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CONFLICT OF LAWS IN THE CARRIAGE OF GOODS BY SEA (Uniform substam r gimes and private international law)

The goal of unification in the international regulation of a specific matter can be achieved either by the acceptance by the States of a uniform substantive law regulating that matter or, often more realistically, by the adoption of a uniform system of choice-of-law rules.¹

The carriage of goods by sea has been, since the first half of the last century, one of the fields where the unification efforts have been more successful, due to the fact that that contract, together with the sale, can be said to represent one of the situations more likely to give rise to a problem of conflict of laws.

This international harmonization has been achieved through the adoption, by the biggest part of maritime countries, of a uniform substantive law, regulating some of the most important aspects of the contract of carriage of goods by sea, known as *The Hague Rules*² or, in their 1968 amended version, as *The Hague/Visby Rules*³.

To properly understand the Rules it's essential to be aware of their nature of compromise between carriers' and cargo owners'

1. System aimed to have a same law regulating a matter notwithstanding the national court seized; this purpose is well known as the need to avoid a *forum shopping*.

2. *International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*, Brussels, 25 August 1924.

3. *Ex Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*, Brussels, 23 February 1968.

opposite interests, compromise realized barring the first ones from avoiding their liability through their bargaining power and, on the other hand, establishing fixed limits and a number of exemptions from that liability.⁴

It would be a mistake, at this point, to think that the broad adoption of the Hague Rules or of the Hague/Visby Rules leaves only residual room and limited importance to the conflict of laws approach in this matter, and it would be a mistake for four reasons:

first of all, not all the States have adopted the Rules, so that the possibility of having to decide a case using the classic applicable-law method is not to be excluded;

secondly, the Rules apply only to carriages covered by bills of lading⁵;

4. The opposite interests of carriers and cargo owners have often found an echo at a State level, with a well known dispute between 'cargo-owning countries' and 'ship-owing countries'; this opposition has been very acute between U.S.A. and England, in cases often involving the application of the American *Harter Act 1893*, which treated as void any contractual exemption of negligence and also imposed penalties on shipowners inserting them in the contract or in the bill of lading. So, in two situations involving exactly the same circumstances, an English vessel carrying goods from the U.S.A. to England, while the U.S. Supreme Court declared U.S. law as the proper law of the contract and thus gave no effect to the liability exemptions clauses inserted in the bill of lading and judged as being against U.S. public policy (*Liverpool and Great Western Steam Co. v Phenix Insurance Co.* (1889) 129 U.S. 397), the English Court of Appeal reached the opposite result of finding English law as the proper law so avoiding the need to apply American rules of public policy, *in specie* the Harter Act (*In re Missouri Steamship Co.* (1888) 42 Ch.D. 321).

5. This is no longer the case under the *Hamburg Rules (United Nation Convention on the Carriage of Goods by Sea, Hamburg, March 1978)*, not yet ratified by the U.K. and by many other important maritime nations.

We don't consider, here, the possible extension under s.1(6)(b) of the U.K. *Carriage of Goods by Sea Act 1971*; a great issue of private international law, i.e. the *status* of the chosen *lex contractus*, was nevertheless involved in a jurisprudential disagreement arisen from the way of constructing that provision, in the two cases *The Vechsroon* [1982] 1 Lloyd's Rep 301, where the incorporation of the Hague/Visby was said to give the Rules force of law, and *The European Enterprise* [1989] 2 Lloyd's Rep 185, where, instead, the effect of the incorporation was said to be that the Rules had to be regarded only as a matter of contract and thus modifiable by the other contractual provisions.

thirdly, the Rules don't regulate every aspect of the contract of carriage of goods by sea, which means that the search for the proper law is still fundamental;

and fourthly, it is legitimate to say that the mandatory character of the Hague/Visby Rules has been, in a very famous case, disregarded, as a result, as we now shall see, of the application of private international law.

*Vita Food Products Inc. v Unus Shipping Co. (The Hurry On)*⁶ is considered the English leading authority establishing the principle that the parties should be free to select the law governing their contract.⁷

The case arose from the damages occurred to a cargo of fish carried on the Canadian vessel *The Harry on* from Newfoundland (now part of Canada but at that time Dominion of the Commonwealth) to New York.

It was admitted that the damage was due to a negligence of the master while navigating along the Canadian coast.

