

Deviation Rule under the Common Law and the Hague-Visby Rules

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Abstract: The deviation rule in shipping law cannot be ignored as it deeply affects the obligation of the carrier. In this essay, before comparing the two regimes that are the Hague-Visby Rules(HVR) and the common law, the factors affecting the comparison are discussed one by one, such as how to determine the reasonable deviation and the criteria for its determination. The study finds that the interpretation of the “reasonable deviation” is attributable to factual issues. Since the range of reasonable deviation is very broad, in determining whether it is a “reasonable deviation”, the factors to be considered are the time of deviation and the distance, the nature of the deviation and interpretation with Art IV,2(1) under HVR. After solving the previous question, it attempts to compare the stipulation of deviation rule under the two regimes. From the comparison of the doctrine of the justified deviation, it is found that although the common law regime may change the scope of justified deviation by adding the liberty clause, it cannot be compared with the HVR regime, in terms of rationality and broadness. In addition, it defines the “proper course” and the meaning of “voluntariness” before comparing the effect of the unjustified deviation on the carrier. The carrier has more rights under the HVR than the common law. For example, the carrier may use Article IV, rule 5(a) and Article III, rule 8 as the defense. Both of these terms have alleviated the responsibility of the carrier to a certain extent. Finally, based on the above findings, it is concluded that the HVR is more suitable for the carrier than the common law for the deviation rule. Based on this conclusion, the suggestion is that both parties to the contract may include the “paramount clause” in the contract, so that the contract may apply the provisions of the HVR.

1. Introduction

The deviation involves deliberately adopting a route different from the contract route, but failing to set the correct route for the next port[1].Due to navigation errors, or involuntary departure routes caused by wind or current, is not a deviation. It undermines the carrier’s primary responsibility for the shipper. This primary duty is that to carry the cargo to its destination will “all due dispatch”. For example, HVR Article IV, rule 4 states that “any deviation in saving or attempting to save life or property at sea” or “any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage”; the carrier shall not be liable for any loss or damage

resulting therefrom. Similarly, the shipowner has the implied obligation not to deviate from the agreed route under the Common law. In the following two circumstances, the common law allows the deviation from the correct route. One is to save people's lives or to communicate with ships in distress to prevent danger to life, and the other is to avoid danger to ships or cargoes. Based on the above rough description, the common law deviation is more stringent than the HVR. Because if the goods are shipped under the terms of the bill of lading, the HVR allows the carrier to make the deviation for reasonable reasons. In addition, according to the HVR system, the unjustified deviation does not deprive the carrier of all absolute rights, such as time restrictions. It is worth noting, however, that the common law may still be relevant, as not all types of bill of lading or various goods transported under a negotiable bill of lading will trigger the application of the HVR. In fact, the HVR are not mandatory for the charter party. Therefore, this essay attempts to compare the deviation rule between the HVR and the common law, so as to give the carrier or shipowner advice on how to deal with the deviation rule.

2. What is the “reasonable deviation”?

The Article IV(4) of the HVR expands the scope of the deviation prescribed by the common law, such as allowing “any reasonable deviation”, but leaves the question of how to define the “reasonable deviation”. The English courts often encounter difficulties in interpreting the phrase “any reasonable deviation”, although it is generally accepted that the interpretation of “reasonable deviation” should be considered a matter of fact[2]. The Stag Line case may fully reflect above problem which is that the judges have the difficulty in interpreting the “reasonable deviation”[3]. The reason for the deviation of the vessel was that the shipowner placed the engineers on the shore. These engineers originally tested the fuel storage system on board. Unfortunately, the ship encountered a stone during the deviation. The House of Lords held that the above reason could not constitute a reasonable deviation, and refused to allow the shipowner to rely on the protection provided by the Rules[3]. In this case, Greer LJ believed that the term “reasonable deviation” referred to a deviation that is beneficial to the ship or the shipowner or both, and the rational person did not raise any objection. Therefore, if it was not in the interests of neither ship nor cargo, the deviation would not be reasonable. In addition to the above considerations, determining whether it is a “reasonable deviation” does not require a fortuity. For instance, even if it is planned or due to problems with the ship before sailing or bill of lading, the deviation may be “reasonable”. Similarly, the reason for not being rendered unreasonable deviation is simply because it is done in a negligent manner. In line with *Monarch Steamship Co.v. Karlshamns Oljefabriker*, the House of Lords believes that the deviation made to compensate for unseaworthiness are not necessarily unreasonable unless the shipowner knows that it is unseaworthy while sailing[4]. In practice, such a planned deviation may be reasonable only in the case of the deviation which is planned to carry out contractual risks, and where the stage doctrine legalizes this method of performance.

