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Dissertation for Ph. D. in Law

A Study on the Protection of the Cruise
Passengers' Rights and Proposals for
Cruise Legislation

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August 2017

Graduate School

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本 論文을 余姪楠(YU YANAN)의 法學博士 學位論文으로 認准함

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2017年 6月 16日

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CATALOGUES

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A Study on the Protection of the Cruise Passengers' Rights and Proposals for Cruise Legislation

YU YANAN

Abstract

Nowadays, the cruise industry is developing at top speed, and also becoming a new economic growth engine for many countries. As one of the emerging industries, on one hand the cruise industry has promoted the development of the tourist industry and created huge economic values, on the other hand behind the rapid development, due to the complexity of the cruise contract, the rights and liabilities are not very clear, while lack of cruise legislation, cruise disputes are emerging in endlessly and the rights of the cruise passenger are hard to be protected. For the long run, this situation may seriously affect the development of the cruise industry. It is necessary and urgent to finding ways for the cruise passengers' rights protection and cruise legislation.

The cruise industry in United States and European Union are relatively developed in the world, likewise, United States and European Union have the thorough cruise legislation and can effectively protect the rights of the cruise passengers. By contrast, Korea and China are two countries with huge developing potential in cruise industry, and both of the two governments also attached great importance to the cruise

legislation. however, the current cruise regulations of Korea and China should be regard as administrative guide and could not be applicable law for cruise disputes, both Korea and China are still lack of specialized cruise legislation. On this occasion, the paper analyzed the current cruise issues and legal relations, introduced the cruise legislation system in United States and European Union, and gave suggestions of cruise proposals for Korea and China. The specific contents were written as follows:

Firstly, the paper introduced the characteristics of the cruise tourism, the development status of the cruise industry and the current cruise legislation in Korea and China. This part showed the necessity of this research also. After that, the paper analyzed the complicated cruise contractual relations, in the progress of the cruise tourism, both the cruise carrier, the cruise passengers and the travel agencies as different contracting parties have different legal status, while the liabilities of the cruise carrier are distinguished due to the characteristics of the cruise trips. Based on the contracting parties, the typical cruise standard terms were introduced here.

Next, the paper focus on the damage compensation for the cruise passengers. The Athens Convention can be used as the law application and liabilities principles but could not applied completely in the cruise tourism. In United States and European Union, there are specific rules and regulations focus on cruise tourism and adapt to the characteristics of cruise. The paper analyzed the law application and liabilities principles for cruise and put forward that for the damage compensation and limitation

of liabilities, the dual liability system and strict responsibility should be applied while summarizing the advanced experiences and advantages in the regulations of United States and European Union.

Except the above mentioned, other special cruise legal systems such as the independent contractors, the torts from the cruise staffs which may effect the liabilities of the cruise carriers are analyzed. The paper chose a typical case focus on the cruise medical issues to introduce the judgment for the cruise disputes in United States.

Compared with laws and regulations in United States and European Union, related cruise cases in Korea and China are introduced to analyze the compensation system in these two countries and to give legal references for the cruise legislation. Based on the above analysis, the paper proposed that Korea and China need to perfect the cruise legislation and to enact the cruise passenger protection and compensation act absorbed the advanced experiences in United States and European Union.

The purpose of this paper is to finding ways for the better resolve of the cruise disputes, to protect the rights of the cruise passenger, whose current legal status is weak and unfair, and expect to promote the development of the cruise legislation in Korea and China.

CHAPTER I Introduction

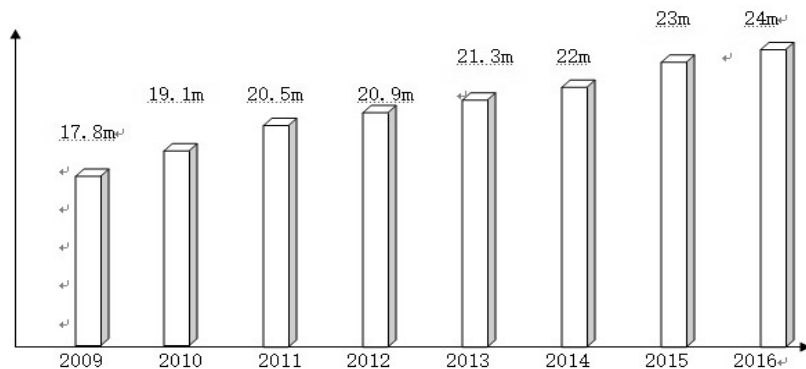
1.1. Purpose of Study

1.1.1. The Development Status of the Cruise Industry

The cruise tourism is now one of the fastest-growing and the most potential developing industries in the world. As an emerging industry, the cruise industry is called as the “Golden Industry Sailing on the Golden Waterway” and had already brought enormous economic benefits. According to the report of the world’s largest cruise industry trade association - Cruise Lines International Association (hereafter referred to as CLIA), more and more passengers are traveling with cruise lines, the demand for cruising has increased 68% in the last ten years, the number of the cruise passengers are increased highly and every years’ amount of increase had exceeded 1 million.(Table 1)

Table 1

2009-2016 Growth of Global Cruise Tourists
(In Millions)



Source : 2016 Cruise Industry Outlook,

The development also promoted the progress of the relative industries. In the shipbuilding industry, for the demand of the cruise market, 27 new ships are on order in 2016, while 92 ships are on order till the year 2022, the new capacity can reached at 143,891.¹⁾

Cruise tourism is now very popular worldwide and also very mature in the area of United States and European Union. The United States is now the biggest cruise tourism country in the world and have 19 cruise companies, the economic value created by the cruise tourism industry can reached at \$4 billion per year according to the statistics of CLIA, and Between 2008 to 2016, cruise travel outpaced general leisure travel in the United States by 22%. At present, European Union has become the biggest cruise tourism market ranking only second to the United States, account for almost 30% of the world's cruise market. The number of the passenger have reached to 640 million and produced almost € 390 billion benefits.²⁾

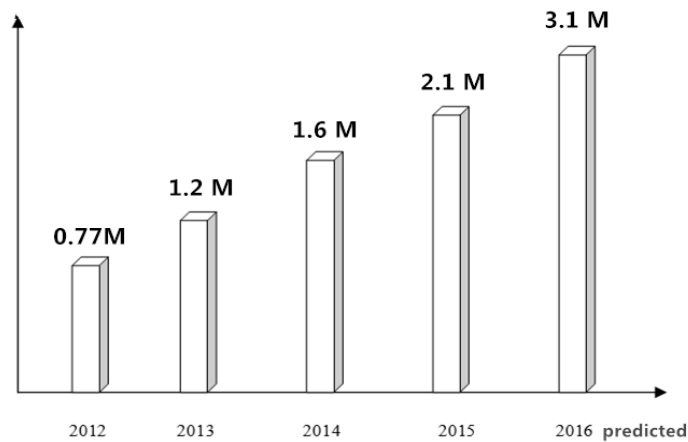
Another potential cruise region is Asia as the passenger capacity has reached to 3.1 million.³⁾ (Table 2)

1) Cruise Lines International Association, 2016. CRUISE INDUSTRY OUTLOOK, United States: Cruise Lines International Association.

2) Cruise Lines International Association Europe, 2016. *The Cruise Industry- Contribution of Cruise Tourism to the Economies of Europe 2016 Edition*, Cruise Lines International Association Europe.

3) Cruise Lines International Association, 2016. *Asia Cruise Trend 2016 Edition*, United States: Cruise Lines International Association.

Table 2
2012-2016 Growth of Cruise Tourists in Asia
(In Millions)



Source : Asia Cruise Trend 2016 Edition , CLIA.

Table 3

2006 – 2016 Cruise Tourism in China

2006		2016
115	Ports of Call	996
25	Home-Port Cruise	913
20,000	Cruise Tourists	2,120,000

Source: China Cruise & Yacht Industry Association

Among these, most passengers are from China. According to the data of the China Cruise & Yacht Industry Association (CCYIA), there had 996 cruise lines travelled from China in 2016 increase by 58%, and the number of cruise passengers that entry-exit China had reached to more than 2 million which increased by 82%. (Table 3) The China Cruise Development Report 2016 indicated that, the cruise industry in China is now developing at full speed and the further 10 years will be a outbreak period for cruise progress. The two cruise terminals in Shanghai, pioneer city in chinese cruise industry, the passenger flow volume had break to 200,000 per month. Several cruise terminals in other coastal cities in China are also under

construction, such as the Sanya Phoenix Island International Cruise Terminal, Qingdao International Cruise Terminal and so on. In 2014, the world famous cruise line the Royal Caribbean International bought a share in the Skysea Holding International Ltd in China who was the Chinese first mainland cruise company, and the cruise line Skysea in now become the best cruise line in China.⁴⁾

Table 4

Number of Foreigners Visiting Korea on Cruise⁴⁾

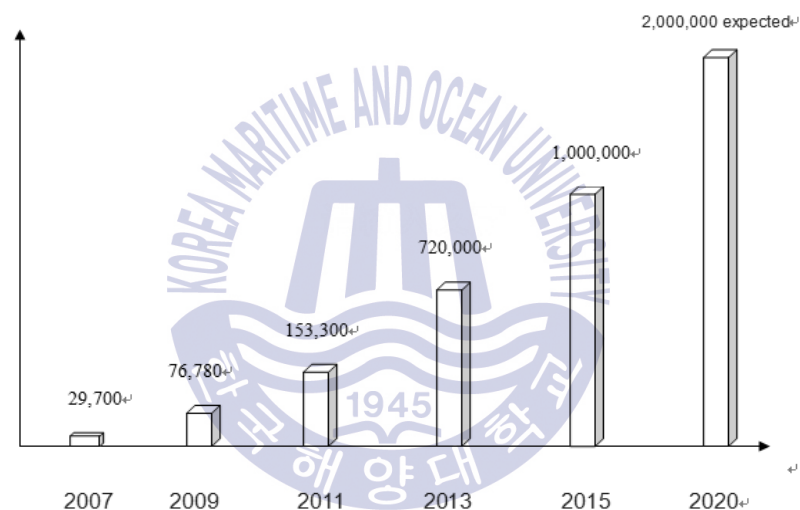
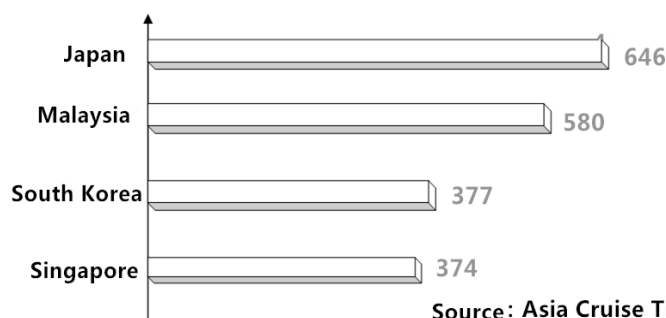


Table 5

Top 4 Countries by Total Ports of Call in Asia, 2015



Source: Asia Cruise Trend 2016 Edition

4) 天海邮轮, [Online] Available at: <http://www.skysea.com/home/AboutUs> [Accessed 5 September 2016].

As an important cruise trip destination and stopover port in the Asian-Pacific region, the cruise tourism is also developed rapidly in Korea. According to a survey released by the KTO (Korea Tourism Organization) in 2014, a foreign cruise passenger who stops over at a Korean port spends an average of \$1,068 during his or her stay. Over 2 million foreigners are projected to visit the country onboard cruise ships in 2020, according to the Ministry of Oceans and Fisheries. The number of cruise tourists stood at 9,040 in January last year and surged to 80,280 in January this year, some 908 cruise vessels are expected to enter Korea, a surge from last year's 409 vessels.⁵⁾ Also, Korea had become the top 3 countries by total port calls in 2016, and the Jeju Island had exceeded Shanghai and Singapore ports and is now the No.1 cruise port in Asia.⁶⁾ (Table4,5) For the outbound tourist, in 2012, only thirteen thousands passengers from Korea took a cruise vacation, but in 2015, the number increased to thirty-five thousands, growing 35.6 percent annually.

The Korea government also announced the steps to turn the cruise industry into a new growth engine for Korea's tourism sector. Such as to build four new cruise terminals on Jeju Island, Incheon and Sokcho by 2017 to cater to the growing number of travelers to the country; to attract more international cruise ships by next year and train 2,000 crew members by

5) Lee Hyo-sik, 2013. *Cruise: new growth engine for Korea's tourism industry?* [Online] (Updated 4 August 2013) Available at: http://www.koreatimes.co.kr/www/news/biz/2016/02/330_140446.html [Accessed 5 September 2016].

6) Cruise Lines International Association, 2016. *Asia Cruise Trend 2016 Edition*, United States: Cruise Lines International Association.

2020; to build more duty free shops, restaurants and other shopping and leisure facilities near the berths so that foreign visitors can easily shop and engage in recreational activities. Also included in the steps to promote the cruise industry is allowing foreigner-only casinos on cruise ships owned by local companies.⁷⁾

1.1.2. The Characteristics of the Cruise Tourism

In the time the airplane had not appear, the ocean lines had undertake the liabilities to transport the passengers, the mails and the cargos overseas. As most of the ocean lines sailed on the fixed lanes in a fixed time and were accepted for the mail carriage overseas, they were called as “Cruise“. The most famous cruise ship in history is the cruise Titanic. From the movie Titanic, we saw the luxurious cabins and facilities. At the beginning of the 20st century, the cruise ships were the first choice for the rich with their grand facilities and the perfect services, which were also the biggest features of the cruise industry at that time.

After the Second World War, with the development of the aerotechnics, and the convenient of the traffic, the main task for the cruise ships was no longer the mail carriage, while more passengers chose to travel by airplane, the cruise ships were not fit to use as transport facility and till now, they evolved to the “Luxury Hotel on Sea“ which apply the

7) Chung Ah-young, 2016. *Korea Promotes Cruise to Attract Tourists* [Online] (Updated 17 March 2016) Available at: http://www.koreatimes.co.kr/www/news/culture/2016/03/320_200585.html [Accessed 5 September 2016].

comfortable, leisure trip along the coastal cities worldwide for the passengers.

As the perfect combination of the holiday relax and the sightseeing tour, the cruise ship can bring the fresh experiences of traveling that different from the traditional ways of travel, and travel by cruise ship is becoming more and more popular and fashionable nowadays. Compared with traditional marine transports, cruise ship as the carrier of the marine tourism, its main features may as follows:

(1) The Large-scale Cruise Companies and Large-scale Cruise Ships

The CLIA has 28 global cruise line members, 26 European regional cruise line members, and 8 Australia regional cruise line members. Many famous cruise line companies are also involved, such as Carnival Cruise Line, Costa Cruise Lines, MSC Cruises and Royal Caribbean International.⁸⁾ All these cruise companies have their own cruise lines and manage the travel programs independently. Except the members in the CLIA, other regional cruise companies such as the Star Cruise are also begin to take shapes.

To meet the needs of the travel, the tonnage of the cruise ships are huge. Take the MSC Cruises as example, the MSC owns 14 cruise lines, and the biggest is the cruise line MSC NERAVIGLIA, its gross tonnage had reached as 167,600 tons, the length of the ship is 1034 ft, and the max beam is 141ft, which

8) Cruise Lines International Association, *Cruise Line Members* [Online] Available at: <http://www.cruising.org/cruise-vacationer/member-cruise-lines> [Accessed 11 June 2016].

allowed 4500 passengers travel together. As the smallest ship, the MSC SINGONIA, its gross tonnage also reached at 65,542 tons and can carry 2679 passengers.⁹⁾ The world largest cruise lines is the ship HARMONY OF THE SEAS belonged to the Royal Caribbean International, the gross tonnage of the ship is 226,000 tons, the length is 1,187 ft and the max beam is 154 ft.¹⁰⁾

(2) The Complete Tourist Facilities and Perfect Tourist Services

The up-to-date cruise lines continued to be luxurious as the ancient lines and facilities on the ships are more and more perfect with the progress of the design, the manufacture and the materials technology. There have kinds of tourist facilities such as swimming pool, shops, gym on the cruise ships, and also provided recreational activities. Some cruise lines cruising the whole journey without berth. Take one cruise journey as example, this 5-day-6-night trip begins from Shanghai, passengers can have a short, ashore travel while the ship berthed at Busan, Jeju, and Fukuoka midway. While for the most times, the passengers could enjoy the cruise facilities in the restaurants, the SPA, the golf course, the gym and the shops on the ship, and the colorful, variety shows and activities are also applied for the passengers.¹¹⁾

9) MSC Cruise USA, [Online] Available at:

<https://www.msccruisesusa.com/en-us/Homepage.aspx> [Accessed 11 June 2016]

10) Royal Caribbean International, [Online] Available at: <http://www.royalcaribbean.com/> [Accessed 11 June 2016]

11) Royal Caribbean China, [Online] Available at: <http://www.rcclchina.com.cn/> [Accessed 11 June 2016]

(3) The Flexural Sailing Route

Most of the laws have ruled that the unreasonable deviation is prohibited. In the Hague Rules, article 4 also has the similar article. However, the cruise ship may deviate to many ports for sightseeing. In one 8-day cruise journey sold on the official website of the Carnival Cruise Lines, the ship CARNIVAL VISTA set sail from the Spanish port Barcelona, and then berthed successively at the French port Marseille, 4 Italian ports, later berthed at the Spanish port Palma de, the trip will finished at the Barcelona. The sail and the berths of the ship are all surrounded by the mediterranean sea, and for the better travel experience of the trip, the sailing route is very flexural.¹²⁾

(4) More Crews for the Tourism Services

Compared to the common passenger ships, there have more crews on the cruise ship. The passenger capacity of the ship COSTA DELIZIOSA is 2826, while the number of crew is 934, the proportion has reached at 1:3, which can not be image at the traditional passenger ship. Most of the crews are the service staffs that provide the travel services at the cruise ship, restaurants and other places. They can only be called as the “Crew in General“, because they are different from the captain, the sailor as they do not need to navigate the ship.

