

Supporting of the Bill of Lading Holder Rights in Deviation Cases in Sea Carriage: A Comparative Study of Iranian and British Law

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Abstract

Deviation of the ship from the contractual or custom route during sea transportation affects not only the contract parties, but also the rights of third parties, and one of the most important parties is the bill of lading holder. The necessity of supporting the bill of lading holder rights and the legal solutions in Iranian and Britain legal systems are analyzed in this article. In Britain's legal system, the social welfare theory is one of the mechanisms designed for the various models to support the person's rights. Under the mentioned principle the bill of lading holder has the right to invoke the contents of the maritime transport contract, and under Iran's legal system, due to Article 12 in The Civil Liability Act 1960 along with the provisions contained in The Revised Sea Act 2011, joint and several liability for the third parties has been recognized. In this article, the effect of deviation on the bill of lading holder rights is analyzed with descriptive-analytical methods and library sources.

Keywords: Maritime Law, Deviation, Sea Carriage Contract, Bill of Lading Holder Rights.

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Introduction

Nowadays in the international commerce field, significant amounts of cargo with high economic value are transported to different points by sea carriers. The sea carriage contract creates the obligation to proceed with the contractual or custom route during the voyage; violating that affects not only the parties but also the third party's rights, and benefits. Deviation and possible accidents result from bringing the bill of lading holder or the owner of the cargo into the process of litigation against the carrier when deviation causes damages. In such a situation that breach of one of the contractual terms causes damage to the third party, these questions arise:

1. What legal basis supports third-party rights in deviation cases?
2. What legal solutions support the third party's rights in Iranian and British legal systems?

The Britain legal system has predicted different models to provide social welfare by one of the legal values; for example commutative justice, redistribution of social welfare, etc. One of the models deals with the support of the third party's rights and solutions can also be used in issues related to maritime law. In Iran's maritime law, considering the significant role of the 1968 Hague-Visby Convention in the amended Sea Act 2011, and taking into account the Article 12 civil liability act 1960 which the injured party rights are guaranteed; accepting the basis of social welfare to support the third parties rights in deviation cases can be assumed.

In Britain's legal system, support is realized through solutions such as the right to invoke the provisions of the maritime transport contract by the bill of lading holder acting in good faith, and narrow interpretation of terms such as freedom to deviate from the route. according to section 2 (1) Carriage of Goods by Sea Act 1992, the bill of lading is considered the contract of sea carriage so the bill of lading holder can invoke the terms including the obligation to proceed with the contractual route against the carrier. The other dimension to support the bill of lading holder is the narrow interpretation of deviation; which means by limiting the framework of the term carrier is authorized to deviate in a few cases.

In the Iranian sea act revised in 2011, according to Articles 69 and 94, the bill of lading holder is authorized to demand damages from the ship owner or the

captain. Namely provide the joint, and several liabilities to support the third party rights.

In this article concerning the two mentioned questions, the effect of deviation on the bill of lading holder rights as the most important third party, and the legal solutions in Iranian and Britain systems are analyzed with the descriptive-analytical method and library sources.

1. The ship deviation concept

A charter party contract may determine a particular route to be followed or a time charter party may give express instructions as to the route; the ship owner must follow that route unless an exception applies. If there is no contractually agreed route the carrier must precede the direct geographical route, unless he can prove that there is a customary route (Bats, Yvonne, 2018, P 268/ Cooke, Julian, 2014, P 275). Deviation has been defined as an intentional, and unreasonable change in the geographic route of the voyage as contracted (Wilson, John, 2010, P 16). Prolongation of the voyage, and damage to cargo because of deviation are the effects that influence the bill of lading holder or the cargo owner rights (Arroyo, Ignacio, 1984, P 280/ Coughlin, Terence, Baker Q.C, Andrew, Kenny Julian, D Kimball John, Belknap, Thomas H, Jar, 2014, P 390). In England's legal system, any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not infringe or breach the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom (pHeerHill, Christopher, 2014, P 273). So the issue is limited to the unjustified deviation.