Apart from these circumstances, in determining whether the deviation is reasonable, the English court may include the following factors in the assessment. The first is the time range and distance range of the justified deviation. Since the customary and usual route is not precisely delineated route, it may contain a reasonable range of limits. However, if an unjustified deviation is formed, then even if the distance and time taken are small, this will not cause it unjustified deviation to become a justified deviation. Moreover, the judge will consider the nature of the deviation. For one thing, the usual feature of navigation may not be regarded as a deviation, such as a bunkering call. Because making such a bunkering call in trade is very common for vessels. Furthermore, analyzing the reason for deviation is also necessary for the English courts. It is common that a deviation is a justified deviation when the aim of deviation is to guarantee the safety of the vessel or cargo,

although the ambit of deviation must not exceed what is a reasonable purpose of achieving its reasonable aim. Repairs for the purpose of reaching her destination safely is a good example to illustrate the above standard. In addition, the court will consider the nature of the transaction, such as whether the ship involves liner services or a general cargo ship that is involved in a series of ports, or whether the ship is contracted to carry all of the goods from one designated port to another. Because the nature of the service will be related to the determination of customary routes, the scope of the construction of the liberty clause and the reasonable scope of the HVR. It should be noted that although the nature of the transaction of the contract is so important, the status of the express terms in the charter party or bill of lading takes precedence over the nature of the transaction. Lastly, the interpretation of “reasonable deviation” in Article IV, rule 4 should be read in conjunction with the exceptions in Article IV 2(1). It is clearly geographical, but deck carriage has always been within the scope of the Rules. While it is most important to save lives and transport ships at sea, this is clearly true, but it may not be a deviation at all, but this freedom extends to save any property and any reasonable deviation at sea. Although the saving of property is not particularly constrained by the term “reasonable”, it is believed that the following may be understood as “any other reasonable deviation” and therefore the step of saving property should not create an unreasonable or disproportionate loss or risk of damage to the property on the ship in which the attempt was made.

3. Are the HVR on the issue of deviation to the carrier better than the Common law?

3.1 From the perspective of the doctrine of “justified deviation”

The Article IV, rule 4 of HVR is not intended to interfere with the established common law principles, the purpose of which is to provide shipowners with a wider range of protection by adding the deviation to save property and reasonable deviation to existing common law-based deviation lists. Therefore, if the carrier is for the purpose of saving life or property at sea or any reasonable deviation, these actions will be considered reasonable in law. From the above description, it can be inferred that the common law and the HVR have slightly different positions on the doctrine of justified deviation. Thus, it can be argued that the doctrine of justified deviation at the HVR is wider than the common law. For instance, at first glance, the carrier has the opportunity to save property, which does not seem to violate the HVR. Since the HVR clearly stipulate that deviation can be made for property interest, the impact may be achieved by the mutual commercial purpose of both parties in the adventure[5]. Then, the HVR is not negative for the deviation rule, but is more positive than the common law, for example saving lives, property and any reasonable deviation is allowed. This provides greater slack in the handling and navigation of the ship for the carrier and its master. The aim of this stipulation actually puts the carrier in an excellent position. In fact, it seems to provide a motive for purely property protection, which is a highly profitable operation for the carrier. Because the adverse consequences of the deviation are borne by the cargo owner, the carrier does not need to take responsibility for this. The carrier may be aware that the goods may be lost or may arrive at damage during operation. However, it might be argued that the doctrine of the justified deviation at the common law might be justified by the specific terms. As the implied obligation is not an absolute obligation. With the development of the shipping industry, it has introduced some exceptions based on contractual practices, such as the liberty clause. Due to the existence of the liberty clause in a bill of lading or charter party governed by common law, the parties to the contract may, by agreement of the liberty clause of use, give the shipowner or carrier the liberty to deviate from the agreed or usual route or to dock at other ports during the voyage. In spite of this, in practice, the courts are likely to interpret such liberty clauses very narrowly. For example, in *Solly v. Whitmore*, the charter party contained a liberty clause that allows the ship to proceed to, touch and stay in any port for any purpose, in particular, Elsinore, without being

considered to be the deviation[6]. The ship touched and stayed at Elsinore and Danzig to deliver cargoes. Unfortunately, the court held that this deviation was unjustified.

