

Standard of Care: Road Haulage Service Provider Responsibility and Halal Logistics Requirements in Malaysia

Anas Afandi Ahmad Apandi, Fadilah Abdul Rahman, Azlina Muhammad

Malaysia Institute of Transport, Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia

Received: July 22, 2016

Accepted: September 24, 2016

ABSTRACT

This paper aims to highlight the current situation on responsibility of road haulage service provider for bailed goods. It discusses the adequacy of the current legal framework on bailment of goods and its coverage on *Halal* logistics. The research documented in this paper employs the exploratory method and focuses on review, i.e. doctrinal legal analysis, of legal documents, applicable cases and academic papers. Various research have been published in relation to both conventional and *Halal* logistics. In terms of conventional logistics, there are numerous published research that have been published pertaining to the standard of care which road haulage service providers must adhere to. The lacunae of research in this area concerns the application of the standard of care for bailment of *Halal* goods. With reference to the road haulage of *Halal* goods, most logistics themed research focused on fundamental principles of operations, marketing and technology, thus totally overlooking legal aspects of the applicable standard of care. With the establishment of Malaysian Standards (MS) for *Halal* logistics for example, the MS 2400, MS 1900 and MS 1500, it is evident that legal research is fundamental for the development of *Halal* logistics. This paper starts by highlighting the standard of care applicable to conventional road haulage service providers and subsequently attempt to analyse the impact of conventional standards when contracts of carriage are used for the carriage of *Halal* goods by road haulage service providers. This paper found that haulage of *Halal* goods, subject to MS, by road requires a higher standard of care compared to its conventional counterpart since it involved a stricter requirement of virtually guaranteeing avoidance of cross contamination for *Halal* goods which may not be recognised by their conventional peers. Since this paper is an exploratory study, it could not cover the whole spectrum of the application standard of care.

KEYWORDS: Bailment of Goods, Conventional Road Haulage, *Halal* Road Haulage, Haulage Responsibility, Standard of Care.

INTRODUCTION

Haulage of goods by road is also known as transportation of goods using vehicle on the road. When this road haulage service providers provide their services, their customers would reasonably have expected them to protect and secure goods bailed for the duration of transportation. The expectation of customers varies from reasonable care to total protection from any possible harm to goods. Majority of customers especially those who is not well verse in risks management and the operation of road haulage service providers would have expect that a road haulage service provider to provide total protection to goods transported. Theoretically, since the road haulage service provider is in possession of the said goods, he should be able to provide the protection that their customers requires. Nevertheless, in practice, the expectation of these customers may result to an increase towards the road haulage service provider costs which will unnecessarily burden the customer through the payment of freight charges. The risks covered in providing total protection to goods transported would also include those risks which are considered as rare and uncommon thus making it impractical and non-economical to do so.

The law as mentioned in [3] has rightly, taking all circumstances into consideration impose the minimum standard of care to road haulage service providers in protecting goods of their customers. However, with the establishment of the concept of *Halal* haulage of goods by road, through the formation of [10, 11], a higher standard is required specifically to regulate road haulage service providers who subscribe to it.

This paper intends to highlight the standard used by conventional and *Halal* logistics requirement applicable to road haulage service providers. The aim of this research is to explain the difference of approach used by conventional and *Halal* road haulage service providers.

BAILMENT OF GOODS

Bailment of goods is a concept used when goods is delivered to another for any objective upon a contract. When the objective is accomplished, the said goods shall be returned or disposed according to the direction of

the person who delivers them. This is mentioned in Section 101 of the [3]. The concept of bailment of goods is essential especially when discussing on road haulage service providers liability to goods.. The concept of bailment derives from the Common Law and has been absorbed by the law of Malaysia through custom, legal precedents and legislation. To affect bailment, parties are required to fulfil 2 criteria's namely; a) there must be a transfer of possession [7] and b) there should be an intention to create bailment by both parties [16].

