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Papers on Shipping Law & Maritime Economics

Implications of the meaning of any  
reasonable deviation under Article IV, Rule 4  
of the Hague/Visby Rules

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# Implications of the meaning of any reasonable deviation under Article IV, Rule 4 of the Hague/Visby Rules.

## **I. Introduction**

The below paper is a critical examination of the meaning of “any reasonable deviation” when a bill of lading is governed by Article IV, Rule 4 of the Hague/Visby Rules by answering whether it adds anything to the deviations already justifiable under common law.

## **II. Purpose**

The purpose of this paper is to assess case and/or statutory law with a view to answering the questions presented by the assignment.

## **III. Methodology & Data**

The assignment is based on secondary data including case and/or statutory law as well as textbooks and articles published on the topics the present analysis focuses on.

## Evaluating “any reasonable deviation” under Article IV, Rule 4 of The Hague/Visby Rules

Deviation means any intentional departure from the ship’s agreed or usual course (Todd, 2016) and it is in principle not permissible and subject to a few exceptions recognised by common law and some further exceptions added by The Hague/Visby Rules.

In the following sections we shall examine the differences by making a brief mention on the exceptions under common law and focusing on the ones added by The Hague/Visby Rules.

### 1.1 Types of Deviation permissible under Common Law

Under common law the following types of deviation are permissible and thus not suffering the consequences of a non permissible deviation from the ship’s agreed or usual route:

1. To save human lives or communicating with a ship in distress (where lives may be in danger)

A leading case on the matter is *Scaramanga v Stamp*<sup>1</sup> where Cockburn CJ held that<sup>2</sup>: “Deviation for the purpose of saving life is protected and involves neither forfeiture of insurance nor liability to the goods’ owner in respect of loss...and, as a necessary consequence of the foregoing, deviation for the purposes of communicating with a ship in distress is allowable, inasmuch as the state of the vessel in distress may involve danger to life. On the other hand, deviation for the sole purpose of saving property is not thus privileged, but entails all the usual consequences of deviation”.

It is important to stress out here that deviation for the purposes of saving property solely is not permissible under common law.

2. To avoid danger to the ship or its cargo such as bad weather conditions, war outbreaks, danger of captivity etc.<sup>3</sup>

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<sup>1</sup> *Scaramanga v Stamp* [1880] 5 CPD 295

<sup>2</sup> *Ibid* at p. 304

<sup>3</sup> *Notara v Henderson* [1872] LR 4 PC 171

3. Where the deviation is caused by default on the side of the charterer e.g. where the charterer has breached his obligation under the charter agreement to load full cargo (Wilson, 2010).<sup>4</sup>

## 1.2 Types of deviation added under The Hague/Visby Rules

According to Article IV, Rule 4 of The Hague/Visby Rules: “Any deviation in saving, or attempting to *save* life or *property* at sea, or *any reasonable deviation*, shall not be deemed to be an infringement or breach of these Rules, or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom”.

The rule essentially stresses out the types of deviation that are permitted by adding two further types of deviation on top of the ones acknowledged by common law:

1. Save or attempt to save property at sea
2. Any reasonable deviation which has created ambiguity with regards to what is deemed as any reasonable deviation.

Whereas it is clear that the Hague/Visby Rules under Article IV Rule 4 provide a clear addition and extend what was previously the norm under common law in respect to saving property at sea the issue is not quite clear in respect to what is deemed as any reasonable deviation.

A test has been set by Lord Atkins in *Stag Line Ltd v Foscolo, Mango & Co Ltd*<sup>5</sup> where he held that deviation<sup>6</sup> :

“..may be reasonable, though it is made solely in the interests of the ship, or solely in the interests of the cargo, or indeed in the direct interests of neither: as, for instance, where the presence of a passenger, or a member of the ship or crew, was urgently required, after the voyage had begun, on a matter of national importance. Or where some person on board was a fugitive from justice, and there were urgent reasons for his immediate appearance.”

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<sup>4</sup> *Wallem's v Muller* [1927] 2 KB 99

<sup>5</sup> [1932] AC 328

<sup>6</sup> *Ibid* at p. 350

He went on to further assert that<sup>7</sup>:

“The true test seems to be what departure from the contract voyage might a prudent person controlling the voyage at the time make and maintain, having in mind all the relevant circumstances existing at the time, including the terms of the contract and the interests of all parties concerned, but without obligation to consider the interests of any one as conclusive”.

It has been argued that Stag Line does not state the law in a clear manner and that it would be a mistake to draw a conclusion that The Hague/Visby Rules provide a wide exception to the duty of the carrier not to deviate (Todd, 2016).

## **BIBLIOGRAPHY**

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<sup>7</sup> Ibid