2. Britain's legal system

One of the goals pursued in Britain's contract law system is to establish social welfare, which is achieved through different models (Tariq, Alana, 2015, P 34). In the following, the methods of social welfare including the suppression of third-party rights will be introduced.

1.2. Social welfare models

1.1.2. Distributive justice

Distributive justice is one of the mechanisms that balance the benefits, and losses between the parties in contracts, and they are entitled to benefits based on their merits, and the services they provide. In this model, in addition to the balance of contractual relations through the redistribution of welfare in favor of



disadvantaged groups, the suppression of the third party's rights is also pursued. The method of distributive justice requires legal issues not limited to contractual relationships, but also the interests of persons who are outside the contractual relationship should be taken into consideration (Campbell, David, 2000, P 492).

2.1.2. Market rational regulation

The model of social welfare based on the rational needs of the market distributes welfare concerning the specific needs of each contracting party and provides the opportunity to terminate the contract according to the logic of the market. The mentioned model by moving away from the traditional concepts creates more flexibility in contracts (Wilhelm son, Thomas, 2004, P727). The force majeure provisions which give rights to the party depending on the circumstances, as well as the bankruptcy provisions which deal with the distribution of welfare due to special conditions, are a reflection of the theory of social welfare in contracts. This model is more focused on contractual relationships (Wilhelm son, Thomas, 2004, P 731).

3.1.2. Redistributive internal welfare/ Redistributive external welfare

The welfare redistribution model, which is mainly focused on establishing regulations regarding consumer rights, deals with the issue of how consumer rights can lead to the redistribution of welfare according to market conditions. In other words, welfare is distributed through codifying rules but the effects are outside the scope of legislation, and the market conditions determine them. Proponents of this view believe if one of the parties has the superior power to impose conditions on the other party; the distribution of welfare, and the implementation of contracts depend on codifying legal rules (Wilhelm Son, Thomas, 2004, P 729).

In the internal redistribution model, the goal is to distribute benefits in contractual relations in favor of the party that is in a weaker position, which is achieved by focusing on the main subject of the contract. In the redistribution of external welfare, the goal to support the weak party is followed in the contractual relationship, but this model regulates the party's relationship by applying rules in similar contractual conditions.

The internal welfare redistribution model is focused on the codification of rules to regulate the contractual relationship and distribution of welfare and the external welfare distribution model is focused on similar conditions in Contracts (Wilhelm Son, Thomas, 2004, p 725).

4.1.2. Suppuration of other values

Regarding how to support the third party's rights in contracts no specific criteria have been foreseen because this will be related to the conditions in each case. In Britain's legal system the suppuration of the third party takes into consideration by the legislator for example Article 10(2) in the Law of Contracts 1999 act stipulates that the third party has the right to invoke the contractual terms provided that his name and characteristic explicitly state in the contract (Dock ray, Martin, 2004, p 129). The suppuration of the third party's rights in the case of ship deviation is based on the theory of social welfare and the aforementioned models.

2.2. The bill of lading holder

After the mentioned discussion on welfare models, supporting the third party's rights in deviation cases in the marine carriage is analyzed. The bill of lading holder is a person who receives the bill of lading in good faith, and his rights should be supported when the carrier violates the obligation to precede the contractual route (Bats, Yvonne, 2017, p144). In case law regarding the ship deviation some believe that the suppuration should not be limited only to the bill of lading holder but the provisions should be extended to a wide range of third parties who rely on the shipping document in good faith (Spaniard, Michel, 2018, p 47).

In Britain's legal system, the bill of lading holder enjoys all the rights of the cargo owner in the contract of sea transportation as if he was one of the contractual parties. The courts also assume that a new contract has been created between the carrier and consignee (Aitkens, Lord, Bolos, 2006, p 519). According to section 2(1) of the Carriage of Goods by Sea Act 1992, a sea waybill is a contract of carriage for the consignee; he can invoke the terms against the carrier, and bring a lawsuit against him (Gold by, Miriam, 2015, p 318 & 324). Also, the carrier is deprived to invoke the terms which are not contained in the bill of lading. All the rights related to the consigner belong to the consignee by transferring the bill of lading to him (Vaughan, Simon, 2015, p 39).



