects only conduct grounded in good faith (Badini, 2023). It should be noted that the factors leading to the invalidity of liability limitation agreements may affect the contract in two distinct ways. In some cases, the ground for ineffectiveness exists at the time of contract formation, rendering the agreement unenforceable due to considerations such as fraud. In other cases, acts committed during the performance of the contract—such as the commission of intentional or gross fault—trigger legal consequences aimed at protecting the obligee and safeguarding social interests.

Not every instance of fault renders a liability limitation agreement ineffective. Fault is a qualitative concept with varying degrees of severity. Common sense recognizes different levels of deviation from the conduct of a reasonable person, some of which are deemed inexcusable (Safaei & Rahimi, 2018). Therefore, for liability limitation agreements to constitute a

successful defense against a claim for damages, it is necessary not only to examine the formation of the agreement but also to ensure that, during its performance, no intentional or gross fault has been committed (Safaei, 1996). Furthermore, given the nature of multimodal transport—where multiple actors besides the multimodal transport operator participate in the carriage process—the question arises whether the operator may rely on a liability limitation agreement where intentional or gross fault is committed by its servants, agents, or representatives. Accordingly, this article examines the concepts of intentional and gross fault, the legal foundations for the ineffectiveness of liability limitation agreements in cases of such fault, and the impact of intentional or gross fault committed by the multimodal transport operator or its servants, agents, and employees under international multimodal transport instruments and Iranian law.

2. Concepts

2.1. The Concept of Intentional Fault

Intentional fault has traditionally been understood as conduct involving the intent to cause harm to another, whereby the obligor knowingly engages in abnormal behavior that results in damage. In determining the existence of such fault, the judge is compelled to inquire into the intent and purpose of the responsible party, assessing whether there was an intention to cause harm or merely negligence. However, this approach leads to an inquisitorial judicial inquiry into the inner intent of the wrongdoer, which is often difficult to establish, given that intent is an internal and personal matter. Excessive emphasis on uncovering subjective intent is therefore regarded as problematic (Safaei & Rahimi, 2018).

As a result, the external manifestation of intent must be identified, which can be readily ascertained through an objective examination of the actor's conduct and the act committed. In this regard, French legal scholars have argued that intentional fault should not be assessed based on the desire for the harmful outcome, but rather on the perpetrator's awareness of breaching contractual obligations or awareness that the act would cause harm to another (Izanloo, 2014). In other words, the decisive question is whether the resulting damage occurred as a consequence of the responsible party's will. Accordingly, intentional fault may be defined as the deliberate breach of contractual obligations by the obligor, which is regarded by reasonable persons as socially unacceptable due to the need to protect societal interests (Jourdain & Adib, 2003).

The French Court of Cassation has similarly held that although a carrier may invoke a liability limitation clause as a defense, such reliance is acceptable only where there is no evidence of an intentional breach of contract by the carrier. Where intentional breach is established, the clause is deemed entirely unenforceable (Yazdanian, 2011). In essence, intentional fault entails the deliberate causing of damage in conjunction with non-performance of contractual obligations, without requiring proof of a specific motive to harm the creditor or the inevitability of the harmful outcome. Rather, any deliberate non-performance—whether relating to an obligation of result or of means—may constitute intentional fault (Izanloo, 2014). In such cases, the obligor who refrains from performing contractual obligations effectively foresees the occurrence of damage as a consequence of their conduct.

One of the most common manifestations of intentional fault is fraud. In transport law, fraud has been defined as intentional fault or intent to cause harm. A person who engages in fraud demonstrates a lack of intention to perform contractual obligations, and in such cases the injured party must typically prove that actual damage was suffered as a direct result of the fraudulent conduct (Taghizadeh, 2010). In English law, intentional fault is treated as a matter of contractual interpretation. By reference to the common intention of the parties and established interpretive rules, courts infer that intentional fault is implicitly incompatible with the parties' shared intent. As a result, intentional fault is associated with fundamental breach, as opposed to minor breach. A deliberate fundamental breach leads to the conclusion that no common intention existed for the liability limitation clause to operate (Hasneziri, 2024). For instance, in the *Suisse Atlantique* case, a deliberate one-day delay in unloading the cargo—considered a minor breach—did not deprive the carrier of the benefit of a liability limitation clause. By contrast, in the *Sze Hai Tong Bank* case, the carrier's fundamental breach of contract precluded reliance on an exemption or limitation clause.

2.2. The Concept of Gross Fault

Gross fault occupies an intermediate position between intentional fault and ordinary negligence and entails the breach of a duty accompanied by the commission of an inexcusable error. In judicial practice, particular attention is usually paid to the level of professional skill and the severity of the damage incurred (Badini & Forouzan Boroujeni, 2018). Gross fault is characterized by such a striking lack of skill or such extreme negligence that, although there is neither an intention to cause harm nor malice, the degree of carelessness is so substantial that the act appears as if it were committed intentionally (Jafari-Langroudi, 2022). In other words, gross fault signifies a deviation from the conduct of a reasonable person, a concept that is more frequently encountered in non-contractual liability.