When bailment is created, there are 3 principles needed to be adhered namely a) when bailment is created, the rights and title to goods remain to the consignor [5]. The road haulage service provider shall have actual/physical possession while the consignor would possess constructive/ownership of goods; b) the road haulage service provider shall dispose the goods in accordance with the given instruction and c) goods must be returned in the same condition and being of those transferred [17].

The argument as mentioned above shows that once bailment is established, the road haulage service provider shall be responsible for the goods and the creation of the requirement of responsibility burdened to the road haulage service provider has further invoked the issue of road haulage service provider level of duty of care. Accordingly, the level of duty of care required to be fulfilled by road haulage service provider would first depends on the written law and this law would refer to [3].

CONTRACT ACT 1950 (MALAYSIA)

The rules of bailment in relation to haulage of goods by road as it is today are particularly governed by Part IX of the [3]. The main source of regulation on duty of care derived from Section 104 and Section 105 of the Act. Section 104 under the heading of "Care to Be Taken by Bailee" imposes the standard of care required to be exercised by road haulage service provider to secure goods bailed to them. The stipulation of the section is seen as follows:

"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed".

The essential elements of the section are divided into 3 categories namely a) man of ordinary prudence and in similar circumstances c) taking his own goods of the same bulk, quality and value as the goods bailed.

The first element is achieved when road haulage service provider manage to prove that he has acted prudently and has fulfil the standard as required for a prudent road haulage service provider [13]. The word 'similar circumstances' refers to the class of person which the road haulage service provider belongs. This means that the road haulage service provider shall be accessed by comparing them against other road haulage service providers. This is due to the fact that a prudent person having particular skills and knowledge shall be judged according to the skills that he possesses. When there is a dispute on duty of care of a road haulage service provider he will be judged as to whether it is reasonable for a man of his skills and knowledge would have act [8]. If it is found that it is reasonable, the road haulage service provider is said to have fulfil the obligation imposed against him. However, if it is found that the road haulage service provider fails to meet the standard required, thus liable for the said loss or damage [15].

The second element requires road haulage service provider to have the responsibility as if he is taking his own goods. This means that he would be judged as to the reasonableness of his action in taking care of goods by making a comparison to a reasonable person or in this case a reasonable road haulage service provider taking goods of the same bulk, quality and value as the goods bailed to him. If it is found that a reasonable road haulage service provider would commit a similar act, the road haulage service provider is said to have fulfil the obligation imposed against him. However, if it is found that the road haulage service provider fails to meet the standard required, thus liable for the said loss or damage [15].

In the event where the road haulage service provider manages to stand equal to the standard as provided in Section 104, Section 105 would act as a protection to him. Section 105 under the heading of "Bailee When Not Liable for Loss, Etc. of Thing Bailed" stipulates that road haulage service provider would be freed of his liability upon taking as much care as described by Section 104. This is seen as follows:

"The bailee..... is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104"

The elaboration on the non-responsibility of road haulage service provider upon reaching the standard of care required as mentioned in the case in [13].

Nevertheless, parties to a carriage contract, namely the road haulage service provider and his customers may agree to increase the responsibility of road haulage service provider towards the goods. This is done

through a special contract. This special contract is a consensus agreed between the parties. The excerpt of section 105 laying down the provision of a special contract is as stated as follows:

“The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104”

Upon the consensus of parties to have a special contract, the road haulage service provider is required to raise their standard of care as equal to those mentioned in the special contract. Failure to fulfil the requirement as mentioned in the special agreement would render the road haulage service provider to be liable for breach of duty of care.

SYARIAH PERSPECTIVE ON THE APPLICATION OF DUTY OF CARE SYARIAH FOR ROAD HAULAGE SERVICE PROVIDERS

Malaysia wishes to be a premier comprehensive *Halal* logistic centre. To become a comprehensive *Halal* logistic centre, Malaysia has established rulings on the standard of care required for *Halal* road haulage service providers. It was found that the rulings on standard of care required for transporting *Halal* goods as established by [10] and [11] is more comprehensive and stricter compared to its conventional sister, especially when reference made to issues surrounding the handling of goods as mentioned in [10, 11].