At that time, a *Carriage of Goods by Sea Act* incorporating the Hague Rules was in force in Newfoundland⁸, whose section 1 and 3 were as follows:

Sect.1: "Subject to the provisions of this Act⁹ the rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in this Dominion to any port whether in or outside this Dominion";

Sect.3: "Every bill of lading or similar document of title issued in this Dominion which contains or is evidence of any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as expressed in this Act".

6. [1939] A.C. 277.

7. Smith, *Conflict of Laws*, Cavendish, London, 1999, 328. This principle is now adopted by art.3(1) of the *Convention on Law Applicable to Contractual Obligations*, Rome, 19 June 1980; (1980) O.J. L266.

8. *Statutes of Newfoundland*, 1932, c.18.

9. Emphasys added.

The bill of lading, due to a mistake, instead of containing the prescribed paramount clause, contained, inter alia, an exemption from liability for loss or damage due to negligence of the shipowner's servants and a clause providing that "this contract shall be governed by English law".

What was contended it was not the mandatory application of the Hague Rules under s.1 of the Newfoundland Act, which would have in any case exempted the shipowners from their liability due to *error in navigation*¹⁰, but the illegality of the bill of lading and of the whole contract of carriage due to the absence of the mandatory paramount clause, and consequently the responsibility of the carriers at common law but *sine contracto*, which would have meant full liability for damages to the cargo.

Lord Wright, in giving judgment in favour of the shipowners, after stated that the provision of the Newfoundland Act relating to the paramount clause was 'directory' and not 'obligatory'¹¹, went on to say that the carriers' responsibility was excluded, and this is the central point of the judgment, **not as consequence of the application of the Hague Rules and of the exceptions provided by the Rules, but because English law was the proper law of the contract having been expressly selected by the parties, and thus the shipowners were free to contract out from their liability.**

The Hague Rules, in other words, were not given application; and "the mandatory nature of s.1 of the Newfoundland Act" - in this way - "was disregarded".¹²

Many are the issues of this much criticised case¹³; but what here we are concerned with is the possibility to avoid the appli-

10. Art.IV, r.2(a); also reproduced in the Hague/Visby Rules but no longer in the Hambourg Rules.

11. [1939] A.C. 295.

12. Tetley, *Vita Food Products Revisited* (1992) 37 McGill L.J. 296.

13. See the several criticisms quoted in Tetley at page 299 and Tetley himself, who describes the case as a "ghost...which is still with us in some of its aspects and will remain so in the future".

cation of the Hague Rules, or of the Hague/Visby Rules, through an *electio iuris* clause. Private international law, today the Rome Convention, following this suggestion, would prevail over the Rules. And it's not surprising that with the name of this case has been called¹⁴ the reservation made by the U.K.¹⁵ not to give effect to art.7(1) of the Convention¹⁶, which allows the court to apply the "mandatory rules of the law of another country with which the situation has a close connection", i.e. mandatory rules which are part neither of the *lex contractus* nor of the *lex fori*.¹⁷

And see the refuse by Lord Diplock, in the *The Morviken* [1983] 1 Lloyd's Rep 9, to "embark upon what I have always found to be an unrewarding task of ascertaining precisely what those dicta meant".

14. See Tetley again at page 294.

15. *Contract (Applicable Law) Act 1990*, section 2(2).

16. The same reservation has been made by Germany, Ireland, Luxemburg and Portugal.

17. Today the Rome Convention is given force of law in the U.K., and a new *Vita Food Products* case, if arises, should be decided under it: it's thus important to be aware of the fact that in the Convention the phrase 'mandatory rules' is employed in several provisions but in two main different meanings.

Art.(3)3, referring to 'internal' contracts, i.e. contracts which lack of international character being all their elements connected with a same country, defines 'mandatory rules' as rules "which cannot be derogated from by contract" and states that in the case of internal contracts the choice of a foreign law shall not prejudice the application of those rules; when art.3(3) applies, the effect of those rules is to override the law chosen by the parties; the aim is clearly to restrain them from evading *mala fide* a domestic legislation in not international situations.

Every rule "which cannot be derogated from by contract" is a 'mandatory rule' under art.3(3): reference must be made to the law of the country to which the rule itself belongs; section 16 of the U.K. *Sale of Goods Act 1979*, which states that property cannot pass in unascertained goods, is a rule of this kind: a contrary intention of the party is ineffective.

