

The Uniqueness of Admiralty and Maritime Law: Concepts and Cases



Management

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Dr. D. Rajasekar

Associate Professor, Amet Business School, Amet University, ECR, Kanathur, Chennai – 603112

ABSTRACT

Admiralty and maritime law has a significant element of internationality. It takes meaningful form not only in national laws but also as a body of principles largely common to shipping and trading nations. Admiralty law there are some unique concepts such as admiralty jurisdiction, charter parties, demurrage, dispatch, bill of lading etc. Admiralty jurisdiction generally refers to the authority of a nation to hear certain types of cases arising from actions that occur on the high seas or other navigable waters. The jurisdiction might also extend to contract disputes that relate to maritime law, such as contracts concerning payment of wages to seamen, transportation of persons or cargo, maritime liens.

INTRODUCTION

Admiralty, or Maritime law, is the private law of navigation and shipping and covers inland as well as marine waters. It is the entire body of laws, rules, legal concepts and procedures that relate to the use of marine resources, ocean commerce, and navigation. Maritime law was shaped by the practical needs of those countries bordering the Mediterranean Sea involved in maritime commerce, the roots of which are traced as far back as 900 B.C. Usually, the need was for legal solutions that had no application on land, therefore, as medieval codes began to emerge in port cities and states of Europe, the customs of mariners and merchants played a large part in the development of maritime laws. These early codes and customary law practices served to shape the current U. S. maritime law. The contracts, torts, offenses or injuries which are results of involvement in sea navigation or commerce make up this unique body of law.

The term, admiralty, specifically refers to the British courts in England and the American colonies, separate courts that traditionally exercised jurisdiction over all regulations and handling of disputes relating to sea navigation and commerce. The American courts in practice adopted English law and procedure, but chose early on to include national subject matter jurisdiction.

Under admiralty, the ship's flag determines the source of law. For example, a ship flying the American flag in the Persian Gulf would be subject to American admiralty law; and a ship flying a Norwegian flag in American waters will be subject to Norwegian Admiralty law. This also applies to criminal law governing the ship's crew. But the ship must be flying the flag legitimately; that is, there must be more than insubstantial contact between the ship and its flag, in order for the law of the flag to apply. American courts may refuse jurisdiction where it would involve applying the law of another country, although in general international law does seek uniformity in admiralty law.

CONCEPTS OF ADMIRALTY LAW

Admiralty law there are some unique concepts such as admiralty jurisdiction, charter parties, demurrage, dispatch, bill of lading etc.

ADMIRALTY JURISDICTION

The admiralty jurisdiction of Indian courts started with the Letters Patent which conferred admiralty jurisdiction on the Chartered High Courts of Calcutta, Bombay and Madras. Clause 32 of the Letters Patent of 1865 stated that the Letters Patent Court "shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as admiralty or vice-admiralty". Subsequently, this jurisdiction was enlarged for colonial courts by the Colonial Courts of Admiralty Act, 1890, which was extended to India by the Colonial Courts of Admiralty (India) Act, 1891. Thus by the latter Act the Chartered High Courts in India were vested with the admiralty jurisdiction which was enjoyed by the High Court of England. This position continued under the Government of India Act, 1915. Section 106 of the said Act specifically provided that all the High Courts established by the Letters Patent were courts

of record and had such original and appellate jurisdiction, including admiralty jurisdiction. Section 223 of the Government of India Act, 1935 also stated that the High Court's shall have the powers and jurisdiction that they had enjoyed before. After independence and the coming into force of the Constitution of India the admiralty jurisdiction was protected by Article 225 which stated as follows:

- The jurisdiction of and the law administered in any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Courts, including the power to make rules of Court and to regulate the sittings of the Court and of the members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this constitution.
- Admiralty jurisdiction, despite the peculiarities of its origin and growth rooted as it is in history and nurtured by the growing demands of international trade is nevertheless a part of the totality of jurisdiction vested in the High Court as a superior court of record, and it is not a distinct and separate jurisdiction as was once the position in England before the unification of courts.

ADMIRALTY JURISDICTION – ARREST A SHIP IN INDIA

A claim or a dispute by which admiralty jurisdiction can be invoked to arrest a ship in India please feel free to email, write or call us to check if admiralty jurisdiction can be invoked. You may also check with us if you intend arresting a ship outside India. A ship can be arrested anywhere in India under admiralty jurisdiction by obtaining order of arrest from Bombay High Court.