The standard of care required in handling *Halal* goods as mentioned in [10, 11] requires road haulage service provider to affirm their practices with syariah principles of Halalan Toyibban, this has in effect makes the rules regulating *Halal* haulage of goods by road to be stricter.

The principle of Syariah regards bailment as a trust. This is in application to road haulage situation shall refer the road haulage service provider as the trustee of goods [4]. Similar to its conventional sister, syariah law requires higher responsibility for paid trustee compared to a gratuitous trustee. Since road haulage service provider requires payment of freight fees for the service they provides. They are obligated to responsible as a paid trustee

Road haulage service provider as a paid trustee is obligated to be responsible for keeping goods from any loss or damage which might be avoided. Comparatively, a gratuitous trustee would only be liable for damage in the event of a wrongful act or negligence [4]. Other than that, the duty of road haulage service provider shall be in accordance with the agreement made by parties involve [1] and subject to the reflection of the costs of freight which would reflect the profit of road haulage operator [4].

MS 1500:2004 HALAL FOOD-PRODUCTION, PREPARATION, HANDLING AND STORAGE

[10] is a decree by Jabatan Kemajuan Islam Malaysia (JAKIM) in ensuring *Halal* food are free from contamination. This standard is applicable to all stakeholders who transport food and subscribe to JAKIM certification of MS 1500. The standard provides a general rule that govern not only transportation companies but also food manufacturer. Transportation companies including road haulage service provider having *Halal* certification as endorsed by [10] should be observant of this standard as they are required to fulfil the obligation as mentioned in [10] as part of their responsibility.

Accordingly, *Halal* food are required to be categorized, labelled and segregated as a means for identification and to prevent it from being mixed with other goods that may contaminate them especially those falling under the category of non-*Halal*. This is mentioned in Section 3.6 (1) under the heading of “Transportation, Display, Sales and Servings of *Halal* Food” and as follows:

“..... *Halal* food, transported..... shall be categorized and labelled *Halal* and segregated at every stage so as to prevent them from being mixed or contaminated with things that are non-*Halal*.”

Labelling and segregation of *Halal* goods and non *Halal* goods is very important. As having a category and label to goods, would enable the parties involve to identify *Halal* goods and non *Halal* goods, and this would in fact reduce the possibility of contamination to a minimum [14]. Contamination may occur in any level before goods were handed to the customer; therefore the standard specifically mentioned that parties dealing with *Halal* goods should ensure that goods are categorised, labelled and segregated at every stage. The word “every stage” connotes that transportation of goods; specifically transportation of goods by road that receives *Halal* certificate of MS1500 would be affected by the standard.

The standard requires dedicated vehicle suitable for the type of *Halal* food that it is transporting. The word “dedicated” refers to a vehicle that is used only to transport *Halal* food and the word suitable means that a vehicle having the capability to ensure food are within its environment. This is for example, if the food transported are frozen food, the vehicle used must be capable of maintaining a low temperature suitable to be

used to cater frozen food. This is mentioned in Section 3.6.3 under the heading of “Transportation, Display, Sale and Servings of *Halal* Food”. The section is as follows:

“Transportation vehicles such as bonded truck shall be dedicated and appropriate to the type of the *Halal* food and satisfy hygiene and sanitation condition”.

Other than vehicle suitability, This section requires for vehicle carrying *Halal* food to be hygienic and sanitized. The word “hygienic” means it must be free of contamination and clean and the word “sanitised” means it must be cleanse with suitable sanitary equipment making sure that it is free from contamination. By using a dedicated, appropriate, hygiene and sanitised vehicle, Risks of contamination could be minimized [9].

