The Viability of the Term "Seaworthiness" Under the Hague-Visby Rules and the Carriage of Goods by Sea Act 1971

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ABSTRACT

In the 20th century, there has different kind of difficulties regarding sea carriage between the shipper and the ship owner. To reduce such complexities the International Law Association has implemented 'The Hague Rules 1921' which helps to govern the rights and liabilities of shippers and ship-owners. However, British Parliament passed the Merchant Shipping Act 1894 in favor of crew and passengers. Seaworthiness is a principle used since the twelve century when it was a moral obligation of a ship owner to provide seaworthy ships to secure the carriage. In 1893 the U.S.A. enacted the Harter Act to protect the shippers by forbidding shipowners from limiting their fundamental liabilities regarding seaworthiness. There are three international conventions in operation governing international maritime transport: the Hague Rules, the Hague-Visby Rules, and the Hamburg Rules. This coursework is going to critically evaluate the viability of the term 'seaworthy' under HVR. According to HVR Art III Rule I, shippers have the minimum liability of 'due diligence' regarding loss or damage of the carriage goods in the sea. Where as common law maximizes the carrier's liability. This essay will challenge the duty of the shipper or carrier depending on the 'onus of proof,' fire exception and perils of the sea as well as the practicability of seaworthiness according to Hague Visby Rule. However, it will also represent some supporting arguments for the liability of ship owners, carriers, and cargo owners by analyzing the term 'due diligence.'

INTRODUCTION

Seaworthiness is one of the most discussed and essential principles in Maritime law that influences various legal areas like shipping liability, commercial law, and insurance law. Seaworthiness affects the responsibility of the carrier, the marine insurance, the environment, and many issues related to the carriage of goods by sea.[1] Seaworthiness of all aspects may directly connect with disputes starting from claims for goods up to complaints of possible body injury in time of a contracted voyage or time in the sea.[2] It's associated with disputes relating to collisions and rescue operations up to disputes on the lay and demurrage days from claims on the insurance of the body and machinery of the ship.

The seaworthiness obligation influences the constancy of the shipping industry where the modern international trade for carriages of goods mostly depends on ships.[3] Therefore, a ship must be seaworthy; otherwise, the goods carried by the ship will be in threat of damage, and consequently, the entire business will suffer from loss. Furthermore, it is the best way to reduce marine casualties.

One of the Definitions of seaworthiness stated that "Where there is a contract to carry goods in the ship…there is a duty on the part of the person who furnishes or supplies that ship…unless something is specified which prevents it, that the ship shall be fit for its purpose"[4]. It implies the shipowner's absolute duty of seaworthiness. It doesn't merely mean that a shipper must provide a ship to fight the peril in the sea. Numerous factors need to be considered in time of sail on the sea. This essay will critically assess the viability of the term "seaworthiness" under The Hague-Visby Rules and the Carriage of Goods by Sea Act 1971. Besides, this writing is going to discuss the supporting arguments in support of the claim of the ship owner and cargo owner by analyzing the term 'due diligence' and the liability of the ship owner.

REGULATIONS AND EXCLUSION CLAUSES OF SEAWORTHINESS

Seaworthiness is a principle used since the twelve century when it was a moral obligation of a ship owner to provide a seaworthy ship to secure the carriage.[5] In 1893 the U.S.A. enacted the Harter Act[6] to protect the shippers by forbidding shipowners from limiting their fundamental liabilities regarding seaworthiness. However, British Parliament passed the Merchant Shipping Act 1894 in favor of crew and passengers. In the 20th century, there have been many complaints and disruptions between shippers and ship owners. To solve such problems, the International Law Association has adopted `The Hague Rules 1921`, which help to govern rights and liabilities between shippers and ship-owners.

By incorporating Hague Rules 1921 into the Carriage of Goods by Sea Act 1924, England makes shipowners oblige to exercise 'due diligence' regarding seaworthy ships. With time being the patterns of complexity has been changed a lot. Hence the legislations have to be modified accordingly.[7] Therefore, nowadays the modern shipping industry governing by the Hague Visby Rules, Rotterdam Rules, the Carriage of Goods by Sea Act 1971, the Marine Insurance Act, the Merchant Shipping Act 1955, and other regulations to maintain a perfect balance regarding seaworthiness between the parties.