It could be argued that the deviation rule under the HVR is uncertainty mainly because of the relationship between the Article IV, rule 4 and the Article III, rule 8. For example, if these liberty clauses are not considered “reasonable” by the court in the sense of Article IV, rule 4, then these liberty clauses will be seized by Article III, rule 8, which will invalidate any clauses that are detrimental to the protection provided by the Rules. But a better point of view seems to be that the liberty clause, in essence, is not conflicting with Article III, rule 8. Since the purpose of the liberty clause is to determine the scope of the contract voyage, rather than mitigating or exempting the carrier’s responsibility. So in this circumstance, it is difficult to understand how the carrier’s behavior constitute the breach of the contract if the deviation is reasonable. Because the liberty clause mainly states how the contract of carriage should be executed. The liberty clause is within the reasonable deviation and therefore does not conflict with Article III, rule 8.

There can be no doubt that the doctrine of deviation rule under the HVR is more operational than the common law. The scope stipulating both the property and lives is feasible in practice. The reason is that in practice it is often difficult to separate the crew, the ship, and its cargo. It will be quite often the case that the intent of the captain’s deviation is to provide protection not only to the crew but also the ship and its cargo. However, according to the common law, one of the most notable exceptions is the saving of human life. Taken the *Scaramanga* case, for example, the defendant’s vessel was chartered by the plaintiff and transported a batch of wheat from the city of Constadt to the Mediterranean, excluding common perils of the sea[7]. During her voyage, she saw and sought help from a ship named the *Arion* in distress. The shipowner agreed to change his route and agreed to drag her into Texel. Even so, the defendant’s ship was stranded and her goods were completely lost. It was held that the deviation was unjustified. As can be seen from the facts of the case, according to the common law, the deviation is considered unreasonable in the preservation of goods or ships. As crew members, ships and goods are often inseparable, it is not feasible only to protect human lives under the Common law. Furthermore, another problem arises in the common law, that is, whether the shipowner is allowed to deviate in order to preserve the goods on board. In order to answer the above question, it is clear that the captain not only allows the deviation to store the cargo on board but if the captain continues to sail without trying to save the goods, it is tantamount to negligence. Due to the clear stipulation of protection of the cargoes under the HVR, the above problem does not exist in such a system. In the case of *Notura v Henderson*, the boat was in good condition, but the cargo on board was wet[8]. The court held that in this case, the captain must take into account the interests of the shipowner and the shipper. It can, therefore, be argued that in this case, the carrier’s implied obligation to care and preserve the goods appeared to take precedence over the implied obligation not to deviate. As can be seen from the case, the scope of justified deviation under the common law does not include the saving of property, and it will be more likely to lead to uncertainty in the application of the shipowner’s implied obligation not to deviate.

In brief, from the perspective of the doctrine of justified deviation, the HVR which may protect the interests of the carrier is more suitable for the carrier than the common law, in terms of rationality, certainty, extensiveness, and enthusiasm.

3.2 From the perspective of the effect of “unjustified deviation”

3.2.1 How to constitute the “unjustified deviation”?

There are two factors that may cause the unjustified deviation. The first factor is the unreasonable deviation from the “proper course”. The second factor is the “voluntary” deviation

from the proper course which will be classified as illegal. Hence, the principle of deviation is to obligate the shipowner to deliver the goods directly to the agreed destination. Taken Joseph Thorley for example, there was a boat carrying beans to London. However, the ship did not travel directly to London but to the Asia Minor port. As a result, after arriving in London, the beans were all damaged. Likewise, in *Clayton v Simmonds*, it was held that if the ship stopped at the unspecified port and deviated from the correct route, or stayed there, this was an unreasonable deviation[9].

It is important to note that in its meaning and operation, the doctrine of deviation goes beyond the actual deviation from the “proper course”. Sometimes, for cost savings, environmental and other reasons, shipowners may wish to reduce the speed of the ship or park at certain points along the way. The charterer may have similar interests to save costs. Even if the owner and the charterer have the same interest in the so-called “slow steaming” the interests of the bill of lading holders in the adventure must be taken into account. Therefore, straying from the proper route is one of the unjustified deviation circumstances; deliberately reducing the speed which causes a delay in fulfilling the duty to proceed with due or utmost dispatch along the normal and direct route is also the case. Furthermore, “slow steaming” in order to save fuel may constitute an unreasonable deviation unless the liberty of doing so is clearly stated in the contract of carriage. Alternatively, if the shipowner wants to “slow steaming”, the owner should first obtain the consent of the cargo owners or at least ensure that both charterers and the holder of the bill of lading know this.