Section 3.7.1(c) under the heading of “Packaging, Labelling and Advertising” requires physical segregation between *Halal* and non-*Halal* food and below is the excerpt of the section:

“during itstransportation, it shall be physically separated from any other food that does not meet the requirements.....”

When *Halal* food are transported, it is a must that these foods are physically separated from foods that does not meet *Halal* requirements. The word “food that does not meet *Halal* requirements” is food that possibly contains *Non-Halal* ingredients such as pork and those which are not certified as *Halal*. The importance of the prohibition is to prevent the transported food from possible cross contamination with food that does not meet *Halal* requirements [2].

MS2400:2010 HALALAN-TOYYIBAN ASSURANCE PIPELINE-PART 1: MANAGEMENT SYSTEM REQUIREMENTS FOR TRANSPORTATION OF GOODS AND/OR CARGO CHAIN SERVICES

Similar to [10,11] is a decree by JAKIM to ensure *Halal* goods are free from contamination. The rulings as stipulated in [11] are specifically to regulate those who involve in transportation of goods and cargo chain services. This standard is a more comprehensive rulings than those as mentioned in [10] when referred to transportation of goods as it is a dedicated standard.

In dealing with transportation of *Halal* goods, current custodian of consignments is required to validate the compliance standard of the previous custodian. This is seen in Section 4.4 under the heading of “Chain of Custody”. The requirement is provided as follows:

“Verification of the consignments of goods transferred from a custodian shall be done by the next custodian of the consignments. Validation on the next custodian’s compliance to this standard shall be done to ensure the Halalan-Toyyiban integrity of the consignments”.

According to the section, it is compulsory for goods to be verified by the custodian who will be taking possession of the goods (next custodian) from the current custodian. When goods are verified by the next custodian, it will affirm through legal documents that goods hold by the current custodian is in compliance with [11]. The verification made would act as an evidence that goods are intact and the next custodian would therefore be liable for any loss or damage to goods since the next custodian has validated the integrity of goods before he possess such goods unless the next custodian is able to prove contrary to the evidence [6].

Section 4.4.3.1 provides for the suitability of transportation. It is under the heading of “Transport” and is provided as follows:

“The organization shall provide suitable means of transporting consignment throughout the transport chain, including equipment and resources as necessary”

The word organization in the whole standard refers to the party who subscribe to the standard. The party may derive as the manufacturer, road haulage service providers and others. These organizations are required to ensure suitability of transportation, equipment and resources to transport *Halal* goods.

Section 4.4.3.2 under the heading of “Transport” provides for the assurance of transportation and is as follows:

“The organization shall also ensure the mode of transportation be operated in accordance with legal and Halalan-Toyyiban requirements”.

The party who subscribes to the standard are required to ensure the requirement of Halalan Toyibban and legal requirements are fulfilled.

Section 4.4.6.1 under the heading of “Loss or Damage” provides for the requirement of identification of loss or damage. It is as follows:

“The organization shall ensure that any loss or damage to the consignment (cargo type) throughout the transportation process be identified and the next custodian informed accordingly. Loss/damage found should be documented”.

In the event where loss or damage occurs, it is compulsory for the party who subscribe to the standard to inform the next custodian of goods and this information should be documented. The importance of informing the next custodian is to ensure that the next custodian is aware of the defect of the good, thus would be able to take reasonable precaution towards the goods.

Section 5.6.1 under the heading of “traceability” requires for the establishment and usage of a traceability system. The section provides as follows:

“The organization shall establish and apply a traceability system that enables the identification of goods and/or cargo in the transportation chain services”.

Traceability plays an important role in *Halal* logistics as traceability would enable the road haulage service provider and its customer would be able to determine the position of the goods and in the event where contamination occurs. The customer and road haulage service provider would be able to determine the point of contamination, thus be able to take necessary steps to mitigate the future occurrence of the said incident.