The word-for-word meaning of seaworthiness is a vessel constructed, outfitted, manned, and in all respects fitted for a voyage to encounter heavy weather in the sea.[8]' Also, according to the common law ship-owners are liable to keep their ship seaworthy. The term seaworthiness has been broadly illuminated and stated by different judges, critics, and legal instruments.[9] It does not merely mean that the ship owner or carrier must provide a seaworthy ship to fight the common perils in the sea. A ship cannot be 100% perfect in all aspects of the sea because of numerous considering factors like the route, type of ship, type of cargo, and weather depending on different seasons in the year. Then again the ship should be as seaworthy as it is supposed to be fit by physical and so on throughout the voyage.

The Hague-Visby Rules

According to The Hague-Visby Rules, Article III, R1, seaworthiness defined accordingly, the carrier shall be bound before and at the start of the voyage to exercise due diligence to (a.) Make a ship seaworthy. (b.) Properly man, equip, 6and supply the ship. (c.) Make the holds, refrigerating chambers, and all other parts of the ship where goods are carried, fit, and safe for their carriage, reception, and preservation. These sections, make an obligation to ship owners to provide a seaworthy ship and to exercise due diligence. It is a furthermore burden to the ship owners.

The Hamburg Rule

One of the critiques of the Hague-Visby Rules (Art 11, R1) is that it does not give any room for interpretation by the court. The strict wording may make it harder for the courts to expand the definition of seaworthiness to the new development of the industry.[10] However, the Hamburg Rule resolved this issue by wording it in Article 5. Though the Hamburg Rule does not specify any provision of seaworthiness, the broad wording makes it easier for the courts to interpret and encompass the obligation of seaworthiness.[11]

The Hamburg Rules further increase the ship owner's liability. The shipowners are responsible unless he proves that he or his agents were not in privy to the defect.[12] Additionally, the period of responsibility is expanded; the Hamburg Rules apply during the period when the goods are in the carrier's custody, as well as throughout the voyage and at the ports of loading/ discharge.[13] However, the Hamburg Rules model was not kept in the Rotterdam Rules, which went back to the clear and precise obligations. If the ship owner can demonstrate that he, his servants, or any agents of his] exercise in a reasonable manner to protect damages, then they will not be liable for such damages.[14] Exercising due diligence in the Hamburg Rules

also applied the same way as The Hague-Visby Rules.[15]

Rotterdam Rule[16]

Seaworthiness was drafted as a continuous duty through Rotterdam Rules.[17]Under Article 14, carriers must make and maintain their seaworthy vessel condition. On deck, the carriage is covered, which is not the case with The Hague/Hague-Visby Rules.[18]The period of responsibility is extended to "door-to-door". Article 18 provides the basis of liability. Carriers are liable for loss or damage which happened during their period of responsibility, Article 18 (1).[19]The burden of proof in establishing that Article 18(1) is fulfilled is on the claimant by proving that the damages or loss occurred during the carrier period of responsibility. Then the carrier can dismiss the claim by showing due diligence from him or his agents. The risk shifts from cargo owners to shipowners.[20]The changes brought by the Rotterdam Rules reflect the current reality. Even without the Rotterdam Rules, most charter parties require the shipowners to keep the vessel seaworthy throughout the voyage. The continuous duty could already be found in the Hamburg Rules.

The Marine Insurance Act

According to the Marine Insurance Act 1906, section 39(4) "a ship considered to be seaworthy when it becomes fit to encounter the ordinary perils of the seas of the adventure insured." Although, it is not mentioned what is "reasonably fit in all respect," however, the reason explained by the drafter of the Act, Sir Mackenzie Chalmers "the words in all respect` in s. 39(4) include manning, equipment, and stowage."[21] It is therefore important for a ship to be seaworthy; otherwise, ship owners will not be able to claim compensation for their loss. Seaworthiness rule in marine insurance law[22]imposes a regulatory framework to protect the insurer assessing the possible risks by making the insured fulfill the standard requirements concerning the condition of his vessel.[23] It is notable that, the meaning of seaworthiness remains almost the same in common law and regulations. However, the regulations make responsible the ship owners exercise due diligence.

ROLE OF SEAWORTHINESS IN SHIPPING LEGISLATION

Shipping law includes risk and liabilities abide by two main parties[24]; the shippers who pay the carriers to have their goods transported and the carriers who are responsible for transporting those goods. The statement was given by Lord Blackburn[25]provides that a person who furnishes and supplies the ship, the carrier has an absolute duty to ensure that a ship is in a seaworthy condition before the sailing of the ship. And such responsibility to maintain the seaworthiness up until the ship set sail which ends at the navigation of the ship. That implies that any damage that occurs after a ship has sailed cannot be liable or attributed to the carrier.[26]