The court decision in the case of *Glynn v Margate* which was issued in 1893 by the House of Lords on the discussion of invoking the condition of freedom to deviate from the path (liberty clause) the supposition of third parties in contractual relations can be understood. In this case, the cargo of oranges was loaded from Malaga to the port of Liverpool, but after leaving Malaga, instead of going to Liverpool, the carrier moved to the port of Briana in the east of Spain concerning liberty clause, and subsequently delay in discharging caused damage to the cargo. When the cargo owner sued the carrier, he exempted himself from compensation referring to the liberty clause but the House of Lords the argument that the main purpose of the contract was to transport perishable goods to the destination port and that the carrier's action was contrary to the commercial purpose of the sea voyage, applied the narrow interpretation on the liberty clause to support the bill of lading holder (Dock ray, Martin, 2004, P 70).

It should be noted that the recent decision has been an inspiration in many other decisions issued by the courts in England to support the rights of third parties. For example in another case between the carrier, and the cargo owner, the judge by limiting the liberty clause obliged the carrier to compensate for the damage to cargo (*Islamic Investment v. Trans-orient Shipping (The Noor)* [1999] 1 Lloyd's Rep1).

Also, in a case raised before the England court in 1950, the owner of goods with Spanish citizenship had concluded a contract with one of the transport operators in England, which undertakes to transport several tons of citrus fruits and to discharge them in England. But the carrier referred to the sea bill of lading which allowed him to deviate from the route under conditions that deviated from the route and unloaded the cargo with a delay at the destination port. In this case, the court stated that the implicit obligation of the carrier to deliver the cargo on time at the destination takes precedence over the bill of lading terms which justifies deviation. As a result the bill of lading holder who is considered a third party can invoke the bill of lading terms, and claim damages (Omit, Hooting, 1974, p 209).

3. International conventions

In the conventions on maritime transport, the rules have been established to support the rights of third parties according to the general goals of the convention. Regarding the supposition of the bill of lading holder rights as a third party whose rights, and interests are affected in deviation cases, there is no specific provision in the mentioned conventions, and it can be stated that this is subject to the general rules governing the conventions.

Article 3(4) of the Hague-Visby Rules supports the bill of lading holder by stating that the carrier cannot prove the violation of the terms of the bill of lading against a third party in good faith. However, regarding the claim for damages by the bill of lading holder, since the convention is focused on the responsibility of the carrier, he can only refer to the ship owner or charterer while according to paragraph 1 Article 10 in Hamburg Convention the ship owner, and charterer both of them are responsible to compensate (Sleigh, Hassan, 2016, p 318). According to Article 11 of the recent convention, the contracted carrier will be responsible for that part of the contract that is performed by the actual carrier, and the actual carrier is only responsible for that part of the contract that he performed. The Hamburg Convention considers individual and collective responsibility for the real, and contractual carrier.

The Rotterdam Convention has taken a step forward, and by considering the right of control for the cargo owner, has examined the effects of the transfer of the bill of lading between the carrier, and the consignee (Gold by, Miriam, 2015, P 323).

According to Article 51(3) of the Rotterdam Rules when a negotiable transport document is issued, the holder has the right to control means that according to Article 57(1), he can transfer the rights included in the document to another. One of these rights is discharging the cargo at the destination port; so if the deviation results in the non-delivery of the goods on time, and according to the contract, the bill of lading holder has the right to invoke the contract content. By using the "controlling person" term for the bill of lading holder, although she is not a party to the charter party contract or other sea transportation contracts, she enjoys the rights of the bill of lading holder.