(5) Better Ports Are Needed For Cruise

The ports for cruise ship to berth must have a better

12) Carnival Corporation, [Online], Available at: <https://www.carnival.com/> [Accessed 11 June 2016]

situation with good navigation condition and service facilities. The Miami Cruise terminal is the largest cruise terminal in the world, it has 12 wharfs, and 20 cruise ships can berth at the same time. Depend on the port, the tourist industry of Miami developed rapidly and had created a large economic benefit. The Busan International Cruise Terminal is one of the only ways which must be passed in the Asian cruise lines. In the year 2014, 380 thousand passengers travelled to Busan by cruise ships, and two years later, the passengers had rose to 450 thousand in 2016.¹³⁾ The Shanghai Wusongkou International Cruise Terminal had berthed 283 cruise lines in the year 2015, and the number improved to 500 cruise lines in 2016, while this terminal is now becoming one of the busiest cruise terminals in the Asian-Pacific region, and as the centre of the Chinese cruise industry, the Wusongkou International Cruise Terminal had exceed the New York Cruise Terminal and had became the eighth biggest cruise ports in the world. At present, two more cruise wharfs are building and will bring into service at the beginning of 2017.¹⁴⁾

The biggest feature of the cruise tourism is the Internationalism, as most of the cruise ships sailing on the high seas, the contractual relation and the application of the law all have the international features. Compared with traditional travel ways, the cruise passengers can not only enjoy the tourism service on the cruise ship, but also can disembark the ship and

13) 부산항 여객터미널, [Online] <http://www.busanpa.com/bpt/Main.do> [Accessed 11 June 2016]

14) 东方网, 2015. 上海吴淞口国际邮轮码头后续工程开工建设 [Online] (Updated 18 August 2015) Available at: <http://sh.eastday.com/m/20150618/ulai8760496.html> [Accessed 11 June 2016]

have sightseeing on land during the trip. However, the time for sightseeing on land is short, the passengers mainly spend their leisure time on the cruise lines.

One other thing that need to note is that domestic port to port or inland waters' cruises also could be regard as "Cruise" in general sense, in several countries, the domestic port to port cruise ships, or inland cruise ships are also popular. In China, to take a cruise trip on the river Yangtze is kind of sizable travel ways. The inland cruise ship "MV President Prime 7" is called as one of the biggest inland cruise ships in the world, while the gross tonnage is only 17,000 tons. Thus, the primary factor we defined a "Cruise" is the entertainment and not the size. The complete tourist facilities and the perfect tourist services are the passenger ship could not bring.¹⁵⁾

1.1.3. Introduction of the Cruise Legislation

(1) Cruise Legislation in United States and European Union

① Cruise Legislation in United States

United States now has basically formed the perfect cruise legal system with a productive administrative supervision system, a thorough civil legal system. (Table 6)

15) From the definition, the domestic port to port and inland waters' cruise ships could be defined as "Cruise ship" as they have the similar characteristics, but if legal disputes occurred on such ships, the legal treatment may much more earlier as for the compensation and limitation of liabilities could applied to its domestic rules and regulations. In the coming Chapters, Athens Convention and other international conventions or regulations will be analyzed but could not applied to domestic port to port and inland waters' cruise ships. Therefore, unless specify express, the legal analysis below will be exclusive of these kind of cruise ships.

For the regulation of cruise design and construction, as the major contracting party of International Meteorological Organization (IMO) and SOLAS, the Code of Federal Regulation in United States have many similar rules together with SOLAS especially in the ship structure, fire fighting and lifesaving, navigation safety. Meanwhile, the Cruise Vessel Security and Safety Act was passed to have a regulate to the cruise vessels' structure, the cruise carriers and the cruise service staff in detail.

For the administrative supervision of the cruise vessels, United States Coast Guard is the only maritime comprehensive law enforcement agency in United States, and also one of the major supervision departments works together with the Admiralty and Maritime Law Committee and the National Transportation Safety Board on the administrative supervision and management. From 2007, the United States Coast Guard began to establish the Cruise Ship National Center of Expertise¹⁶⁾ to enhance the maritime security system, and to provide the specialized knowledge to the cruise industry. It provided the training to the foreign cruise vessels (Coast Guard's Foreign Passenger Vessel Examination Program)¹⁷⁾ to afford the professional consultation of the cruise vessels.

16) United State Coast Guard, [Online] Available at:

<http://www.uscg.mil/hq/cg5/csncoe/default.asp> [Accessed 5 September 2016].

17) According to the website of CSNCOE, the foreign cruise vessels that berthed in the US port must conform to the cruise safety and technical standard of United States. This course is designed to broaden and deepen understanding of and competency in the Coast Guard's Foreign Passenger Vessel Examination program in preparation for qualification.

In recent years, the legislation of United States paid more attention to the protection of the cruise passengers' rights. The newest legislative proposals include Cruise Passenger Protection Act (hereinafter referred to as CPPA) and Vessel Consumer Confidence Act of 2013 (hereinafter referred to as VCCA). The CPPA was called "the only way we're going to make consumer awareness and protection a priority, since the cruise industry seems to refuse to take action on its own" ¹⁸⁾, and the VCCA was "directed against unfair or deceptive practices and unfair competition" ¹⁹⁾.

Table 6

Cruise Legal System in United States

	Legislation	Main Contents
Regulation for Cruise Design and Construction	Safety of Life at Sea (SOLAS)	Fundamental and broad regulations for all general ships.
	Code of Federal Regulation	Ship structure, Fire fighting, Lifesaving, Navigation Safety.
	Cruise Vessel Security and Safety Act	Aim to safeguard the cruise passengers' safety through the rules of construction standards, staffs' qualifications, crime prevention and evidence preservation.
Regulation for Administrative Supervision of Cruise Vessels	Main management agencies: <ul style="list-style-type: none"> - United States Coast Guard - Admiralty and Maritime Law Committee - National Transportation Safety Board 	
Regulation for Parties' Rights and Liabilities	Cruise Passenger Protection Act (Proposal)	Proposed to make new standard form of cruise contract. Empower more rights to government to protect the cruise passengers.
	Vessel Consumer Confidence Act (Proposal)	The duty of disclosure to cruise carriers.

18) Ana. Figueroal, *Cruise Passenger Protection Act of 2013 - Proposed Law Increases Consumer Protections, Safety and Security at Sea* [Online] Available at:

② Cruise Legislation in European Union

Table 7 **Cruise Legal System in European Union**

Titles	Full Name	Main Contents
Regulation (EC) NO 392/2009	On the liability of carriers of passengers by the sea in the event of accidents (Regulation (EC) NO 392/2009 of the European Parliament and of the council of 23 April 2009)	The liabilities of the cruise carriers when the personal injury and the luggage lost or damage happened.
Regulation (EU) NO 1177/2010	Concerning the rights of passengers when traveling by sea and inland waterway and amending regulation (EC) NO 2006/2004 (Regulation (EU) NO 1177/2010 of the European parliament and of the council of 24 November 2010)	The rights of the disabled and the mobility impaired.
Directive (EU) 2015/2302	Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements	The liabilities for damage when the voyage is cancelled or delayed.
Directive 2011/83/EU	On consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC and Directive 97/7/EC of the European Parliament and of the Council (Directive 2011/83/EU of the European Parliament and the council)	Protection of the fees paid by the passengers that were unnecessary.
Regulation (CE) NO 2006/2004	On cooperation between national authorities responsible for the enforcement of consumer protection laws (the regulation on consumer protection cooperation) (Regulation (CE) NO 2006/2004 of the European parliament and of the council of 27 October 2004).	The member countries should have the specialized agency to protect the rights of the passengers.

The European Union has the thorough cruise legislation and since 2001, the Council of European Union had proposed the protection system of the cruise passengers in its White Paper for

<http://tourism.about.com/od/specialtourism/a/Cruise-Passenger-Protection-Act-Of-2013.htm> [Accessed 5 September 2016].

- 19) Ana, Figueroal, Cruise Vessel Consumer Confidence – New Proposed Bill Adds Cruise Passenger Protections [Online] Available at:
<http://tourism.about.com/od/marketingandpromotion/fl/Cruise-Vessel-Consumer-Confidence-Act.htm> [Accessed 5 September 2016].

Transport.²⁰⁾ After that, some rules had been enacted, these regulations ruled the liabilities of the cruise carriers and also the rights of the cruise passengers from different angles. For the passengers' rights protection, there mainly existed five important regulations²¹⁾ (Table 7)

(2) The Cruise Legislation in Korea and China

① Cruise Legislation in Korea

Determined to create a new “blue-ocean” opportunity for the Korean economy, the Korean government is steaming ahead to invigorate the cruise industry with bold and innovative policy measures to establish state-owned cruise lines and permission for domestic patrons to enter cruise ship casinos.²²⁾ In February 2016, the Ministry of Oceans and Fisheries enacted Act on Fostering and Supporting Cruise Industry and the will be take effect on June, 2017. This regulation aims to boost the competitiveness and the development of economy in Korea. Article 2 of the regulation defined the “Cruise”, “Cruise Operator”, and gave suggestion for the cruise development.²³⁾

For the legal liabilities and dispute resolutions, the legislations are defective. For the common passengers and the

20) European Communities, 2011. *WHITE PAPER European transport policy for 2010: time to decide. COMMISSION OF THE EUROPEAN COMMUNITIES*, 12.9.2001 COM(2001) 370 final. Brussels: European Communities.

21) 马炎秋.&邓越, 2015. 欧盟海上残障旅客权利保护立法介评, *大连海事大学学报*, 14(2), pp.50~55.

22) Marine Economy Korea, *Policy Package Making Progress, Cruising for Pleasure & Treasure* [Online] Available at: http://www.industrykorea.net/BCS_Com/Project/Data/KPI/150617-KPI-06-08.pdf [Accessed 5 September 2016].

23) 해양수산부, *크루즈산업의 육성 및 지원에 관한 법률*.

transportation, part V of the Commercial Act, the Maritime Transport Act could be referred to.

The Maritime Transport Act ruled about the cruise passenger transport services. “For leisure purpose using a passenger ship which is equipped with amenities such as lodging facilities and drinking facilities and entertainment facilities, and of which the size is more than that as prescribed by Presidential Decree.”²⁴⁾ And in the coming article, the act ruled that person who intends to carry out cruise passenger transport services shall obtain a license from the Minister of Land, Transport, and Maritime Affairs.²⁵⁾

Compared with China, Korea still do not has specialized tourism law, therefore, cruise disputes can be solved only with the related regulations under the current situation.

What calls for special attention is that Korea has not join the Athens Convention, therefore, the limitation of compensation may follow the own domestic regulations, while this part will be analyzed in the following chapter.

② Cruise Legislation in China

Nowadays, China had already formulated several regulations for cruise construction, they are: The Design Code for Cruise Terminal issued by Ministry of Transport in 2015, the Regulation for Cruise Standards issued by China Classification

24) Maritime Transport Act, CHAPTER 2, MARITIME TRANSPORT SERVICES FOR PASSENGERS, Article 3.

25) Maritime Transport Act, CHAPTER 2, MARITIME TRANSPORT SERVICES FOR PASSENGERS, Article 4.

Society (CCS) in 2017. The Design Code for Cruise Terminal is the compulsory rules that giving clear standards for the design and construction of the cruise terminals, the Regulation for Cruise Standards put forward the technical requirements for the construction of cruise vessels and inspection standards.

In 2014, the Ministry of Transport of China issued the Instruction of Promoting the Development of Cruise Transportation in China. This rule proposed the guide and suggestions for the development of the cruise industry in China as the instructional standard of the industry.

However, there still not have legal regulations for the solution of cruise disputes in China, only Maritime Law, Maritime Traffic Safety Law can be used to the settlement of cruise disputes. Although China had issued the Tourism Law, there's no articles regulate the cruise tourism.

In 21st June, 2016, the Operation Regulation of Cruise Tourism in Shanghai had signed by the Shanghai Tourist Administration and Shanghai Transportation Commission. This was the first time that the Chinese authority issued the rule to regulate the cruise operator, although the legal force is only limited in Shanghai as a regional regulation, it is the pioneering event in the cruise industry of China and will effect the development of cruise tourism.

1.1.4. The Necessity of the Study

(1) More Legal Supports Are Needed for the Developing of the Industry

Nowadays, more and more passengers choose cruise tourism and would like to spent their vacations on cruise ships. But in fact, behind the rapid development of the industry, there also have huge hidden troubles. Due to the complexity of the cruise contract, the rights and liabilities are not very clear, and as lack of legal regulation to this new way tourism, cruise carriers are more likely to involved in the dispute, while the passengers who have been abused could not safeguard their own rights and interests by legal means. In the meanwhile, as the cruise vessels almost sail on the high seas, and these have really lead the cruise passengers into danger. During the trip, if the passengers caused legal dispute with the cruise carriers, their personal rights and property safety are easy to be infringed as lacking of legal aid, medical aid, and even the protection of the crime scene. As the legal regulations are still not complete, the infringed rights are hard to be protected. Over time, it may has a bad influence on the development of the cruise tourism. Therefore, to definite the liabilities of the carriers and to perfect the legislation are seriously important to the protection of the cruise passengers and the cruise tourism. On this basis, perfect legal regulations are particularly beneficial to the rights' protection of the cruise passengers.

(2) The Current Cruise Regulations in Korea and China Are Not Enough

Table 8 Comparison of the Current Cruise Regulations in Korea and China

Title	Regulation of Developing and Supporting to Cruise Industry	Instruction of Promoting the Development of Cruise Transportation in China	Operation Regulation of Cruise Tourism in Shanghai
Issued By	Ministry of Ocean and Fisheries, Korea.	Ministry of Transport, China.	Shanghai Tourist Administration.
Legislative Intent	By means of the training of supporting of the industry, to boost the competitiveness and the development of economy in Korea. (Article 1)	Improve the cruise industry of China to the biggest cruise economic market in Asian-Pacific region till 2020. (Article 3)	Reinforce the management of the industry, and resolutions for cruise disputes. (Article 2)
Main Clauses	<ul style="list-style-type: none"> -Definition of cruise, cruise operator (Article 2) -Industry development planning (Chapter 2) -Cultivation of the cruise talents (Article 13) -Establishment of the cruise association (Article 15) 	<ul style="list-style-type: none"> -Development of cruise lines (Article 4) -Construction of the cruise terminals (Article 5) -Management of the cruise industry (Article 6) -Cultivation of the cruise talents (Article 10) 	<ul style="list-style-type: none"> -Definition of cruise legal relations, cruise tourism (Article 2) -Cruise contracts (Article 13) -Dispute resolutions (Article 18)

It seems that both Korea and China already had cruise regulations and developing policies, however, current regulations are insufficient for the development of the industry or the protection of the passengers' rights.

Compared with the clauses, the regulations ruled several legal definition of cruise, which was a huge breakthrough. However, we could see that the aims of the regulations are to guide the development and to reinforce the management of the

industry. Also, as lack of clauses for the liabilities or limitation, the current regulations could not be used for applicable law and to solve cruise disputes or give effective protection to the passengers. Therefore, the current cruise regulations of both Korea and China should be regard as administrative and fundamental industry guide. (Table 8)

(3) The Thorough Cruise Legislation in United States and European Union Could be Used for References

The United States is now the biggest cruise tourist generating region and also one of the countries that have the biggest number of cruise legal disputes. Under this circumstance, legislative forms were used by the United States government to protect the rights of the cruise passengers and the normal order of the cruise tourism.

The European Union has the thorough cruise legislation and these regulations ruled the liabilities of the cruise carriers and also the rights of the cruise passengers from different angles.

Compared with United States and European Union, Korea and China are two countries with high developing potential in cruise industry, however, the cruise legislation are not perfect. Therefore, the advanced experiences could be learned and imitated from United States and European Union.

1.2. Scope of Study

It is not possible, at least for the author, to deal with all aspects of the cruise law. In order to finish the above-mentioned purposes, The paper is likely to include the following contents of each chapter in this paper:

(1) Chapter II

Cruise contract is the foundation of the cruise relations and there are three different ways for passengers to reserve a cruise trip, the different ways may affect the law application and compensation. Also, the cruise parties' legal relations are distinguished based on these. This chapter introduced the three different ways for book a cruise trip and analyzed the features of the cruise contract, and also showed the typical cruise standard terms.

(2) Chapter III

This chapter mainly analyzed cruise compensations for cruise passengers at sea. The basic legal theories of compensation are introduced such as the law application and the liabilities principles. The cruise carrier shall be liable and need to compensate for the personal injuries and property damages of the passengers. In this part, the current limitations of the compensation liabilities also put forward.

(3) Chapter IV

In the cruise compensation system, both United States and European Union have rules and regulations, which are valuable

to introduced in this chapter. The independent contractor, typical cases about torts from cruise staffs, cruise medical dispute are also treated in this chapter, as with the regulation and case law in United States, the case can be solved easily, on the contrary, judicial dilemma may bring out in Korea and China without the legal regulate. Thus, after introduce such case law and regulations, this chapter analyzed the legislation of cruise passengers' rights protection in United States and European Union.

(4) Chapter V

In China, The arrest of the cruise ship "Henna", the sinking of the cruise ship "Eastern Star" are two cases that had been solved under the current compensation system of Chinese laws, from the analysis in this chapter, we could not only understand the compensation system under Chinese laws, but also find problems and the necessity for cruise legislation. The sinking of the ferry "Sewol" was not a typical cruise case, but as domestic port to port accident, the compensation and liability problems under Korean laws are still worth to discuss here, which could help us find the problems and ways to a better cruise legislation. After introduced and analyzed the above-mentioned problems, cruise proposals for passengers' rights protection in Korea and China are presented in this chapter, the incomplete legislation and problems need to be solved, and ways for the legal references and perfection are also analyzed here. At last, the paper proposed to enact the Cruise Passenger Protection and Compensation Act.

(5) Chapter VI

As conclusion, a brief review is made on previous chapters. And six main viewpoints are proposed for a better understanding of the cruise legal problems.