"The ship owner agrees to transport goods by sea and thus warrants that the ship will be seaworthy not only in the ordinary sense. It will be tight staunch and practically fit to face any perils expected in time of the voyage but also the ship, its furniture, and all the machinery will be fit as well to the agreed cargo" which was held in Elder, Dempster and Co v Paterson Zochonic and Co. Ltd. [27]

Seaworthiness is applied in two ways claimed by In AE Reed and Co Ltd v Page, Son, and East,[28] Lord Scrutton L J. First, the fitness of the ship to receive the cargo agreed upon as a carrying container. Therefore, the carrier needs to go through two tests of providing the seaworthiness of that ship; a well-built-up ship that can prevent the ordinary perils of the sea and the cargo-worthiness which prove the ship can hold and carry that cargo. Second, the ship-owner has some implied obligations, such as the ship is well equipped for the carriage of freight. Besides, if the contracted carriage of goods is a frozen item, then the ship owner must provide the refrigeration system in the ship, there is an 'implied warranty' that the ship

with the cooling system is perfectly fit for the decided voyage.[29] Furthermore, the carrier is also impliedly obliged to employ an adequate and proficient crew to regulate the ship properly. Expressly the ship must have to carry valid certifications of appropriate physical condition as well as seaworthiness of the ship.[30]

The carrier is accountable just before and at the beginning of the decided voyage to exercise due diligence regarding seaworthiness, imposed by the Hague-Visby Rules.[31] Therefore, a question comes to mind that is the responsibility ends after sailing the ship? The Common Law and Hague-Visby Rules harmonize and interpreted that the carrier's accountability begins when the voyage starts. Though, it's hard to prove a ship unseaworthy due to the extended period during the voyage.

All the regulations regarding seaworthiness agreed that carriers should provide a seaworthy ship. Only the nature of the obligation varies, however, the personal combination remains the same under common law and The Hague/ Hague- Visby Rules. The difference between Common Law and Hague-Visby Rules is, the duty under common law is absolute whereas Hague-Visby Rules implies a duty to apply due diligence is bestowed.[32] If the HVR doesn't apply, the carrier remains under absolute duty.

DUE DILIGENCE AND THE VIABILITY OF SEAWORTHINESS OBLIGATIONS UNDER VARIOUS CHARTER

When a vessel is hired by the charter party only for a particular voyage, is called a voyage charter. The ship-owner is obliged to provide a seaworthy vessel even without having any specific terms of a contract.[33] There are numerous grounds of such implied duties such as before making a deal of voyage it's a general expectation that the ship will be capable enough to continue its journey to the sea and end the voyage safely. Besides, to claim the cargo insurance, it's necessary to prove that before the sail the said ship was seaworthy unless the cargo owners will be unable to get compensation for any damage or loss. [34]

In Kopitoff v Wilson Field J[35] stated that by any nature of the contract of carriage, ship-owners are impliedly obliged and expressly warrant that the ship is seaworthy. However, the GENCON 1994 clause two [36] had reduced the obligation of seaworthiness and implied personal due diligence to the ship owners and their employers, and at the same time, it has also emphasized the immunity of ship owners and casual links related to the breach of seaworthiness.

The exercise of due diligence is equivalent to the exercise of reasonable care and skill.[37]Moreover, the meaning of due diligence remains the same as The Hague –Visby Rules Article IV Rule 1. Whereas Wilmer L. J[38] interpreted due diligence as "to exercise reasonable care," and Lord Delvin[39] stated, "Lack of due diligence is negligence." Seaworthiness warranty starts before and at the start of the voyage in common law for voyage charters. Therefore, the ship owner must make his ship seaworthy for different stages, i.e., "Load at the port, lying while waiting for the voyage and voyage by the beginning of the voyage." In the voyage charters, the sailing voyage can be divided into different stages i.e., the fuelling doctrine of the stage and the river-sea doctrine stage.[40] All these doctrines also affect the seaworthiness of a ship. Therefore, ship owners needed to consider carefully to work with due diligence.

Whereas a charter hires the vessel for a period defined as a time charter party. It is unlike a voyage charter due to its specific and expressed obligations to the ship owner. In voyage, charter ships usually being under the control of the ship-owner.[41] Therefore common law makes them accountable even in some implied manner. Whereas a charter hires the vessel for a period defined as a time charter party. It is unlike a voyage charter due to its specific and expressed obligations to the ship owner. In a voyage charter ships usually being under the control of the ship-owner.[42] Therefore common law makes them accountable even in some implied manner. Besides, in the time charter party because of its separate maintenance clause, it can be set the responsibility expressly that the ship owner has to maintain the sea-worthiness with clear language

by mentioning specific contracted time.[43]Such a maintenance clause put upon the ship owners an obligation to bear the expenses of any maintenance and to take reasonable and proper steps to restore the ship to a seaworthy position after any occurrence.

