

Abstract

At present, the volume of trade is greatly expanded. Due to the free trade, international sales of goods are increasingly made. Mostly the purchased goods are needed to transport from the country of the seller to the country of the purchaser or the country of the repurchaser. As a result, international trade is increasingly expanded. The most popular mode of transportation is the carriage of goods by sea because when comparing to other modes of transportation, the carriage of goods by sea has cheap expenses as well as can load more goods in each time. This provides more benefits to the international business. If the purchaser decides to use other modes of transportations, he/she may receive less profit or it may not worth investing. Hence, in international trade wishing to move goods across the countries, the carriage of goods by sea is concerned. In other words, the carriage of goods by sea agreement is often a part of international trade.

However, despite the aforesaid advantages in carriage of goods by sea, it still has many disadvantages. For instance, it takes time to transfer goods at the specified seaport. The restriction in travel speed causes the transportation a reasonable amount of time. The geography in each season is uncertain such as the storm, current, etc. Apart from these disadvantages, when the ship arriving at the port of discharge, there may be a problem regarding geography of each country which may cause the big ship unable to dock. Consequently, it has to move transported goods into a smaller ship in order to enter into the purchaser's country. During such move into the smaller ship, such goods may be damaged or loss. Even though there is not any damage or loss while in the ship, such damage or loss may be happened before or after the ship departs or the goods are loaded at the seaport. The goods may be damaged or loss by the loading from or into the ship, by the move from container yard to warehouse or by the negligence of an agent or an employee of the carrier or any person who the carrier hires to move the transported goods on behalf of the carrier. Therefore, the internationally transported goods may be damaged or loss from the time when the

shipper delivers the goods to the carrier to the time when the carrier delivers the goods to the consignee or the receiver.

When the goods are damaged or loss, the person receiving damage or a person subrogating from the injured person has to file a case against the carrier or any person relating to the carrier for the damage. However, when Thailand has the Carriage of Goods by Sea Act B.E. 2534 (1991) to enforce the carriage of goods by sea specifically, the international carriage of goods by sea has to be under this Act. This Act also mentions that the carrier is entitled to exclude from the liability and limit the liability. The aforesaid Act indicates 20 causes to get exemption from liability as well as sets the limitation of the liable amount which is considerable low when compared with the price of the goods. Once there is an action against the carrier under the said Act, the injured person does not compensate in full amount. In some cases, the person causing damage may not be the carrier himself/herself but an agent or an employee of the carrier or any person who the carrier hires to move the transported goods on behalf of the carrier (such as third-party carriers or independent contractor who does not do the carriage of goods by sea but does other obligations of the carrier instead of him/her). These persons do not have any legal relation with the injured person. From the aforesaid reasons, the injured person avoids filing the action against the carrier or person causing damage under the carriage of goods by sea agreement but decides to sue the case under the wrongful act. Thus, the carrier, agent or employee of the carrier cannot raise the exemption or the limitation of liability or any defence under the Carriage of Goods by Sea Act B.E. (1991). Accordingly, the injured person will receive the compensation in full amount. Besides, there are other benefits such as the prescription.

The practices in Thailand and foreign countries do not prohibit filing the case under the wrongful act even though it is related to the carriage of goods by sea agreement. This brings many problems on the unsuitability. Since the law does not provide any specific provision regarding filing the case under the wrongful act, the court has to apply the wrongful act laws under the Civil and Commercial Code into the adjudication of the case. This is conflict with the objective of the aforesaid Act which is

especially enacted for enforcing the carriage of goods by sea. In addition, there are many subsequent problems, namely, whether the prescription will be under the wrongful act or the carriage of goods by sea agreement and whether the Intellectual Property and International Trade Court has jurisdiction to consider the case concerning the wrongful act according to the carriage of goods by sea agreement. Furthermore, the Carriage of Goods by Sea Act B.E. 2534 (1991) does not have any section mentioning this case which is different from the Hague-Visby Rules 1968, the Hamburg Rules 1978 and Rotterdam Rules 2009. These Rules clearly specify this case including indicating that the carrier, actual carrier, agent or employee of the carrier or the actual carrier can raise the exemption or the limitation of liability or any defence regardless of filing the case to the court or submitting the dispute to the arbitrators under the wrongful act, the agreement or any other ground. Additionally, the Rotterdam Rules 2009 expands its provision that the maritime performing party such as the independent contractor is entitled to raise the said defences.

Owing to the fact that the Carriage of Goods by Sea Act B.E. 2534 (1991) has many hindrances, there is an opinion to amend some provisions in the said Act. This leads to draft the Carriage of Goods by Sea Act (No....) B.E..... In this draft Act, it mentions about the issue regarding filing the case under the wrongful act according to the carriage of goods by sea agreement in 4 sections. Particularly, it prescribes that the carrier, actual carriers, agent or employee of the carrier can raise the exemption or the limitation of liability or any defence. The prescription in the Carriage of Goods by Sea Act B.E. 2534 (1991) is applied. In addition, it lets the Intellectual Property and International Trade Court have jurisdiction over the case under the wrongful act according to the carriage of goods by sea agreement. Besides, the said draft Act has other sections solving other problems in the Carriage of Goods by Sea Act B.E. 2534 (1991) such as an increase in the limitation amount and the application of the SDR.

Thus, if there is an amendment for the case under the wrongful act according to the carriage of goods by sea agreement, the Carriage of Goods by Sea Act will cover every case concerning the carriage of goods by sea agreement.

Moreover, the carrier, actual carriers, agent or employee of the carrier or of actual carriers, including the independent contractor can raise any defence of the carrier under the Carriage of Goods by Sea Act B.E. 2534 (1991) without considering about the ground of the case. Hence it will not cause the problems on uncertainty as well as make the Thai law on carriage of goods by sea international and appropriate to the condition of the carriage of goods by sea business in Thailand.