In this regard, some legal scholars have proposed foreseeability and preventability as criteria for identifying gross fault (Safaei & Rahimi, 2018). According to another definition, a fault that, in the eyes of custom, is highly likely to result in breach of contract is regarded as gross fault, even if the perpetrator's intention to cause harm or to breach the obligation is not established (Katouzian, 2025). Yet another definition describes gross fault as a lapse that is not intentional but is so manifestly serious that it reflects extreme carelessness, inattention, or negligence on the part of the obligor, such that, from a customary perspective, the commission of such fault is unexpected and appears quasi-volitional (Khajezadeh, 2022). Accordingly, gross fault denotes a lack of skill, severe negligence, or extraordinary imprudence to such an extent that customary judgment treats the conduct as equivalent to intent (Taghizadeh, 2010).

Based on these definitions, the indicators of gross fault may be summarized as follows. First, although the actor lacks the intent to harm another, the damaging outcome of the conduct is customarily foreseeable; thus, the carrier is deemed to have knowledge of the probable harmful consequences of the error committed (Besong, 2007). Second, contrary to the experience and professional background of the responsible person, the damage incurred is manifestly abnormal. In determining gross fault, various factors must therefore be considered from a customary perspective, including the flagrancy of the fault, breach of an essential aspect of the obligation, the extent of the damage caused, repetition of the harmful conduct, the obligor's level of skill and expertise, the high probability of damage, lack of due care, and deficiencies in organization. Third, there is an absence of any reasonable justification, such that, given the obligor's expertise, recourse to custom does not permit treating the person as unaware of the resulting damage (Badini, 2004).

For example, if a carrier transports valuable goods without regard to their value in an unsuitable location, or delivers the goods to a third party lacking proper authority, such conduct evidences gross fault on the part of the carrier. Conversely, if the breach results only in minor damage, or if custom does not regard the error or harmful act as excessively abnormal, gross fault is not established (DiMichael, 2011). This criterion can be imperfectly inferred from Article 116 of the Iranian Maritime Code, under which the principal standard for determining gross fault is the judgment of custom, having regard to the specific circumstances of each case. Nevertheless, given the non-intentional nature of gross fault, an objective standard must be applied.

An examination of certain judicial decisions in English and French law further elucidates the concept of gross fault. In the *Bail* case, concerning a carrier and its agents who failed to perform a specific duty with due care and skill, the judge defined gross fault as "such a lack of care, skill, and promptness as may justly be expected of persons and their servants." Similarly, Lord Chief Justice Barton of the lower court in the same case stated that "there exists a degree of fault which everyone condemns severely; such a deficiency in the exercise of care, skill, and diligence constitutes gross fault" (Micklitz, 2005). In English law, however, the concepts of intentional and gross fault are treated as matters of contractual interpretation. Judges apply interpretive principles to ascertain the parties' intent and to determine whether gross fault was contemplated by them. Generally, in contracts where a party assumes a fiduciary character, or where the fault is regarded by custom as fundamental and substantial, gross fault renders liability limitation agreements invalid (Lawson, 2011).

In another French case, while emphasizing the equivalence of the consequences of intentional and gross fault, the court held that a carrier could not rely on a liability limitation clause once gross fault had been established, and accordingly declared the clause void. In general, under French law, once the intentional nature of the breach is proven by the injured party, reliance on a liability limitation agreement is no longer permissible. In line with the interpretation adopted by the French Court of Cassation, a breach is deemed intentional where the debtor knowingly and voluntarily decides not to perform contractual obligations.

French legal doctrine similarly endorses this view, maintaining that it is unnecessary to include the desire for the harmful result within the notion of intent; rather, it suffices that the obligor knowingly and willingly refrains from performing the obligation (Rowan, 2021).

Reference to certain decisions of courts in the United States likewise clarifies the meaning of gross fault by distinguishing it from related concepts. In this context, gross fault is defined as extreme negligence, the absence of even slight care, or the failure to exercise minimal diligence. Another definition describes gross fault as a reckless and manifest breach of a legal duty accompanied by disregard for its probable consequences, equating such conduct with intentional behavior. Black's Law Dictionary further explains gross fault as the voluntary failure to perform an explicit duty or indifference to its consequences with respect to another's life or property, whereby the perpetrator, through an act or omission of a severe and fundamental nature, abandons the duty owed and thereby distinguishes such conduct from ordinary negligence (Yates, 2011).

Accordingly, the assessment of gross fault differs from that of intentional fault. In evaluating gross fault, it is assumed that the conduct was non-intentional; nevertheless, the wrongdoer is held responsible due to unacceptable imprudence under customary standards, where the harmful outcome of the conduct causes loss to another. Thus, instead of uncovering the subjective intent or purpose of the wrongdoer, the adjudicator objectively compares the person's conduct with that of similarly situated individuals in society—an approach referred to in psychology as objective or external assessment. For instance, where a carrier or its agents store and protect a valuable cargo, such as gold, with the same recklessness as ordinary goods, the carrier's conduct so markedly deviates from that of a reasonable carrier that it is perceived by others as intentional. Similarly, under Iranian commercial and maritime law, the legislature has equated gross fault with major fault and treated it as tantamount to intent.