To measure the standard of the man performed due diligence by the carrier, agents, and servants, Lord Justice Auld instituted an objective test in The Kapitan Sakharov.[44] Practically, this standard varies depending on facts, information accessible during the time of performing duty, and conditions of the case.

Due Diligence covers the effort of a sensible carrier to take all necessary and reasonable measures with the available knowledge and time to accomplish his duty of providing a seaworthy ship.[45] Due diligence becomes a significant practice when the ship-owner attempts to apply for the exemption in Art IV R2 of the Hague-Visby Rules to prove his innocence and under the exemption clauses of the Contract of Carriage 1971 to get immunity from the liability of an unseaworthy ship.[46] For this reason, if a ship-owner could prove his exercise of due diligence before the commencement of the journey then he will not be responsible if the ship turns out unseaworthy during the voyage.

In contrast, only the properly loaded cargo can't prove the seaworthiness of the ship because the liability of a carrier will be extended until the time of sailing. Hence it can be anticipated that the ship is fit to occupy cargo at the date of loading which will primarily prove the cargo-worthiness of the ship.

The carrier's duty to exercise due diligence under Article III, rule 1 described by the Muncaster Castle case [47]. According to this, the ship owner can't be liable for unseaworthiness resulting from a lack of due diligence in a ship at a time when the ship was not in his possession or under control.

When the route of a voyage is in different geographical territories and stages, the condition of the vessel may fluctuate with the various journey through the rough sea with high tides, rivers, and calm sea.[48] Hence it should be noted that the general rule expects that the carrier may make the ship fit for the whole journey or only at the beginning of each stage of the voyage. The court held in the Vortigem case[49] that the ship was not seaworthy because of insufficient fuel for the whole journey. After the court observed that it became a routine to split a long route into parts to refill fuel which is consistent practice. It also according to the warranty of seaworthiness linked at the start of the voyage. Here the doctrine of stages is considered a puzzle.

The significance of the warranty of seaworthiness is superseded if the doctrine of stages is troubled. The same puzzled situation was addressed in the case of Northumbrian Shipping Co v Timm[50] the court ordered the owners to decide the acceptable stages. Accordingly, the carrier or his agents should plan the bunkering stages before the journey started.[51] Otherwise, they will not be able to defend themselves from the doctrine of stages and will lose the opportunity of claiming compensation.

Under the time charter, the doctrine of stages does not apply in each voyage. According to the time charter, this is an expressed warranty for the whole duration of the hired journey, then it doesn't apply at the beginning or the start of each stage. [52]

There is another issue of counting the period 'before and at the beginning of the voyage.' The court held in McFadden V Blue Star Line case that it is a breach of warranty of cargo-worthiness if the fault was seen before the goods were loaded. This action splits the stages of a voyage and confirms that the cargo worthiness (cargo is good enough to receive the goods) and the stowage (storage system is capable for the goods through the journey) are mainly related to the seaworthiness of the ship.

Maxine Footwear Co Ltd v Canadian Government Merchant Marine Ltd [53] illuminates the theory of the 'time scope' of the obligation of the Hague-Visby Rule. The court reigned that the duty to maintain 'due

diligence' to make the ship seaworthy is continuous which begins from the start of loading until the start of the voyage. The term "before and at the beginning of the voyage" specifies the period from no less than the commencement of the loading until the ship's sails the court defined. As per the court the phrase 'before the voyage' comprises the entire stage before sailing. There is nothing to misinterpret with the term at the beginning of the loading.'

It is, therefore, necessary for the time-charter party to make their contractual provisions expressly to make the ship owners oblige to provide and maintain a seaworthy ship.[54] In doing so The Hague or Hague-Visby Rules can be incorporated into the contract which makes the carriers bound before and at the beginning of the voyage to exercise due diligence.[55] However, if the shipping breakdown during the voyage, it does not entitle the Charterer to repudiate the contract, unless the delay in repairing the ship is so high as to frustrate the commercial purpose of the contract.