MS1900:2005: QUALITY MANAGEMENT SYSTEMS-REQUIREMENTS FROM ISLAMIC PERSPECTIVES

The usage of [11] should be consistent with [12]. This is provided in section 0.3 of the [11] under the heading of “Introduction”, thus when using [11] one could not run from applying [12].

Section 7.5.4 under the heading of “Customer Property” provides for the establishment of policies for damage or losses. This is seen below:

“The organization shall ensure that all customer properties under its care and all usage related to the properties are Syariah compliant. The organization shall develop appropriate and sufficient policies with regard to voluntary compensation in the events of damages and losses”

This section provides that the organization shall ensure goods are syariah compliant and they shall develop and implement policies for compensation. This means that the organization has full authority to create its own set of policies. By using a standard agreement, they would be possibly be no negotiation between the parties.

THE APPLICATION OF MALAYSIAN STANDARD (MS) FOR TRANSPORTATION OF GOODS

The three standards [10, 11, 12] applies only to its subscribers, thus its area of enforcement is restricted. This would mean that a *Halal* food manufacturer would not be able to automatically bind a road haulage service provider of the standard as imposed to them, unless they are *Halal* logistics service provider who would naturally subscribe to the standard.

A conventional road haulage service provider may be bound upon a special contract with the *Halal* food manufacturer. Failure to reach a special contract with a conventional road haulage service provider would render that the road haulage service provider be free from the application of higher duty of care as required by the standard.

With regard to a conventional road haulage service provider, there are 2 possible scenarios that they may fall into. First, he would be liable for his failure to fulfil the requirement of the standard. This is due to the facts that a bailee (road haulage service provider) duty is to act as if he is the owner of goods of the same quality and value (Section 104 of [3]). In order to ensure that *Halal* certification is not breached (this represents the value and quality of goods) the road haulage service provider, upon carrying a *Halal* goods automatically required to fulfil the standard whether or not they subscribe to the standard. However, a reliance on this supposition would render the concept of *Halal* logistics as redundant as any transporter as long as goods transported are *Halal*; they are required to follow the standard applicable to the said goods and in accordance to its certification.

The second scenario is it is arguable that a “reasonable” conventional road haulage service provider is not implicated to a higher duty of care to provide the standard of care, as similar to those having *Halal* logistic certification as it is not within their specialization. Further, they are not a party with a responsibility to fulfil the

requirement of *Halal* certification. Thus, they are not liable for a raise of duty of care when they are carrying *Halal* goods.

This demarcation means that, in the event where the standard is breached and such breach derived from a conventional road haulage service provider, arguably they would not be liable for their breach as they are not certified nor bound to the rules. Thus, the manufacturer who is the subscriber of the rules would ultimately suffer the consequence of such loss.

A *Halal* road haulage service provider may be said to have an increased duty towards *Halal* goods compared to a conventional road haulage service provider. This is due to the intention of the establishment of *Halal* logistics is to secure *Halalness* of goods transported. Although their duty of care may be increased by virtue of Section 7.5.4 of the [12], the *Halal* road haulage service provider may limit their liability through a sufficient policy. Further, it is arguable that a man of ordinary prudence would not be liable to another if the other had waive parts of their rights through a limit of liability contained in a contract between him and the road haulage service provider.

CONCLUSION AND RECOMMENDATIONS

Halal logistics can be considered as a new branch of logistic in the industry. Although it is new compared to conventional logistics, it requires an increase of standard of care on the part of the road haulage service provider. A road haulage service provider could not simply adopt their conventional haulage agreement as a *Halal* haulage agreement as *Halal* haulage requires a stricter duty of care on part of the road haulage service provider to ensure the quality of *Halal* goods.

Further, in the event where customer appoints conventional road haulage service provider to deal with *Halal* goods. There is uncertainty with regard to the standard of care required for a conventional road haulage service provider against *Halal* goods. The use of a conventional service provider to transport *Halal* goods may trigger high risks of liability to the customer, as they may not be liable to have a higher standard of care required for those transporting *Halal* goods. This liability shall be squarely put on the customer for his failure to appoint a *Halal* logistics service provider.