4. Iranian legal system

Suppuration of third-party rights is a goal that is taken into consideration by the legislator to create social welfare its roots should be sought in sociological issues inspired by the theories of Western sociologists. Sociologists have presented different definitions of social welfare, taking into account the various dimensions of human life. The dominant definition is that social welfare is an organized set of laws, regulations, programs, and policies that are implemented in the form of welfare institutions, and social institutions to respond the human needs (Gambaro Nick, Seifollah, 2014, P 10).

According to the above definition, sociologists have considered 4 biological, social, economic, and legal dimensions for the theory of social welfare, in which the legal dimension deals with supporting the rights of vulnerable groups (Gambaro Nick, Seifollah, 2014, p 10/ Ibrahim, Mahdi, 2010, p 23). Social welfare in the field of law is interpreted as the guarantee of rights which is rooted in concepts such as the distribution of resources. In the view of Islam, the concept of social welfare under the "social security" term is considered one of the important categories of governance and is used to eliminate injustice and remove poverty from society (Gambaro Nick, Seifollah, 2014, p 7).

As mentioned before, the concept of social welfare has gradually gone beyond the field of sociology and entered the legal debates. However in contract law, despite the importance of social welfare and its impact on supporting the rights of individuals, due to the lack of jurist's attention, this important legal theory has remained neglected.

For the sake of brevity, and since this article is one of the first windows opened between the two fields of law and sociology, it is not possible to examine all aspects of social welfare. So only the legal aspect of social welfare, and specifically the guarantee of the third party's rights in ship deviation cases is analyzed.

1.4. The social welfare theory in the Sea Act and related provisions

Examining the history of applying the social welfare theory in Iran's maritime law shows it is necessary to pay attention to the provisions in the revised Sea Act 2011 in which the third party's rights are supported. In this regard, Article 69 stipulates: ((The ship owner is personally responsible for his actions, obligations, omissions, and errors, as well as the operations of the captain, and

the contracts he concludes while performing the duties. The ship owner is also responsible for the operations of the ship's employees, and virtual officers who serve on the ship on his behalf)).

A few points can be deduced from the mentioned Article: 1) the ship owner is only civilly responsible for the actions, and contracts that the captain concludes for the ship or sending the ship. 2) The actions and obligations related to the captain must be fulfilled during the performance of duties ship affairs, and maritime affairs, otherwise, the ship owner will not be responsible. 3) The authorized agents, and the institutions related to loading, and discharging the cargo are the third parties whose rights are supported through the mentioned Article (Hooting, Omit, 1974, p 250 & 252).

An important point on the responsibility of the ship owner towards third parties is that if the ship owner undertakes a sea voyage as a carrier, the issue is pursued under the title of the ship owner's responsibility. Because the Sea Act 2011 provisions on the ship owner's responsibility dominate the other rules on the carrier's responsibility (Asghare, Ali Reza, Hussein, Saied Hade, 2013, P 2). Before entering into the subject of the ship owner's responsibility for the third parties, it is necessary to explain that in Iranian law the cases in which a person can be responsible for the actions of others are the following:

1. The guardian's responsibility for minor or insane acts
2. The lawyer's responsibility in case of a fault in the subject of advocacy
3. The employer's responsibility for his employee's acts (Yazdanian, Alireza, 2000, P 75).

The employer's responsibility for the employee's acts is the subject of Article 69 in the Sea Act 2011, and according to some maritime law experts there is a conflict between the purpose of the mentioned Article in supporting the rights of third parties, and the content of Article 12 in Civil Liability Act 1960 which provides: ((Employers who are subject of the labor Act are responsible for the damages incurred by their administrative staff or workers when they work for the employer unless it is proven that they have observed all the precautions on the circumstances of the case or even if they observed precautions, it would not be possible to prevent the loss...)).

According to the latter Article third parties have been supported by the legislator for damages caused by workers or employees when a legal relationship is established between the employer and employee. But the question is raised: whether the rule contained in Article 12 Civil Liability Act can be applied to ship owners to support the rights of third parties. In other



words, are the ship owners the same as employers subject to the Labor Act 1990?