CAUSES AND CONSEQUENCES OF UNSEAWORTHINESS

There are two different situations of a ship being unseaworthy. First, it can be unseaworthy itself from the beginning of the voyage.[56] Second, it became unseaworthy during the voyage due to some unexpected reasons created before or later.[57] Under the common law, the absolute responsibility goes to the shipper, ship-owner, or consignee if the ship itself was unseaworthy from the beginning. Otherwise, the cargo owner must prove that the ship was faulty previously to defend himself. In a case, it was held that the ship-owner would be liable and pay the entire damage if the ship is unseaworthy.[58]

Overloading can be a cause of the unseaworthiness of a ship at the beginning or start of any stage. In the case AE Reed & Co Ltd v Page, Son & East Ltd[59]clarifies one major concern in the doctrine of stages which is pre-sailing operations. The defendants pleaded that the warranty of seaworthiness was not assigned when the ship descended as an accident occurred before the sailing. Furthermore, they proved and appealed that the faulty equipment was not the cause of the damage, the actual cause of the damage was overloading. The court ruled that the factors like an accident at the time of shipment, damage unrepaired at the start of a new stage and such damage comprises unseaworthiness. A necessary modification in the notion of seaworthiness is offered by bunkering and loading stages.

If the damage is caused by unseaworthiness, the carrier needs to prove the connection between the unseaworthiness and the damage of goods to claim the exemption under the Hague-Visby Rules.[60] This article imposes obligations to the cargo owners to prove that the ship was not seaworthy and ship owner or his staff has not worked with due diligence.[61] It might sometimes become difficult for the cargo owners because they do not have ships.

The ship owners can get an exemption from such liability under the Hague-Visby Rules,[62]they can prove that the unseaworthiness of the ship was not due to their negligence. The primary responsibility of a carrier is stated in the Hamburg Rule.[63] The carrier needs to prove that he, his servant, and the staff took all reasonable care during the journey. Further, in Section 4[64] of Hamburg Rule approaches the carrier's liability like the Hague-Visby Rules.

The cargo owner is responsible for proving and creating an unseaworthy situation on the ship. However, in The Hamburg Rules, there is a presumption that ship owners are liable for any damages to goods because cargo owners have left their goods to ship owners, and which are under the control of ship owners. It is the solemn obligation of the cargo owners to prove the unseaworthy conditions of a ship while the ships and all the information have the ship owners.

In some situations where the unseaworthiness of the vessel might not be the cause of cargo damage. In such case, "it appears to us …the ship was, in fact, unseaworthy at the exact time, the cargo owner has had to

prove that the loss was occasioned through or in consequence of the unseaworthiness and it has not been sufficient to say …ship was unseaworthy…"[65]

Sometimes, crew negligence becomes a good reason for unseaworthiness. According to The Hague-Visby Rules,[66] the ship must be adequately manned, equipped, and supplied with services. It is, therefore, the inadequate number of the crew and lack of proper qualifications and training can lead to unseaworthiness. In The Star Sea case,[67]the master was very experienced and qualified; however, he was not familiar with the modern fire-fighting equipment on the ship. Consequently, he was unable to take proper steps to fight the fire. Therefore, the ship was treated as unseaworthy.

If it is proved that, the crews are not trained, qualified, and confident enough, in such a situation, according to the Marine Insurance Act 1906,[68]ship owners would be liable personally for the damages. In preventing such an unseaworthy situation, in 1974 the Convention on Safety of Life at Sea introduced the International Safety Management Code (the ISM Code), which will likely alter the legal positions between unseaworthiness and staff negligence. Therefore, it will be difficult to use the Hague-Visby Rules[69]as a defense.

A weak storage system can be a dominant cause of unseaworthiness.[70]In the case of Elder Dempster v Patterson, Lord Summer cited "bad stowage could affect the seaworthiness of the ship if the safety of the ship is affected."[71]At the time of damage whoever possesses the ship will be responsible for the occurrence caused by bad storage under time charter, the ship owner will not be liable here.[72] On the contrary, in a voyage charter, the ship owner will be responsible under the same circumstances.[73]In common law and The Hague-Visby Rules[74]the ship owner has responsibility for bad stowage, if they failed to exercise due diligence, the ship will be unseaworthy.[75]

The consequences of unseaworthiness could lead to the termination of a contract. However, the charter party must prove the breach is serious negligence which frustrated the primary commercial purpose of the contract. In Hong Kong Fair Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd[76]held that the breach was not so severe. Therefore, the party was unable to terminate the contract. However, in a voyage charter party, due to the unseaworthiness of a ship, the charter party may also have the right to terminate the contract. The charter must prove the ship was unseaworthy before the goods are loaded, during the charter, and before the charter commencement.

