Gold Clause of the Hague Rules:
Why have the Korean Court Rejected the Rosa S?

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Abstract

The Hague Rules entitles a carrier to limit its liability to 100 per package or unit, but at the same time declares that the monetary units in the Rules were to be taken to be gold value. The relationship between the limitation of liability clause (Art.IV, r.5) and the gold clause (the first sentence of Art.XI) has been long argued in terms of whether the wording of the gold clause was so clear and specific as to qualify the words of the limitation of liability clause.

The Rosa S ([1988] 2 Lloyd's Rep 574) concluded that the above two provisions should be read together to the effect that the
gold value of 100 sterling be taken as defined by the Coinage Act 1971, and the limitation amount be taken as the value of that quantity of gold at the time of accrual of the cause of action.

However, from many English authorities, we can arrive at a conclusion that in a case where (i) the relevant bill of lading does not have the clear incorporation wording similar to all provisions of the Hague Rules including Art.XI or (ii) the English law or the law of the nation which has the corresponding legislation to the Coinage Act is not applied to the relevant bill of lading, the above two provisions should not be read together.

In this regard, we note that the Korean court, in the Spar Two (the Seoul District Court Judgment, Case No. 2001 Kahap 25714) rejected the Rosa S. The Rosa S rule needs more rigorous testing in the English courts in light of whether the first requirement was met.

[Key Words]
Hague Rules—bill of lading—incorporation—limitation of liability—gold clause—gold value—the Rosa S— the Spar Two

Chapter 1 Introduction

1. Basic explanation

This dissertation is an exploration of the relationship between Art.IV, r.5 ('the limitation of liability clause') and the first sentence of Art.XI ('the gold clause') of the Hague Rules. The meaning of the Hague Rules is important in many countries, since the Rules are