

Abstract

In terms of making the Judgment in any cases, the Court has to make the just Judgment as much as possible. However, to be the winner of the case depends on many factors. Not only facts and the substantive law concerns but the procedural law is also one of significant factors which would determine the result of the case. It comprises the rule by which the Court hears and determines what happens in civil lawsuit or criminal proceedings. In principles of procedural process in civil and commercial cases, including carriage of goods by sea cases, the Court can raise the matter of law herself at the time of making the Judgment even though the parties have not raised it. However, the matter of law, which would have been raised, must not change subject matter of the litigation, and it must come from the facts raised by parties beforehand and those facts must come from the right procedure under the law. Nevertheless, the Court can raise matter of law at the time of making the Judgment even though it would change the subject matter of litigation or it is not claimed by parties if the matter of law is public policy. Moreover, the parties can also raise the matter of law, which had not been raised before in the Primary Court, in the Appeal Court or in the Supreme Court if that issue relates to public policy. Thus, the matter of law which can be raised by the Court is an essential problem in procedural process in civil and commercial cases which would be the factors of determining the result of the case. Unquestionably, it is an important problem in carriage of good by sea cases which is the focus of this thesis.

The technical problem of raising the matter of law in carriage of goods by sea cases by the Court, can be seen explicitly from the differences of the Central Intellectual Property and International Trade Court's Judgments and the Intellectual Property and International Trade Division in the Supreme Court's Judgments. The two different courts have made the dissimilar decisions even though the facts of the cases are not radically different. After having done the research from articles of the Carriage of Goods by Sea Act, B.E. 2534 (1991), Act on Establishment of Intellectual Property and International Trade Court and Intellectual Property and International Trade Court

Procedure, B.E. 2539 (1996) and Rule of the Intellectual Property and International Trade Court, B.E. 2540 (1997) and the intention of those law, as well as the principle of making the Judgment in civil and commercial cases, the author have considered that the Carriage of Goods by Sea Act, B.E. 2534 (1991) is not totally public policy which can be raise by the Court in making the Judgment. There are only a few of them.

This thesis will raise interesting examples of the raising of matter of law by the Court in carriage of goods by sea cases by focusing on Carriage of Goods by Sea Act, B.E. 2534 (1991). The majority practical problems involves limitation of liability such as the problem of whether the Court herself can raise limitation of liability issue at the time of making the Judgment without parties' claim. After having done the research from mentioned information, the author have considered that if a carrier would like to limit his liability according to article 58 of Carriage of Goods by Sea Act, B.E. 2534 (1991), the carrier has to claim in defense. If the carrier does not do so, the Court cannot raise the limitation of liability issue at the time of making the Judgment because limitation of liability is not public policy. Moreover, it will cause damages to a shipper or a consignee who has against by a carrier, and it will block off a shipper or a consignee to break the limits. However, if a carrier and a shipper have agreed to fix maximum amount of limitation of liability less than the appropriate maximum mentioned in article 58 of Carriage of Goods by Sea Act, B.E. 2534 (1991) (less than 10,000 baht per package or unit or less than 30 baht per kilo of gross weight of the goods), the Court can raise the limitation of liability issue at the time of making the Judgment without parties' claim because the void agreement; according to the law, the limitation of liability agreement will be void if it is agreed less than the amount mentioned in article 58 and 60, would cause of unfairness to a shipper and a consignee.

Thus, in carriage of goods by sea cases, the Court should make the Judgment as same basis as making a Judgment in civil and commercial case. For example, the Court can raise matter of law when it is public policy, if not, the Court should not raise it without claimed by parties. Therefore, parties will have equivalent rights in litigation and they can foresee the result of the case. Moreover, it will protect the

parties from evidence assault that will cause of unfairness. The other significant point of raising the matter of law by the Court in carriage of goods by sea cases is to ensure that a carrier, a shipper and a consignee will get equally protection from Carriage of Goods by Sea Act, B.E. 2534 (1991).

If the Court brings the suggestion from this thesis to be an instruction of making the Judgment in carriage of goods by sea cases, it will be very useful for both parties because they will know their rights and duties under the Carriage of Goods by Sea Act, B.E. 2534 (1991). Additionally, the instruction of making the Judgment by the Court will lead to parties' litigation preparation which would benefit both parties. Eventually, the Judgment will cause the least damage to parties.