Unseaworthiness as a Reason for Breach of Contract

The failure to provide a seaworthy ship will be considered a breach of duty or contract depending on various facts and situations according to the applicable legal regime.[77] Firstly, in the absence of a) express terms opposing the charter party or b) the Hague or Hague-Visby Rules; Carrier's general duty to position a seaworthy vessel indeed. Consequently, if the vessel does not come out seaworthy, then the carrier shall be liable for the loss or damage to the cargo caused by unseaworthiness. To sum up, the breach of seaworthiness obligation cannot bar the right to rely on the aforesaid three kinds of exception clauses.[78]

Related Difficulties regarding Seaworthiness; Onus of Proof[79]

There is absolute confusion regarding the burden of proof that a ship-owner has to prove that the damage was not caused by unseaworthiness but by negligence at the time of shipping.[80] It's tough to prove in the absence of the fact as they did not have the ship at the time of the incidents even usually, they don't send any agents on the ship.

CONCLUSION

The duties of a shipper regarding sea-worthiness are tied to the question of sharing liabilities and risks of

damage. The Hague-Visby Rule and the common law rules are positioned with different standards. The Hague-Visby Rules provide that the only requirement to ensure a seaworthy ship is to maintain the due diligence of a carrier. Whereas the common law rules indicate an absolute duty on a ship owner to ensure the seaworthiness of a ship from the beginning of loading till the ship has sailed. The Hague-Visby rules are comparatively more reasonable with the standard since the common law rules offer to ensure legal certainty as it always specifies who is liable for what in which incident. It, therefore, inspires less litigation with less associated cost. However, it's not that easy to affirm that the shipper is no longer under absolute responsibility once a ship has set sail. Though an absolute duty does not exist once the ship has sailed. Nonetheless, the duty of reasonableness still exists. Therefore, a carrier is under a duty to guarantee that the damage is not caused by the risks postured by other goods under the laws of contract.[81]

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FOOTNOTES

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[2]Indira Carr, P Stone, International Trade Law (3rd ed, Routledge 2005)

[3]Simon Baughen, Shipping Law (3rd ed, Oxford University Press 2004) 129-150

[4]Talal Aladwani, 'The Supply of Containers and "Seaworthiness"-The Rotterdam Rules Perspective' [2011] 42(2) Journal of Maritime Law & Commerce 187-209

[5]Bradgate, R, White, F, Commercial Law (5th ed, Oxford University Press 2007)

[6]The Harter Act of 1893

[7]Seyyedeh Hoda Emami Meybodi, 'Legal Aspects of Seaworthiness in the International Maritime Law based on the Iranian Judicial Precedent ' [2016] 1(2) International Journal Of Humanities And Cultural Studies (ISSN 2356-5926) 1493-1502

[8]Badrah Binti Yussof and Mohamed Daud, 'Ocean Carriage; What Constitute Seaworthiness ' [2003] 1(1) Journal of Science, Technology and Humanities 47-52

[9]Stephen Girvin, Carriage of Goods by Sea (4th ed, Oxford University Press 2007) 200-277

[10]Talal Aladwani, 'The Supply of Containers and "Seaworthiness"-The Rotterdam Rules Perspective' [2011] 42(2) Journal of Maritime Law & Commerce 187-209

[11]Delphine Aurilie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' [2016] 20(2) USF Maritime Law Journal 237-288

[12]Talal Hamad Aladwani, 'A comparative study of the obligation of due diligence to provide a seaworthy vessel under the Hague/Hague-Visby Rules and the Rotterdam Rules ' [2015] A thesis submitted to Plymouth University in partial fulfillment for the degree of Doctor of Philosophy, Plymouth Law School

[13]Tong-jiang, Su, and Wang Peng, 'Carrier's Liability under International Maritime Conventions and the UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea' [2009] 24(4) Transport 345-351.

[14] the Hamburg Rules article 5, s (1)

[15] Due diligence makes ship owners and their staff or agents liable according to Article 5, s 4(a).

[16] U.N. Comm'n on Int'l Trade: U.N. Convention on Contracts for the Int'l Carriage of Goods Wholly or Partly by Sea. U.N. Sales No. E.09.V.9 (2014) (former name of the Rotterdam Rules, adopted by the General Assembly of the United Nations on 11 December 2008).

[17] John F. Wilson, Carriage of Goods By Sea 232 (2010); 1 Francesco Berlingieri, International Maritime Conventions: The Carriage Of Goods And Passengers By Sea (1st. Ed. 2014).

[18] Anthony Diamond QC, 'The Next Sea Carriage Convention' [2010] 1(35) LLOYD'S MAR. & COM. L. Q. 150.

[19] Jane Andrewartha, 'English Maritime Law Update' [2008] 40(21) J. MAR. L. & COM. 395, 397.