1.3. Methods of Study

In this dissertation, effective methods will be used to deal with the issues to discuss and analyze the above-mentioned problems. According to characteristics of the issues, following methods are used:

(1) Methods of Comparative Law

As mentioned above, this paper analyzed the cruise legislation in United States and European Union, and compared the legal compensation situations in Korea and China. In the meanwhile, international conventions, regulations from the cruise organization are also analyzed and compared in the paper. As there still do not have cruise legislation to settle the legal disputes in Korea and China, for the purpose of legal references, the methods of comparative law is the most significant method used in the paper. As far as the study is concerned, without the methods of comparative law, the research can not go smoothly and can not be successful.

(2) Methods of Connecting Legal Theory with Judicial Practice

Legislation is based on legal theory, and judicial practice is decided by legislation and related with legal theory. In order to precisely explain the law and practice, the legal theory supporting the law and practice should not be ignored, while in order to enrich and develop the legal theory and improve the law, the judicial practice should be studied. In this paper, several cases are cited when analyzing the legal theories and the legislative problems. As a case law country, the judgments of the cruise cases have fatal values in solving the cruise disputes in United States and the method of case analysis is given a special attention to in this study.

(3) Methods of Case Study

This dissertation had used several cases, the case “Carlisle v. Carnival corp.” in United States was analyzed for the legal status of the cruise physician. The arrest of the cruise ship “Henna”, and the sinking of the cruise ship “Eastern Star” was introduced for the understanding of Chinese legal system. The sinking of the ferry “Sewol” help us to find problems under Korean laws and seek ways for the better solution of the cruise disputes. The methods of case study had combined the legal practices with the typical cases through the analysis and explain, for the solution of the cruise disputes.

CHAPTER II

Overview of Cruise Contracts and Legal Relations

2.1. The Features of the Cruise Contract

2.1.1. Ways to Reserve Cruise Trips

Nowadays, there have three different ways for cruise passengers to reserve a cruise trip:

The first is that the cruise passengers reserve the place directly to the cruise carriers through the internet or the phone, and sign the cruise contract directly to the carrier. But as for an international cruise trip, it's complicated to apply for the visa or other procedures, some of the passengers won't choose these ways. Also, in some countries such as China, according to the Regulation on Travel Agencies, Article 23, No foreign-invested travel agency may operate the business in Chinese mainland residents' traveling to other countries. So in China, it's hard for Chinese passengers to booking the cruise trip directly to the foreign cruise carriers.

The second is the group tour which is also the most general way for cruise tourism. The travel agencies replace the passengers to book the tickets and organize the passengers to board and travel together with the tour guide. Some travel agencies even chartered the ship for passengers to travel, under this circumstance, the travel agencies sign the cruise contract

including the parts of travel on land with the passengers, and the cruise carrier only provide the cruise tickets.

The third is that the passengers book the tickets through the help of the travel agencies, while other additional tourist activities such as travel on land need to reserved by themselves after board on the ship.²⁶⁾ At this time, the passengers sign the contract with the travel agencies also, but in the part of the additional tourist activities, the carriers will be one of the parties to undertake the liabilities.

In fact, no matter which kind of ways the passengers choose, based on the relation of the contract, the cruise carrier is not only as the common carriers of the carriage on sea, but also as the provider of the tourist service to provide the tourist service for the passengers.

2.1.2. Features of Contract

For an integrated cruise tour, there contains not only the traditional carriage of passengers by sea, but also the tour on ship and on land. Therefore, two aspects of contents are contained in the cruise contract: the contract for carriage of passengers by sea, and the tourism contract. In the passenger traffic articles, limitation for passenger's luggage, rules about the cruise route, passenger's obligation, carrier's liabilities and limitation are listed; while for part of the tourism articles,

26) As analyzed in Chapter I, the characteristics of the cruise ships. Except for travel on cruise, many cruise ships may berthed on cruise terminals for passengers travel on land, the passengers could choose to attend or not. Some of these tourist activities won't contained in the cruise contract and need to pay otherwise. Thus, the paper use the word "additional tourist activities" to express.

schedules of the recreational activities on ship, sightseeing on land are ruled inside.²⁷⁾ To analyze the features of the cruise contract, we need to have a comparative study between the contract for carriage of passengers by sea and the tourism contract.

(1) Cruise Contract and the Contract for Carriage of Passengers by Sea

The parties in the cruise contract is called as “Carrier” and “Passenger” which are similar as the appellation in the contract for carriage of passengers by sea. The parties in both of the two contracts are carrier and the passenger. The passenger is not only the party of the contract but also the delivery object.

The differences are also existed:

Firstly, the purpose of the contract.

The purpose in the contract for carriage of passengers by sea is simple that is to delivery passengers from one port to another. While for the cruise tour, to apply the sightseeing service is much more important than delivery and transport.

Secondly, the shipping route.

The unreasonable deviation is prohibited and tour should begin from the port of departure and sail directly to the destination port in the common carriage of passengers by sea, while for the cruise tour, the ship may berthed at a port of call

27) 郭萍,2016.对邮轮合同法律性质的探究和思考.《中国海商法研究》,27(1),pp.55~62.

according to the cruise contract after sail from the port of departure, and when the ship sail back to the port of departure, the trip is treat as finished.

Thirdly, the meaning of “Carrier”.

According to the Hague Rules, Article 1, Carrier includes the owner or the charterer who enters into a contract of carriage with a shipper. However, the meaning of “Carrier” is much more widely in the cruise contract. The ship operator, shipowner, charterer all can be called as “Carrier”. As the cruise tickets are sold by the cruise companies and their agents, the cruise contract is signed and performed by the cruise companies, so the cruise company should be treated as the carrier and the actual carrier.

(2) Cruise Contract and Tourism Contract

The similarities are:

Similar as the activities applied by the travel agency in the tourism contract, all the tourist activities are arranged by the cruise company (except the optional tour). The International Convention on Travel Contracts (CCV), Article 1 ruled that:

“Travel Organizer” means any person who habitually or regularly undertakes to perform the contract ... whether or not such activity is him main business and whether or not he exercises such activity on a professional basis.

The “Travel Organizer” do not have to be the travel operator, the general civil subject can also organize a trip, while

in a cruise contract, the trips on land are generally arranged by the travel agencies, and most of the travel facilities on the cruise ship are applied and managed by other operators. Though the passengers may not have the directly contractual relation with the carrier, the carrier should also undertake the liabilities as the “Travel Organizer“, these characteristics are similar to the tourism contract.

The differences are also existed:

On one hand, in a tourism contract, most of the tourist activities are carried out on land, while on land travel is just a fraction part in a cruise contract; on the other hand, there have more risks and uncertainty in a cruise trip, the typhoon, tsunami and other severe weather may influence the trip badly. If passenger’s personal injury and property damage are caused by the cruise carrier, the cruise carrier can use the limitation of liability for maritime claims when undertake the liability, but as there’s no maritime perils, such claims can not be used in a common tourism contract, only contract engagement and relevant regulations can be used to deal with the undertake of the liabilities.

After comparison, we can found that the contents of the contract for carriage of passengers by sea and the tourism contract are contained in the cruise contract. In fact, the purpose of the cruise contract is to enjoy the sightseeing on the sea using the means of marine transport.

2.2. Analysis of the Cruise Parties' Legal Relations

2.2.1. Three Parties Under the Cruise Contract

Under the cruise tour contract, there may have three parties, the cruise carrier, travel agencies and the cruise passenger.

(1) Cruise Carrier

According to the Athens Convention 1974, Article 1, "carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier; "performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage. In the cruise tourism, most of the times the cruise company will use the name of the cruise carrier to sign the contract with the cruise passenger instead of the cruise ship itself. Therefore, to the cruise carrier, when it signs the contract with the passenger directly, delegate the travel agency to sign the contract, or transport as the actual carrier, it should be treated as one party of the contract and undertake the liabilities within limits.

Based on the different status of the cruise carrier, the cruise carrier should undertake different civil liabilities. Firstly, the cruise carrier still needs to undertake the liabilities of passenger transportation for the common carriage of passenger on sea; Secondly, the cruise carrier should provide the cruise services and tourist facilities to the passenger while working as the

actual provider of the cruise tourism; Lastly, the cruise carrier need to undertake the liabilities as the infringer or the default party according to the different form of the tour contract on land when the cruise ship berth on the port and travel on land.

(2) Travel Agencies

As stated above, when the travel agencies replace the passengers to reserve the cruise trip, organize the route of travel, and sign the contract with the passengers, it is one party of the contract.

(3) Cruise Passenger

According to Athens Convention, Article 1, “passenger” means any person carried in a ship. (a) Under a contract of carriage, or (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention. There have differences between the cruise passenger and the common passenger. To the cruise passenger, the more important thing is to has cruise tour except to fulfill the obligations according to the contract, while the definition of the cruise passenger should refer to the definition of tourist in the tour contract. The cruise passenger should be definite as:

The cruise passenger is who sign the cruise tour contract with the travel agencies or the cruise carrier as one party of the contract, to receive the services of the cruise tourism and pay for the tourism.

2.2.2 Cruise Disputes and the Jurisdiction

(1) Cruise Disputes

In a cruise trip, there may exist two kinds of injuries that the passengers are easily suffered from. They are the personal injury and the property damage. When the damage occurred, the disputes are inevitably. Cruise disputes can be divided into two aspects:

Firstly, the disputes happened on ship or on land.

The disputes happened during the passenger transport period or happened during the tourist activities can all be ranked to the disputes on ship. When the passengers are having sightseeing on land, they may have disputes with the carrier, or the reception person on land.

Secondly, assault from the carrier or others.

During the period of transportation and sightseeing on ship, the cruise carrier can be the offender and hurt the passengers, while other harms may come from the travel agencies, the reception person on land and other passengers.

(2) Civil Jurisdiction

In general case, according to the Athens Convention, Article 2,

This Convention shall apply to any international carriage if:

(a) the ship is flying the flag of or is registered in a Stated Party to this Convention, or

(b) the contract of carriage has been made in a State Party to this Convention, or

(c) the place of departure of destination, according to the contract of carriage, is in a State Party to this Convention.

Different countries may use their domestic regulations claim for the jurisdiction. For example, in China, as lack of specific cruise legislation, nowadays according to the Maritime Law, Article 1 and 2, the cruise transportation is treat as one adjustment object for Maritime Law, and the jurisdiction of cruise disputes is belong to the maritime court.

According to the Special Maritime Procedure Law of China, Article 8,

... through written agreement, choose the maritime court of the People's Republic of China to exercise jurisdiction, even if the place which has practical connections with the dispute is not within the territory of the People's Republic of China, the maritime court of the People's Republic of China shall also have jurisdiction over the dispute.

Cruise companies always engaged agreement jurisdiction in their cruise contract, take MSC Cruise as an example, the contract engaged:

(A) For Voyages that do not include a port in U.S.A., all claims arising out of this Contract or relating to or arising from

this Contract or your cruise shall be brought in and be subject to the exclusive jurisdiction of the Courts of Naples, Italy.

(B) For Voyages that include a port in U.S.A., all claims arising out of this Contract shall be brought in, and be subject to the exclusive jurisdiction of the U.S. District Court for the Southern District of Florida. It is expressly agreed that all disputes shall be tried by a Judge without a Jury as an Admiralty and Maritime claim pursuant to Rule 9H of the Federal Rules of Civil Procedure. Any suit shall be filed in the venue of Ft. Lauderdale, Broward County, Florida to the exclusion of any other venue or location where suit may otherwise be brought. ²⁸⁾

(3) Criminal Jurisdiction

Criminal behaviors such as the pirate, exchange blows, theft are also existed during the cruise trip. Geneva Convention on the High Seas, Article 6 ruled that, ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. While in the United Nations Convention on the Law of the Sea also has the similar regulations. In addition, there are many barriers in solving the criminal behaviors on the ship, for instance, the crime happened on the high seas without cell phone signal so that the victim can not report the case to the police immediately; the policemen and investigator can not board the ship rapidly after the crime happened; the crime scenes are

28) MSC Cruise USA, *Booking Terms and Conditions* [Online] Available at: <https://www.msccruisesusa.com/en-us/Terms-Conditions.aspx> [Accessed 1 August 2016].

hard to protect. Although the flag state jurisdiction is the elementary principle in the jurisdiction of the high seas, when the passengers are hurt on the high seas without the jurisdiction from the flag states, the victims' own country may hear the criminal behaviors using the principles of territorial jurisdiction and negative personal jurisdiction to protect the benefits of its own citizens.²⁹⁾

(4) Application Law

Most countries include Korea and China use regulations for definite that the courts shall determine the applicable laws in accordance with relevant laws and regulations. To be specific, firstly, the provisions of the international conventions shall apply, unless the provisions are ones which the domestic regulations has announced reservations. In cruise contract, as mentioned above, Athens Convention is the most common international applicable regulations.

Secondly, the parties concerned may choose the laws or regulations applicable to contracts by agreement. As the typical cruise standard terms are used for cruise contract, the cruise companies will choose the laws applicable to contracts. Laws and regulations of United States are most widespread used for application laws as United States owns the maximum amount of the cruise companies and carriers. It should be noted that most domestic regulations ruled that the agreement could not violate the mandatory rules of law or administrative regulation of

29)李维佳,2012.探究公海上外国船舶的刑事管辖权问题——以歌诗达邮轮失窃案为例.经济与法,4,pp.189~191.

countries, or it might treat as invalid.

Thirdly, if the parties have not choose the application law by agreement, the laws which have the closest relation with this contract shall apply. The closest connection principle may contains, the law of the contract signing place, the law of carrier's business place, or the law of the departure, destination or performance place. The court has discretion to decide which laws or regulations should be apply for. For the cruise trip, as the passengers may signed the contract with the travel agencies indirectly to the carriers all over the world, and most of the voyages are sailing on the high seas, both the place of contract signing or contract performance are indefinitely, therefore, the laws and regulations of the carrier's business place or registration place shall be the governing law when the parties have not choose the application law by agreement.

2.3. Typical Cruise Standard Terms

Although different cruise companies may have different appellation to the cruise contract, the cruise contract always use the form of "Cruise Tickets". Known from the traditional passenger ticket, the cruise tickets are issued in a cruise booklet. Even if different cruise booklets issued by different companies, they have the same contents. The contents mainly included:

① Definition clauses. In these parts mainly definite the "Cruise", "Passenger", "Guest" and "Fare". ② The travel

agency. ③ The limitation of liabilities for personal injury, luggage and property. ④ The obligation for the passengers. ⑤ The liabilities of carrier and limitation. ⑥ Independent Contractor, medical treatment on ship, sightseeing on land and other personal services. ⑦ Jurisdiction, period of litigation and notice of claim. ⑧ Class action waiver. ⑨ Personal privacy, rights to use the photos and video. ⑩ The fare.

Now we take the cruise ticket contract of Carnival Cruise as an example,³⁰⁾

(1) Definitions and Scope of Contract

This part definite the word “Carnival” “Guest” “Cruise Fare” or “Fare” and explicated that: “Except as otherwise expressly provided herein, this contract constitutes the entire agreement between Carnival and Guest and supersedes all other agreements, oral or written. Any alteration to any term of this contract must be in writing and authorized by Carnival.”

(2) Nature of Cruise and Guest’s obligation

The passengers who take part in the cruise trip should have “proper travel documentation and eligibility to travel is required at the embarkation and throughout the cruise.” Guest must complete the voyage and disembark at the embarkation port. Failure to do so may result in a fine or penalty being imposed by the United States Customs Service or other governmental agency.

30) Carnival Corporation, [Online], Available at: <https://www.carnival.com/> [Accessed 1 August 2016].

(3) Travel Agent

This part emphasized the differences between Carnival and travel agency to limit the liabilities of Carnival. “Any travel agent or sales agent utilized by the Guest in connection with the booking of the cruise, or this contract is solely the agent of the Guest and not Carnival.”

(4) Baggage, Personal Property, Prohibited Items, Limitation of Liability

The luggage that the passengers carried must fit the requirements of Carnival. Weapons, firearms, contraband, ammunition, explosives, incendiary devices, or other dangerous items are strictly prohibited aboard the vessel.

(5) Fitness To Travel, Special Need, Pregnancy, Infants, Drinking, Disembarkation

This part stipulated the identities of the passengers.

(6) Cancellation By Guest, Refunds

According to the different cruise trips and the expiration date, the passenger should pay different expenses if they cancel the trip after reserved before.

(7) Carnival's Right To Increase Fares, Cancel Or Change Voyage, Change Stateroom Assignments.

Carnival reserves the right to increase published fares without prior notice. Carnival reserves the right to offer promotional cruise fares that require a minimum occupancy

requirement per cabin. Carnival has the right without previous notice to cancel this contract at the port of embarkation or any time during the voyage and shall thereupon return to the Guest. At last, specific stateroom assignments are not guaranteed.

(8) Compliance With Rules, Solicitation, Smoking, Drinking, Illegal Activity, Searches, and Beverage Policy.

Carnival has a “zero tolerance” policy toward any illegal activity or behavior by Guests or crew aboard. The Carnival prohibited smoking and ruled in detail about carry alcoholic drinks.

(9) Personal Data; Video Surveillance; Right To Search or Inspect; Privacy Notice and Public Wireless Services

This part issued clauses to protect passengers’ privacy.

(10) Guest’s Reimbursement For Fines, Expenses, Debts and Damages.

Guest’s failure to observe or comply with local requirements in respect of immigration, border patrol, customs and excise, agriculture, health or any other government regulation, the Guest or Guest’s estate shall be liable to and shall reimburse Carnival for all deviation expenses (including loss of revenue), damages to the vessel.

(11) Independent Contractors, Shore Excursions and Other Services.

Independent contractors are widely existed in the cruise ship.³¹⁾ The Carnival ruled that: “Guest further acknowledges

that although independent contractors or their employees may use signage or clothing which contains the name 'Carnival' or other related trade names or logos, the independent contractor status remains unchanged. Independent contractors, their employees and assistants are not agents, servants or employees of Carnival and have no authority to act on behalf of Carnival."

(12) Limitations of Carnival's Liability.