The condition for invoking the deviation rule is that the process of deviating from proper navigation must be voluntary and unreasonable. This means that the deviation must be illegal. Therefore, it is necessary to determine the correct route for a particular voyage before determining the illegal deviation. This feature will be implemented using explicit terms in the charter party. But the question is what if the parties do not specify such an agreed route. In the absence of a clear definition of the route, the another claim is to adopt a direct geographic course. However, the problem is that new problems may still arise after solving the above problem. For example, when there are multiple geographic routes, there may be different opinions for the parties to the question that should use which of the two or more alternative geographic routes. Therefore, when there are multiple geographical routes between the starting point and the ending point, the court often chooses the usual geographical route. But even if the usual geographical route is determined, the court will encounter the new problem, that is, the usual route of the shipowner or the usual route of the shipper. Apart from this, the emerging issue is to ascertain whether the standard of the usual route is for the particular trade or for the shipping industry as a whole. Another way to consider is whether the standard of the usual route is based on objective conditions. Based on the above, the court may need to break through the literal concept of “usual route” and seek to define a recognized trade route. The purpose of this is to add a certain degree of objectivity to the criteria in order to establish a usual route when the parties do not write the specific route in the contract.

Based on the above questions, the method for determining the “proper course” is as follows. On the surface, the “proper course” is a generally agreed route as stipulated in the contract of carriage. when the contract does not provide for a clear route, the court considers the “proper course” to be a direct geographic route between the port of loading and the port of discharge. When there are multiple geographic routes, evidence can be provided by the parties to explain why these routes constitute the “proper course”. For instance, the customary route may be the usual route taken by the shipping company on a particular routes, or it may be the route that the carrier has been taking. When the shipowner claims to have a customary route, he must produce evidence that the route is both universal and uniform. If the evidence is convincing, the court will be persuaded to accept the customary route as the “proper course”. In brief, the shipowner’s responsibility is to sail from one port to another using the proper routes between the two ports. If no evidence is provided, the route is assumed to be a direct geographic route. However, in many cases, the route may be modified for

navigation or other reasons. For example, other reasons may contain the evidence which is provided to prove that the route is the customary route or the stipulation of the particular route which is written down in the charter party or bill of lading.

3.2.2 Comparison the effect of the unjustified deviation under the HVR and the Common law

An obligation to carry out without unreasonable deviation is the basic term or condition of the contract. Any breach of contract, even to a charter extent, gives the charterer the right to choose whether to affirm or rescind the contract. There is strong evidence that carriers have more serious responsibilities under the common law than under the HVR. If the injured party chooses to terminate the contract, the shipowner can no longer rely on the terms of the charter party or the bill of lading to protect the shipowner. The shipowner holds the goods as a co-carrier and therefore has strict liability for loss or damage. Because if the loss or damage that occurred during or after the deviation was prosecuted, he could not invoke the exceptions to the contract or the limitation of liability. The common law only recognizes three exceptions, namely exceptions related to the act of God, the act of the Queen's enemies and inherent vice. In addition, as the deviation retains its characteristics as a breach of contract, the carrier must also prove that the loss will occur if no deviation occurs. If a loss occurs during the deviation, this is usually not possible to prove. In recent cases, the court seems to indicate that such deviation should be dealt with a construction basis, as the court should consider the shipowner's attempt to use the exemption clause as a defensive measure. It then checks the facts of the loss caused by the charterer and then, as an explanation, decides whether the parties intend to include the specific exclusions that have occurred. In addition, even if the ship has returned to the correct route, the carrier may encounter similar proof difficulties. Because, in different weather, visibility, tides and traffic conditions, the ship is likely to be later than other ships passing the channel. Therefore, in *Hain v. Tate & Lyle*, the vessel had returned to the contract route before stranding, but it was later than the original time. Lord Wright argued that the shipowner could not prove that if there was no deviation, the stranding would also occur. However, Lord Atkin believed that the real point was that leaving the contracted navigation route is a breach of contract by the shipowner. Regardless of the degree of deviation, the other party to the contract has the right to treat it as the root of the contract and declare that it is no longer bound by any of its terms. Although this view may be too harsh for the carrier and difficult to coordinate with actual decision of *Hain v. Tate & Lyle*, it shows that this argument exists in practice[10].