But in order for those 'mandatory rules' of a country to override the law chosen under art.(3)1 all the "elements relevant to the situation" must be connected only with that country, which is really not likely to be a frequent case in a contract of carriage of goods by sea; any international element would be sufficient in order to avoid the limitation contained in art.3(3): the mere difference between the parties' nationalities, for instance, would give the contract the *status* of international contract and art.3(3) would not apply. Art.3(3) would override the chosen law in favour of English law in the case of a contract of carriage of goods from Dover to Shoreham concluded by two British.

In *Vita Food Products*, Tetley suggests, section 1 of the Newfoundland Act was a mandatory rule of this kind; it was, borrowing from French legal doctrine, a *loi de police*.¹⁸

But beside those dealt with by art.3(3), there is in the Rome Convention another, narrower, category of 'mandatory rules' whose overriding effect is much stronger; examples of this kind of rules are some consumers or labour laws, public hygiene rules or rules aimed to protect the national economic system of a country.

In these cases the interests of a State to the application of these laws, notwithstanding an eventual choice of a foreign law by the parties, is so strong that the Convention, recognising it, surrenders to them: "Nothing in this Convention shall restrict" their application. (Art.7(2)).

In private international law 'mandatory rules' of this kind are considered as the public policy of a country operating not in a negative way, as it is historically the case for the *ordre public* exception, but in a positive one: they don't override only the law chosen by the parties (like the rules considered by art.3(3)), they override *directly* the choice-of-law-rules; they are, in other words, stronger than private international law.

Section 204(1) of the U.K. *Employment Rights Act*, which states that for the purpose of the Act it is immaterial whether the law governing the contract is English or another law, is an example.

The very innovative characteristic of the Rome Convention is the power conferred to the court by art.7 to apply not only its overriding mandatory rules (art.7(2)), but also those of a third country (art.7(1), not in force in the U.K.).

A pre-Rome Convention maritime case involving a mandatory rule with strengthened force of law is the famous Dutch Hage Raad (Supreme Court) 13 may 1966 *Alnati* decision (in *Nederlandse Jurisprudentie*, 1967, 16), where a Belgian rule relating to bills of lading was applied notwithstanding the proper law of the contract was Dutch law under an express *electio iuris* clause; in deciding the case, the Court went on to say that "it can happen that for a State the application of some of its rules is so important that a court...should consider and apply them even contrary to the provisions of the law chosen by the parties" as *lex contractus*. We are very far from the comity (in its private international law meaning) reserved by Lord Wright to Newfoundland: "whether view a Newfoundland court might take...the result would be the same in the present case, where the action was brought not in a Newfoundland but in a Nova Scotian court" [1939] A.C. 296.

18. As defined for the first time by Bouhier in his *Observations sur la Coutume du Duché de Bourgogne*.

Mandatory rules under art.7 of the Rome Convention are well known in civil law jurisdictions: they are the Italian *norme di applicazione necessaria*; the German *Eingriffsnormen*, or the *lois d'application immediate* as also called in France.

The question, after the Rome Convention came into force in the U.K.¹⁹, is actual: do the Hague Rules, or the Hague/Visby Rules, and the various domestic provisions implementing them²⁰, have just normal mandatory force of law so that they can be avoided by a choice-of-law clause under art.3(1) of the Rome Convention, or, instead, are they *lois de police* which will be applied in any case, if part of the *lex fori* (art.7(2)), or after an evaluation of the judge, if part of a third legal system (art.7(1))?

If 'mandatory rules' and 'force of law' are the same²¹, the risk of a new *Vita Food Products* decision, even if not probable, is not impossible, especially if we consider the almost unlimited freedom art.3(1) gives the parties to elect the *lex contractus*²²: one could argue that the Convention too has force of law.

It's essential, in other words, to recognize to the uniform substantive law contained in the Hague Rules or in the Hague/Visby Rules the character of *loi de police* always able to prevail over the law designated by the uniform conflict-of-law rule contained in art.3(1) of the Rome Convention²³, or, more correctly, able to prevail over art.3(1) itself.

But even doing so, the possibility, in the U.K., of a new *Vita Food Products* decision theoretically remains.

This assertion could seem odd, especially in consideration of the principles held in the famous case *The Morviken*²⁴, and, even before *Vita Foods Products*, in *The Torni*.²⁵

19. 1 April 1991, as a result of the incorporation by the *Contract (Applicable Law) Act 1990*.