3. Grounds for the Ineffectiveness of the Carrier's Liability Limitation Agreement in Cases of Intentional or Gross Fault

Under general and overarching legal principles, no person may, through deliberate and knowing conduct and with the intention of causing loss to another, exempt themselves from liability to compensate the resulting harm. This is because such an arrangement is unquestionably contrary to public order and is deemed void. Accordingly, a party who, in bad faith and through intentional conduct, seeks to rely on a liability limitation agreement cannot benefit from it; the contractual relationship is premised on the parties' commitment to act in good faith and to avoid deception and fraud. In reality, this principle operates as an implied limitation that removes intentional wrongdoing from the domain of enforceable private agreements (Katouzian, 2025).

Consequently, under the rules of most legal systems and international conventions on the carriage of goods, where intentional or gross fault—according to its objective and customary meaning—is established, the carrier is not entitled to invoke limitation or exclusion of liability clauses, because the carrier's conduct, being incompatible with contractual good faith, public order, and contractual stability, is invalid. For example, in the well-known *Kirby* case and the *Nawasaki* matter, courts in the United States, relying on the instruments governing multimodal transport—particularly the bill of lading—deprived the carrier of the ability to rely on limitation of liability due to the commission of inexcusable fault.

Jurists have advanced several justifications for the ineffectiveness of civil liability limitation agreements in the event of intentional or gross fault. It should be noted that, given the conceptual definitions of intentional and gross fault and their theoretical proximity, the grounds of ineffectiveness for each largely overlap. If gross fault were not treated as equivalent to intentional fault, an obligor might deliberately breach a contract and nevertheless escape liability because proving intent—an internal mental state—is difficult. Put differently, assimilating gross fault to intentional fault prevents a bad-faith obligor from feigning ignorance and thereby remaining shielded from responsibility. In any event, morality does not condemn every form of legal fault; only a particular category of legally recognized faults is also ethically blameworthy, and gross fault is ethically reprehensible as well (Izanloo, 2014).

The first ground concerns the parties' common intention at the time of contract formation and the setting of contractual terms. Undoubtedly, the parties accept all conditions on the premise that they will act in good faith and refrain from trickery and fraud. This implied assumption qualifies all agreements, including liability limitation agreements. Accordingly, within the

parties' shared intent, the various forms of liability-limiting arrangements are not directed toward permitting the debtor's intentional refusal to perform contractual obligations (Katouzian, 2025).

It is an undeniable reality that liability limitation agreements typically disrupt the contractual equilibrium of the parties' obligations, particularly where such a clause relates to the obligor's breach of an essential contractual obligation. Therefore, the concept of "contractual justice" has led to the position that liability limitation agreements should be regarded as invalid where they result in a severe and fundamental breach of obligations. This approach is articulated explicitly in English law under the so-called "fundamental breach doctrine," according to which every contract contains essential obligations whose breach is impermissible and, a fortiori, any agreement contrary to them is void. In other words, an agreement concerning essential obligations—providing that the obligor may refrain from performance—empties the contract of its substance and is inconsistent with the very nature of the contract (Black, 2015).

For example, a carrier who delivers the goods to a person other than the rightful consignee, or abandons the goods, has committed a fundamental breach of contract and cannot benefit from limitation or exclusion of liability. Under the fundamental breach doctrine, the rationale for invalidating agreements that purport to operate where a fundamental breach occurs is the protection of the weaker party to the contract; by its operation, the debtor cannot rely on liability limitation clauses (Razak et al., 2021).

Although today the foregoing doctrine, due to the lack of coherent logical support in English law, is largely treated as an interpretive rule, the practical result is that only where the parties have treated an obligation as essential—such as obligations connected to intentional or gross fault—does the breach of that obligation render the limitation or exclusion clause (or related ancillary agreements) unenforceable (Lawson, 2011). For instance, in one case, the judge expressly stated that a party relying on an exclusion clause is deprived of such reliance, because such a clause cannot nullify liability arising from a fundamental breach. In this legal system, using an interpretive approach, courts seek to answer whether contractual clauses or separate agreements produce a fundamental breach of the underlying contract. Here, the judge interprets incompatibility by reference to the parties' common intention (Safaei, 1996).

In another case, concerning *Captain Petko Voyvoda*, the court, through interpretation of the principal contract, did not infer that the agreed limitation of the carrier's liability amounted to a fundamental breach of contractual duties, and therefore limited the carrier's liability to the ceiling stipulated by agreement.

In French law, breach of an essential contractual obligation is treated as intentional or gross fault, and in a civil liability claim brought by the obligee, reliance on agreements that reduce or exclude the obligor's liability is not permitted. Accordingly, in French law, an agreement contrary to an essential obligation of the contract is regarded as a form of gross fault and, in effect, as an obstacle to the enforceability of civil liability limitation agreements (Safaei & Rahimi, 2018).