What calls for special attention in this part, the limitations in Europe are different from other regions, and Carnival gives special notice to this.

(13) Jurisdiction, Venue Arbitration, Time Limits For Claims and Governing Law.

The duration of action is within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. The specified competent court is Miami-Dade County, Florida, U.S.A.

Beyond that, the cruise contract also has other contents: Class Action Waiver, Carnival's Use of Guest's Likeness, Guest's Use of Photos, Videos or Recordings Prohibited, Guest's Obligations for Expenses or if Confined, Denied Boarding or Disembarked and so on.

31) The legal definition of Independent Contractor will be analyzed in Chapter IV, Part 4.2.

At the last part of the contract, the Carnival wrote: “For purposes of this paragraph ‘CARNIVAL’ refers to Carnival Cruise Line, its affiliates, subsidiary companies, agents, servants, and employees. CARNIVAL is the principle tour operator and its responsibility to Guests is limited to the arrangement of all tours and accommodations offered in these vacation packages. CARNIVAL shall not be responsible for personal injuries, death, or property damage, economic loss, inconvenience or delay, consequential damages, or change of itinerary or accommodations incurred by any person or Guest which may occur due to acts or omissions or tortious conduct on the part of any direct or supplemental air carrier, hotel or other suppliers of arrangements and services or other independent contractors, their employees, agents or others not under the direct control of CARNIVAL.”

The cruise ticket contract of Carnival Cruise is a mature and complete cruise standard contract that may be referential to the current cruise contracts of different cruise companies. From the above analysis we can see that the current cruise contract is tend to restrain the rights of the passengers. This kind of restraint is realized through the designated jurisdiction, the disclaimer of the independent contractor and other clauses that are beneficial to the carrier. Although we can not deny that there have some clauses that have restrain the carrier, such as the clauses of compensation for damages, carrier’s rights and obligation and the clauses to protect passengers’ privacy. But such restraints are very limited, the rights of the passengers can not be protected completely.

CHAPTER III

Principle and Limitation of Compensation for Passengers under Athens Convention

3.1. Law Application and Liabilities Principles

As the above analysis, an integrated cruise tourism can be divided into three aspects: The first is the common carriage of passengers by sea, the cruise carrier is responsible in this period; the second period is sightseeing on ship, in which the passengers will enjoy the travel facilities and services on the ship; the third is travel on land. After the ship arrived on shore, the passengers' activities on land are belonging to this part. Regardless of the different periods, the cruise carrier should undertake the liabilities to the passengers, but the law application and liabilities principles may be different as the distinguished contractual relations.

3.1.1. Period of Carriage of Passengers by Sea

When the cruise carrier works as the carrier of carriage of passenger by sea, the period of responsibility should conform to the relative rules in the Athens Convention and its domestic laws.

According to the Athens Convention 1974, Article 1, "carriage" covers the following periods: with regard to the passenger and his cabin luggage, the period during which the

passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier.

The Athens Convention 1974 and its protocol 1976, 1990 all use the fault responsibility, which is the combination of fault responsibility and fault presumed responsibility.³²⁾

The protocol 2002 amended the liability principles refer to rules of the air transportation in the Montreal Convention that is the Dual Responsibility System.³³⁾

From the original Athens Convention 1974 to the Protocol 2002, the changes of the liability principles manifest the trend to aggravate the liabilities of the carriers and to protect the rights of the passengers. In the juridical practice of United States,

32) 司玉琢&李志文,2009. *中国海商法基本理论专题研究*.北京大学出版社,pp.478.

33) See Article 3 of Athens Convention. Article 3, Liability of Carrier, divided the liability into Shipping incident and others. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account ... For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier ... For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

when the cruise carrier undertake the liability of carriage of passenger by sea, it is the “Common Carrier”,³⁴⁾ and the common carrier should undertake a kind of “Special Duty”, this means that, the cruise carrier must promise to delivery the passenger to the port with the highest level of security standard to avoid the passenger from being hurt.³⁵⁾

The European Union referred to the Athens Convention and its protocols, and enacted the Regulation (EU) NO 392/2009 of the European Parliament and of the Council of 23 April 2009 on the Liability of Carriers of Passengers by Sea in the Event of Accident, this regulation mainly ruled the carrier’s liabilities for damage to the personal injury and the property damage of the passengers, and its liability principles also referred to the protocol 2002 of Athens Convention which is the Dual Responsibility.³⁶⁾

What calls for special attention is that, there still have differences between the cruise carrier and the common passenger carrier, to the cruise carrier, its transport activities always combined with the tourist activities and hard to distinguish, while the passengers on the cruise ship will have greater active spaces which will be easier to get personal injury

34) Section 3(6) of the Shipping Act of 1984. 46 U.S.C. Sec.1702(6).

35) *New Jersey Steamboat Co. v. Brockett* (1887) 121 U.S.637,645-646

36) The application range of this regulation shall apply to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC ... this Regulation to all domestic sea - going voyages.(Article2) This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto. (Article 5)

and luggage damage. Therefore, in view of the protection to the cruise passenger, the liability principles of the cruise carrier should also refer to the protocol 2002 that is the Dual Responsibility System.

In conclusion, the cruise carrier shall be liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

3.1.2. Period of Tourism on Ship

The juridical status of cruise carrier under cruise tourism contract is different as the different contractual relations of the parties. If the cruise carrier signed the contract directly with the cruise passengers, as one party of the contract, it is easier for cruise carrier to undertake the liabilities during the period of tourism on ship as the contractual relation is much more simple. When the cruise contract is signed between the travel agency and the passengers, the travel services are still provided by the

cruise carrier as they have the contractual relations with the travel agency during the trip. Under such circumstances, the cruise carrier should be called as “Subsidiary of the Travel Service“. Thus, the carrier should also undertake the liabilities.

If the cruise carrier undertakes the liabilities, the liability principles should be the same as the principles in the traditional carriage of passengers by sea, which is the Dual Responsibility.³⁷⁾ What should be note here is that although the cruise carrier should undertake the strict liability, it still can claim for the exemption of liability under the circumstances such as Force Majeure, natural hazard and others. Also, if the cruise carrier uses the form contract to limit its liability, the contract terms must within a reasonable range or the terms will be invalid if it exempt the carrier’s liability and limit the passenger’s right.

To be specific, in the process of the contract performance, if the personal casualty or the property damage is caused by the cruise carrier’s faults, when the passenger institute the tort suit, the travel agency should undertake the joint liability together with the cruise carrier. However, to the internal responsibility, if the travel agency has no mistakes, it can claim compensation from the carrier, while if it has mistake, the liability that should be taken is also within the limits. In the meanwhile, the cruise carrier has to undertake the security liability during the performance of the contract, and should compensate for its faults.

37) The content of Dual Responsibility see above: Part 3.1.1. The liabilities of the cruise carrier in the period of carriage of Passengers by sea.

3.1.3. Period of Tourism on Land

In this period, the contracting parties are also different because of the different tourism booking ways the passengers choose. The passenger can choose to sign the contract directly with the cruise carrier. At this time, the cruise carrier is not always the provider of the tour program on land, it may authorize the trip to the local travel agency. The passenger can also choose to sign the contract directly with the travel agencies, at this time, the tourism on land sometimes may be provided by the cruise carrier and just reserved by the travel agency, sometimes may organized by the travel agencies.

The application of the law in the period of tourism on land will defined in the cruise tourism contract, different cruise carriers may have the same rules about the application of the law that is both the period of carriage of passengers by sea and the period of tourism on land apply for the same law application and the same limitations of liabilities.

What calls for special attention is that, as most of the cruise ships are large-scale vessels which some ports can not provide the berthage that can berth the cruise ship directly, so after the cruise berthed, small ferry boats may needed to ferry across the passengers from the cruise ship to the land. If so, this period should apply for the carriage of passengers by sea and its cruise clauses.

Therefore, the period of responsibility should divided into two aspects, the period of transportation from cruise ship to land

and the period of tourism on land:

The period of transportation from cruise ship to land should be expressed as “from the time when the passenger board on the ferry till the time when the passenger disembark on the land”, during this period, if the ferry is provided by the carrier itself, the carrier is the subject of liability without any doubts, while if the ferry is provided by other companies, although the carrier is not the subject of the liability, it still need to be highly cautious when selecting the companies, or, it has to undertake the liability also.

3.2. Compensation to Personal Injuries and Property Damages

3.2.1. Classify of Compensation

(1) Carrier's Compensation When Break the Contract

In a common tourism contract, the travel agency should undertake the liabilities if they default the duty of the contract. For example, in the Tourism Law of China, Chapter V Tourism Service Contracts has ruled the liabilities that the travel agency must undertake when they break the contract. Article 70 of the Tourism Law ruled:

Travel agencies that fail to fulfill the obligations in the package tour contract or the fulfillment of such obligations falls short of the stipulation of the contract must, in accordance with the law, undertake responsibilities for breach of contract by

continuing the fulfillment of obligations, taking remedy measures or making compensations for the losses; in case of personal injury or property loss of the tourists, the travel agency must undertake compensation responsibilities in accordance with the law.

So as the cruise contract, the carrier should also undertake the liabilities as one party of the contract if they failed to perform the contract. As stated above, in the cruise ticket contract of Carnival Cruise also ruled the liabilities and limitation of the it.

Specifically, the carrier should provide the travel services according to the contract and could not reduce the quality of services and change the travel facilities. Once the carrier break the contract, the passengers can require to perform the contract and seek for compensation.

(2) Carrier's Non-Property Compensation When Break the Contract

Some viewpoints think that the contractual liabilities are liabilities of property, and the compensation for breaking the contract is also limited for property damage. In fact, the range of compensation has been enlarged recent years in both common law system and the civil law system. The German Civil Code ruled that the travel vacation is also a kind of property value, and if the vacation is influenced and can not going on, monetary compensation is also available.³⁸⁾

38) German Civil Code, Article 651 (2)

In fact, the purpose of travel is the spiritual enjoyment. The nonperformance of the contract during the travel will influence the mood of the passengers and then influence the achievement of the contractual purpose.³⁹⁾ Therefore, mental compensation is also needed in a cruise tourism. What calls for special attention is that the mental compensation also has its limitation. On one hand, the nonperformance act must influenced most of the passengers' mental painful; one the other hand, the carrier must be deliberate as the subjectivity of the mental painful.

(3) Carrier's Compensation When the Third Party Break the Contract

The third party in the cruise trip include the one who provide the travel service, such as the local travel agency, the hotel and restaurant during the on land trip. If the third party caused the passengers' personal injury and luggage damage, the passenger should not only claim for compensation to the third party, but also to the cruise carrier. The reason is the principle of "Altruistic Contract" that as the beneficial owner of the contract, the passenger can advocate the rights to both of the parties.

For a cruise trip, it is more useful and convenient for passengers to advocate the rights to the carrier. While the trip on land is short, passengers may hard to find the third party and seek for help. For the better protection of the passengers'

39) 谢彦君,1998.论旅游的本质与特征.旅游学刊,4,pp.41~43.

rights, compensation is needed.

3.2.2. Compensation Under Current Cruise Laws

The Regulation (EC) No 392/2009 was issued by the European Union and had referred to the contents of Athens Convention. This regulation could represent the compensation under current cruise laws.

Article 2 ruled that: This Regulation shall apply to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, where: the ship is flying the flag of or is registered in a Member State; the contract of carriage has been made in a Member State; or the place of departure or destination, according to the contract of carriage, is in a Member State. This part also ruled that the responsibility principle and liability for damage all apply to the Athens Convention.⁴⁰⁾ In addition, the main contents are:

(1) Payments for Personal Injury in Advance

Article 6 ruled that:

Where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis

⁴⁰⁾ Article 4, Article 5 of the Regulation

proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than EUR 21,000.

(2) Compulsory Liability Insurance

When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion.⁴¹⁾

(3) Notice of Claim and Limitation of Action

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

41) Article 4bis, Compulsory Insurance

Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.⁴²⁾

3.3. Limitations of the Compensation Liabilities

3.3.1. Limitations Followed the Athens Convention

As stated above, the limitations of the compensation liabilities followed the regulations in the Athens Convention should be:

The liabilities for damage of the carriers can be divided into the liability for breach of contract, liability for tort and the concurrent liability. The limitations of liability include the Unit Limitation (Package Limitation) and the Limitation of Liability for Maritime Claims. The Athens Convention 1974 ruled the limitations of liability in Article 7 and Article 8.⁴³⁾ In Protocol 1976, the SDR was firstly used to express the limitation of liability.⁴⁴⁾ While Protocol 2002 uses the Dual responsibility system combined the strict liability and the fault liability.⁴⁵⁾

42) Article 14, Basis for Claim; Article 15, Notice of Loss or Damage to Luggage; Article 16, Time-bar for Action.

43) Article 7 and 8, The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 700,000 francs per carriage. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 12,500 francs per passenger, per carriage... The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 1,750 francs in the case of damage to a vehicle and not exceeding 200 francs per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

44) See Article II.

45) Article 8, For the loss suffered as a result of the death of or personal injury to a

3.3.2. Regulation in the Current Cruise Contract

In the cruise tourism, although the statements are different from different cruise companies, the limits of liabilities are basically the same. Take the Star Cruise as example, its form contract express that:

When the Athens Convention applies, all claims against Carrier shall be brought in accordance with that Convention. In all other cases, the liability of the Carrier shall not exceed: in the case of death of or personal injury to a Guest, the sum of US\$70,000/- per Guest including medical costs, disability compensation, etc (or whatsoever); and in the case of loss of or damage to property, the sum of (a) US\$300/- per Guest, or (b) US\$5/- per kilogram of the item lost or damaged or, US\$75/- per bag or piece of baggage, whichever is lowest.⁴⁶⁾

Other cruise companies also ruled the same:

In addition to the other liability and damage limitations provided in this Passage Contract, the liability (if any) of the Company for damages suffered as a result of death, personal injury, emotional distress to the Passenger, or loss or damage to

passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account... and shall in no case exceed 400,000 units of account per passenger on each distinct occasion... The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 units of account per passenger, per carriage... The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage...

46) Star Cruise, *Passenger Terms* [Online] Available at:

<http://www.starcruiises.com/en/home/passage-terms.aspx> [Accessed April 18 2017].

luggage shall be subject to the following limitations and shall be determined in accordance with the provisions of the Athens Convention and, where applicable, EU Regulation 392/2009 are hereby expressly incorporated into these conditions of carriage.⁴⁷⁾

We can see that, the limits of liabilities in the cruise tourism are accordance with that of traditional carriage of passengers by sea. The agreed limits of liabilities can be higher than the Athens Convention and its protocols, but must be based on these limits, or the agreement will be invalid.

3.3.3. The Unfair Cruise Form Contract

To protect its own rights, the cruise carrier use the form contract to limit the liabilities it should undertake from two aspects:

(1) Limitation of Liability and the Indemnity Method

Just like the Cruise Carnival case wrote above, this seems to be not that reasonable, other cruise clauses also have the possibilities to infringe the passengers' rights. Such as, most form contracts will ruled that the carrier will limit the liability when the baggage is stolen. The form contract of Cruise Carnival defined if any such articles are shipped in the Guest's baggage in breach of this warranty, no liability for negligence, gross or ordinary, shall attach to Carnival for any loss or damage thereto. This clause seem to be reasonable that to notice the passenger to keep the belongings carefully, while it

⁴⁷⁾ MSC Cruise USA, [Online] Available at:

<https://www.msccruisesusa.com/en-us/Homepage.aspx> [Accessed April 18 2017]

also ruled that even though the baggage is kept in the safe-deposit box of cruise, the biggest compensation amount for the loss is only USD 500.

(2) The Agreed Jurisdiction

The cruise carrier used to choose Venue Selection Clauses that is benefit to itself while may make the passenger into the unfair status of lawsuit. The Star Cruise ruled that, the contract shall be interpreted, construed and governed by the laws of Hong Kong Special Administrative Region and all claims by the Guest against the Carrier must only be brought in the Courts of Hong Kong Special Administrative Region to the exclusive of other courts.

Even if the parties have not choose the application law by agreement, the closest connection principle may used for choosing application law. In cruise tourism, as the passengers may signed the contract with the travel agencies indirectly to the carriers all over the world, the place of contract signing could not easily be defined; as most of the voyages are sailing on the high seas, it is hard to find regulations or laws that are suitable as contract performance law. Thus, the laws and regulations of the carrier's business place or registration place shall be the governing law under this situations.

However, whether the parties had choose the application law by agreement or not, it is hard for passengers from other countries that are not familiar with the laws of carrier's business places to protect the rights.

CHAPTER IV

Cruise Regulations in United States and European Union

4.1. Passengers' Rights Protection in the Cruise Contract

4.1.1. Passengers' Rights Protection in European Union

Some of the regulations in European Union mainly aimed for the protection of passengers' rights. They are: Regulation (EU) NO 1177/2010 mainly ruled the obligation of the carrier when the voyage is broken, the right to know, the heard of the passengers, and had set a unified system to the protection of disabled person. (90/314/EEC) OJ L 158/59 mainly ruled the liabilities for damage when the voyage is cancelled or delayed. Directive 97/7/EC mainly protects the fees paid by the passengers that were unnecessary.

(1) Regulation (EU) NO 1177/2010: The Passengers' Rights in the Case of Cancellation or Delay and Protection to the Disable Person

The full name of the regulation is “concerning the rights of passengers when traveling by sea and inland waterway and amending Regulation (EC) No 2006/2004“. The main contents are:

①Passengers' Rights in Case of Cancellation or Delay

In the case of a cancellation or a delay in departure of a passenger service or a cruise, passengers departing from port terminals or, if possible, passengers departing from ports shall be informed by the carrier or, where appropriate, by the terminal operator, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled time of departure, and of the estimated departure time and estimated arrival time as soon as that information is available.⁴⁸⁾

Where a carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between re-routing to the final destination or reimbursement of the ticket price.⁴⁹⁾

Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract.⁵⁰⁾

Carriers and terminal operators shall provide passengers with adequate information throughout their travel in formats which are accessible to everybody and in the same languages as those in which information is generally made available to all

48) CHAPTER III OBLIGATIONS OF CARRIERS AND TERMINAL OPERATORS IN THE EVENT OF INTERRUPTED TRAVEL, Article 16, Information in the event of cancelled or delayed departures.