20. Like s.1 of the U.K. *Carriage of Goods by Sea Act 1971*, which gives 'force of law' to the Hague/Visby Rules.

21. As Tetley suggests, "at least in respect of the carriage of goods by sea"; *op.cit.*, 315.

22. Any connection between the contract and the chosen law is required, similarly to what suggested by Lord Wright in *Vita Food Products* [1939] A.C.290: "connection with English law is not as a matter of principle essential".

23. Which means, at last resort, over the will of the parties.

24. [1983] 1 Lloyd's Rep 1

25. [1932] Lloyd's Rep volume 43, 78

In this last case, concerning the carriage of a cargo of oranges, delivered rotten, from Jaffa, Palestine, over which at that time England exercised a mandate, to Hull, the bill of lading contained the following clause:

“This bill of lading wherever signed is to be construed in accordance with English law”.

A Government *Carriage of Goods by Sea Ordinance*, implementing the Hague Rules, was at that time in force in Palestine.

In a judgment radically opposite to the one rendered by Lord Wright seven years later, Lord Scrutton went on to say that if choice-of-law clauses had “the effect of striking out” the Hague Rules, “it will be quite simple for every shipowner to defeat the rules and the whole system under it by simply putting in a clause: ‘this bill of lading is to be construed by the law, not of the place where it is made, but by the law of the place to which the ship is going’”. No matter what the parties declared, it was held by the English Court of Appeal, the Hague Rules applied.

Similar, in *The Morviken*, in a case of carriage of an asphalt road finishing machine from Leith, U.K., to Bonaire, in the Dutch Antilles, a through bill of lading²⁶ was issued containing, inter alia, a choice-of-law clause in favour of Dutch law and a jurisdiction clause in favour of the Court of Amsterdam.

After a claim was brought in England for damages caused to the machine during the unloading process²⁷, the defendants’ argument regarding the exclusive jurisdiction of the Court of Amsterdam, held at first instance, was defeated in the House of Lords on the ground that, having Holland at that time implemented the Hague Rules but not yet, like England, the Hague/Visby Rules, with their higher responsibility limitations, to give effect to the jurisdiction clause would have meant application of Dutch law by the Court of Amsterdam under the choice-

26. A transhipment was concerned.

27. English courts were seized due to another ship owned by the defendants, the *Hollandia*, which was within the jurisdiction of the Admiralty Court.

of-law provision and thus application of the Hague Rules, so allowing the carriers to evade the more strict provisions of the Hague/Visby Rules, contrary to art.III, rule 8 of the Rules themselves which declares null, void and without effect any clause, covenant or agreement directed to exclude or to lessen the shipowners' liability.

After having stated that the Hague/Visby Rules "are to have the force of law in the United Kingdom" because "they are to be treated as if they were part of directly enacted statute law", Lord Diplock went on to say that even if the evasion outcome would have been only an indirect consequence of the *electio fori* clause, to give effect to that clause would have meant, nevertheless, "to lessen, otherwise than is provided in the Hague/Visby Rules, the liability of the carrier".

It is worth to note that the jurisdiction clause was not, in this case, declared void *ex se*, but only disregarded insofar its application would have had the effect of avoiding, by the selection of a 'court of convenience', the provisions of the Rules, which were to be given 'force of law'.

The choice-of-law clause, instead, was judged by Lord Diplock as offending 'prima facie', i.e. directly, art.III, rule 8.

This would mean that the parties to a contract of carriage by sea to which the 1971 Act and its schedule applies would never be free to select the law of a country which doesn't adopt the Hague/Visby Rules regime: in these cases, the intention of the parties, as expressed in their *electio iuris* clause, should be always disregarded.²⁸

How to reconcile this statement with the provision now contained in art.3(1) of the Rome Convention, which is law in England, that "a contract shall be governed by the law chosen by the parties"?

28. See the criticisms quoted in Wilson, *Carriage of goods by sea*, Fourth Ed., Longman, 2001, 188.

Art.3(3) of the Convention, which together with art.16 (*ordre public*) and art.7 (mandatory rules) limits the freedom given to the parties to choose the law applicable to their transaction, cannot be relied upon in this case, because it only refers to 'internal' contracts, i.e. contracts connected with only one country and thus lacking in international character.