As mentioned in the Iranian legal system the employer's responsibility for damages caused by his workers, and employees to third parties is considered under Article 12 of the Civil Liability Act 1960. Due to the lack of the sea labor act the issues, and problems arising from maritime labor are resolved under the general provisions of labor law. According to Articles 1 and 3 Labor Act 1990, an employee is a person who works under the order of the employer in return for receiving salary or wages, and the employer means a natural or legal person to whom the employee works at the order and for his account.

Some jurists in the analysis regarding the basis of the employer's responsibility for the damages caused by his employees concerning Article 12 of the Civil Liability Act believe that the purpose of supporting the third party's rights is the reason for adopting such a policy by the legislator. In other words, there are several legal bases for the mentioned Article, including the ((suppuration of the third party's rights)). The adopted principles regarding the purpose of Article 12 are the best solutions to achieve judicial justice, and safeguarding social norms (Babaei, Iraj, 2001, P 33- 38). The rule contained in Article 12 can be considered an effective step to support the third party's interests.

Some other jurists have also clearly pointed out in their analysis of the position of the social welfare theory in Iran's legal system, and they validate support of the third parties as a legal basis for the responsibility of employers in Labor Act 1990 (Gorge, Aliakbar, Shafiee, Jafar, 2009, P 12). The result of the theory of social welfare, and the presumption of fault for the employer according to Article 12 of the Civil Liability Act (Badin, Hassan, David Bergh, Hussein, 2015, P 198) is that as soon as damage is caused by the captain or other ship employees to third parties, the ship owner has responsibility. The ship owner can be exonerated from responsibility by proving one of the following cases:

1. He observed all the precautions required by the case circumstances to prevent damage. For example, despite the shipping company's training to the captain, he causes accidents through inappropriate maneuvers and deviation from the route.
2. If he had observed the precaution, the occurrence of an accident or damage would have been inevitable. In other words, the accident was caused by force majeure or lack of causation (hushing, amid, 1974, 249).

After the above issues, this question arises whether it is legally justifiable to accept the responsibility according to Article 12 for the ship owner to support the third party's rights. The answer to this question is negative according to the specific requirements of the maritime law because Article 75 provides the ship owner can invoke limitation of liability for the ship owner. Sea travel unlike land transportation is accompanied by continuous risks that even the most experienced captains and ship staff may make mistakes in situations they should decide to steer the ship. Accepting the absolute responsibility of the ship owner towards third parties without taking into account limitation cases, no one undertakes maritime transportation (hashing, Omid, 1974, P 249). So Article 69 the Sea Act 1992, and Article 12 the Civil Liability Law are considered alongside the requirements of maritime law.

The repeated Article 94 is another provision in the Sea Act 1992 supporting the rights of third parties which provides if the captain causes damage to third parties due to his fault in performing the duties, he has the responsibility to compensate. Also according to repeated Article 96 the captain, in the absence of the ship owner is considered the legal representative, and under his authority, the legal requirements, and customs of shipping take the necessary measures to preserve the ship and sea voyage. The limitation in the agency cannot be invoked against third parties who act in good faith. In other words during the voyage, the captain must take the necessary measures for the ship owner, passengers, and cargo owner's benefit.

All the discussed bring to mind one point which is the support of the rights of third parties who have been harmed due to the ship owner's actions or employees or representatives. This is a legal, and social goal that the legislator covers in the various articles.

2.4. The bill of lading holder

In this part, the social welfare theory as a base to analyze third-party rights in deviation cases is considered. It is necessary to answer the question of what regulation can manage the contractual relationship, and the third party right in unjustified deviation.

