



A Comparative Study of the Legal Effects of Determining a Safe Port in International Maritime Transport Contracts with an Emphasis on the Laws of Iran and England

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Abstract

With the globalization of the economy and the introduction of modern technologies in the field of transportation, developing and developed countries sought to use new methods for international trade. Today, the importance of maritime transport is so great that the Maritime Silk Road initiative has been proposed for long-term international cooperation so that about 65 countries in the world can take control of one-third of the world economy. The specific nature of international trade has always involved the exchange of various goods from one country to another, and among these, maritime transport has been the main focus of international maritime transport due to its low cost compared to other modes of transport such as land and air, as well as the use of the largest capacity for movement. Since more than 90 percent of world trade is carried out in this way, it can be said that ports are the main commercial gateway of each country for international maritime trade. Generally, in maritime transport contracts, a charter party agreement occurs when the owner agrees to dedicate the entire capacity of his ship to the carriage of goods at a certain time or voyage. Therefore, the importance and position of determining and introducing a safe port in contracts concluded between the shipowner and the charterer can play a decisive role in assigning responsibility to each of them. Usually, ship charter contracts for international cargo transportation are concluded in the form of voyage charters, time charters, and close charter contracts. One of the important obligations of the charterer in the contract is to use a safe port for loading or unloading goods; therefore, the following questions arise: In the event of an accident resulting from the insecurity of the port, what criteria and regulations are used in charter contracts to determine and introduce the safe port to assign responsibility to the shipowner or charterer? In addition, it must be clarified whether the damage to the ship was caused by the insecurity of the port or by other causes, and if there are multiple causes, what is the main reason for the damage? Answering these questions and clarifying the meaning of a safe port in international maritime transport contracts plays a significant role in determining the charterer's liability to the shipowner for damages



caused by the insecurity of the port. Also, to prove our hypothesis that at some times of the year, there are ports that do not have the necessary security for loading or unloading goods due to the occurrence of severe storms and unfavorable weather conditions. Therefore, this is why the lessor (shipowner) specifies in ship charter contracts that the port mentioned in the charter contract or the port that the charterer (lessee) introduces later must be safe and secure. However in practice, determining which port is safe or unsafe seems to be very difficult. On the one hand, the risk does not mean only natural and atmospheric hazards, and on the other hand, it may not be practically possible to enter the port mentioned in the contract due to workers' unrest or the occurrence of other unforeseen events, which can cause It provided the insecurity of the port and, as a result, put forward the conditions and how to assign the responsibility theory to the ship owner or charterer.

By studying the documents and judicial practices of different countries, we find that the effects of the condition of designating and introducing a safe port in maritime transportation contracts, including time charter and voyage contracts, are completely distinct from each other. If, in a voyage charter, the ports designated for loading or unloading goods are not safe, the master of the ship can unload the cargo at the nearest safe port. However, in a time charter, the master does not have such authority and can only refuse to proceed with the voyage or enter the port. According to it, the port must be technically and weather-wise such that the ship can dock there afloat and without danger, and the captain must not worry about the arrest and confiscation of his ship due to a riot, revolution, or strike, or face the risk of contagious diseases. If the ship's captain refuses to sail or enter the port due to the insecurity of the port, the charterer cannot appeal to the shipowner on the grounds of breach of contractual obligations or seek to terminate the contract. On the contrary, it is the charterer himself who is held liable for any damage caused to the ship due to such incidents. Also, the English legal system has chosen an intermediate method in determining and introducing a safe port and tends to use the criterion of effective cause in resolving maritime disputes; however, the approach of the Iranian legal system in dealing with this issue has many ambiguities and it is only possible to resolve some of these ambiguities by interpreting some of the provisions of the maritime law. In this research, an attempt has been made to use a descriptive-analytical method, while examining the domestic cases and regulations of Iran and England to resolve the existing ambiguities regarding the determination of a safe port, and to analyze the methods of attributing responsibility resulting from the failure to identify a safe port to the charterer in voyage charter and time charter contract.

Keywords: Time Charterparty, VoyageCharterparty, Charterer Liability, International Maritime Transport, Safe Port.



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