Equally, the *clause échappatoire* contained in art.4(5), which, "if it appears from the circumstances as a whole that the contract is more closely connected with another country", gives the court the power to disregard the presumption contained in art.4(2)²⁹, cannot help in this case, because it refers to cases where a choice of law, either express or implied, is absent.

The proper solution, once again, is to consider the Hague/Visby Rules as mandatory rules under art.7, i.e. *lois de police*; but it must be clear that 'mandatory rules' doesn't mean here only rules with force of law, but rules able to prevail over the rules of private international law, i.e. over the conflict-of-laws rules, *in primis* over a selection by the parties of the applicable law.³⁰

The result of this reasoning would be, in a new *Morviken* case, to treat the choice-of-law clause not as void *ex se*³¹, but ineffective

29. Which links the closest connection, and thus the *lex contractus*, with the habitual residence of the party who is to effect the 'characteristic performance'.

30. In Cheshire-North, *Private International Law*, Thirteenth Edition, Butterworths, London, 1999, 573, after the statement that the concept of mandatory rules is a "particularly difficult concept for English lawyers to apply, because it is not known under English law", it is said that the definition of mandatory rules is to be found in art.3(3) as rules "which cannot be derogated by contract".

This opinion is partly due to the use of the same expression in the two provisions; the same misuse exists in the Italian text of the Convention, which refers in both art.3(3) and art.7 to *disposizioni imperative* notwithstanding the fact that *disposizioni imperative* in art.3(3) are to be intended as *ius cogens*, i.e. as rules with normal force of law, whereas *disposizioni imperative* in art.7 are the overriding rules able to prevail over the conflict-of-laws rules of private international law. Writers are unanimous: Ballarino, *Studi di diritto internazionale privato*, Padova, 1992, 226; Bonomi, *Le norme imperative nel diritto internazionale privato*, Zurich, 1998, 19; Treves, *Norme imperative e norme di applicazione necessaria nella Convenzione di Roma del 19 giugno 1980*, in *Verso una disciplina comunitaria della legge applicabile ai contratti*, Padova, 1983, 27.

insofar the provisions of the chosen law are inconsistent with the provisions of the Hague/Visby Rules, which would thus be applied as *lois de police* of the forum (England) under art.7(2) of the Rome Convention.

But what in case of a shipment from a country where the Hague/Visby Rules are in force, under a bill of lading containing a choice-of-law clause in favour of English law together with a jurisdiction clause in favour of English courts?³²

England made a reservation in respect of art.7(1) of the Rome Convention³³, so that the possibility, for British courts, to apply the Rules under that provision as foreign *lois de police* is excluded.

One could think that the choice of English law means, *a fortiori*, also the application of the *Carriage of Goods by Sea Act 1971* and of the Hague/Visby Rules as implemented by it; but this outcome is not so sure.

In *Vita Food Products* the application of English law should have implied the ineffectiveness of the exemption clause contained in the bill of lading, simply because English law at that time, like Newfoundland law, was implementing the Hague Rules, by the *Carriage of Goods by Sea Act 1924*, and thus that clause was inconsistent with the provision of art.III, rule 8(1) of the Hague Rules.³⁴

Nevertheless, this was not the conclusion reached by the Privy Council, which, instead, gave effect to the exemption

Straightforward is instead the French text which in art.7 refers to *lois de police*; nevertheless a French writer, examining art.3(3), has expressed an opinion similar to the one expressed in *Cheshire*, thus identifying 'mandatory rules' under art.3(3) and 'mandatory rules' under art.7: Pommier, *Principe d'autonomie et loi du contrat en droit international privé*, Paris, 1992, 133: "cette internationalisation d'un contrat interne" - under art.3(3) - "ne s'effectuerait que sous réserve de l'exception d'ordre public...et des lois de police".

31. As done by Lord Diplock in the *Morviken*.

32. Which is very often the case.

33. 'The *Vita Food Products* Reservation' as Tetley calls it.

34. Tetley, *op.cit.*, 310: "when the Court recognised 'English law' expressly chosen by the parties, it ignored that the Hague Rules are a mandatory part of 'English law'".

clause and on that ground excluded the shipowners' liability.

'English law', in the Privy Council's reasoning, meant English common law, with exclusion of English statutes.

