

Investigation of marine carrier responsibility based on Rotterdam's Convention

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Abstract: Paying attention to the regulations of the Hamburg and Hague, and due to the facts that the current legal system was not uniform final draft of the Rotterdam Rules, which was assembled by the United Nations Commission on International Trade Law, was adopted by the United Nations on December 11, 2008 and a signing ceremony commenced in Rotterdam, Netherlands (the convention's informal namesake) on September 23, 2009. This convention fully pays to the responsibilities of carrier and owner in the context of international marine trade. In this convention, the base of responsibility has been proposed "strict responsibility". In this article the authors pay to the foundations of responsibility and its types, by reviewing the Rotterdam Convention's articles.

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Introduction:

Civic liability is divided into two types: contractual liability and out of contract liability. For realization of the contractual liability, realization of three conditions are necessary; realization of lose, violation of commitment and causality relationship and the relationship between career and submitter of product is from the type of contractual loyalties because their relationship will be interpreted by the transportation contract. Regarding to the bases of the liability, several theories have been proposed and the two most significant are; "risk" and "fault" theories. Regarding to the fault based liability four types have been proposed: 'proved fault prove', 'presumption of fault', 'absolute responsibility' and 'strict responsibility.

Contractual Responsibility: if due to the delay or perjury of one party the other parties lose, the other should reciprocate the loss. This responsibility works when one violates the committed contract by her/himself (Elliott Catherine: 2004; Iorasa, 1997).

Out of Contract Responsibility;

This responsibility will be necessitated when the imposed loss is not due to the contract. The root of the responsibility is not the contract between two parties but, it is a type of violation from the legal tasks (Yazdanian, 2000). This type of responsibility some time is called fault responsibility because, the improvement of the fault is its basic principle (Barikloo, 2006).

The base of responsibility:

The lawmakers and lawyers are not in consensus about the question 'what is the base of responsibility?' Some believe it is based on fault and some believe it is based on risk.

a. Fault based view: in this approach it is proposed that the base of responsibility is fault. In this state, the actor or subject reciprocates the loss if the one party proves that the cause is the other party (Bahrami, 2009). Also if one violates the responsibility committed, he/she is blamable (Katebi, 2007).

b. Risk theory

Bases of responsibility of marine transportation carrier in Rotterdam regulations:

1- Previously, we stated that 4 responsibility types exist based on fault theory; 'proved fault prove', 'presumption of fault', 'absolute responsibility' and 'strict responsibility. Now it is the time to investigate that in Rotterdam regulations which type of responsibility is used. Prior to the discussion about this question, it should be noted that in Brussels regulation the bases of responsibility is ambiguous. Some believe it is based on presumption of fault (Omid, 1974; Katouziyan, 1997) and others believe it is based on strict responsibility (Tetley:1998; Remond:1988). About the Hamburg regulation also there is same situation.

The article 17 of Rotterdam regulations states that; if complainant proves that the fault, damage, or delay has been occurred in the period of the responsibility of the carrier, the carrier is obligated to reciprocate.

2- If the carrier approve that the damage, fault or delay hasn't been occurred in the period of the responsibility of the carrier, he/she will be exculpated from the crime. Also based on article 14, it is determined that; 1- the carrier obligated to provide the followings before and during the journey; a. prepare the ship for navigation, b. employ staff, facilities and tools before and during the travel, c. to

safe the depots and containers for receiving the goods and products. In the first glance, it may be perceived that the Rotterdam regulations have obeyed the "presumption of fault" for responsibility because it is stated in the line 2 of the article 17 that if the carrier prove that he/she is not directly or indirectly responsible for the damage, fault or delay, he/she is exculpated from the crime but, in the article 17 it is pointed to 15 cases that with the prove of each case, the carrier will be exculpated. Based on this article, the carrier will be exculpated from all or some parts of the responsibilities indicated in part 1. Following the proof of negligence in paragraph (2) of this article stated, fixed KnDKh one or more of the following events or circumstances, lead to failure, damage, or delay the onset Yadr it was involved: (a) the disaster natural (force). (B) serious risks, dangers and accidents of maritime seafaring Yachnyn events that occur in water (c) war, hostilities, armed conflict, piracy, terrorism, riots and civil unrest, (d) quarantine restrictions a, interfere or obstruct governments, public authorities, rulers or people, such as seizure or arrest record, which is attributable to the transportation officer or any of the persons referred to in Article 18 or, (e) strikes, boycotts, work stoppages or banned labor (and) ship on fire (g) technical defects hidden way that is not detectable with conventional measures. He gives. " Provisions of the Convention (Rotterdam), including regulations (The Hague) to the English style of exposition has.Fact paragraphs (4) and (5) of Article 17 has been decreed referred to in Article 18, no. to, and the same theory "is something" is. theory, "assuming responsibility" for the incumbent carriers. The Convention (Rotterdam), with more detailed rules (the Hague) and (Hamburg) in (18 chapters and 96 female) has developed, have tried to resolve ambiguities in the previous regulations and assume responsibility with incumbent carriers More strength is confirmed. referred to in Article 18, no. 5 - Also added Despite paragraph 3 of this Article, the officer carrying all or part of the deficit, damage or delay is responsible for the following: (a) proves that claims such as (1) the capability of sailing ships, (In paragraph 5 - A substance referred to cause damage or delay or failure is not, or (2) the exercise of his responsibility for accidents with conventional measures based on Article 14 has been adapted. The Convention (Rotterdam), with more detailed rules (the Hague) and (Hamburg) in (18 chapters and 96 female) has developed, have tried to resolve ambiguities in the previous regulations and assume responsibility with incumbent carriers More strength is confirmed. Provisions of the Convention (Rotterdam), including regulations (The Hague) to the English style of exposition has. The regulations (The Hague) and (17)

was the exception that proves any of the exceptional cases mentioned by the incumbent carriers, circumstantial evidence was removed from his responsibilities. n regulation, "Hamburg" by eliminating the exemption from liability contained in the regulations stated, "The Hague" responsible charge transport in a simple format that was mentioned was leading to the occurrence of numerous disagreements, the paragraph under "First Article V Hamburg Rules" in If the transport operator proves that he, agents or representatives, all reasonable measures that are necessary to avoid the incident and its consequences can be absolved of responsibility. to, and the same theory "is something" is. theory, "assuming responsibility" for the incumbent carriers.

Convention (Rotterdam), with more detailed rules (the Hague) and (Hamburg) in (18 chapters and 96 female) has developed, have to try to resolve ambiguities in the previous regulations and assume responsibility with the strength of charge carriers More has been confirmed.

Conclusions:

In reviewing the regulations, "Rotterdam" of Article 17 of the review officer has the responsibility with regard to paragraphs (3) (4) and (5) that the material that features numerous "branches of Cairo" reached the conclusion that the Darndbh) is stipulated to be fixed, based on the assumption that the same responsibility or liability is circumstantial evidence.

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