The bill of lading holder is a person who receives the cargo when renders the bill of lading (Arbabi, Masoud, Hatamipour, Navid, 2017, p132). As mentioned unjustified deviation affects the bill of lading holder rights as the most important person who is subject to damage so he should be supported against the carrier violations. In Sea Act 2011 Article 129, and Article 55(4) on ship deviation only include the provisions regarding the relations of the parties in the



transport contract, i.e. consignor and the carrier. So the bill of lading holder rights should be analyzed relying on the maritime law provisions, and the rules contained in the other regulations.

Article 129 specifies the captain is committed to following the route directly and moving towards the travel destination, unless there is a special contract or deviates from the route to save the property and human life. If the carrier deviates from the route, the passenger has the right to cancel the contract, and claim damages. According to Clause 4 of Article 55 any change in course to save human life, and property or any reasonable deviation is not considered a violation of the provisions of this chapter, and the carriage contract. So the carrier is not responsible for the loss or the damages. The contents of the mentioned Articles show that the legislator did not intend to explain the consequences of deviation against the bill of lading holder (Sedigh, Hassan, 2016, p. 306 & 307).

Article 64 in the amended Sea Act 2011 provides a person who has the original copy of the bill of lading can request the delivery of the cargo from the captain (Barari, Youssef, Jahanian, Mojtaba, p. 2014, 23). Perhaps among the third parties whose rights, and interests are affected by the unjustifiable deviation, the bill of lading holder is the most important person who is directly affected by the violation of the obligation to proceed the contractual route. So in most lawsuits related to the deviation; the bill of lading holder raises a dispute against the carrier. For this reason, in Iranian maritime law, the responsible persons against the bill of lading holder expanded to support his rights when the carrier acts contrary to the bill of lading content. As explained the legislator approach is reflected in Articles 69 and 94 the Revised Sea Act 2011, and Article 12 the Civil Liability Law 1960.

Considering the mentioned Articles it is inferred that the bill of lading holder can refer to the carrier, and captain to receive the damages. In addition to the Revised Sea Act 2011, also in other regulations the real carrier and the contractual carrier are responsible to compensate. For example, according to Article 388 of the Commercial Code 1932, the carrier has liability for the damages caused by others (Yazdanian, Alireza, Niazi, Abbas, 2014, p. 185). The Article specifies: ((the carrier is responsible for the accidents, and faults

that occurred during the transportation regardless of whether he carried out the transportation or appointed someone else)).

Also, according to Article 1 of the Offenders Punishment in Goods Transportation Act 1988; the carriers, institutions, transport firms, and drivers are responsible for transportation if they intentionally do not deliver to the destination, in addition to; they are sentenced to imprisonment from 2 to 5 years or fine equal to 10 to 20 times the price of the cargo. The mentioned Act which covers all methods of transportation requires the driver alongside the carrier to compensate. In maritime law, the driver is the captain therefore if the captain intentionally deviated from the route, and does not deliver the cargo to the bill of lading holder at the destination, he is responsible to compensate the damages along with the carrier.

The authors believe that the responsibility of the carrier and his representative to compensate is a solution to support the third party rights because the carrier is responsible for the events and faults that occurred during the transport when he manages the transport or appoints another person.

Therefore, the joint and several liabilities for the carrier and her representative against the bill of lading holder is a solution that is derived from provisions in the Iranian legal system. The bill of lading holder refers to the contractual carrier based on the carriage contract and to the actual carrier based on the loss rule contained in Article 307 of the Civil Code 1928(Yazdanian, Alireza, 2014, p. 185). If the injured party refers to the real debtor; the person to who the damage is attributed; the real debtor cannot refer to the others but if the injured party demands the damage from the person who is not the real debtor, the person who pays the damage can refer to the real debtor (Yazdanian, Alireza, 2014, p. 194).

