

[Title]

Application of the *International Carriage of Goods by Sea Act*

[Deciding Court]

Tokyo District Court

[Date of Decision]

1 July 1984

[Case No.]

Case No. 6394 (wa) of 1977

[Case Name]

Claim for Damages

[Source]

*Hanrei Taimuzu* No. 548: 164

[Party Names]

Plaintiff X Nordstern Allgemeine Versicherungs Aktiengesellschaft

Vs.

Defendant Y Toho Line, Ltd.

[Summary of Facts]

A German company, A, purchased Chinese white rabbit fur from a Chinese company, B, under C & F terms (cost and freight). B contracted with a shipping company, Y, for the transport of the fur from Shanghai to Bremen by sea. When the fur arrived in Bremen after transport by Y and was delivered to the consignee, it was discovered to have been damaged by discoloration. Insurance Company X, which had entered into a cargo insurance contract with A with respect to the carriage by sea described above paid insurance benefits to A. X filed this subrogated insurance suit against Y, claiming damages and asserting that the damage described above was caused by Y's negligence. X further asserted that a drum filled with liquid Furfural was stowed inside the same steamship utilized for transport by Y, and that the liquid Furfural leaked from the drum, evaporated and mixed with the air, acted on the fur described above which was stowed in the same cargo compartment and caused the discoloration.

The bill of lading that Y issued for the relevant transport stipulated the following provisions:  
"Article 1. (Governing Law)

Japan's *International Carriage of Goods by Sea Act* dated 13 June 1957, which incorporates the *Hague Rules*, which are included in the *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading* signed on 25 August 1924 at Brussels, shall be applicable to the contract verified by this bill of lading. However, if the country in which the bill of lading is issued has domestic laws legislated in accordance with the rules described above, and the contract verified by this bill of lading requires that the contract be governed by these laws, the relevant rules made applicable by domestic law, within the scope required by the laws, shall be applicable to the contract verified by this bill of lading. No part of this bill of lading shall be

considered a waiver of rights or discharge by the carrier under the *International Carriage of Goods by Sea Act* or legislation, or an increase in liability or duties. Moreover, it shall not prevent the carrier from asserting a legal protection, release from liability, or benefit of limitation of liability that is provided to the carrier or the vessel by the law of any country.

If any part of this bill of lading is in violation of the *International Carriage of Goods by Sea Act* or other provisions applicable by mandatory laws, the part in violation shall be null and void to the extent of the violation, without affecting the remainder of the bill of lading.

“Article 2. (Jurisdiction)

All lawsuits with regard to the contract for carriage shall be filed in a Japanese court in accordance with laws of Japan, unless otherwise prescribed in this bill of lading.”

[Summary of Decision]

Claim denied.

1. “Pursuant to Article 7(1) of the *Act on the Application of Laws*, the legal relationships under contract for carriage should be interpreted as regulated by the provisions of the *International Carriage of Goods by Sea Act* described in the bill of lading, as well as the provisions in the bill of lading.

It follows that we should firstly examine the *International Carriage of Goods by Sea Act*. In terms of facts that the parties did not dispute, the specifics of the contract for carriage of the cargo provided that the loading port was Shanghai in the People’s Republic of China, and that the destination port was Bremen in the Federal Republic of Germany (noting that the discharge port was Hamburg in the same country). The contract was entered into for carriage by sea between these two locations. According to the above facts, this case involved the carriage of goods by a shipping vessel, and it was clear that the carriage was to be between ports of loading and discharge that were both in foreign countries, outside Japan. There was a theoretical dispute as to the interpretation of Article 1 of the *International Carriage of Goods by Sea Act* in terms of whether or not that *Act* was applicable in such a case, however the Tokyo District Court’s interpretation was that the *Act* was obviously also applicable in such a case.

It followed that the governing law of the contract for carriage could be interpreted to be the agreement described in the back of the bill of lading, and the *International Carriage of Goods by Sea Act*.”

2. The Court inferred that the damage to the cargo could have been caused by something other than Furfural gas, and it could not be concluded that the damage to the cargo was caused by Y’s default in the provision of carriage. Accordingly, X’s claims in the case were held to be groundless, and there was no need to rule on other issues.