On the contrary, it can be argued that the HVR on unreasonable deviation is more friendly than the common law. Since the scope of "unreasonable deviation" under the HVR is smaller than the common law. However, in certain circumstances, the deviation is reasonable and therefore not considered a breach of contract. Since the legal deviation of the HVR is larger than that of the common law, it can be concluded that the illegal deviation of the Rule is smaller than the common law. For example, deviation from the rescue of property or any reasonable deviation will not infringe or violate the HVR, and the carrier will not be liable for any loss or damage caused thereby. On the contrary, under the common law, for property and any deviation that has reasonable grounds, it will be classified as illegal. In addition, the deviation under HVR does not deprive the carrier of the right to liability under Article IV, rule 5 and to invoke the time bar set out in Article III, rule 6. Because Art III, rule 6 and Art IV, rule 5 clearly apply "in any event". In a decision involving unauthorized deck carriage, the court of appeal held that the decisive factor is not to violate the seriousness or other aspects of the case, but how to directly construct the relevant provisions. In this way, they think that "in any event" is what they say. Their scope is infinite, and it is evident there is no reason to give them any other meaning than their natural meaning. The introduction of the HVR in the United Kingdom reinforces this approach, as their provisions clearly give "the force of the

law”. If these provisions want to be as effective as legal rules these provisions must continue to exist if the parties concerned refuse to perform their contractual obligations.

In the *Antares* decision, the plaintiff requested the time charterer to compensate for the loss of undeclared deck cargo. The termination or identity of the carrier’s terms in the bill of lading clearly indicates that the owner of the ship is the “principal” in the contract of carriage. When the owners finally get a claim, they file a one-year time limit based on the HVR as a defense. In this case, as the plaintiffs applied for an extension of time, the court was forced to consider the undeclared stowage on the time bar. The important provisions of article III, rule 6 are as follows: “in any event, the carrier and the ship shall be released from all liability with respect to the goods, except in the event of litigation within one year or on the date of delivery”. One argument put forward by the plaintiffs is that because of the “fundamental breach” of the contract, the contract is null and void and the owner cannot rely on the time limit. While many cases greatly limit the applicability of the so-called fundamental breach doctrine, it is widely believed that deviations under the maritime law are unique and undeclared deck stowage could lead to the discovery of a fundamental breach. The appellate court’s decision distinguished between a strict deviation of the contractual route and unauthorized deck transport. In the absence of a judgment on the former, it was considered that the unauthorized carriage of deck goods was not an exceptional case. The court noted that the wording of the article III, rule 6 provided that the carrier would not “in any event” be exonerated from all liability unless the suit was filed within a year, and, therefore the owner’s defense was successful.

To sum up, as with all construction questions, things ultimately have to depend on the language of the contract. For example, it has been suggested that, as an explanation, the package limitation clause of the HVR which means applicable “in any event” still applies in the event of Gods default. In the case of the non-termination of the contract, if the deviation occurs, the same result will occur. As part of the commercial context, the substance of the exception may also relate to construction issues. Thus in the case of unreasonably deviating from the contractual route under the HVR, an exception can be said to be more burdensome for the shipowner than the contract stipulates, and the contract time limit will not become more cumbersome due to the deviation, and should be applied as a construction problem whether the ship deviates.

3.3 From the perspective of the “liberty clause”

Applying the rule to the liberty clause would mean that the clause was read to conform to the contract voyage. The contracts of carriage by sea typically include provisions that allow the carrier to deviate from the proper route, at the same time, the shipowner or shipper provide the liberty to leave the agreed route freely under the HVR. Shipowners have the freedom under common law, including clear the liberty clause to deviate from the correct route. These liberties only prove that the carrier calls the port on the route between the departure port and the final destination. It can be seen that although there is no formal difference between the liberty clause in the charter party and the interpretation of the liberty clause in the bill of lading, the background of the transaction explained by the former tends to lead to a more rigorous interpretation. However, this restrictive explanation is not absolute because the interpretation can be overcome to some extent by allowing the shipowner to make a call at any port, albeit in the opposite direction to the route. In *Connolly Shaw v Nordenfjedske*, the contract contained the following extremely wide liberty clause[11]. For example, nothing on this bill of lading shall be construed as an agreement that the above-mentioned transportation shall be carried out directly or without delay. The ship may sail freely before or after the departure from the port of delivery of the goods mentioned above. The ship will go to or return and stay at any port or place once or any backward or forward loading or unloading of cargo passengers coal or stores. For any purpose, whether sailing with them, sailing