[20] Delphine Aurilie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' [2016] 20(2) USF Maritime Law Journal 237-288

[21] Nicolas R. Foster, 'The Seaworthiness Trilogy: Carriage of Goods, Insurance, and Personal Injury ' [2000] 40(2) Santa Clara Law Review 473

[22] S 39 of the MIA 1906

[23] Dr. Milica Josifovska, 'Managing moral hazard in English marine insurance law – The implied warranty of seaworthiness' [2012] 16(4) Ins L Rev 16-23

[24] 'Shipper' is the person or company who is usually the supplier or owner of commodities shipped. Also called Consignor. 'Carrier' is a person or company that transports goods or people for any person or company and that is responsible for any possible loss of the goods during transport.

[25] Lord Blackburn, Steel v State Line Steamship Co [1877] 3 AC 72 (HL) at 86

[26] Delphine Aurilie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' [2016] 20(2) USF Maritime Law Journal 237-288

[27] Paterson, Zochonis & Co., Ltd. V. Elder, Dempster & Co., Ltd. And Others. (1924) 18 L. L. Rep. 319. House Of Lords

[28] A. E. Reed and Company, Limited v. Page, Son, and East, Limited, [1927] 1 K.B. 743

[29] Jason Chuah, Law of International Trade: Cross-border Commercial Transactions, (4th ed, Sweet & Maxwell/Thomson Reuters 2009)

[30] Dr. Milica Josifovska, 'Managing moral hazard in English marine insurance law – The implied warranty of seaworthiness' [2012] 16(4) Ins L Rev 16-23

[31] Talal Aladwani, 'The Supply of Containers and "Seaworthiness"-The Rotterdam Rules Perspective' [2011] 42(2) Journal of Maritime Law & Commerce 187-209

[32] Badrah Binti Yussof and Mohamed Daud, 'Ocean Carriage; What Constitute Seaworthiness ' [2003] 1(1) Journal of Science, Technology and Humanities 47-52

[33] Claudiuiulian Lesni, 'The Ship Owner's Obligation To Ensure Seaworthiness Of The Ship – Implicit Obligation Of The Ship Owner In The Charter Party' [2012] 4(1) Contemporary Readings in Law and Social Justice 563-569

[34] Chen Liang, 'Seaworthiness in charter parties' [2000] Journal of Business Law 1-33.

[35] Field J in Kopitoff v Wilson (1876) 1 QBD 377, p 380

[36] N.J. Margetson, The system of liability of articles III and IV of the Hague Visby Rules International commercial law series, (2nd ed, Uitgeverij Paris 2008)

[37] Paper Traders Co Ltd v Hyundai Merchant Marine Co Ltd (The Eurasian Dream), [2002] All ER (D) 101 (Feb) by Cresswell J at para 130:

[38] Supra note 37

[39]In The Amstelslot [1963] 2 Lloyd's Rep. 223 per Lord Devlin at 235

[40]Delphine Aurilie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' [2016] 20(2) USF Maritime Law Journal 237-288

[41]Francesco Berlingieri, 'A Comparative Analysis Of The Hague-Visby Rules, The Hamburg Rules And The Rotterdam Rules' Paper delivered at the General Assembly of the AMD, Marrakesh 5-6 November 2009, 63-119

[42]Indira Carr, P Stone, International Trade Law (3rd ed, Routledge 2005)

[43]Seyyedeh Hoda Emami Meybodi, 'Legal Aspects of Seaworthiness in the International Maritime Law based on the Iranian Judicial Precedent ' [2016] 1(2) International Journal Of Humanities And Cultural Studies (ISSN 2356-5926) 1493-1502

[44] Per Auld LJ in The Kapitan Sakharov [2000] 2 Lloyd's Rep. 255 at p. 266

[45]Alexander Von Ziegler, 'The Liability Of The Contracting Carrier ' [2009] 44(1) Texas International Law Journal 329

[46]Badrah Binti Yussof and Mohamed Daud, 'Ocean Carriage; What Constitute Seaworthiness ' [2003] 1(1) Journal of Science, Technology and Humanities 47-52

[47] The Muncaster Castle [1961] 1 Lloyd's Rep.57 per Lord Keith of Avonholm at pp.86-87 clarified the scope of the carrier's duty under Article III, rule 1, to exercise due diligence to make the ship seaworthy.

[48]Seyyedeh Hoda Emami Meybodi, 'Legal Aspects of Seaworthiness in the International Maritime Law based on the Iranian Judicial Precedent ' [2016] 1(2) International Journal Of Humanities And Cultural Studies (ISSN 2356-5926) 1493-1502

[49]The Vortigern [1899] P 140 per Henn Collins LJ

[50]E. Timm & Son, Ltd. V. Northumbrian Shipping Company, Ltd. (1939) 64 Ll.L.Rep. 33.