In this context, reference may be made to the well-known *Chronopost* decision issued by the commercial chamber of a French court. The matter concerned Chronopost, which undertook to provide rapid delivery services. Despite the request of the Banchero company for expedited delivery of a shipment (the tender proposal letter) by noon the following day, Chronopost failed to perform within the stipulated time. Banchero brought a liability claim for loss of the opportunity to win the tender, arguing that time was an essential contractual obligation and that speed was inherent in the nature of the contract. Chronopost, in response, relied on a contractual clause providing that in case of delay it would be liable only up to 122 francs (equivalent to the postage fee), and thus invoked a limitation of liability clause. Although the appellate court held that the essential obligation had not been breached, that no gross fault had occurred, and gave effect to the limitation clause, the Court of Cassation, relying on the theory that an obligation must have a lawful "cause" and reasoning that Chronopost was a specialist in rapid transport and had guaranteed the speed of its services, characterized the failure to deliver rapidly as a failure to perform an essential contractual obligation, treated it as gross fault, and—because the limitation clause conflicted with the scope of the undertaken obligation—declared the clause void. Accordingly, in the carriage of goods, under the French approach, the obligation to ensure the safety of the goods and the obligation to deliver the cargo are regarded as essential obligations; breach of either is treated as gross fault, and any agreement aimed at reducing the carrier's liability against the cargo owner is not enforceable (Yazdanian, 2011).

Moreover, accepting the validity of liability limitation agreements notwithstanding intentional or gross fault would mean that the debtor is free to perform or not perform the contract, which is contrary to public order. In such a scenario, the effect of

the agreement becomes contingent upon the debtor's will, and the debtor becomes the determinant of whether the contract will be performed. In many cases, the parties do not intend for the state of the contract to depend on the unilateral will of one party (Izanloo, 2014).

Public order not only disallows breach of contract, but also disallows bad faith in contractual performance such that a party, under the shelter of a special agreement, harms another. In the law of carriage of goods, this concern manifests more prominently than in many other fields. Given the lack of balance in economic power between carriers and their contractual counterparts, granting carriers broad discretion in performing their obligations is itself contrary to public order. In addition, transport companies often operate with monopolistic characteristics and commonly impose their contracts and conditions on the other contracting party (Abedi, 2015). It is therefore rational to prevent their abuses and excesses and not permit such companies—without apprehension—under the guise of liability limitation agreements, to refrain from performing their obligations and, while extracting excessive advantages, bring the injured party under their dominance. In this sense, protective public order, aimed at supporting the weaker party to the contract, prevents the enforceability of such agreements (Khakbaz et al., 2024).

Further, intentional or gross fault promotes carelessness and non-performance and, in reality, undermines contractual stability—where contracts function as instruments for wealth distribution and the regulation of social relations. If contract performance becomes dependent on the unilateral inclination and decision of one party, that party is effectively free to perform or not perform, and such conditions are unquestionably incompatible with the nature of contract and are void (Izanloo, 2014). In this regard, legal systems generally adopt similar approaches; and within the Iranian legal system, by reference to Article 975 of the Civil Code, private agreements that contravene public order are deemed void and without legal effect.

4. The Effects of Intentional or Gross Fault on the Multimodal Transport Operator's Liability Limitation Agreement

In multimodal transport, due to the presence and participation of multiple actors in the carriage of goods, the commission of intentional or gross fault by any of these persons is possible. Accordingly, examining the effects of fault attributable to actors surrounding the carriage process—including carriers, agents, and other persons involved in each mode of transport—is of particular importance. Therefore, the effects of intentional or gross fault committed by the multimodal transport operator are examined first, followed by the effects of intentional or gross fault committed by the operator's servants, agents, and employees.

4.1. With Respect to the Multimodal Transport Operator

The ineffectiveness of a multimodal transport operator's liability limitation agreement in cases of gross or intentional fault is expressly provided in instruments governing multimodal transport. Under Article 11 of the 1980 Geneva Convention on International Multimodal Transport of Goods, where there is a fraudulent declaration in the multimodal transport document or intentional neglect, the multimodal transport operator remains liable in all circumstances. Pursuant to this provision, if the operator, with intent to cause loss to a third party, obtains incorrect information in accordance with Article 8(1)(a) and (b), or negligently fails to comply under Article 9, the operator is liable for all losses, damages, and costs incurred by the third party—including a consignee who has acted in reliance on the description of the goods in the issued multimodal transport document—without the right to benefit from the limitation of liability established by the Convention (Mohammadzadeh Vadghani, 2000). Accordingly, the commission of intentional fault—whether through fraud (misrepresentation) or otherwise—constitutes a ground for the legal ineffectiveness of civil liability limitation agreements.

Similarly, Article 21(1) of the Multimodal Transport Convention provides that where it is proven that loss, damage, or delay in delivery resulted from an act or omission of the multimodal transport operator, whether committed with the intent to cause loss, damage, or delay, or through recklessness with knowledge that such loss, damage, or delay would probably result, the operator may not benefit from the limitation of liability provided in the Convention. Article 21(2) further provides that where loss, damage, or delay is proven to have resulted from an act or omission of a servant or agent of the operator, or any other person whose services the operator uses for performance of the contract of carriage—whether committed intentionally or through recklessness with knowledge of the probable consequences—such persons may not benefit from the limitation of liability provided in the Convention.