49) Article 18, Re-routing and reimbursement in the event of cancelled or delayed departures.

50) Article 19, Compensation of the ticket price in the event of delay in arrival.

passengers.⁵¹⁾

② Rights for Disabled Person and Person With Reduced Mobility

According to the regulation, “disabled person” or “person with reduced mobility” means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or loco motor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the service made available to all passengers.⁵²⁾

They have the rights to travel by ship and the carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier.⁵³⁾

They have the rights to assistance in ports and on board ships. Carriers and terminal operators shall, within their respective areas of competence, provide assistance free of charge to disabled persons and persons with mobility, in ports, including embarkation and disembarkation, and on board ships.⁵⁴⁾

Carriers and terminal operators shall be liable for loss

51) CHAPTER IV, GENERAL RULES ON INFORMATION AND COMPLAINTS, Article 22, Right to travel information, Article 23, Information on passenger rights.

52) Article 3, Definitions.

53) Article 8, Exceptions and special conditions

54) Article 11, Conditions under which assistance is provided

suffered as a result of the loss of or damage to mobility equipment or other specific equipment, used by a disabled person or person with reduced mobility, if the incident which caused the loss was due to the fault or neglect of the carrier or the terminal operator. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.⁵⁵⁾

(2) (90/314/EEC) OJ L 158/59 and the Amendments: The Passengers' Rights for the Compensation

The full name of the regulation is “COUNCIL DIRECTIVE of 13 June 1990 on package travel, package holidays and package tours“, the regulation was issued in 1990 and then in 2013, the regulation was amended by the European Union Council, a new regulation was issued as: “Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements“.

Under the cruise tourism, if compensation happened because of the cancellation or delay, this regulation can be applied to use.⁵⁶⁾

If the consumer withdraws from the contract pursuant, or if, for whatever cause, other than the fault of the consumer, the organizer cancels the package before the agreed date of departure, the consumer shall be entitle.⁵⁷⁾

55) Article 15, Compensation in respect of mobility equipment or other specific equipment

56) Article 4, (90/314/EEC) OJ L 158/59.

57) Article 4, Volume 6, (90/314/EEC) OJ L 158/59.

Where, after departure, a significant proportion of the services contracted for is not provided or the organizer perceives that he will be unable to procure a significant proportion of the services to be provided, the organizer shall make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package, and where appropriate compensate the consumer for the difference between the services offered and those supplied.⁵⁸⁾

However, this regulation has not ruled the compensation after the situation of delay. As delay is a kind of violate the contract, the carrier should undertake the liability of damage according to the principle of default. While the regulation has not empower the rights to the passengers when the contract can not be execute because of the Force Majeure or the passengers' faults.

According to the regulation, if the traveler terminates the package travel contract, the traveler may accept a substitute package where this is offered by the organizer, if possible of an equivalent or a higher quality.⁵⁹⁾ Member States shall ensure that the traveler may address messages, requests or complaints in relation to the performance of the package directly to the retailer through which it was purchased. The retailer shall forward those messages, requests or complaints to the organizer without undue delay. For the purpose of compliance with time-limits or limitation periods, receipt of the messages,

58) Article 4, Volume 7, (90/314/EEC) OJ L 158/59.

59) Article 11, Directive (EU) 2015/2302 „Alteration of other package travel contract terms.

requests or complaints referred to in the first subparagraph by the retailer shall be considered as receipt by the organizer. Member States shall ensure that the organizer gives appropriate assistance without undue delay to the traveler in difficulty.⁶⁰⁾

(3) Directive 97/7/EC and the amendments: The Passengers' Rights to Avoid the Unfair Payments

The full name of the regulation is “DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997 on the protection of consumers in respect of distance contracts“, and after amend several times, the new version is “DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1994/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council“.

The regulation mainly ruled how to deal with the unfair payments: the overdue fees and the hidden charges. According to the regulation, the operator should provide the contract with full price that cover the tax, validity, liabilities and other informations. Or, the consumer do not need to bound by the contract.⁶¹⁾ If the operator charge the fees without express, the consumer can required to return the premium.⁶²⁾

60) Article 15, Possibility to contact the organizer via the retailer, Article 16, Obligation to provide assistance, Directive (EU) 2015/2302.

61) CHAPTER II, CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS.

62) CHAPTER III, CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL FOR DISTANCE AND OFF-PREMISES CONTRACTS.

4.1.2. Passengers' Rights Protection in United States

As United States is one of the countries that have the biggest number of cruise dispute and victim, legislative forms were set by the United States government to protect the rights of the cruise passengers and the normal order of the cruise tourism. In the legal practice, laws and regulations are tend to protect the rights of passengers using the principle of strict liability in United States.

(1) Regulation of the Carrier's Liability in Case Law

14 years old girl Liz Marie and her parents and brother took a vacation aboard a Carnival cruise ship. The Carnival employee encouraged Liz Marie's father and brother to visit Coki Beach and Coral World up on disembarking the ship in St. Thomas, Virgin Islands. On July 12, 2010, they left the ship and traveled to Coki Beach independently of the ship's sponsored excursions in St. Thomas. On their way back to the ship from Coki Beach, while stuck in traffic, gang-related, retaliatory violence erupted, shots were fired, and Liz Marie was killed by gunfire while she was a passenger on the bus. Liz's parents sued Carnival in the Southern District of Florida, claiming that Carnival negligently failed to warn them about the crime problem, reported gang-related violence, and potential for public shootings in St. Thomas generally, and Coki Beach specifically. They further alleged that Carnival's negligent failure to warn resulted in Carnival's negligent infliction of emotional distress. Cruise Carnival argued that this case is based upon a heightened duty of care that exceeds the reasonable ordinary care standard

recognized by controlling maritime law. And Cruise Carnival did not had the duty to warn passengers of known dangers at ports of call.

Firstly, the court judged that the Liz's parents lost the lawsuit as absence of proof, after the appeal of Liz's parents and the huge responses caused in the American society, finally, the Federal Appeals Court judged that the Cruise Carnival should undertake the liabilities of Liz's death.⁶³⁾

From this case we can see that there has very strictly rules in United States for the carrier to undertake the liability even in the period of tourism on land. Actually, there had no directly contract relations between Liz and the cruise carrier as they chose to have independently tour on land, but as the cruise carrier had not fulfill its obligation to give safety instruction, it should undertake the liabilities for Liz's death. This judgment seems to be unreasonable, but actually give full consideration to the protection of the cruise passenger that is the weakness part in the cruise contract.

(2) Legislative Proposals for Passenger's Rights Protection

There have two significant proposals that had caused great discussion in United States, they are Cruise Passenger Protection Act and the Cruise Vessel Consumer Confidence Act of 2013. The reason why these two proposals could cause such great influence could be found in the background case - the COSTA CONCORDIA DISASTER. In 2012, the Italian cruise ship

63) Liz Marie Perez Chaparro v. CARNIVAL CORPORATION, 693F. 3d1333, 23 Fla.L. Weekly Fed. C1508.

Costa Concordia capsized and sank after striking an underwater rock, with the loss of 32 lives, after the accident, the survivors accused the captain of the Costa Concordia that the management of the vessel was disordered, and the vessel's staffs and seamen lacked the abilities of urgent evacuation and rescue, what caused the worst consequence. After that, the agency hearing held by the United States Senate pointed out that, the legislation method must be used to change the present disordered situation of the cruise industry. These two proposals have their own merits, and the development direction of the cruise legislation in United States can be comprehended from this.

① The Cruise Passenger Protection Act: Draw Up New Cruise Standard Form of Contract

This proposal showed the protection to the cruise passengers through three aspects:

Firstly, to draw up a new cruise standard form of contract and to simplify the contract terms.

The previous cruise contracts tend to have complicated terms and recondite words that were made by the cruise carriers before. This kind of cruise contract is hard to understand by the cruise passengers, while the cruise carriers can use this to make inequality clauses the passengers hard to know. To solve this problem, the proposal ruled that the new form of contract should be made by the transportation departments of the federal government. Except using the simplify terms and words to make the contract easier to understand, the central aim is to regulate

for the key controversial problems, the jurisdiction, the responsibilities and the immunity.

Secondly, to empower more authorities to the federal government and to protect the rights of the passengers.

This proposal empowered more authorities to the federal government to inquiry the cruise fraud and unfair competition, if the cruise passengers suffered from the luggage lost, trip undue cancelled and dispute on the fee, they can complaint to the related organizations to safeguard their own rights. In addition, it proposed to establish a specialized commission to improve the rights' protection of the cruise passengers.

Thirdly, to perfect the terms of CVSSA. The proposal refined the terms of CVSSA, including the report of the criminal information, the position of the video on board, etc.

② Cruise Vessel Consumer Confidence Act of 2013: Carriers' Duty of Disclosure

This proposal mainly ruled the cruise carriers' duty of disclosure. To the cruise carriers, they must publish the messages to the public including the departed crimes happened on the vessels, the specific ticket price, the recreation facilities and services that the vessel owned and so on. If the cruise carriers failed to publish to the public, it will be treat as fraud and be punished. Meanwhile, this proposal had added the content of International Cruise Line Passenger Bill of Rights into it within a legislative form.⁶⁴⁾

64) The International Cruise Line Passenger Bill of Rights will be introduced in part 4.1.3

(3) Legal Force of the Standard Terms in Cruise Contract of United States

Although the legislation is much more perfect in United States than any other countries, the problems are still existed in the legal practice. In 1996, a cruise line belong to the Carnival Cruise met a hurricane in the Gulf of Mexico and the cruise trip had to be stopped while the ship can only floated on sea with shortage of food and water. After the accident, the 600 passengers only got \$40 compensation per person. The reason is defined in its form contract:

“The Vessel shall be entitled ... to deviate in any direction or for any purpose from the direct or usual course, and to omit or change any or all port calls, arrival or departure times, with or without notice, for any reason whatsoever, including but not limited to safety, security, adverse weather ... all such deviations being considered as forming part of and included in the proposed voyage ... Carnival shall have no liability for any compensation or other damages in such circumstances ...”⁶⁵⁾

This accident is not an isolated affair. In United States, there has a non-governmental organization called “International Cruise Victims”. On its official website, the organization shows all kinds of cruise victims and cruise crimes. Most of the victims can not get sufficient compensation or still on endless

65) Carnival Corporation, *Ticket Contract* [Online], Available at: <http://www.carnival.com/about-carnival/legal-notice/ticket-contract.aspx> [Accessed April 18 2017].

lawsuit ways. The exist of the organization can be a mirror of the cruise legal practice in United States. On one hand, the cruise contract itself is not that unfair so that the passengers can not get appropriate compensation; on another hand, passengers are hard to win the lawsuit with many limiting factors. In a cruise contract, the cruise carrier will choose the Venue Selection Clauses⁶⁶⁾, delimit the limit of Independent Contractor to limit the liabilities. In the legal practice in United States, if the cruise passenger do not know the Venue Selection Clauses in the contract, and the dissolution of the contract can not be successfully without pay the penalty, the clause is treat as invalid.⁶⁷⁾

4.1.3. International Cruise Line Passengers Bill of Rights

This rule issued by the CLIA mainly specifies the emergency measures when the cruise vessel having the mechanical failure or other critical situation that can't make the journey as planned.

Firstly, passengers' RIGHT TO KNOW. The passengers have the rights to a full refund for a trip that is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures.

Secondly, rights to have emergency rescue under urgent

66) A Venue Selection Clause sets the geographic location for the resolution of any dispute, while a Forum Selection Clause chooses the particular court or arbitrator that will decide the matter. As stated above, the cruise ticket contract of Carnival Cruise ruled the competent court is Miami-Dade County, Florida, U.S.A, this is a typical Venue Selection Clause that sets the geographic location for the dispute.

67) Corna v. American Hawaii Cruises, Inc., 794F.Supp.1005,1011-1012(D.Haw.1992)

circumstance. The right to have food, water, restroom facilities, access to medical care and an emergency power source in essential provisions.

Thirdly, rights to refund if the trip is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures.

4.2. Special Legal System in the Case Law

4.2.1. Independent Contractors in the Cruise Tourism

Independent Contractors is a legal concept under the common law system. As the definition in the Black's Law Dictionary, the Independent Contractor is:

One who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. It does not matter whether the work is done for pay or gratuitously. Unlike an employee, an independent contractor who commits a wrong while carrying out the work does not create liability for the one who did the hiring.

The Independent Contractors can be individual, corporation and also organization which have contract relations with the employer and provide service or goods to the third parties, but the Independent Contractors is not the employee and can not be restricted by the employer. In the common law system, the employer does not need to undertake the tort liability for the Independent Contractors' fault as lack of the

employment or agency relations under normal conditions.

The cruise carrier used to delimit the scope of the Independent Contractors in its cruise tourism contract to limit its own liabilities. Take the Cruise Carnival's tourism contract as example, the contract ruled that:

“All on board concessions (including but not limited to, the gift shops, spa, and beauty salon ... fitness center) are independent contractors ... Carnival neither supervises nor controls their actions, nor makes any representation either expresses or implied as to their suitability ... Carnival assumes no responsibility, does not guarantee performance and in no event shall be liable for any negligent or intentional acts or omissions, loss, damage, injury or delay to Guest ... Guests use the services of all independent contractors at the Guest's sole risk ... Independent contractors, their employees and assistants are not agents, servants or employees of Carnival and have no authority to act on behalf of Carnival.”⁶⁸⁾

In the practice, it is hard for cruise passenger to define the scope of Independent Contractors. To the passengers, if the tourist facilities on the ship using signage or clothing which contains the name “Carnival” or other related trade names or logos, that must belong to the cruise company which is the biggest reason to cause the dispute.

68) Carnival Corporation, *Ticket Contract* [Online], Available at: <http://www.carnival.com/about-carnival/legal-notice/ticket-contract.aspx> [Accessed 20 September 2016].

4.2.2. Torts from Cruise Staffs

The employer's liability means the employer should undertake the tort responsibility to the employee's action. In the common law system, the employer's liability is treated as the No-fault Liability which means "the employer does not need to have fault while the fault of the employee will be presumed to the employer by law."⁶⁹⁾ There also have the employment relations between the cruise staffs and the cruise carriers, actually, the cruise carrier used to defend using the No-fault Liability when the staffs infringed. However, it is worth discussing whether the cruise carrier can defend as the common employer using the No-fault Liability.

Susan Morton and her husband paid to take a cruise in 1989 on the M/V Carnival, a ship owned and operated by Carnival Cruise Lines.⁷⁰⁾ Crew member Joaquin De Oliveira served as their regular dining room waiter. One evening, while Susan Morton was alone in their cabin, De Oliveira pushed her on the bed and raped her. She did not tell her husband immediately about the attack nor did she report it to authorities aboard the ship. Several weeks after the cruise ended, Susan Morton told her husband she had been assaulted by De Oliveira during the cruise. The Mortons sued De Oliveira and Carnival Cruise Lines but they would be unable to show any negligence by Carnival in hiring or supervising De Oliveira. Instead, their complaint rested on a theory of a shipowner's absolute liability

69) 弗莱明,1992.《民事侵权法概论》.香港中文大学出版社,pp.142.

70) Morton v. De Oliveira, 984 F. 2d 289.

for assaults on passengers by its crew members. Carnival, however, contends that the ship owner could be liable only if it actually knew of the hazardous condition and failed to warn the visitor of the hazard.

The district judge determined that: "By the sale of the ticket there arose a contractual relationship between the company and the passenger ... The contract of carriage made it the duty of the carrier to carry safely and to protect its passenger from violence and insult committed by its own servants ... As long as respondent was a passenger on appellant's ship, appellant owed him a duty of ABSOLUTE PROTECTION from the assaults and aggressions of its servants, and the rule is well nigh universal that the carrier cannot plead as a defense that the servant acted outside the scope of his employment." In that note, the Court makes clear that "reasonable care under the circumstances" is not the universal standard of care to be provided aboard ship.⁷¹⁾ A different standard may apply where it makes sense under maritime law. Finally, the Morton won the lawsuit.

The judgment of this case showed the attitude of the American juridical practice. The special relationship between a common carrier of passenger and its hire comes from the fact that the passengers are entrusting themselves to the cruise ship company's protection and care.⁷²⁾ A cruise ship has a duty of

71) Morton v. De Oliveira, 984 F. 2d 289.

72) Holland America Cruises, Inc. v. Underwood (Fla.Dist.Ct.App. 1985) 470 So.2d 19, 20.
In the case, the Court found that common carriers have a strict duty to protect passengers from crimes on ships for hire.

safe transport, including, inter alia, protection of ship passengers from attacks by crew members such as gang rapes, child rapes, sexual molestation, battery on shore, and other harms of a physical nature.⁷³⁾ The U.S. Supreme Court decided in *New Jersey Steamboat* that a passenger who had been physically harmed when he was violently removed from a restricted area of a vessel by a violent ship employee. The Court let it be known that since there was a contract for safe transportation, a passenger was entitled to be protected from a common carrier's servants' improper conduct and/or negligence. The Court reasoned that a servants' improper conduct must be imputed to the master, or the carrier, due to the fact that the servants aboard the ship are hired to perform the contract to transport the passengers safely. This reasoning comes from the public policy and other case precedents set forth in railroad cases. The high Court held that common carriers are under a duty to "absolutely protect" their cruise ship passengers from their servant's misconduct, so long as the act is committed in the course of the servant's employment.⁷⁴⁾ The Supreme Court reaffirmed another case,⁷⁵⁾ *Jopes* had to do with the train conductor shooting train passenger. The Court used the reasoning set forth in *Brockett* and expanded on original definition for common carrier liability, stating common carriers are absolutely bound to ensure that their own servants do not unlawfully assault or injure their passengers. *Jopes* expanded

73) M.J. Norris, *The Law of Maritime Personal Injuries*, Sec. 3:3, at 62-63; Sec.3:12, at 78 (4th ed. 1990).