ACKNOWLEDGEMENT

Heartfelt appreciation is forwarded to the Malaysian Institute of Transport (MITRANS) for the fund given and for providing me with the opportunity to do my doctoral research and the prospect of publishing this paper. I wish to convey my thanks to the Ministry of Education Malaysia for providing me with MyBrain 15 scholarship. Overall, thank you very much for those who are involved directly and indirectly throughout the completion period of this thesis. May Allah bless those who have contributed in this paper.

REFERENCES

1. Alhowaimil, I.S., 2013. Frustration of performance of contracts: A comparative and analytic study in Islamic law and English law, Phd thesis, Brunel University, London.
2. Bonne, K. and W. Verbeke, 2008. Religious Values Informing *Halal* Meat Production and the Control And Delivery of *Halal* Credence Quality. *Agriculture and Human Values*, 25 (1): 35-47.
3. CommonLII, 1974. Contracts Act 1950 (Revised 1974). Retrieved from http://www.commonlii.org/my/legis/consol_act/ca19501974200/.
4. Wichard, J.C., F.E. Vogel and S.L. Hayes, 2000. Islamic Law and Finance. Religion, Risk and Return. *Law and Politics in Africa, Asia and Latin America*, 33 (1): 94-99.
5. Roger L. Miller and Gaylord A. Jentz, 2011. *Business law today: Comprehensive: Text and cases*. Cengage Learning.
6. Giermansk, D.J., 2011. Tracking and chain of custody: The difference. Retrieved from <http://www.maritime-executive.com/article/tracking-and-chain-of-custody-the-difference>.
7. Greenwood v Waverley MC (1928) 28 SR (NSW) 219.
8. Hor Sai Hong v. University Hospital [2002] MLJ 167.
9. Islam, A., 2013. The Challenges of Trading *Halal* Food: The Logistics and the Law. *Global Islamic Finance Report*, 2013 (1): 172-178.
10. Department of Standards Malaysia, 2009. Malaysian Standard MS 1500:2009-*Halal* Food-Production, Preparation, Handling and Storage. Retrieved from <https://law.resource.org/pub/my/ibr/ms.1500.2009.pdf>.
11. Department of Standards Malaysia, 2010. Malaysian Standard MS 2400-1:2010-*Halalan-Toyyiban* Assurance Pipeline-Part 1: Management System Requirements for Transportation of Goods and/or Cargo Chain Services. Retrieved from https://www.msonline.gov.my/download_file.php?file=24704&source=production.

12. Department of Standards Malaysia, 2005. Malaysian Standard MS 1900:2005-Quality Management Systems-Requirements from Islamic Perspectives. Retrieved from <https://law.resource.org/pub/my/ibr/ms.1900.2005.pdf>.
13. Port Swettenham Authority v TW Wu and Company (M) Sdn Bhd [1978] 2 MLJ 137).
14. Salama, 2015. UK: The importance of labeling *Halal* food as *stun* or non *stun*. Retrieved from <http://Halalfocus.net/uk-the-importance-of-labeling-Halal-food-as-stun-or-non-stun/>.
15. Federal Court of Malaysia, 2010. Tai Seng Glass Sdn Bhd v. Jasa Kita Warehousing Service Sdn Bhd [2010] 9 CLJ 161. Retrieved from <http://www.kehakiman.gov.my/directory/judgment/file/JMT%20W-02-936-01.pdf>.
16. SlideShare, 1894. *Ultzen v. Nichols* (1894) 1 Q.B. 92. Retrieved from <http://www.slideshare.net/fawadansari3/case-ultzen-vs-nichols>.
17. *Voland v. Reed* 2164 N. Y. Supp. 19 (Sup. Ct. 1917).