Accordingly, the Convention treats inexcusable fault as falling within the operative scope of intentional wrongdoing, and in such cases the multimodal transport operator may not avail itself of the Convention's limitation of liability (Kongphok, 2018). In other words, the type and degree of error or imprudence may yield different legal consequences: proof of intentional or gross fault results in the loss of the benefit of limitation of liability. Moreover, under the practice of courts in advanced jurisdictions, the operator's specialization is relevant to determining gross fault: courts assess the carrier's conduct in light of its expertise and professional track record. For example, in a case before the Supreme Court of Norway, given the operator's specialization, damage to cargo caused by adverse weather while being transported on an open semi-trailer was deemed a form of manifest negligence and gross fault; consequently, a liability limitation agreement providing for 2 SDR per kilogram was held unenforceable. Likewise, in *Helvetia Switzerland v. Jones*, a United States court, in a collision resulting in cargo loss, reasoned that, given the carrier's skill and expertise, the carrier's conduct amounted to gross fault, and the carrier could not rely on a liability limitation agreement in that case.

Because the Multimodal Transport Convention has not become broadly operative in practice in many contexts, recourse is sometimes made to unimodal carriage conventions. In this respect, international carriage conventions likewise treat intentional or gross fault as a ground for depriving the carrier of the ability to rely on limitation of liability, although certain conventions differentiate between intentional fault and gross fault. Nevertheless, what is common across international carriage instruments is reliance on an objective standard and recourse to custom in determining the meaning of gross fault. For example, Article 29 of the CMR Convention provides that if damage is caused by the carrier's wilful misconduct or by such default as, according to the law of the forum, is considered equivalent to wilful misconduct, the carrier may not avail itself of provisions that exclude or limit liability or shift the burden of proof. Here, gross fault and intentional fault are treated equivalently. By contrast, Article 4 of the COTIF Convention distinguishes between fraud and gross fault: where loss, damage, delay, or non-performance is attributable to fraud or gross fault of the railway, full compensation is owed; however, in cases of gross fault, compensation is limited to twice the maximum amounts provided in the Convention. Thus, while there is no cap for fraud or intentional fault, gross fault increases the liability ceiling to double the Convention's maximum.

In maritime carriage conventions, including the Hague–Visby Rules and the Hamburg Rules, intentional or gross fault also constitutes a bar to applying limitation of liability. Under Article 4 of the Hague–Visby Rules, where the damage results from an act or omission of the carrier committed either intentionally or recklessly and with knowledge that damage would probably result, neither the carrier nor the ship may benefit from limitation. Similarly, Article 8(1) of the Hamburg Rules provides that where loss, damage, or delay results from an act or omission of the carrier committed recklessly and with knowledge that such loss, damage, or delay would probably result, the carrier may not benefit from the limitation of liability in Article 16. Further, under the 1992 UNCTAD Rules, where it is proven that loss, damage, or delay resulted from an intentional act or omission of the carrier—either with intent to cause the damage or through recklessness with knowledge of its probability—the carrier is deprived of the right to rely on limitation of liability (Besong, 2007).

Iranian law reflects a broadly similar approach to the effects of intentional or gross fault on a carrier's liability limitation arrangements. Article 391 of the Iranian Commercial Code provides that if the goods are accepted without reservation and the freight is paid, no claim may thereafter be brought against the carrier, except in cases of fraud or "major fault." Accordingly, where fraud or gross fault is attributable to the carrier, the consignee retains the right to bring a damages claim, even though acceptance of the goods would ordinarily extinguish that right. In such cases, the consignee must notify the carrier of the defect within eight days and may sue upon proving major fault or fraud. In this situation, not only is reliance on a liability limitation agreement unavailable, but the carrier's liability may also be aggravated (Erfani, 2006).

Likewise, Article 116 of the Iranian Maritime Code provides that where it is proven that the cause of the damage was an act or omission of the carrier committed intentionally or with knowledge of the probability of damage, the carrier may not benefit from the limitation of liability established in Article 115. Thus, non-performance accompanied by knowledge of the probability of harm is treated as equivalent to intent. However, the text of the provision appears to introduce a subjective "knowledge" criterion for determining gross fault, which can be difficult to establish. For this reason, scholars argue that the provision should be interpreted in light of the professional character of carriage, such that the relevant knowledge is objective knowledge attributable to persons engaged in the profession (Izanloo & Samadi, 2013). Consequently, a carrier's mere assertion that it

lacked knowledge of the probability of damage is not acceptable given its expertise; rather, the carrier must prove the occurrence of events showing that the harmful incident was not attributable to the carrier's fault.

It should be noted that, with respect to gross fault, the mere breach of contract—often establishing contractual liability due to breach of an obligation of result—is not, in itself, determinative. Although French judicial practice has, at times, expanded the concept of gross fault by labeling the breach of a contractual obligation as gross fault, this approach is not persuasive. Under more recent French jurisprudence, contrary to the conventional understanding of gross fault as a concept with a personal dimension—assessed by comparing the debtor's behavior with that of similar persons under an objective standard—the concept of gross fault has sometimes been used in a specifically contractual sense. Under this approach, only the non-performance of an obligation of result may qualify as gross fault, such that, instead of assessing the intensity of the debtor's conduct, attention is directed to the importance of the unperformed obligation and whether it is essential or ancillary (Izanloo, 2014). In such a framework, psychological analysis is excluded, and the material element dominates: the non-performance of an essential obligation becomes sufficient to identify gross fault (Jourdain & Adib, 2003). In any event, adopting this newer approach in Iranian law—where the objective and customary standard is used to identify degrees of fault—is not acceptable. Moreover, the traditional justification for denying enforceability to private agreements in cases of gross fault is the protection of the weaker party through public order considerations, in response to unethical conduct; this justification is absent in the newer approach, and if that approach were accepted, there would be no convincing basis for denying enforceability to liability limitation agreements despite gross fault (Izanloo, 2014).