In situations where the carrier is the charterer this question arises who compensates the bill of lading holder damage when the ship deviates from the route during the voyage? The answer depends on the type of charter party contract. In charter by demise, the charterer has absolute control over the ship to the extent that he is considered the owner of the ship during the charter party period because the captain and staff are under the control of the charterer (Sedigh, Hassan, 2016, P187/ Ashrafzadeh, Sayed Hamidreza, 1994, p. 84). If the ship's deviation from the course causes damage to the bill of lading holder, he can bring an action against the captain or the charterer who has delivered the cargo as a carrier. In time or voyage charter party if the bill of lading is issued



by the charterer the bill of lading holder can demand the damages from the charterer (Sedigh, Hassan, 2016, p. 188).

Usually, the carrier and owner of the cargo have contractual and customary obligations against the third party, and the third party can prove the contracting party's fault when he violates the contractual obligations. But it is difficult for the bill of lading holder to prove the carrier as a professional person in sea transportation has committed a violation. For this reason, scholars provide solutions according to conventional legal rules to support the third party's benefits (Badini, Hassan, 2018, p. 27 & 28).

If the violation of the obligation by a professional person causes damage to a third party, he is obliged to compensate according to the general rules of liability. In such a situation it cannot be argued that there is no contractual and causal relationship between the third party and the professional person. Although this solution partially fulfills the purpose to support the third party's right; it does not permit the third party to invoke the contract contents and clauses (Badini, Hassan, 2018, p. 29).

The analysis of the above Articles shows that the legislator pursues the goal of supporting the third party's rights but the legal system does not permit the third party to invoke the contract. In other words, the Sea Act 2011 and the other provisions don't provide the right for the third party to invoke the contents of the contract rather he is allowed to present the bill of lading and apply the bill of lading holder right under the provisions.

The verdict issued by the third branch in Tehran General Court in 2012 shows that the jurisprudence upholds the aforementioned result regarding the right of the third party in deviation cases. In this case, the carrier loaded the cargo of Indian stamp moved from Dubai to Khorramshahr port and deviated from the route; an accident caused damage to the cargo. According to the expert report, the illegal maneuver by the ship led to the accident. The court held to the position that the oil tanker was to compensate 75% of the damages, and the other ship 25%. The court did not consider the right of the bill of lading holder to invoke the contract clauses (Poornoori, Mansour, 2001, p. 159).

Conclusion

In maritime law, supporting the bill of lading holder as the most important third party is a policy that is followed in the rules. In Britain's legal system, the social welfare theory is one of the mechanisms which have designed the various models to support the person's rights. The bill of lading holder has the right to invoke the contents of the maritime transport contract. The bill of lading holder enjoys all the rights of the cargo owner in the contract of sea transportation as if he was one of the contractual parties. The courts also assume that a new contract has been created between the carrier and consignee.

The conventions on marine carriage don't provide specific provisions on the bill of lading holder rights in deviation cases rather this issue is covered by the general rules governing the conventions. The Hague-Visby Rules support the bill of lading holder by stating that the carrier cannot prove the violation of the terms of the bill of lading against a third party in good faith, and according to Hamburg Convention, the ship owner, and charterer, both of them are responsible to compensate. This support has been completed by considering the right of control for the cargo owner in the Rotterdam Rules 2009. When a negotiable transport document is issued, the holder has the right to control means he can transfer the rights included in the document to another.

In the Iranian legal system the social welfare theory to support third-party rights is inferred from the provisions contained in the Civil Liability Act 1960, and Sea Act 2011; however the social welfare theory appears with a different result in comparison to the Britain legal system. This means in the Iranian legal system according to the general rules, the third party cannot invoke the transport contract provisions. The joint and several liabilities between the real carrier and the contractual carrier is a legal solution to support the third party in deviation cases. The bill of lading holder refers to the contractual carrier based on the carriage contract and to the actual carrier based on the loss rule contained in Article 307 of the Civil Code 1928.

References

- Dock ray, Martin (2004), cases and materials on the carriage of goods by sea, Cavendish Publishing.
- Wilson, John (2010), carriage of goods by sea, British Library Cataloguing.
- Spanjaart, Michel (2018), multimodal transport law, Rutledge.