74) *New Jersey Steamboat Co. v. Brockett* (1887) 121 U.S.

75) *New Orleans & N.E. R.R. Co. v. Jopes* (1891)142 U.S. 18.

Brockett by eliminating the rule that an employee is supposed to act within the scope of his or her employment. That Court held that the common carrier is strictly liable for any act of its employees against passengers. Just because Jopes had to do with trains and not ships, this is irrelevant, because both are common carriers for hire.

In the meanwhile, to the passengers, it is harder for them to find the cruise staff and sue them directly than to sue the cruise carrier, while the cruise carrier may use the excuse that the employment relations is finished or tort act the cruise staff did is not the duty behavior. Therefore, it is beneficial for the protection of the cruise passenger's rights that to let the cruise carrier to undertake the strict liability.

4.2.3. Cruise Medical Dispute Case in United States

(1) The Case Facts ⁷⁶⁾

On March 31, 1997, the Carlisle family boarded the Carnival cruise ship, the Ecstasy, in the Port of Miami for a Caribbean cruise. When fourteen year-old Elizabeth Carlisle began experiencing abdominal pain and lethargy, her parents took her to see Dr. Mauro Neri, the onboard physician. Instead of examining her, Dr. Neri repeatedly advised the Carlises that Elizabeth had the flu and placed her on antibiotics. The Carlises discontinued their cruise in Cozumel, Mexico because Elizabeth continued to feel ill. They flew home where Elizabeth was taken to the emergency room and doctors determined that

⁷⁶⁾ Carlisle v. Carnival Corp., 864 So. 2d 1 (Fla. 3d DCA 2003)

“as a result of the rupture and subsequent infection, Elizabeth was rendered sterile.”⁷⁷⁾

The family filed suit in the circuit Court for Miami-Dade County, Florida, seeking to hold Carnival vicariously liable for the negligence of Dr. Neri under a theory of apparent agency. The trial court granted Carnival’s motion for summary judgment. The family appealed.⁷⁸⁾ The Third District Court of Appeal of Florida held that “the ship’s doctor is an agent of the cruise line whose negligent medical treatment of a passenger should be imputed to the shipowner,” regardless of the independent contractor rank assigned to the doctor; and (2) title 46 U.S.C § 183(c) prohibits a cruise line from limiting its liability for the negligence of the ship’s doctor.⁷⁹⁾ The appellate court accordingly reversed the summary judgment on the issue of vicarious liability, and remanded the case for further proceedings.⁸⁰⁾ Then the case appealed to the Florida Supreme Court, the final judgement was that: “We quash the decision of the district court and hold that the ship owner is not vicariously liable under the theory of respondent superior for the medical negligence of the shipboard physician”⁸¹⁾

Because the Port of Miami and Miami-Dade Courty are situated within Florida’s Third District, the judgment of the case

77) Appellee’s Answer Brief at 6, *Carlisle v. Carnival Corp.*, 864 So. 2d 1 (Fla. 3d DCA 2003) (No. 98-6109).

78) *Carlisle*, 864 So. 2d at 2.

79) Brief of Appellant at 4, *Carlisle* (No. 98-6109)

80) *Carlisle*, 864 So. 2d at 2.

81) Supreme Court of Florida. *CARNIVALCORPORATION, Petitioner, v Darce CARPORAION, Respondent*. SC04-393.No. Decided: February 15, 2007.

is binding on the world's largest cruise operators. Consequently, the Third District is essentially a court of last resort for much of the cruise industry.

(2) Legal Analysis of the Case Under US Law

Firstly, the shipowner has control over the doctor-patient relationship.

The Carlisle court said that if the shipowner chooses to fulfill his "duty of exercising reasonable care" to his passengers by hiring a doctor, it follows that he would be liable for the medical care given by the doctor. His passengers must see if they need immediate treatment.⁸²⁾ A cruise line has no legal duty to practice medicine but when a cruise line chooses to treat ailing passengers by providing a doctor on board, it then has "assumed the duty to treat carefully."

The doctor is not on board solely for the passengers' convenience, as the shipowner contends. Where the shipowner can fulfill his duty of care by not having to divert the ship to a port, he is gaining a great economic benefit. The shipowner in this way exerts control over the doctor-patient relationship because the choice of the passenger is limited to the choice already made by the shipowner.

Secondly, the doctor is an agent of the Cruise Line.

The Carlisle court concluded that, no matter the contractual ranking assigned to the doctor, he is in fact "an

⁸²⁾ *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959).

agent of the cruise line whose negligence should be imputed to the cruise line.” The doctor was to provide medical services to passengers and crew in accordance with the cruise line’s guidelines.

At the time Dr. Neri treated Elizabeth Carlisle, he was wearing an officer’s uniform. To a passenger, a doctor wearing an office’s uniform aboard a ship represents to the passenger that the doctor is working for the cruise line. Further more, the uniform creates a sense of trust in an innocent passenger.

(3) The Value of the Case and the Legal Reflection

The court entails that cruise ship owners have duty to provide medical care for passengers, just as they do for their crew members. When the legislature can develop this duty, a more predictable and reliable system will be in place, calming the seas for the fast growing cruise industry and passengers.⁸³⁾

If the case was appeared in Korea or China, as without any legal precedents or regulations, the case can only followed by the general legal principles, in which the cruise doctors can be treated as the traditional independent contractors while the carrier should not undertake the liability for their faults. Actually, nowadays no one can deny that the cruise medical doctor is distinguished with the traditional independent contractor, and the liability for cruise carrier is an irresistible trend, without legal regulate, the case can not be solved and judged well.

83) Maggie O. Tsavaris, 2004. Calming Troubled Waters for Cruise Ship Owners and Their Passengers: Carlisle v. Carnival Corp. *University of Miami Inter-American Law Review*, pp.153~181.

In fact, in the judgments of the series medical dispute cases, the “Case Law” is the main proper law in the American juridical practice. However, as the Korea is the country with a civil law system,⁸⁴⁾ while China’s legal system is also close to the civil law system, the “Statute Law” should be the main proper law instead of the “Case Law”. Therefore, to solve the medical dispute cases, the best way is to work on legislation, and the status of the cruise doctors should be ruled separately and distinguished with the independent contractor in the legislation. The detailed analysis will be shown in the CHAPTER V of the paper.

4.3. Analysis of the Cruise Regulations

4.3.1. Advanced Experiences

The advanced experiences can be summarized as follows:

(1) Strictness of the Principle of Liability

No matter what periods inside the cruise trip or what kinds of cruise contract the passengers signed with, the cruise carrier is always in a leading status, while in opposite, the passengers are always in a weak situation and easy to become victims. Nowadays, the principle of liability for the carrier is more and more strict in the legal practice. As stated above, for

84) As the definition of Black’s Law Dictionary, the COMMON LAW means: The body of law derived from judicial decisions, rather than from statutes or constitutions; case law. the CIVIL LAW means: The body of law imposed by the state, as opposed to moral law.

the Athens Convention, which applied to the period of carriage of passengers by sea in a cruise trip, the liability principles are changing from fault responsibility to the dual responsibility.⁸⁵⁾ Similarly, in the legal practice of United States, the cruise carrier should also undertake the strict liability during the trip or even for the employee's torts. We can see that not only for the liabilities followed the Athens Convention and its amendment is becoming strictly, but also the cruise judgment showed such a trend. The undertake of the strict liability is beneficial to balance the status and relationship in a cruise contract, and protect the rights of passengers.

(2) Regulation of the Cruise Standard Form Contract

The current cruise contracts are made by the cruise carrier in advance, for the passengers, who are not professional at reading a contract may hard to understand and to find the problems and the unfair clauses inside. In the meanwhile, the carrier are using the standard contract to formulate clauses that are beneficial to itself. Legislative proposals in United States had proposed to regulate the cruise contract. A simplified contractual language must be used in the contract for passengers to understand, and other pivotal problems such as charges, jurisdiction are also need to be regulate for preventing the unfair clauses.

(3) Strictness of the Carrier's Liabilities

As the obtained information in a cruise trip is not

⁸⁵⁾ See above on CHAPTER III, Principle and Limitation of Compensation for Passengers under Athens Convention.

symmetric, the passengers are hard to get new cruise information and the dynamic states of the ship, European Union and United States attached importance to the duty of disclosure for the carrier. The International Cruise Line Passengers Bill of Rights ruled that the cruise carrier must publish the contract information to the public, while the Cruise Vessel Consumer Confidence Act of 2013 proposed the cruise carriers' duty of disclosure. To the cruise carriers, they must publish the messages to the public including the departed crimes happened on the vessels, the specific ticket price, the recreation facilities and services that the vessel owned and so on.

(4) Definition of the Passenger's Rights

It is also an important way to restrain the carrier with a thorough passengers' rights. In the international Cruise Line Passengers Bill of Rights, passengers' rights to know are ruled inside. Similarly, in the Cruise Vessel Consumer Confidence Act of 2013, the regulation proposed that the carrier must publish its previous ship conditions or the carrier will suffer with highly penalty.

4.3.2. Shortcomings

(1) The Insufficient of the Protection to the Passengers

Although the legislations in European Union and United States are relatively well, there still have problems. For the regulations in United States, many clauses are empty and leak of realistic value. For example, if the trip is cancelled, how to refund the fees; if the cabins are overbooking which lead the

passengers can not boarding on the trip, how to protect the rights of passengers; if the passengers are compelled off the ship because of the unlawful act, how about the surplus fees. All these problems need to be regulate properly.

In addition, the specific clauses for the protection of the passenger's rights are lacking. In the International Cruise Line Passengers Bill of Rights, the bill had ruled the rights to have food, water, restroom facilities, access to medical care and an emergency power source in essential provisions, but who is responsibility for all the cost has not ruled, while this can also bring big problems in the practice.

(2) The Deficiency in Carrier's Limitation of Liability

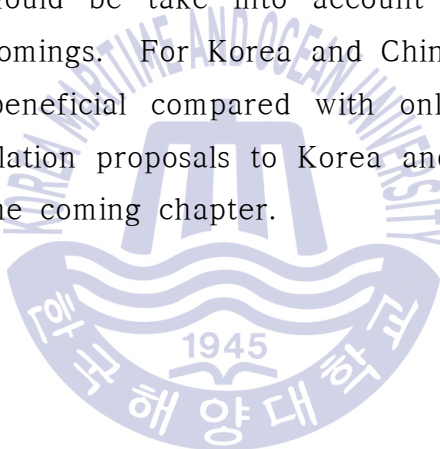
In the 1974 Athens Convention, the limitation of liability is too low as the cruise carrier takes delight in choosing these clauses for their clauses. In fact, the cruise carrier have the opportunity to avoid the responsibility through the unfair clauses and the rights of the passengers are hard to protect. Other problems such as the Independent Contractor is also influencing the passengers' rights. All these need to be pay attention to and solved through the legislation.

(3) Legal Reflection of the Shortcomings

In fact, these shortcomings appeared with two reasons. Firstly, as the cruise industry is an emerging industry, the legislation and its perfect need time and can not be accomplished in an action. Nowadays, most of the cruise disputes are solving with the help of other relevant regulations

which may be not that suit for the cruise situation. It is normal to has shortcomings or legal loopholes during the development of the cruise industry as more legal relations and also contradictions may occurred.

Secondly, many typical cruise cases and their judgments of United States are referenced in this part, as a country with common law system, case law is also an important way to the perfection of its legal system, while this is different with Korea, China and other countries with civil law system. Therefore, legislative fact should be take into account when finding and solving the shortcomings. For Korea and China, using legislative ways are more beneficial compared with only imitating United States. The legislation proposals to Korea and China will wrote and analyzed in the coming chapter.



CHAPTER V

Analysis of the Related Cruise Cases in Korea and China and Cruise Proposals

5.1. Cruise Cases and Compensation Regulations in China

5.1.1. The Arrest of the Cruise Ship “Henna”

(1) Case Facts

The cruise ship “Henna” is the first cruise line managed by Chinese cruise company, the HNA Group. In the year 2013, the ship set out on its first voyage and mainly sailed for trip to Korea and Japan. On September 13th, 2013, the ship was arrested by the Korean Court when it berthed on the Jeju cruise terminal and planned to departure with 1659 passengers. After arrested for already 70 hours, and paid the deposit at KRW 30 billion to the Court, the ship finally made a return voyage.

The reason why the ship could be arrested was because the dispute over obligation between the ship owner HNA Group and other shipping service company, called “SHAGANG”. As the debt dispute was lasting for already three years, the SHANGANG applied to Korean Court to arrest the ship through the help of the Korea agency company in accordance with the international law.

However, the passengers were innocent and they all

suffered for huge damage in the 70 hours. According to the news, their trip had been changed and even could not get enough foods, medical services or other living facilities. Before back to China, the HNA Group proposed the compensation scheme to the passengers: every passenger can get at most RMB 2300 (KRW 400,000) for compensation, and the passengers had no any other choices but only to accept this compensation and then they could back to China with the airplane offered by HNA Group. It was unfair but most of the passengers had to accept it as they travelled to Korea with the Group Visa and could not disembark or go back by themselves.

(2) Lawsuit and Compensation

After back to China, all the passengers faced three problems.

① The compensation was unreasonable and lower than the damage.

For most of the passengers, the price of this trip cost them RMB 3000 to 5000, but the amount of compensation may only covered the rest of the trip's expenses. For the damages the passengers suffered, the impacts to their health, mental stresses and others seem not worth a cent.

② The contractual relations were confused.

As the characteristics of the cruise contract, most of the cruise passengers on Henna signed the cruise contract with different travel agencies. Among the travel agencies, different

handling methods appeared and could not be unified. 80% of the passengers on ship signed the contract with the HAITAO Travel Agency. HAITAO gave full refund to the passengers and another 15% of the charge for compensation.⁸⁶⁾ Some other passengers signed the contract with the LEYOU Travel Agency who refused to compensate for the damage and said the ship owner was liable for the passengers.⁸⁷⁾

What's worse, the ship owner, HNA Group refused to gave more compensation except the RMB 2300, they treat the accident as "force majeure" and said the passengers were lack of contractual relations with the ship.

③ It was hard to find law applications and legal practice in China.

Such case are never appeared in China and also, no specialized regulation or laws can be applied to it. In this case, passengers are hard to get more compensation as they could not got enough legal supports.

For the passengers, if they want to bring an action against the ship, they could only apply to the civil law in China, that is, Article 111 of the Principles of the Civil Law in China.

If a party fails to fulfill its contractual obligations or violates the term of a contract while fulfilling the obligations, other party shall have the right to demand fulfillment or taking

86) 范焘, 海娜号游客获全额退款外加违约赔偿 [Online] (Updated 25 September 2013)
Available at: <http://news.sohu.com/20130925/n387175065.shtml> [Accessed 2 February 2017]

87) 狄堃, 2013.9.24.海航, 请给大家一个真诚的道歉. 天津日报, 11.

of remedial measures and claim compensation for its losses.

The problems are, on one hand, as the characteristics of the cruise contract, the ship owner is only at the status of “actual parties” while the contract is signed between the passengers and the travel agencies. The results are the travel agencies may refused to compensate as they have not perform the contracts actually and the ship owner may also avoid the liabilities as they are not one party of the contract.

On the other hand, according to the civil law in China, only “direct loss” could be compensated, mental damage, and other indirect losses are not involved in the law. Even the passengers could get compensation from the shipowner or the travel agencies, the amount is limit.

5.1.2. The Sinking of the Cruise Ship “Eastern Star”

(1) Case Facts

The cruise ship “Eastern Star” is an inland cruise ship belong to the Chongqing Eastern Shipping Company that sailed from the city Nanjing to Chongqing on the Yangtze River in China. The ship provided accommodation, restaurant, and some simple recreational facilities for passengers. For a normal voyage, passengers have board and lodging on the ship, and disembark for sightseeing along the coastwise.

On 1st June, 2015, when the ship sailed to the city Jin Zhou, the ship kept sailing with the sudden severe convection weather and suddenly the whole ship sank into the river in just

one minute. Only 12 people survived and 442 passengers died for the accident.

The survey report made by government had published half year after the accident, according to the report, three reasons caused the accident. Firstly, the severe convection weather with heavy downburst and strong rainfall made the ship lose control; Secondly, the captain and the chief officer had not judge the weather condition accurately, and had not sent alarm or distress signal during the sinking of the ship; Thirdly, the ship did not had enough wind loading rating to sail in the extreme weather. Both the company and the government lack the enough management for the ship, and when the natural hazard appeared, there's no early warning mechanisms and no one found the ship was disappeared at the first time.⁸⁸⁾

(2) Responsible Parties and Liabilities

As lack of specialized cruise regulations, the accident was judged applied to regulation for the common carriage of passengers. Both captain and the chief engineer were survived without took any measures for rescue and control the ship, according Article 38 of the Maritime Law, they both liable for the accident.⁸⁹⁾ For the ship company, according to the

88) State Administration of Work Safety, 2015. *Survey Report of the Accident "Eastern Star"* [Online] (Updated 30 December 2015) Available at: http://www.chinasafety.gov.cn/newpage/Contents/Channel_21356/2015/1230/262992/content_262992.htm [Accessed 2 February 2017]

89) Article 38 of the Maritime Law ruled that, Where a sea casualty has occurred to a ship and the life and property on board have thus been threatened, the Master shall, with crew members and other persons on board under his command, make best efforts to run to the rescue. Upon abandoning the ship, the Master must take all measures first to evacuate the passengers safely from the ship in an orderly way,

Regulation on the Administration of Domestic Water Transport, Article 38, as the ship did not had good seaworthiness, the water transport operators should undertake liabilities.

In addition, as cruise ship, the tickets of “Eastern Star” were booked by the passengers through the travel agencies, and the travel contracts were signed with the travel agencies, which mean that the travel agencies are also one of the responsible parties and liable for the passengers.