Overall, gross fault—like intentional fault—results in the ineffectiveness of liability limitation agreements. It reflects a degree of imprudence and lack of diligence by the carrier that may even justify holding the carrier liable in circumstances approaching force majeure (Fakhari, 2006). For example, if the carrier, despite anticipating a severe storm, fails to use appropriate means of transport, the carrier commits gross fault and cannot rely on force majeure as a defense. Likewise, it can be inferred from Article 55 of the Iranian Maritime Code that failure to select proper transport means, an appropriate route, or suitable technical conditions for carriage may constitute gross fault (Omid, 1974).

A critical nuance, however, is that gross fault differs from intentional fault. In terms of the mental element, there is a fundamental distinction: gross fault, however severe, remains non-intentional; the perpetrator does not intend to harm another, whereas intentional fault involves an act or omission carried out with the purpose of causing harm (Khajezadeh, 2022). Nevertheless, as reflected in numerous judicial decisions, intentional or gross fault deprives carriers of the ability to rely on liability limitation agreements, because the binding force of contracts is undermined in such cases, as if the will of one party has been vitiated. For example, in an arbitral award issued by the Iran Chamber Arbitration Center (No. 176/58/85/26), concerning a carrier seeking to benefit from an exclusion clause where the cargo owner suffered losses due to war, the tribunal reasoned that, in light of commercial custom and fairness, it would be inappropriate to uphold the non-liability clause and immunize the carrier from responsibility where the cargo owner lost the entirety of its property as a result of the carriage operation. The tribunal further found that the carrier had knowledge of the war in the location and route of carriage and could have transported the cargo safely through alternative means, but failed to plan properly, thereby causing loss and breaching the contract; accordingly, the carrier was held liable to compensate the damage (Mohebi & Kakavand, 2015).

4.2. With Respect to the Servants, Agents, and Employees of the Multimodal Transport Operator

Under the Multimodal Transport Convention, the scope of liability of the operator's servants, agents, and employees is determined by reference to the relevant unimodal international carriage conventions. For example, if loss is caused in the course of maritime carriage, the liability limits applicable to the person who caused or is responsible for the harmful incident are determined under the conventions governing maritime transport. In this context, reliance on limitation of liability clauses is likewise governed by the relevant unimodal carriage conventions (Besong, 2007). Nevertheless, pursuant to Article 21(2) of the Multimodal Transport Convention, such persons may benefit from the immunities and liability limitations applicable to the multimodal transport operator, provided that they have not committed intentional or gross fault in causing the loss. Further, under Article 20(3) of the Convention, the aggregate amount recoverable from a servant, agent, or any other person whose

services the operator uses in performing the contract may not exceed the limits of liability set out in the Convention, unless intentional or gross fault is established (Kasih & Salain, 2021).

Accordingly, the legal regime of the Multimodal Transport Convention adopts a differentiated approach—depending on the legal basis of the claim—when assessing the effect of intentional or gross fault committed by servants, agents, and employees involved in multimodal transport. Where a damages claim is brought on the basis of the contract concluded with the multimodal transport operator, the operator's direct liability for the loss is engaged; and in that scenario, there is no difference, as a matter of liability characterization, between intentional or gross fault committed by the operator itself and intentional or gross fault committed by persons whose services the operator uses for performance. However, where a servant, agent, or employee of the operator commits intentional or gross fault, the operator may nevertheless invoke the Convention's liability limits (Derkach & Pavliuk, 2017). In other words, intentional or gross fault attributable to the operator's representatives or employees does not cause the operator to lose the benefit of limitation of liability; conversely, in cases of intentional or gross fault committed by those representatives or employees, the individuals themselves lose the right to rely on limitation of liability under the Convention.

Thus, where a claim for loss arising from loss of, or delay in delivery of, goods is brought against a servant, agent, or employee of the multimodal transport operator, or any other person whose services the operator uses for performance of the contract, such persons must prove that they acted within the scope of their duties. If so, they benefit from the same liability limits available to the multimodal transport operator under the Convention (Daujotas, 2011). More precisely, where the place of damage is identifiable—for instance, where the damage occurred during road carriage—and an agent of the multimodal transport operator committed gross fault, the servant/agent/employee would be subject only to the liability ceiling provided under the relevant road carriage convention (CMR), while the operator's liability under the multimodal transport framework would be treated as not benefiting from the relevant ceiling. Consequently, the operator would not be able to rely on unimodal exemptions provided in the unimodal conventions governing the particular mode of carriage.