outwards or on the way, the location and navigation of all such ports shall be deemed to be included in the intended voyage of the goods. As stated above, the description language refers to the ambit of the liberty clause. As the owner deviated from Hull before heading to London, the owner lost money due to falling market prices during the extended voyage. However, the lemon goods arrived in good condition. The court held that the deviation was within the doctrine of liberty clause. In this case, it confirms that the court will apply and interpret the liberty clause verbatim as long as the purpose of the voyage (i.e. transporting the lemon goods in London) is not frustrated. This is a voyage charter, and time is not important, so delivery at a specific time is not a relevant factor when determining the purpose of the voyage. Nevertheless, the reference to “reasonable deviation” in the above provisions is, of course, broader than the common law approach and gives the shipowner greater freedom to be able to justify the deviation in court. It can be concluded that the existence of “reasonable deviation” in the HVR gives the shipowner more room to prove this deviation is reasonable in court.

It may be suggested that the scope of the “liberty clause” under the HVR is smaller than the common law. Because the application of the Carriage of Goods by Sea Act 1971, the liberty clause which tries to allow deviations from the contract voyage beyond the limits allowed by article IV, rule 4 would come within the detriment of article III, rule 8 of the Rules. The consequence of this is that the liberty clause that attempts to exclude or limit the carrier’s liability is become invalid and has no effect. But when the HVR does not apply, the common law position is that such a clause is fully valid. However, judges who wish to protect shippers from such restrictions are not completely free of weapons. The court may use the “secret weapon” of the construction or “contra proferentem” rule. Since the vague and generous terms will be restricted by the courts, these clauses apply to the “contra proferentem” rule of construction. The “contra proferentem” rule is the doctrine of contract interpretation, stipulating that if the promise, agreement or term is ambiguous, the preferred meaning should be contrary to the act of providing the wording of the party. The most important thing is that the doctrine cannot be directly applied to the language mandated by law, as is often the case with insurance contracts and bill of lading. Thus this indirectly illustrates that the scope of the HVR which governs bill of lading is not necessarily smaller than the scope of the common law. Apart from the secret weapon of the court, it is true that the insurance benefit or similar clause in which the carrier is the beneficiary should be considered as exempting the carrier’s liability. Nonetheless, any liberty clause in the bill of lading is not as broad as the “reasonable deviation” from the HVR. Thus in *Renton & Co Ltd v. Palmyra Trading Corporation of Panama (The Caspiana)*, although a wide range of strike clauses have been added to the bill of lading, this is not intended to offend Article III(8) above, so according to the HVR, it is not necessary to consider whether it is a reasonable deviation[12]. It seems that some contracts of carriage contain freedoms that deviate for special reasons, for example, if the prescribed port of discharge cannot be provided for some reason (such as a strike), the owner can be free to unload the goods. The bill of lading usually includes provisions that allow the carrier to deviate from the contract voyage. Prior to *Stag Line v Foscola, Manga and Co*, it is unclear whether the joint action of the article III, rule 8 and Article IV, rule 4 may invalidate the liberty clause to deviate. The liberty clause to express deviation has now been well resolved. Because the role of the liberty clause is to define the range of voyage and how to execute the voyage, it does not conflict with HVR Art III, rule 8.

To sum up, the liberty clause is now considered to be one of the most important exceptions to the deviation obligation, since such contractual term can be said to represent the will of the parties based on the principle of freedom of contract. Since the role and function of the liberty clause are carried out in the context of deviating from the law, the use of the liberty clause in different regimes is compared. The final conclusion is that the use of the liberty clause does not conflict with Art III, rule 8 under the HVR, and thus does not invalidate the liberty clause. In addition, the inclusion of

the liberty clause in the common law does not make the scope of its justified deviation greater than the “reasonable deviation” under the HVR.