5.1.3. Compensation System Under Chinese Regulations

In 1994, China joined the 1974 Athens Convention and its 1976 Protocols. According to the Maritime Law, for the international carriage of passengers by sea, the Athens Convention and its protocols have priorities to application. The limitation of liability of the carrier are ruled in Article 117 of Maritime Code, for death of or personal injury to the passenger is not exceeding 46,666 Units of Account per passenger.

To the compensation for port to port carriage of passengers, the Provisions of Limitation Between the Ports of China is the application law, article 3 of the provision ruled that, the limitation of liability of the carrier shall not exceeding RMB 40,000 (about KRW 6.5 million) per passenger for death, for personal injury, the amount is RMB 800 (about KRW 120,000). However, this provision only applied to the port to port carriage by sea, not include the inland waters.

then make arrangements for crew members to evacuate, while the master shall be the last to evacuate.

The interpretation from the Supreme People's Court also ruled the compensation for death as: "for a period of 20 years based on the per capita disposable income of the urban residents or the per capita net income of the rural residents at the place where the court accepting the case was located during the previous year". The regulation here is different from the Athens Convention or the Maritime Law and only could applied to the inland waters' transportation, which is also the application law for the Eastern Star.

Luckily, the "Eastern Star" could not applied to the limitation of liability for maritime claims. As the Maritime Law had not rule that the limitation could be applied to the port to port or inland waters' transportation.⁹⁰⁾ Meanwhile, for the "Eastern Star", the captain chose to continue sailing under severe weather without any safety measures, it could be presumed the captain was with gross negligence, that is another reason the ship could not applied to the limitation.⁹¹⁾

Both of the two cases were the worst shipping accidents in China and had caused huge social influences. We could see that the compensation system had already built under Chinese Law. Although it seems there's no legal loophole for the compensation for passengers, problems are still existed. The "Eastern Star" was a cruise ship to transport passengers for sightseeing, the characteristics of the ship were different from

90) 翟业虎. & 刘亚飞, 2015. 对东方之星沉没的海商法思考, *法律与生活*, pp. 55-57.

91) Article 209 of Maritime Law ruled that, a person liable shall not be entitled to limit his liability in accordance with the provisions of this Chapter, if it is proved that the loss resulted from his act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

the common ships, but the application of law could not reflect such characteristics. The legal definition of cruise ship is still vacant and there's no specialized regulation or laws for compensation to cruise under Chinese law - not to mention the protection of the cruise passengers. In addition, the limitation of liability is not unified and the limitation for port to port and inland water ships are still lower, although the "Eastern Star" had not claimed for the limitation of liability, for the cruise ships, how could the limitation of liability applied to need to be considered for giving appropriate protection for the cruise passengers.

5.2. Related Case and Compensation Regulations in Korea

5.2.1. The Sinking of the Ferry "Sewol" ⁹²⁾

(1) Case Facts

The sinking of the ferry "Sewol" occurred on the morning of 16 April 2014, the route from Incheon to Jeju and the wreck was just off the island of Jindo on the south-west tip of Korea, the ship belonged to the Chonghaejin Ship Company and capsized while carrying 476 people, mostly were secondary

92) The ferry "Sewol" was not an actual cruise ship, the main task of the ship was transport passengers from port to port. The paper analyzed the case here for two reasons: Firstly, after the introduction of the case, the compensation system and limitation of liability under Korean laws were analyzed, such laws and regulations could applied to the cruise disputes under the situation of lacking specific cruise laws, that shows the typical significance of the case; Secondly, compared with the sinking of the "Eastern Star" and current Chinese laws, problems still existed and this case is valuable to take as reference for the perfection of the cruise legal system under Korean laws. Based on these, the ferry "Sewol" was analyzed in this part.

school students. In all, 304 passengers and crew members died in the disaster. Until now, 7 victims are still missing and the victims' claims are still pending. The causes of this man-made accident were thought as the neglect of safety, the lack of safety awareness, wrong behavior of the ship crews and the deregulation for the operation. Besides these direct causes, there are indirect causes, such as an inefficient disaster prevention system and corruption between the government and ship owner.⁹³⁾ In addition, the cause of the accident and matters of responsibility are still unresolved, the possibility of designing a viable plan for compensation liability insurance and insurance for the ship is unclear.

(2) Responsible Parties and Liabilities

For the Sewol ferry, the accident can also be divided into injury to persons and injury to property. The injury persons included the passengers on ferry whose were injured or dead because of the fault or neglect by the carrier or other responsible parties, the injury property means destruction or loss of containers, or any other vessels on the Sewol.

The captain of the ferry had not stayed on ship and ran away at the first time, he had not took appropriate measures when the ship was in danger or rescue passengers. He was directly liable for the sinking of the ferry.

The shipowner, Chonghaejin Marine Co., Ltd. had duty of care for seaworthiness during the trip, if the company could not

93) 홍완식, 2014. 세월호 사고에 관한 입법적 성찰. *법학연구*, 56(0), pp.327~348.

prove that it had not breach its duty of care, it would be obligated to compensation. (According to Article 794, 795 of the Commercial Act), In the meanwhile, the victims could make claims to compensation against the insurer pursuant to Article 724 of the Commercial Act.

Article 401 of the Commercial Act ruled that, If a director has neglected his/her duties intentionally or by gross negligence, he/she shall be jointly and severally liable for damages to a third party. The director of the shipping company knew that the Sewol was not seaworthy but still arranged the ferry to sail for profits, the director of the shipping company should be claimed to compensate for the unlawful acts according to the law.

The Korea Shipping Association was also liable for the accident. According to the Maritime Transportation Act, Article 22, “Operators of coastwise passenger transport services shall be subject to the direction and supervision concerning safe operation by a vessel operation manager, appointed by the Korean Shipping Association established under the Korea Shipping Association Act“. According to Article 6 of Korea shipping Association Act, the operations managers, Korea Shipping Association had not stopped the Sewol’s departure with overloaded cargos, which affected the restoring force of the ferry and was an important reason for the ferry’s sinking.

As the Korean Supreme Court’s decision, the coast guard was liable for negligent rescue in regard to the ferry on a previous occasion and even the Korean government, who is liable along with the captain, the company, the association and

the coast guard.⁹⁴⁾

5.2.2. Compensation System Under Korean Laws

The damage compensations and the limitations of compensation liabilities under Korean laws need to be analysed separately just because that Korea has not join the Athens Convention. In fact, the liabilities principles in Korea is also in accordance with the Athens Convention through the analysis, this part also needed for a better understanding.

In Korea, the domestic regulations in adjusting the carriage of passengers by sea can divided into two parts: the liability principles for personal injury should follow The Commercial Act, Part II Commercial Activities, Chapter IX Carriage, Section 2 Carriage of Passenger, while the liability principles for luggage damage should follow The Commercial Act, Part V Maritime Commerce, Chapter II Transport and Chapter.⁹⁵⁾

(1) Personal Injury

In the Commercial Act, Article 148 ruled that: “A carrier shall not be relieved of liability for damages from any injury sustained by a passenger arising from the carriage unless the

94) Seokwoo Lee, 2017. The Sewol Ferry Disaster in Korea: Liability and Compensation Issues, *The International Journal of Marine and Coastal Law*, 32, pp. 173-181.

95) According to Article 826, Provisions Applicable Mutatis Mutandis. (1) The provisions of Articles 148, 794, 799(1) and 809 shall apply mutatis mutandis to the marine passenger transport. (2) The provisions of Articles 134, 136, 149(2), 794 through 801, 804, 807, 809, 811 and 814 shall apply mutatis mutandis to the transport of the baggage of the passengers that have been entrusted to the carrier. (3) The provisions of Articles 150, 797(1) and (4), 798, 799(1), 809 and 814 shall apply mutatis mutandis to the baggage of the passengers that have not been entrusted to the carrier.

carrier proves that neither he nor any of his employees has neglected care in connection with the carriage“.

That means only after the carrier proves that he is no fault while also the liability of seaworthiness, he do not need to undertake the liability.

(2) Luggage Damage

Article 794 ruled that: “A carrier shall be liable for compensation for the damage due to the loss of, damage to or late arrival of the cargo unless he proves that himself, the crew, or other employees have not failed to ...“ Also, Article 795 ruled that: “If a carrier does not prove that himself or the crew or other employees of a ship have exercise due diligence concerning receiving, loading, stowage, transport, storage, unloading, and delivery of the cargo, he shall be liable for compensation for the damage incurred due to loss of, damage to or later arrival of the cargo.“ We can see that for the luggage that has been entrusted to the carrier, the liability principles is Presumptive Fault.

Article 795 and Article 796 ruled the exemptions of carrier, and also Article 797 ruled that: “The liability for compensation for damage of a carrier under the provisions of Article 794 through 796 may be limited to the larger amount as the limit out of the amount of 666 and 67/100 unites of account per package or per shipment unit of the cargo concerned and the amount of two units of account per kilogram.“

For the luggage that has not been entrusted to the

carrier, according to the Article 150, “A carrier shall not be liable for damages from any loss of or injury to such luggage which has not been deposited to him by a passenger if the negligence of a carrier, or of any of his employees does not exist.” These rules are different from the rules in Athens Convention, which divided the liability into shipping incident and others.

In a word, we should take care of the differences under the Korean law between the Athens Conventions when judging cruise dispute cases as nowadays no specialized regulations and unified standard exist. However, it's a trend for unify the Korean Law with the Athens Convention in the cruise tourism field.

5.2.3. Legal Consideration

Three years had past since the sadly sinking of the ferry “Sewol”, the mystery was now began to solved after the ferry emerged from the water floor recently, the causes of accident are wait to be investigated and the compensation for victims should keep proceeding. There is no denying that the Korean government had took lots of measures for solving the compensation problems for the ferry, the Sewol Ferry Special Act and other regulations had worked together for the solutions and it seems that the survey is keeping in progress, while the compensation problems to victims still need to be solved. Refer to experiences of China and for the legal view could be considered. Specifically, the legislation system could be establish better and need to definite liability and limitation. The limitation

of liability nowadays is low and can adopted to the passengers' rights protection and the development of the society, Thus, the limitation principle and limitation of liability must be regulate firstly, and could refer to the protocol 2002. For the seriously disaster like the sinking of the ferry Sewol, strict liability should be refer to, all the responsible parties must undertake their liabilities without any limitation of liability, this is not only for the establishment of the compensation legal system, but also for the stabilization of the state.

5.3. Problems and Legal Solutions

With the developments of the cruise industry in Korea and China, the disputes and problems are also increased. From the case "HENNA" we could see that the compensation is limit and not enough for passengers which was insignificant compared with their losses. As the characteristics of the cruise tourism, more disputes and accidents may occur in the future, there need laws and regulation to deal with such situations urgently. Compared with European Union and United States who had already formulate cruise legal system, analyzed the related cases in the above chapters, the incomplete legislation problems can be list as follows:

5.3.1. Problems

(1) The Imperfection of Cruise Legislation

The current regulations in both Korea and China had

ruled the definition of cruise, cruise operator and cruise tourism, however, it is still hard to deal with cruise legal disputes as the contractual relations and compensation have not be put into their adjustment scope. In fact, although the “Eastern Star” accident had been solved properly, consider to the characteristics of the cruise ships, problems still existed as there’s no specialized regulation or laws that could applied to the cruise passengers and for the protection of cruise passengers’ rights.

(2) Lack of Judicial Experiences

As the imperfection of the cruise legislation, only common regulations that focus on the maritime traffic and passenger transport can be applied to judge cruise dispute cases in Korea and China. However, as both the two countries are in the civil law system, case law can not be used as basis for trial like United States, therefore, more difficulties appeared during the judicial practice. Moreover, both Korea and China are at the inchoate stage of the cruise developing, which make it harder for the judgment of the cruise disputes.

(3) The low limitation of Liability

To achieve the goal of protection to the cruise passengers, it is necessary for giving proper compensation standards. In the case of “Eastern Star“, the compensation and limitation of liability had followed the current common compensation system for passengers under Chinese Law. However, as analyzed before, for the characteristics of the cruise ships, the compensation was too low to protect the

passengers. Compared with United States, and European Union, use “Strict Liability” and a higher limitation of liability to the cruise carrier are reasonable ways for the protection of the cruise passengers.

In a word, the incomplete legislation and judicial problems may seriously affect the development of the cruise industry in Korea and China, the above problems need to be solved immediately.

5.3.2. Legal Solutions

For the development of the cruise tourism and referring to legal experiences in European Union and United States, the measures could be taken as follows,

(1) Establishment of Legislation

① Modification of the Current Regulations

Firstly, the cruise legal relations need to be put into the adjustment scope of maritime regulations. For China, Operation Regulation of Cruise Tourism in Shanghai issued by Shanghai Tourist Administration had ruled the cruise contractual relations inside, however, as a local regulation, it could not be applied nationwide. The Maritime Code of China should be modified for the definition of cruise carrier, passengers and the cruise legal relations. For Korea, the features of cruise contract, the definition of cruise carrier could also be added into The Commercial Act of Korea.

Secondly, as a special kind of tourism, the cruise tourism

should also be ruled into the tourist law. In the Tourism Law of China, these contents can be added: In Chapter IV Tourism Operation, the business that travel agencies may engaged in should include the agency of cruise tourism; In Chapter V Tourism Service Contract, the features of cruise tourism can be mentioned in this chapter; In Chapter IX Legal Responsibilities, cruise legal responsibilities can be added also. Similarly, while there's no specialized tourism law in Korea, such contents can be referred in the future.

Thirdly, the cruise contract should be treated as an individual kind of contract that issued in the Contract Law of China, and the Civil Code of Korea. That is because a cruise contract may has three parties that is different from traditional contract.

② Establishment of Specialized Cruise Legislation

The Cruise Vessel Security and Safety Act 2010 in United States is an important regulation setting construction standards for cruise vessels. Similarly, China now already had issued Design Code for Cruise Terminals, and Cruise Construction Standards for construction of the vessels and terminals. In fact, both Korea and China are at the early stage for cruise ship construction. We could find that the construction of cruise vessels need more complicated and higher standard compared with the common passenger vessel. Therefore, Korea may issued a law that ruled the regulations about construction of the vessel, not only for the safety of cruise passengers, but also for the further development of the ship construction industry.

For the protection of the passengers' rights, cruise passengers bill of rights can be issued to specify the emergency measures when the cruise having problems during the journey. Such rights for passengers under emergency situation should be ruled separately for the protection of passengers' rights. Korea and China could refer to the International Cruise Line Passengers Bills of Rights issued by the CLIA, the two proposals issued by United States.

(2) Detail of the Regulation Contents

① Definition of the Limitation Principle and Limitation of Liability

As outlined above, the limitation of liability for cruise nowadays is lower and can not adopted to the passengers' rights protection and the development of the industry. Thus, the limitation principle and limitation of liability must be regulate firstly. The liability principles of the cruise carrier should also refer to the protocol 2002 that is the Dual Responsibility System. The cruise carrier shall be liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. In the meanwhile, the limitation of liability issued in the 1974 Athens Convention should also be enhanced properly.

What's more, although there's no direct employment or

agency relationship between the cruise carrier and the shops, SPA, gym and other independent contractors on cruise, it is not suitable to exclude the undertake of the carrier's liabilities. The regulation of Korea and China could issued that, the cruise passengers can choose to suit the cruise carrier or the independent contract when disputes happened, while the cruise carrier can claim compensation from the independent contractor. At the same time, the carrier has the liability to express the range of independent contractor on ship, or it has to undertake the liability because of violating the right to know. Such articles should also suitable or referable to other related cruise staffs. To the contrary, as the cruise physician is treat as the agent of the cruise ships from the preceding part of the paper, the cruise physician's status and legal liabilities also need to be expressed precisely for the passengers.

② Legislation of the Cruise Format Contract

As mentioned above, a cruise contract can be signed between the carrier and the passenger, or between the travel agency and the passenger. In the legal practice, without the specialized legislation, the cruise contract signed between the travel agency and the passenger may applied to the tourist regulations, while the application of another kind of cruise contract may be confused. If the application of the cruise contract can all be ranked into one regulation, the problem will be solved, that means, the legal states of the cruise contract should be defined into not only the Contract Law, but also the application of the Tourism law.

The basic contents of a cruise contract must be formulated through legislation. As the standard form of cruise contract should at least ruled: the charging standard, delay or cancel of the trip, jurisdiction, the limitation of liability, the immunity of liability, time limit and other questions that are easy to produce disputes. The contractual language must be simply and easy to be understood by the passengers. Meanwhile, the standard form of cruise contract must issued to be used for all cruise companies compulsively and could not be changed optionally. The implement of the contract should under the supervise of the relative departments.

③ Definition of the Cruise Carrier's Liabilities

The cruise carrier is no longer the common carrier on sea, but also the provider of the travel services. It has the characteristic of travel operator, while the legal status must be issued in the legislation and distinguished with common carrier or travel agency.

The liabilities of the cruise carrier should be concerned at performing the contract, creating the cruise security and compensating for the passengers. One thing to note is that the duty of disclosure is more and more important recent years in the cruise industry. Both the CLIA and the cruise proposals from United States pay attention to this duty and such new points of legal focus should be reflected in the legislation.

(3) Ways to Cooperation and Communication

① The Specialized Agency and Self-discipline Organization

In the Act on Fostering and Supporting Cruise Industry issued by Korea Ministry of Ocean and Fisheries, Article 15 put forward to establish the cruise association for industry management, policy formulation and talents training. Referring to this and the Cruise Ship National Center of Expertise established by the United States, a committee that established to protect the rights of passengers and to guide the behaviour of the carrier is necessary for China. The passengers can complaint or seek for help no matter what the problems are during their trip. The committee should has the independently rights of investigative and the rights to regulate the development of the industry under the support of government and specialists.

Except the governmental association mentioned above, non-governmental organization is also necessary. The CLIA is now the largest industry organization in North America that is playing a significant role in the development of the cruise industry. For China and Korea, to built a self-discipline organization and to add not only the cruise companies, but also the shipyard and the travel agencies will enhance the communication and promote the development.

