The effect of deviation occurring in the course of a maritime voyage on the liability of the carrier under the Hague/Visby rules and Hamburg rules, in relation to certain countries


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Abstract

Deviation occurring in the course of a maritime voyage and its effect on the carrier's liability is a controversial issue whether under the Hague/Visby Rules and the Hamburg Rules or under the COGSA of the United Kingdom and the United States. The thesis is divided into six chapters. Chapter one is aimed at defining the concept of deviation and clarifying the classification of deviation. Any attempt to classify the terminology of deviation into reasonable and unreasonable is considered an essential factor in deciding whether the deviation occurring in the course of the maritime voyage is a deviatory breach of contractual obligations or not. Chapter two is divided into two sections. The first one is devoted to explaining the main principles of the carrier's liability concerning the seaworthiness and the proper care of the goods by loading, handling, and stowing the goods carried. I also discussed the degree of the seriousness of the carrier's fault or his servant or agent and the effect of serious fault on the doctrine of deviation which might displace the carriage contract when such deviation occurs deliberately. Whereas, the immunities of the carrier, whether under the International Convention, i.e. The Hague/Visby Rules and The Hamburg Rules or, in the national laws and the immunities which are based on a contractual basis, are subject of section two. I have however reached the conclusion, in this chapter, that the carrier's liability, under the Hague/Visby Rules and the Hamburg Rules, is based on the principles of presumed fault or neglect. On the other hand, I have adopted the risk approach as the best theory for introducing an explanation for holding a deviating carrier liable providing that the deviation is wrongful and increasing the risk of loss beyond that permitted by the contract and endeavours to prevent the carrier from creating unauthorized risks. Chapter three deals with the effect of deviation on the contract of carriage and its characteristics as a serious breach of the contractual obligations. I have therefore divided the chapter into two sections. Section one is concerned with the characterization of the breach of contract of carriage by explaining the distinction between the conditions and warranties under the general principles of the contract law, and the breach of fundamental term or the fundamental breach, while section two is devoted to explaining the effect of unreasonable deviation on the obligations of the contracting parties. I have however tried in this chapter to find a legal characterization for unreasonable deviation. I believe that such a serious breach is considered a breach of the substantive rules and therefore the doctrine of deviation still the same effects on the contractual obligations as it had under the pre-Hague Rules regime. I also endeavoured to base such a breach in the carriage contract or test of reasonableness which determines whether or not a breach of contract is fundamental or material. Thus, any exaggeration in the drastic effect of an unreasonable deviation should be isolated from the carrier's duties to provide a seaworthy ship and to load, stow, and discharge the cargo properly and carefully. The innocent party has merely a right to compensation for such loss of or damage to the cargo. Recovery of losses and damages resulting from an unreasonable deviation is the subject of chapter four. This chapter is divided into three sections which deal with the compensatory nature of losses and damages and whether the innocent party is entitled to recover physical and the economic loss by establishing the causal relationship between the unreasonable deviation and the loss of or damage to the cargo which could be shadowning two doctrines, i.e. remoteness and mitigation of damage, which have tried to limit the damages. The court is however entitled to have a special method to estimate such loss of or damage to the cargo. Unless the nature and the value of the goods have been declared by the shipper before shipment and inserted in the bill of lading, the cargo-owner is entitled to recovery for full damages caused to the cargo which may exceed the statutory limitation. Chapter five is concerned with the procedures of action for lost or damaged cargo. This chapter is divided into four sections. These sections are concentrated on the principles of notice of loss, damage and delay in delivery.
It is clear that a shipper is not restricted to shipping only goods which carry no risk at all and also true that all goods present some risk. Responsibility for such risks or for avoiding or minimizing their consequences may of course fall on the shipper, who may be liable for losses suffered by the carrier or third parties as a result of the shipment of such goods. Otherwise it is the carrier's duty to provide a seaworthy ship which is fit for the contracted cargo. Furthermore, it is a normal part of a carrier's duties to take appropriate measures to avoid loss resulting from risks of which the Hague–Visby Rules is a set of international rules for the international carriage of goods by sea. They are a slightly updated version of the original Hague Rules which were drafted in Brussels in 1924. The premise of the Hague–Visby Rules (and of the earlier English common law from which the Rules are drawn) was that a carrier typically has far greater bargaining power than the shipper, and that to protect the interests of the shipper/cargo-owner, the law should impose some minimum affreightment. [1] The limit of liability of the carrier under article 4(5) of the Hague Rules must be converted into Italian currency on the basis of the market value at the time of the occurrence of the gold content of the gold pound in 1924. Japan. [1] The Hague Rules being incorporated in the bill of lading the effect of clause 8.2 is to nullify the package limitation in clause 6(B)(b)(i) to the extent that it may be in conflict with or repugnant to the Hague Rules. (2) The first paragraph of article 9 of the Hague Rules is intended to qualify the reference in article 4(5) to £ 100, so that the figure in sterling must be taken to be a gold value figure, viz. the gold value of $ 100 sterling in 1924. * A copy of this judgment has been kindly provided by Dr. Paul Myburgh, University of Auckland.