[51]Hague Rules and Burden of Proof [2017] Lloyd's Maritime and Commercial Law Quarterly 169

[52] Gietsen v. Turball, 1908 S.C. 1101; see also a recent case, The IMVROS [1999] 1 Lloyd's Rep. 848 [Q.B. (Com. Ct)], where absolute seaworthiness obligation as expressly set out in the time charter.

[53] [Maxine Footwear Company Ltd. v. Canadian Government Merchant Marine Ltd., [1957] S.C.R. 801]

[54] Terenceh H. Bewbow, 'Seaworthiness and Seamen ' [1954-1955] 9(7) Miami LQ 418-429 [55]Simon

Baughen, Shipping Law (3rd ed, Oxford University Press 2004) 129-150

[56] Talal Aladwani, 'The Supply of Containers and "Seaworthiness"-The Rotterdam Rules Perspective' [2011] 42(2) Journal of Maritime Law & Commerce 187-209

[57] Jason Chuah, Law of International Trade: Cross-border Commercial Transactions, (4th ed, Sweet & Maxwell/Thomson Reuters 2009)

[58] As stated by Channell J in McFadden v Blue Star Line, [(1905) 1 KB 697]

[59] Hendrikse, M. L., N. H. Margetson, and N. J. Margetson, Aspects of Maritime Law: Claims under Bills of Lading. Alphen Aan Den Rijn, (The Netherlands: Kluwer Law International 2008)

[60] Jason Chuah, Law of International Trade: Cross-border Commercial Transactions, (4th ed., Sweet & Maxwell/Thomson Reuters 2009)

[61] Carriage of Goods by Sea Act 1971

[62] exemption clause The Hague-Visby Rules, Art IV,s(2) (a-q).

[63] Art 5 stated the basis liability of the carrier: s 1, "The carrier is liable for loss resulting from loss of the damage to the goods…as defined in article 4 unless the carrier proves that he, his servant or agents took all measures that could reasonably be required to avoid the occurrence and its consequence".

[64] Section 4(a) mentioned "The carrier is liable; a) For loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents.

b) For such loss, damage, or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servant, or agent in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences".

[65] Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd The Sea Star (1974)

[66] Article 3 rule 1(b)

[67] Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd The Sea Star (1974)

[68] the Marine Insurance Act 1906, Section 39(5)

[69] the Marine Insurance Act 1906, s 4(2)(a)

[70] Unseaworthiness for bad stowage will be particularly important in the following situations. a) There is the context of the application of exception clauses. b) The charterer may have undertaken the obligation of stowage in which resultant losses will fall to its account and not that of the ship owner.

[71] Delphine Aurilie Laurence Defossez, 'Seaworthiness: The Adequacy of the Rotterdam Rules Approach' [2016] 20(2) USF Maritime Law Journal 237-288

[72] The decision of (time charter) case "The IMVROS"

[73] The Visungis (1939)

[74] Art III rule 2 , HVR 1971

[75] Art III, rule 1. HVR 1971

[76] Badrah Binti Yussof and Mohamed Daud, 'Ocean Carriage; What Constitute Seaworthiness ' [2003] 1(1) Journal of Science, Technology and Humanities 47-52

[77] Marel Katsivela, 'The Treatment Of The Sea Peril Exception Of The Hague-Visby Rules In Common Law And Civil Law Jurisdictions' [2017] 16(1) WMU Journal of Maritime Affairs 19-36

[78] Chen Liang, 'Seaworthiness in charter parties' [2000] Journal of Business Law 1-33.

[79] Under the common law, if the cargo claimant alleges that the loss or damage has been caused by unseaworthiness, then the carrier has the burden of proof to inaugurate the followings;

(i) That the vessel was unseaworthy at the beginning of the voyage; and that

(ii) The loss or damage has been caused by such unseaworthiness. Accordingly, if he proves (i) and (ii) then there is an assumption that the carrier has not exercised due diligence to make the ship seaworthy, and therefore, the onus is then on him to prove that he has exercised due diligence

[80] If he fails to prove the same, then the carrier will not be entitled to rely upon the exceptions given in Article IV, rule 2 of the Hague/Hague Visby Rules. On the other hand, if the carrier succeeds in doing so, then he can rely upon the exceptions in Article IV Rule 2 to defend his liability

[81] Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea) [2001] 1 Lloyd's Rep 389 (HL).