This dual approach has been criticized. Some jurists argue that because intentional or gross fault by servants and agents does not deprive the multimodal transport operator of the right to limit liability—while it deprives only the individuals themselves—this is inconsistent with the concept of integrated liability of the multimodal transport operator (Ciok, 2016). The underlying philosophy of the Multimodal Transport Convention is to encourage claims to be brought against the operator; yet under this approach, the incentive to sue servants and agents increases (Mohammadzadeh Vadghani, 2000). Moreover, the party with real control over performance of the contract may enjoy broader exemptions and limitations than the servants and agents, which can further shift litigation incentives toward suing other carriers, agents, or employees. In any event, under the Multimodal Transport Convention, the liability limits provided by the Convention apply to all claims against the multimodal transport operator arising from loss of or damage to the goods, or damage arising from delay in delivery, whether the claims are contractual or tortious in nature (Osnes, 2018). In that setting, the operator is liable unless it can prove the absence of fault and that it took all reasonable and customary precautions. If it is found liable, it may limit its liability—unless intentional or gross fault is established.

Today, the use of the Himalaya clause in international multimodal transport documents has become widespread. A Himalaya clause permits the multimodal transport operator to extend its contractual protections (including liability limits) to subcontractors and other persons involved in the multimodal carriage. As a result, employees, agents, subcontractors, and any person participating in performance of the contract may benefit—like the operator—from limitation or exemption from liability, and may invoke the clause against the injured party. The clause also seeks to ensure that all carriers enjoy uniform protection and are shielded from direct claims.

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Accordingly, given the integrated and presumed-liability model of the multimodal transport operator, the Himalaya clause may function as a mechanism for rational distribution of liability across the transport chain. For example, in one case, a shipment from Jamaica to Jamestown was carried under a multimodal bill of lading containing a Himalaya clause stating that "all parties who, as employees, servants, agents, or contractors of the carrier, perform services for or on behalf of the ship or carrier, shall have the same liability protections as the multimodal transport operator." The carrier entered into a separate

contract with another carrier for inland transport to the destination, but the trucks were stolen before leaving Florida. The court held that, despite the absence of a direct contractual relationship with the shipper, the road carrier was entitled to the bill of lading's protections. Similarly, in the *Kirby* case, the United States Supreme Court (2004) held that the Himalaya clause could operate to extend protections to parties surrounding the carriage. In any event, the commission of intentional or gross fault prevents servants, agents, and employees of the multimodal transport operator from relying on limitation of liability arrangements. For example, in the *Liverpool* case, refusal to uphold limitation of liability in the presence of gross fault was justified on public order grounds; and in the *Bisco* case, the same outcome was reached due to inexcusable negligence even despite a Himalaya clause. Likewise, in the *Atlantic* case, limitation of liability was rejected in a gross-fault collision context. The overall implication of these decisions is that, with the development of carriage of goods (facilitated by containerization) and expanded reliance on multimodal transport, Himalaya clauses and liability limitation for surrounding actors are not enforceable in absolute terms where intentional or gross fault is established.

In Iranian law, several general positions have been advanced regarding the impact of intentional or gross fault by servants, agents, and employees on the enforceability of the carrier's liability limitation agreement. Some jurists, invoking public order, have treated liability limitation agreements as void in general where gross or intentional fault is committed by the carrier's servants, agents, or employees (Katouzian, 2025). However, it appears that recognizing liability limitation in respect of the acts of others is not necessarily contrary to public order; indeed, it may be consistent with it. Contrary to the argument that such a clause violates the essential nature of the obligation, it does not grant the debtor absolute freedom to perform or not perform the contract. Moreover, certain Iranian provisions accept such arrangements. For example, under Article 54(8) of the Iranian Maritime Code, a non-liability clause in respect of the debtor's own fault is void; yet under Article 55(2), the carrier is not liable for "negligence or default or acts of the master and crew and pilots or authorized agents of the carrier during navigation and management of the ship."

Another group, distinguishing contractual liability for the acts of others from tort liability, holds that in contractual liability, a limitation agreement is ineffective where intentional or gross fault is committed by servants, agents, or employees, treating their intentional or gross fault as equivalent to the carrier's own fault. However, I cannot cite "Ashtari, 1356" or "Amani, 1386" as they are not included in your approved reference list; therefore, those specific attributions cannot be reproduced as citations, and the relevant propositions remain uncited or are supported only where a permissible citation exists.

A further view holds that a servant, agent, or employee should be treated as representing another only when acting within the scope of assigned duties. The carrier may never have intended actions outside the scope of duties. Accordingly, surrounding actors are treated as representing the carrier only so long as they act within their duties; once they act outside that scope, they cannot rely on limitation of liability in the presence of intentional or gross fault unless the parties have expressly agreed otherwise (Katouzian, 2025). Nevertheless, the carrier may still be held liable for its own fault in selecting, instructing, or supervising those persons. In any event, based on freedom of contract, the debtor may exclude an implied guarantee obligation regarding the acts of servants from the contractual duties, or may contractually place itself in a position where it is not responsible for their fault. Such a private agreement may remain valid even where the servants' fault is gross or intentional. This does not, however, imply enforceability of limitation of liability where the carrier itself commits intentional or gross fault. Where the carrier errs in selecting persons or issuing adequate instructions, that error may constitute gross fault attributable to the carrier; and because the harmful act becomes attributable to the carrier's conduct, the limitation agreement will not be valid in that case (Safaei & Rahimi, 2018).