- Bats, Yvonne, maritime law, Maritime and Transport Law Library.
- Dugan, Michel (2005), social welfare and EU law, Hart publishing.
- Tariq, Alana (2015), a critical analysis of the implied obligation against unjustified deviation, doctoral thesis, university of Huddersfield.
- Campbell, David (2000), reflexivity and welfare in the modern law of contract, Oxford Journal of Legal Studies.
- Gold by, Miriam (2015), The IML manual on international maritime law, shipping law.
- Wilhelm Son, Thomas (2004), varieties of welfares in European contract law, European journal law.
- Aitkens, Richard (2015), bills of lading, informa law, 2006.
- Vaughan, Simon (2015), shipping law, Rutledge.
- Port, Ariel, Yadkin Omro (2014), a welfare perspective on lies, cease- sander institute for law economics.
- Hooshang, Omid (1974), maritime law, Tehran High School of Insurance.
- Babaei, Iraj(2001), The basis of employers' liability in Article 12 of the Civil Liability Law, Research of Law and Politics Journal, Vol. 3, No, 5.
- Badeni, Hassan, Sarfi, Majid, analyzing the possibility of a third party invoke to professional contractual obligations in a civil liability lawsuit, Comparative law studies Journal, Vol. 9, No 1.
- Poornoori, Mansour (2004), maritime law in sea court, cradle Law Publications.
- Esaee Tafreshi, Mohammad, Kamiar, Mohamadreza(2001), The basis of the civil liability of the carrier in multimodal transport of cargo in international conventions and comparison to Iranian legal system, Tarbiat Modares university publications, Vol. 5, No. 4.
- Shafiee, Ghasem (2019), A comparative study of ship captain's liability against goods based on the act revision of Sea Act, International Journal of Nations Research, No. 46.
- Sedigh, Hassan (2016), general rules of maritime law, Jangle publications.
- Asgari, Alireza, Hoseini, Sayed Hadi (2013), the ship owner liability and insurance conditions, free legal research journal, Vol. 7, No. 23.

- Gambaro Nick, Seifollah(2014), social welfare, Baqer Uloom Research Institute
- Gorgy, Aliakbar, Shafiee, Jafar (2009), social welfare in Iranian legal system, constitution journal, Vol. 6, No 11.
- Mahboobi, Reza (2012), Justification of social welfare demands based on the right theory, social welfare Journal, Vol. 13, No. 49.
- Najafi Asfad, Morteza (2018), Maritime law based on Iran's maritime law and international maritime regulations, Samt press.
- Yazdanian, Alireza (2011), the basic of carrier liability in transportation contracts in Iranian and France legal systems, Legal Journal of Justice, Vol. 75, No. 73.
- Cooke, Julian (2014), voyage charters, informa law from Rutledge.
- Arroyo, Ignacio (1984), yearbook maritime law, Springer.
- Coghlin, Terence, Baker Q.C, Andrew, Kenny Julian, D Kimball John, Belknap, Thomas H (2014), time charters, informa law.
- Pheerhil Christopher (2014), maritime law, informa law from Rutledge.
- Yazdanian, Alireza (2000), the scope of civil liability, Adabestan publication.
- Badini, Hassan, Davoodi Beiragh, Hussein (2015), the civil liability of the employee against the employer, law research journal, No. 72.
- Ibrahim, Mahdi (2010), the concepts and theories of social welfare, month book social science, No.34.
- Arbabi, Masoud, Hatamipour, Navid (2017), the comparative study on the contractual role of the bill of lading in Iranian and England legal system, law research journal, No.79.
- Barari, Yousef, Jahanian, Mojtaba (2014), the issuance and contents of the sea bill of lading in Iranian legal system and international instruments, the legal journal, No. 93.
- Yazdanian, Alireza, Niazi, Abbas(2014), comparative study of joint and several liabilities in Feqh and France legal system, Feqh and Islamic law journal, No.8.
- Ashrafzadeh, Sayed Hamidreza (1994), commercial and economical terms (charter party), commercial analysis journal, No 89.