If now it's true that *Vita Food Products* is an earlier case, it is also true that the suggestion in question has been held³⁵ in a more recent case, the *Komminos S.*³⁶

Here, a carriage of steel coils from Thessaloniki (Greece) to Ravenna (Italy) under a bill of lading providing, inter alia, that all disputes should have been referred to British courts, was involved.

On discharge at Ravenna the cargo was found damaged by corrosion due to the negligent omission of the master and of the crew in properly cleaning the holds, where a cargo of salt had been previously shipped.

It was, thus, a case of unseaworthiness of the vessel.

The main issue of the case concerned the validity of a number of exemption clauses inserted in the bill of lading but void under Greek domestic law, even if at that time Greece was not a contracting State to the Hague/Visby Rules: if Greek law would have been judged as the proper law of the contract, the shipowners would not have been entitled to rely on those exemptions.

This was the conclusion reached by the first judge, in consideration of the fact that the contract was made in Greece (*locus conclusionis*) between Greek parties to carry Greek steel from Greece to Italy, with the freight payable in Greek currency.

The Court of Appeal, instead, took another view and inferred from the jurisdiction clause an implied choice of English law by the parties.³⁷

35. "albeit discreetly and without citation" as Tetley notes.

36. *Hellenic Steel Co. And others v Svolamar Shipping Co. Ltd. And others; The Komminos S* [1991] 1 Lloyd's Rep 370.

37. One of the arguments in favour of the shipowners, i.e. in favour of the application of English law, was the observation of Lord Denning in *Coast Lines Ltd v Hudig & Veder Chartering N.V.* [1972] 1 Lloyd's Rep 53 that when choosing the proper law of a contract preference should be given to the law which con-

The outcome should have been the same, because the exemption clauses in question were in any case inconsistent with art.III, rule 8 of the Hague/visby Rules and the Hague/Visby Rules were part of English law.

But the Court of Appeal, nevertheless, did not follow this suggestion.

Arguing from the non satisfaction of the requirements art.X of the Rules establishes for their application, the Court held that there was "no question of the United Kingdom legislation applying automatically. It had to be incorporated".

An attentive exam of art.X(c) of the Hague/Visby Rules would nonetheless suggest that a provision in the bill of lading selecting the legislation of a State giving effect to the Rules should be enough in order for the Rules themselves to apply; but for the Court of Appeal the implied choice of English law, inferred from the jurisdiction clause, was not sufficient to establish that the bill of lading 'provided' that the legislation of the U.K. giving effect to the Rules should have been applied.³⁸

Once again English law was intended as English common law and consequently the *laissez faire* doctrine was applied allowing the parties to contract out from their liability.³⁹

siders the contract as valid; this is what is called, in Italian private international law, *favour validitatis* connection principle.

38. We are surely very far from Lord Diplock's suggestion in *The Morviken* [1983]1 Lloyd's Rep 5 that the Hague/Visby Rules "should be given a purposive rather than a narrow literalistic construction".

39. See the criticism in Tetley, *op.cit.*, 312: "The assumption that 'English law' did not include the mandatory U.K. *Carriage of Goods by Sea Act*...because the Act only applies outward from an English port, is to ignore the whole nature of incorporation by reference of a law. Any incorporation by reference of a law must be done, making necessary adjustments *mutatis mutandis*. When the carriage of goods by sea contract takes the major step of by-passing a mandatory law of the place of contract and shipment to incorporate other laws...one would expect that incorporation would include the mandatory *Carriage of Goods by Sea Act* of English law. To assume that only 'English common law' is meant is a very large assumption. It can also be argued that, like the U.K. *Carriage of Goods by Sea Act*, 'English common law' only applies to English shipments".

It is true that in the *Komminos S* the evasion concerned Greek national law⁴⁰, but it is possible that a case might arise concerning this time an evasion from the Hague/Visby Rules *via* the application of the Rome Convention.

Being English courts not entitled to apply foreign *lois de police* under art.7(1) of the Convention⁴¹, it is essential, to avoid the 'ghost' of the *Vita Food Products* decision, to recognize once for all that the choice, express or implied, of English law as the law governing the contract means the whole English law, and not, only, part of it.

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40. Whose application, nevertheless, would implied an outcome identical to the one which would have been implied by the application of the Hague/Visby Rule.

41. And the Greek prohibition of exemption clauses, in the *Komminos S*, was, without doubt, a *loi de police*.