4. Suggestion

4.1 Introduction of the “paramount clause”

The word “paramount” should literally be interpreted as “supreme” or “above all others”. This term is related to certain characteristics and is characterized by prioritization over all other characteristics. The inclusion of the term “paramount clause” means that all other terms of the contract of carriage, whether included in the charter party or bill of lading, will be subject to the “paramount clause”. For example if the “paramount clause” stipulates that the carriage of the goods is subject to the HVR, the content of the Rules will become part of the contract and will stipulate the rights and duties of both parties. The clause paramount is to incorporate the liability regime (usually the Hague or HVR) into the subject charter. These terms are necessary because at least according to English law, the “rules” are not mandatory for the charter party. Therefore, when the Rules are not enforced, there is a need for a sufficiently clear consolidation clause. Although Article V of the HVR stipulates that these rules are not mandatory for the charter party, many standard forms of charter party are combined on a voluntary basis. This result can be achieved by specifically referring to the legislation that sets the rules in the country of shipment, specifically mentioning the rules themselves or the provisions containing the substance of Article III, rule 6, Article IV, rule 4, and Article IV, rule 5(a). This incorporation is usually achieved by including the so-called Clause Paramount in the charter party.

Next, it will discuss the words of incorporation. If a clause paramount is in the charter parties, it will not necessarily mean that the Rules are incorporated. For example, “the following clause shall be included in all bills of lading issued pursuant to this Charter” or “Charterers shall procure that all bills of lading issued under this charter shall contain the following” is not sufficient to include the “Paramount Clause” in the subject charter. However, the following wording is sufficient to incorporate the clause paramount into the subject charter: “this Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder”. It is particularly important to note the precise wording of the clause in question in cases where the paramount clause may conflict with other clauses in the contract once it is incorporated. As a general principle of construction, the preamble to this clause will usually determine which clause take precedence over the other. For example, if the company registration begins with “although there may be any other provisions in the charter...”, the paramount clause is likely to take precedence over the other. If it is another clause with this preface wording, then vice versa.

4.2 The effect of incorporation

It is common for charter parties to combine the HVR with a “clause paramount”. This incorporation will give the contractual force, so the Rule will take precedence over any exceptions in the charter parties. However, the question is that the parties may not always provide for the application of the HVR in their clause paramount. The effect of the paramount clause replaces the deviation rule under the common law. The following effects can be reflected. As a charter party which governed by common law rules, the captain can only save lives rather than property, and the effect of the paramount clause is incorporated in the HR and HVR in order to give the captain more freedom and flexibility in this deviation. It is permissible and reasonable when the goal is to preserve property or life, or both, or if there is any reasonable deviation from the matter. Therefore, the overall effect of the paramount clause is to reduce or dilute the stringency and rigor of the

common law rules on the deviation. If the rule is successfully incorporated and applied to a charter party, the application will not be limited to the cargo claim. For example, the owner may also benefit from the defenses provided by the other claims in the rules. Depending on the exceptions to the charter party, the shipowner usually needs to perform activities that are broader than the ones covered in the bill of lading, or that is envisaged under the exceptions listed in Rule 2 of Rule IV of the HVR. The ensuing question was whether the shipowner had the right to invoke the immunity in Article IV to cover this broader activity in the case of the incorporation of the charter. Taken the US experience for example, in the case of the *Satya v Kailash*, the Court of Appeal gave a positive answer to this question.

The inclusion of the HVR in the charter party will enable the shipowner to utilize the 12-month time bar set forth in article III, rule 6. This provision usually takes precedence over any provision of a shorter term specified in the charter party, even if the clause stipulates that the dispute is submitted to arbitration. As with the exceptions, the extent to which shipowners can rely on time limits as a protection against claims for many of the obligations arising from breach of a charter party are not the types encountered in the bill of lading contract. In this regard, two factors are important. First, Article III rule 6, requires that the claim involve loss or damage to the goods. Obviously, any claim for breach of contract that caused actual loss or damage to the goods falls under this definition, but the court has made a broader interpretation of the term. If the general vocabulary is included in the legislative time limit for the promulgation of the HVR, the shipowner has the right to rely on time limits to protect claims that violate any of the articles of the statute. Even if they do not extend with the obligations in the rules, they will be provided to the shipowner for claims: responsibility for actual loss or damage to the goods, or liability for economic losses associated with the goods and goods, intended to be shipped under the charter. In order to operate the time bar in the event that the goods are intended to be transported, it is obvious that both parties must be considered when a violation occurs on the voyage during a particular voyage.

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