Accordingly, liability based on the act of another becomes relevant only where: (i) an agency or servant relationship is established; (ii) the fault is not attributable to the carrier itself; and (iii) there is no applicable limitation agreement covering acts of others (Izanloo, 2014). In the author's view, where absence of fault by the carrier is established and the loss cannot be attributed to the carrier's fault, even if intentional or gross fault is committed by the carrier's agents or subcontractors, a limitation agreement is enforceable only in favor of the carrier itself.

Iranian judicial practice also supports the proposition that compliance with statutory rules and commercial custom by the carrier during carriage—even where there is some laxity by the carrier or its agents—does not necessarily establish gross fault; rather, adherence to carriage custom and ordinary precautions may preclude a finding of gross fault against the carrier. Conversely, the commission of gross fault—whether by the carrier or by its agents—may render limitation of liability

ineffective insofar as it is invoked to reduce the carrier's own liability. For example, the Fourth Chamber of the Iranian Supreme Court stated that the squandering of goods by a truck driver is not covered by Article 386 of the Commercial Code, but rather constitutes fault attributable to the driver and must be adjudicated under Article 388. In that case, the driver's lack of due care—leading to squandering of the goods—was treated as gross fault, and the carrier was deprived of reliance on a limitation of liability clause, which was treated as ineffective.

5. Conclusion

Pursuant to Article 18 of the 1980 Geneva Convention on International Multimodal Transport of Goods and Article 386 of the Iranian Commercial Code, the parties to a contract for the carriage of goods, by jointly assuming potential risks, may agree on the nature and extent of the carrier's liability for possible future losses. By concluding a liability limitation agreement, they may replace the statutory liability regime governing the carrier's responsibility with a voluntary liability regime. Under such agreements, the scope of the carrier's liability is modified, such that, even where breach of contract and the obligation to compensate damage are established, the carrier's liability may be reduced and subject to a specific and calculable ceiling. According to the instruments governing multimodal transport, the conclusion of such agreements is, in principle, consistent with the freedom of contract and valid, unless the carrier commits intentional or gross fault. Not every deviation from the conduct of a comparable reasonable person constitutes intentional or gross fault. Intentional fault on the part of the carrier denotes a deliberate breach of contractual obligations in a manner that results in a fundamental violation of the carrier's duty to ensure the safety of the goods and, due to the need to protect societal interests, such conduct is contrary to public order; in this respect, mere awareness of the occurrence of a harmful incident, coupled with failure to take preventive measures, may amount to intentional fault. Gross fault, by contrast, encompasses conduct that is not intentional but is, from a customary perspective, so egregious that it reflects manifest imprudence or lack of professional skill on the part of the carrier, resulting in a fundamental breach of the carrier's duty of safety and, having regard to the extent of the damage, repetition of the harmful conduct, the obligor's expertise and skill, the high probability of harm, lack of due care, and deficiencies in organization, is deemed exceptional and treated as quasi-volitional. In identifying the grounds for the ineffectiveness of private agreements limiting the carrier's liability, recourse may be had to the parties' true common intention, bearing in mind that the parties never intended performance of the contract to become arbitrary or to permit non-performance without good faith, as well as to the basis upon which cargo owners resort to carriers—namely, the carrier's expertise and professional skill—and to the carrier's essential obligations to ensure the safety of the goods and to deliver the cargo. Consequently, any agreement aimed at reducing the carrier's liability where the carrier itself, or its servants, agents, or employees, has committed gross fault should not be regarded as enforceable against cargo owners. In any event, public order not only prohibits breach of the underlying contract, but also precludes abuse in the performance of the contract, preventing the carrier from harming others under the shelter of a liability limitation agreement, particularly given the structural imbalance between carriers and their contractual counterparts. Under Articles 11 and 21 of the Multimodal Transport Convention, a liability limitation agreement of the multimodal transport operator is ineffective and unenforceable against the injured party where intentional or gross fault is established. Judicial practice in advanced jurisdictions likewise emphasizes the carrier's specialization in assessing intentional or gross fault, with courts objectively evaluating manifest negligence in light of the carrier's expertise and professional experience and, upon finding intentional or gross fault, treating liability limitation agreements as unenforceable. A similar approach may be inferred in Iranian law. However, the approach of the Multimodal Transport Convention with respect to reliance on liability limitation agreements in cases of intentional or gross fault committed by servants, agents, or employees of the multimodal transport operator is dualistic and open to criticism. In cases of intentional or gross fault by such persons, a contractual liability claim allows the operator to rely on the liability limitation agreement, whereas in tort claims the operator may still rely on the limitation while the subordinate actors themselves may not. Moreover, the liability of servants, agents, and employees of the multimodal transport operator is determined by reference to the relevant unimodal carriage conventions. In any event, the use of Himalaya clauses in international multimodal transport documents has become widespread, extending contractual protections, including liability limitations, to all persons involved in the multimodal carriage of goods. In Iranian law, despite opinions advocating the nullity of liability limitation agreements in cases of intentional or gross fault by servants, agents, or employees of the carrier, the view adopted here is that such conduct generally renders the carrier's liability limitation agreement

ineffective and unenforceable vis-à-vis the contractual parties, unless the carrier proves that it exercised all necessary care and complied with customary contractual standards, in which case only the carrier itself may rely on the liability limitation agreement.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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