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L.L.B Part- 2nd

Subject- Insurance Act

Paper- 8th

Date- 24/09/2020

Topic- What do you understand by deviation? When is deviation of delay allowed?

Deviation-

When a ship intentionally changes her route or remains in port without just cause, the ship's new route or delay is called a deviation. Unless the contract permitted otherwise, in either case there is a breach of contract by the party responsible for the deviation.

In the law of carriage of goods by sea, deviation has special penalty. From the minute this happens, the voyage is altered, the contract determined, and the insurer discharged from later responsibilities. By the contract, the insurer only runs the risk of the contract agreed upon, and no other and it is, therefore, a situation understood in the policy, that the ship shall continue to her port of destination by the shortest, direct and safest route, and on no account to depart from that route, but in cases of urgent and critical situation.

There is no breach of the term if a ship deviates on reasonable grounds as, for example, to avoid the dangerous weather or to save the life at sea, although deviation to save property at sea is not a permitted deviation at common law as it is under the Hague-Visby Rules.

The importance of the term for the shipowner lies in the legal effect of a breach of the term by the carrier. Any voluntary and unjustified deviation is a fundamental breach of the contract of carriage. In consequence, the shipowner is entitled to reject the contract and, if he does so, the carrier will lose the benefit of any immunity in the contract protecting him from legal responsibility for loss or damage except those available to a common carrier and even the common carrier's defences will only be open to him if he can prove that the loss or damage would have happened even if there had been no deviation.

The principle of deviation in ocean carriage has been recognised as the ancestor of the principle of fundamental breach. Deviation was described in *Joseph Thorley Ltd v Orchris Steamship Co Ltd* as:

“A serious matter that changes the character of the contemplated voyage so essentially, that a shipowner that has been guilty of a deviation cannot be considered as having performed his part of the bill of lading contract but something fundamentally different and therefore he cannot claim the benefit of stipulations in his favour contained in the bill of lading.”

The true underlying principle of deviation was affirmed by Lord Wright MR in *Hain Steamship Co. Ltd v Tate & Lyle* as follows:

Loss of the insurance is sometimes stated as the reason why deviation is treated so drastically under a contract of affreightment. If that were all, the mischief might be remedied by means of the deviation clause which is so generally now found in policies. But the reason is more fundamental and is the same principle in both contracts. The adventure has been changed. A contract entered into on the basis of the original adventure, is inapplicable to the new adventure.

When is deviation of delay allowed-

For example: It may be possible to deviate in order to prosecute the voyage with safety. A master is always under a duty to use reasonable care to ensure the success of the voyage, by protecting his ship and cargo from avoidable risks. In some circumstances, there may even be an obligation on the shipowner to deviate in order to protect the cargo interests. Deviation in order to save human life is always justified, but not to save property, unless this is expressly provided for in the charterparty.

In *Leduc v Ward* the carriage contract permitted the shipowners “Liberty to call at any port in any order”. The ship loaded a cargo at Fiume for carriage to Dunkirk. She deviated via Glasgow instead of proceeding directly to Dunkirk, which added some 1000 miles to the voyage. The court held that the deviation to Glasgow was unjustifiable. Lord Esher MR said:

“It was argued that the clause gives liberty to call at any port in the world. Here again it is the question of the construction of a mercantile document, and I think as such the term can have but one meaning, namely that the ports, liberty to call at which is intended to be given, must be substantially ports which will be passed on the named voyage.”

The words “in any order” was held to mean that the requirement that the ship call in geographical order was removed, but that the ship would only call at such ports as were passed in the named voyage.

The precise effect of a breach of the obligation under a contract of carriage by sea to proceed without deviation was a matter of some doubt until the decision of the House of Lords in *Hain Steamship Co. v. Tate & Lyle Ltd* .

In this case, a ship was chartered to proceed to Cuba for loading a cargo sugar and from there to a port in San Domingo and then proceed to Queenstown for orders. However after loading at Cuba, due to the default of the owner’s agents and post office authorities in Cuba, the owners failed to inform the master that he had been ordered to the port of San Domingo. Later when the

parties became aware of the mistake, the master was ordered to return back to the port of Domingo and the ship after leaving this port became stranded. It was held by the House of Lords that the ship had deviated after leaving Cuba, but the charterers had waived the deviation. It was settled by this case, that the obligation not to deviate is a condition of the contract and that the breach of it entitles the goods-owner if he desires to treat the contract as repudiated. Furthermore it is open to the party not in default to treat the contract as at an end or to waive the breach and treat it as subsisting. Furthermore waiver of a deviation by a charterer will not usually affect the position of a consignee or indorsee to whom he has transferred the bills of lading. A voluntary and unwarranted deviation puts an end to the special contract, unless the goods owner waives it.

As observed earlier, the ship must proceed with reasonable carefulness, not only on the main contract voyage but also when proceeding under a charter party to the port of loading. The effect of delay on the contract of carriage appears to depend on the question whether or not the delay amounts to a deviation. Where the delay amounts to a deviation, the charterer is entitled to treat it as a breach of condition and to refuse to load the ship, but that where the delay does not amount to a deviation his remedy is in damages.

Delay amounts to a deviation when it is such as to substitute an entirely different service from that contemplated, it must make the voyage different from the contract voyage. The term deviation is sometimes loosely used to describe any delay beyond the shortest reasonable time in which a voyage can be carried out but this is a misuse of words. The proper test to apply in order to decide whether there is a delay is whether that delay is such as to frustrate the commercial purpose of the venture. Where the neglect of the ship-owner to proceed to the port of loading with due diligence does not generally entitle the charterer to refuse to load. But when the delay is such as in effect to frustrate the intended adventure, the charterer will be entitled to reject the ship.

In *Mount v. Larkins*, it was a marine insurance case which decided that an unreasonable and unjustifiable delay in commencing a voyage amounted to a deviation and therefore discharged the insurer. Furthermore if the ship is unfit to receive the cargo, and the delay entailed in making her fit would amount to a deviation, the charterer is entitled to rescind the charter party. However if the defect of the ship had been remedied by the ship-owner, without such delay as to frustrate the adventure, probably the charterer would not have been entitled to reject the ship, though he might have claimed compensation for any loss sustained through the delay. Where a vessel is chartered for a specified period of time, the charterer will not be bound to take her if she can be made fit for the chartered service only after such delay as will frustrate the commercial purpose of the charterparty.

In *Snia Societa v. Suzuki* the ship was unable to perform her chartered service for a period owing to unseaworthiness, and it was held by the Court of Appeal that the charterers were entitled to cancel the charter on the ground of frustration. The principle applicable for time charters is what applies to charters in general-only such delay as makes the chartered service something materially different from that which was contemplated, in the sense that the commercial object of the charter-party is frustrated, entitles the charterer to cancel the charter party.

Where the delay does not amount to deviation, damages will not be recoverable for loss or damage occurring during or after such delay unless the delay caused the loss or damage in question. Hence no damages will be recoverable for loss resulting were a vessel is stuck by lightning which she would have avoided had she sailed with reasonable dispatch. Damages for delay are recoverable if the event in question would not have occurred but for the delay and was in fact anticipated. Where the outbreak of war prevents the completion of a voyage, which but for the delay would have been completed before the war, the liability of the ship-owner depends on whether he ought to have reasonably foreseen such likelihood.

The End