② The Communication between Korea and China

Currently, Korea is the most significant cruise destination for chinese cruise passengers to travel, while the chinese passengers have occupied a large proportion of numbers that

travelled to Korea by cruise. As the policy of Visa Waive in Jeju, many Chinese passengers choose travel there instead of Japan. For the long-term development, the Korea and China should continue to working at Visa Waive, the simplification of exit and entry and other convenient measures. Meanwhile, the communication should also be enhanced in the aspects of shipbuilding, terminal developing and investing.

5.4. Proposal of the Act for Cruise Passenger's Protection and Compensation

After summarized above, The Cruise Passenger Protection and Compensation Act could be proposed as follows:⁹⁶⁾

THE CRUISE PASSENGER PROTECTION AND COMPENSATION ACT (Proposal)

CHAPTER 1 GENERAL PROVISIONS

Article 1

This Act is formulated for purposes of protecting the lawful rights and interests of the Cruise Passenger, regulating the order of cruise tourism market, and promoting the sustainable and sound development of the cruise industry.

96) The formulate of this proposal had refer to: Tourism Law of China, Maritime Code of China, Cruise Vessel Security and Safety Act of US, Cruise Passenger Protection Act of US, Vessel Consumer Confidence Act of US, Regulation (EU) No 1177/2010 in EU, Regulation (EC) No 392/2009 in EU and other laws and regulations; The Guest Contract Tickets of Royal Caribbean International, Ticket Contract of Carnival Cruise, Passage Contract of Star Cruise and other cruise contracts in several cruise companies.

Article 2

The Cruise Vessel, which is on a voyage that embarks or disembarks Cruise Passengers in Korea (China); or, operate by the Korean (Chinese) Cruise Carrier.

Article 3 Definitions

(a) “Cruise Vessel” means the ship owned or chartered or operated by Cruise Carrier on which Cruise Passenger may be traveling or against which Cruise Passenger may assert a claim, as well as any substituted ship used in the performance of this Ticket Contract.

(b) “Cruise Contract” or “Ticket Contract” means the contract signed in written between the Cruise Passenger and the Cruise Carrier, which contained reserve information provided from the Cruise Carrier and has complete clauses about the trip. This contract shall, substitute for any carrier’s advertisements, notice, oral promise and appoint.

(c) “Cruise Carrier” means a person signs the cruise contract with the passenger directly, delegate the travel agency to sign the contract, or transport as the actual carrier.

(d) “Cruise Passenger” means the party who signed the Cruise Contract with the Cruise Carrier, receive the service from the carrier and pay for the trip.

(e) “Disabled Cruise Passenger” or “Cruise Passenger with Reduced Mobility” means the passenger whose mobility when using transport is reduced as a result of any physical disability,

intellectual disability or impairment, and whose situation need appropriate attention and adaptation to his particular needs.

(f) “Cruise Travel Agencies” means the parties who accept the commission from the carrier, and to book the cruise trip take the place of the Cruise Passenger. The Cruise Travel Agencies have the contractual relationship with both the Cruise Carrier and the Cruise Passenger.

(g) “Cruise Trip” or “Cruise Tour” means the tourism product, tourism on land and leisure and recreation activities provided by the Cruise Carrier that contract in the Cruise Contract.

(h) “Cruise Fee” means the fee paid by the Cruise Passenger for the cruise tourism product. Such fee shall contain sailing, board and lodging, and other general fees. That including but not limited to the customs dues, the quayage, the visa fee and other fee levied by the government.

(i) “Cruise Independent Contractor” means the individual, corporation or organization which has contract relations with the cruise carrier and provides service or goods to the cruise passenger, but the Cruise Independent Contractor is not the employee of the Cruise Carrier.

(j) “Cruise Physician” means the individual who has the legal qualification and with professional medical abilities to give medical services and emergency medical care for the cruise passengers and cruise staffs.

CHAPTER 2 CRUISE VESSEL

Article 4

Cruise Vessel Security and Safety Requirements

Each vessel to which this subsection applies shall comply with the following design and construction standards:

- (a) The vessel shall be equipped with ship rails that are located not less than 42 inches above the cabin deck.
- (b) Monitoring System is needed for the deck, tourist facilities and other public area on vessel.
- (c) Each passenger stateroom shall be equipped with entry doors that included with peep holes, security latches and time - sensitive key or other means of visual identification.

Article 5 Cruise Vessel Safety

1. The cruise vessel shall organized safety drill to all passengers at the beginning of the trip, which assist passenger to know the position and usage of the safety equipments.
2. The cruise vessel has available for each passenger a Safety Guide, provides a description of medical and security situations on the vessel. This guide shall be publish in the cabin, lobby and other public positions on the vessel.

Article 6 Cruise Vessel Equipments and Services

1. The cruise vessel shall provided recreation facilities, food and beverage services according to the Cruise Contract. All these

facilities and services shall expressed whether the fees caused by such facilities and services had contained in the cruise fee paid by the passengers in advance.

2. The cruise vessel shall provide each passenger a “Cruise Service Guide“. The guide shall not only introduce the recreation facilities, food and beverage services on the cruise, but also guide the passengers to get assistances from the cruise in case of emergency.

3. The cruise vessel shall provide the Service Center, and also the Medical Service Center.

Article 7 Cruise Staff

1. The Cruise Staff shall conform with the International Convention on Standards of Training Certification and Watchkeeping for Seafarers.

2. The Cruise Vessel shall provide professional training to the crewmember and cruise staff in accordance with accepted law enforcement and security guidelines, policies, and procedures.

CHAPTER 3 CRUISE CONTRACT

Article 8

A Cruise Contract is formed upon the Cruise Carrier’s delivery of the cruise ticket to the Cruise Passenger, except otherwise agreed by the parties or provided by the relevant usage.

Article 9

1. The Cruise Contract shall included: the cruise route, limitation

of liability, rights and obligations, independent contractor, jurisdiction clause and other clauses relate to cruise transport; vessel recreational activities in detail, travel on land, cruise service and medical treatment and other clauses relate to cruise tourism.

2. The Cruise Carrier shall provide the Cruise Passenger with the whole Cruise Contract which are accessible to everybody and in the same languages as those in which the contract clauses are generally made available to all passengers.

Article 10 Baggage Limits and Prohibited Items

Each adult Passenger is permitted to carry onboard the cruise vessel or check-in only the wearing apparel and personal effects reasonably necessary for the cruise. In no event shall any Passenger bring on board the cruise vessel or check-in, or in connection with the land tour, any illegal controlled substances, fireworks, live animals, weapons, firearms, explosives or other hazardous materials, or any other items prohibited by applicable law or carrier policy. Cruise Carrier reserves the right to refuse to permit any Cruise Passenger to take on board the cruise vessel or on any mode of transport any item Cruise Carrier deems inappropriate.

CHAPTER 4 CRUISE CARRIER

Article 11 The Obligation of the Cruise Carrier

1. The Cruise Carrier shall sail in accordance with the route and provide travel services, catering and accommodation. Except

force majeure, the cruise passenger could choose to discharge the contract or obtain the compensation.

2. The Cruise Carrier shall publish the messengers to the public including the specific ticket price, the recreation facilities and services and the departed crimes happened on the vessels.

3. The Cruise Carrier shall also provide the Cruise Passenger with the conditions of carriage, journey information and access conditions throughout their travel in formats which are accessible to the Cruise Passenger.

4. The Cruise Carrier shall protect the portraiture right of the Cruise Passenger. The use of Cruise Passenger's any tape recording, video, or photograph shall require for the agreement of the Cruise Passenger. Or, the Cruise Carrier shall liable for that.

Article 12 Liability For Damage

1. The liability of the Cruise Carrier for damages suffered as a result of death, personal injury, emotional distress to the Cruise Passenger, or loss or damage to luggage shall be subject to the following limitations and shall be determined in accordance with the provisions of the Athens Convention.

2. Liability for Damage to Personal Injury

The Cruise Carrier shall be liable for the loss suffered as a result of the death of or personal injury to a Cruise Passenger caused by a shipping incident. For the loss suffered as a result of the death of or personal injury to a Cruise Passenger not

caused by a shipping incident, the Cruise Carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the Cruise Carrier.

3. Liability for Damage to Luggage

For the loss suffered as a result of the loss of or damage to cabin luggage, the Cruise Carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the Cruise Carrier. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the Cruise Carrier shall be liable unless the Cruise Carrier proves that the incident which caused the loss occurred without the fault or neglect of the Cruise Carrier.

4. Limitation of Liability

When the Athens Convention applies, all claims against Carrier shall be brought in accordance with that Convention. In all other cases,

The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 unites of account per passenger, per carriage.

The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in on case exceed 12,700 units of account per vehicle, per carriage.

The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 2 and 3 shall in no case exceed 3,375 units of account per passenger, per carriage.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

CHAPTER 5 CRUISE PASSENGER

Article 13

Cruise Passenger warrants that he and those traveling with him are fit for travel and that such travel will not endanger themselves or others. Any Cruise Passenger under the age of 18 shall be considered a minor and must travel with a parent or Legal Guardian or such other person as may be permitted by Carrier's policies.

Article 14 The Cruise Passenger's Rights

1. The Cruise Passenger has the right to use the cruise facilities and cruise services.
2. The Cruise Passenger has the right to know. The Cruise Carrier and Travel Agencies shall ensure that all relevant information, including the conditions of carriage, journey information and access conditions are available in appropriate and accessible formats for Cruise Passenger.
3. The Cruise Passenger has the right to get emergency rescue under urgent circumstance. The Cruise Carrier shall provide food, water, restroom facilities, access to medical care and an

emergency power source in essential provisions.

4. The Cruise Passenger has the right to refund if the trip is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures.

5. The Disabled Cruise Passenger or Passenger With Reduced Mobility has the right to assistance in ports and on board ships. The Cruise Carrier shall, by all means available, provide assistance free of charge to them in ports, including embarkation and disembarkation, and on board ships.

Article 15 The Cruise Passenger's Obligation

1. Cruise Passenger understands and agrees that Cruise Carrier has a zero tolerance policy for illegal activity and shall report such activity to the appropriate authorities.

2. Cruise Passengers are solely responsible to maintain in their possession all passports, visas and other travel documents required for embarkation, travel and disembarkation at all ports of call.

3. Cruise Passenger shall, in all ports of call, to return to the vessel according to the Cruise Contract before the scheduled departure time. Or, the Cruise Passenger should undertake the liability.

4. Cruise Carrier may also disembark or refuse to embark the Cruise Passenger without liability, as the Cruise Passenger is believed to present a possible danger or security risk to the vessel or other Cruise Passengers when in the reasonable

opinion of the Cruise Carrier.

5. For the Disabled Cruise Passenger or Cruise Passenger with Reduced mobility whose situation need appropriate attention and adaptation to his particular needs.

CHAPTER 6 OTHER CONTRACT PARTIES

Article 16 Travel Agencies

1. Travel Agencies that engage in cruise tourism must register with the industry and commerce administration in accordance with the law and administrative regulations.

2. The information published by the Travel Agencies for Cruise Passenger attraction or organization must be authentic and accurate. They shall not provide false information for promotion purposes and mislead the Cruise Passenger.

3. Travel Agencies could book cruise ticket as agent, or organize cruise trip by chartering. Travel agencies shall specify the cruise travel projects and its scope.

Article 17 Independent Contractor

1. The Independent Contractor shall be distinguished with the cruise carrier and its staff through different dress and obvious marks.

2. The Cruise Carrier shall explicitly instruct in the Cruise Contract about the status of the Independent Contractor and its liability.

3. When disputes occur, Cruise Passenger could choose to sue

Independent Contractor, or the Cruise Carrier. If the court judged the Cruise Carrier to undertake the liability, after that the Cruise Carrier could claim compensation from the Independent Contractor.

Article 18 Cruise Medical

1. The Cruise Passenger shall understand that due to the nature of travel by sea and the ports visited, the availability of medical care onboard the cruise vessel and in ports of call may be limited.

2. The Cruise Carrier is liable to the selection of the cruise doctor, and its medical negligence.

CHAPTER 7

CRUISE SUPERVISION AND ADMINISTRATION

Article 18

1. A Cruise Passengers Protection Committee shall set up as the single agency for accepting passenger complaints. This committee shall provide legal aid and protection to Cruise Passenger.

2. The Cruise Passengers Protection Committee shall provide professional skills and specialist supports to the Cruise Carriers, organize industry training and publish investigation report to the public.

Article 19

The tourism authorities and relevant departments of the

government shall exercise supervision and administration of the Cruise Passenger, the Travel Agencies within their respective scope of duties in accordance with the provisions of this law and other relevant laws and regulations.



CHAPTER VII Conclusion

With the development of the cruise industry, a perfect cruise legislation is more and more important. On one hand, the cruise legislation can promote the development of the cruise industry. On the other hand, what's more, the sick legislation may damage the legitimate interests of the carrier and the passengers with the complicated cruise legal relations. Under such circumstances, the cruise legislation is essential.

Compared with the common carrier, the cruise carrier has its own legal characteristics. As one of the parties under the cruise contract, the cruise carrier is also the main undertaker to the legal liabilities of the cruise contract. In the progress of the cruise tourism, the liabilities of the cruise carrier are different due to the different periods. While the cruise contract is also different from the traditional passenger contract or tourism contract. However, as another party in a cruise contract, the rights of the cruise passenger are easy to be damaged with the standard form of contract made by the carrier.

As a matter of fact, now more and more countries have realized the importance of the cruise legislation and the protection of the cruise passengers. United States and European Union are two of them who have better legislation and normative judgment.

For Korea and China, the cruise industry is also fast

growing, but many problems still existed. From the sinking of the ships, the lower amount of compensation, lack of safety requirements and several problems need to be treat well.

Based on this, this dissertation had analyzed the cruise contract and the responsibility relationship under the different kinds of cruise contracts and different travel period on the occasion of the introduction of the basis cruise legal issues. Then, the compensations for cruise passengers and limitations of the compensation liabilities are analyzed with the introduction of the advanced legal experiences of United States and European Union. For Korea and China, related cruise cases are introduced for a better understanding of the current legislative situations and problems. The purpose of the dissertation is to finding ways for the better resolve of the cruise disputes and to promote the development of the cruise legislation from the view of the passengers' protection for Korea and China.

Simply speaking, the main viewpoints of this dissertation are:

(1) The cruise industry has diverse characteristics and should be treated differently from the perspective of legislation. On the other side, the current cruise regulations in Korea and China could only be regarded as administrative industry guide and could not be application laws for cruise legal disputes. In view of the developing status, the cruise legislation is necessary and urgent needed with the development status of the cruise industry.

(2) The parties of the cruise contract are different with the common tourist contract or the carriage of passengers by sea, the cruise carrier, the cruise passengers and the travel agencies may be contained into the cruise contract. while the parties are different, the legal relations also need to be treated distinctively.

(3) The liability principles of the cruise carrier should also refer to the protocol 2002 of Athens Convention that is the Dual Responsibility System. While the limits of liabilities in the cruise tourism are accordance with that of traditional carriage of passengers by sea. The agreed limits of liabilities can be higher than the Athens Convention and its protocols, but must be based on these limits, or the agreement will be invalid.

(4) After analyzed the typical cases in United States and European Union, the advanced cruise legislation should be pay highly attention to. Those rules and regulations are: Regulation NO 1177/2010, (90/314/ EEC) OJ L 158/59, Directive 97/7/EC in EU, The case laws and two proposals in United States.

(5) From the related cruise cases in Korea and China, the current compensation system and limitation of liabilities of these two countries had been analyzed in the paper, however, current regulations could not applied totally to the cruise disputes. In the meanwhile, case law is now a significant legal sources in the cruise disputes judgments nowadays, although these cases have values of research, they can not be applied directly in Korea and China because of the diversity in the legal system. Substantial and specific cruise laws and regulations are the best

ways for solving the cruise disputes in Korea and China.

(6) The proposal focus on the protection of the cruise passenger's rights and damage compensation could be enact on the basis of the analysis of legal principles and advanced legislative experiences. The content of the proposal may including but not limited to: the cruise vessel security and safety; equipments and services clauses; requirements for the cruise contract; obligation and rights of the cruise carrier and cruise passenger; travel agencies, independent contractor and other relative parties in the cruise tourism; cruise supervision and administration.

In China, there's one old proverb said that: when act go, let rule go first. If the Korea and China want to win in the drastic competition in the cruise industry, there must have the safeguard of the cruise legislation which may promote the development of the cruise industry rapidly and successfully.

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Acknowledgements

My deepest gratitude goes first and foremost to Professor Ji Sang-Kyu, my supervisor, for his constant encouragement and guidance. Without his dedicated assistance and insightful instruction, I could not fulfill my doctor study and this thesis could not reached its present form. My faithful appreciation also goes to all the excellent professors who had taught me during my doctor years, Professor Cheong Yeong-Seok, Professor Chung Dae, Professor Kim In-Yu, from whose devoted teaching and enlightening lectures I had benefited a lot. I'd like to thank Professor Park Eun-Kyung and Professor Choi Sung-Soo, for careful review of my dissertation and their valuable comments.

My gratitude also goes to Professor Ma Yan-Qiu from Ocean University of China, she gives me sincere help, prompt and useful advices. My parents, who give me endless support, encouragement and understanding. Under their selfless love, I could go with strong motivation and power, completing my doctor study smoothly. My hearty thanks to Mr. Shao Yu-De, who had helped and encouraged me in the process of my thesis writing, he keeps accompanying me all the way no matter what happens, and shared with my worriers, frustrations and happiness. Last but not least, I am indebted to all my relatives and friends for their supports and concerns.

Time is fleeting. In a blink of an eye, almost three years had past. I once cried, confused, but finally I've stuck at it and

all my hard work really paid off. I am proud of myself and will keep working and struggling to live up all the expectations and supports I received. It is the grand experiences to studied in Korea Maritime and Ocean University, and experienced the customs and cultures of Korea. I am so fortunate to meet my supervisor, my lover, and my friends here. I will always cherish these sweet memories as treasure in my life forever.