In ship arrest or release matters the firm advise on all types of disputes representing owners, charterers, suppliers, repairers, cargo owners and their insurers, including P & I clubs, banks, financial institution, mortgagors and conducts litigation. Advice and assistance on all types of disputes and claims, including bunker dues, repairs, casualties, collision, limitation of liability, cargo, charter party, jurisdiction, conflict of laws, bill of lading, carriage of goods, contract conditions, fire, liens, general average, containers, recoveries, subrogation, casualties, freight forwarders liabilities, multimodal and unimodal, insurance and reinsurance, commercial disputes, recovery of unpaid dues, towage, salvage, pilotage, grounding, commodity disputes, damage done or received by any ship, freight, hire, demurrage, lay time, masters and crew claims, necessities, supplies, ownership, possession, building, equipping.

MARITIME LIENS

"Maritime liens: although admiralty actions are frequently brought in personam, against individual or corporate defendants only, the most distinctive feature of admiralty practice is the proceeding in rem, against maritime property, that is, a vessel, a cargo, or "freight", which in shipping means the compensation to which a carrier is entitled for the carriage of cargo.

Under American maritime law the ship is personified to the

extent that it may sometimes be held responsible under no liability. The classic example of personification is the "compulsory pilotage" case. Some State statutes impose a penalty on a ship owner whose vessel fails to take a pilot when entering or leaving the waters of the State. Since the pilotage is compulsory, the pilot's negligence is not impugned to the ship owner. Nevertheless the vessel itself is charged with the pilot's fault and is immediately impressed with an inchoate maritime lien that is enforceable in Court.

Maritime liens can arise not only when the personified ship is charged with a maritime tort, such as a negligent collision or time tort, such a negligent collision or personal injury, but also for salvage services, for general average contributions and for breach of certain maritime contracts."

Traditionally, only five types of claims alone are treated as maritime liens. They are (i) Damage done by a ship, (b) Salvage, (c) Seaman or Master's wages, (d) Master's disbursement and (e) Bottomry.

NATURE OF ACTIONS IN REM AND ACTIONS IN PERSONAM

An action in rem is an action against the ship itself but the view that if the owners of the vessel do not enter an appearance in the suit in order to defend their property no personal liability can be established against them has recently been questioned. It has been stated that, if the defendant enters an appearance, an action in rem becomes, or continues also as, an action in personam; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by an action in personam, although this is subject to certain restrictions in the case of collision and similar cases, except where the defendant submits or agrees to submit to the jurisdiction of the Court.

The foundation of an action in rem is the lien resulting from the personal liability of the owner of the res. Thus an action in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties.

The defendant in an Admiralty action in personam is liable, as in other actions in the High Court, for the full amount of the plaintiff's proved claim. Equally in an action in rem a defendant who appears is now liable for the full amount of the judgment even though it exceeds the value of the res or of the bail provided. The right to recover damages may however be affected by the right of the defendant to the benefit of statutory provisions relating to limitation of liability."

INTERNATIONAL CONVENTION FOR ARREST OF SHIPS

India did not sign and consequently did not ratify or promulgate either the International Convention Relating to the Arrest of Seagoing Ships or the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, both signed at Brussels on 10 May 1952. The 1999 Arrest convention is not presently in force and has no immediate prospect of entry into force.

DEMURRAGE

Derived from the French word demurer, which means to stay or remain somewhere although the legal definition refers to damages paid in respect of a delay in a transportation or charter party contract. The days specified by the ship to load or unload are called lay days. When a charterer exceeds that time, the damages are pre-specified, liquidated, and known as demurrage.

"Demurrage is usually typically quoted at a certain rate per day and pro rata for a part day. If no limit is set to the number of days on demurrage, the ship owner is bound to keep the ship at the loading port as long as it is necessary for the charterer to load, or at least until commercial

frustration overtakes their contract, since the charterer is paying extra for the privilege of detaining the ship. Commonly, however, a fixed number of days on demurrage is stipulated in the charter party (contract) so that holding over longer is a breach of contract."

CHARTER PARTIES

A charter party is a document of contract by which a ship owner agrees to lease, and the charterer agrees to hire, a vessel or all the cargo space, or a part of it, on terms and conditions forth in the charter party. If permitted to do so by the terms of charter party, the may enter into sub contracts with other shippers. The charterer takes over the vessel for either a certain amount of time (a time charter) or for a certain point-to-point voyage (a voyage charter), giving rise to these two main types of charter agreement. There is a subtype of time charter called the demise or bareboat charter. In a time charter, the vessel is hired for a specific amount of time. The owner still manages the vessel but the charterer gives orders for the employment of the vessel, and may sub-charter the vessel on a time charter or voyage charter basis. The demise or bareboat charter is a subtype of time charter in which the charterer takes responsibility for the crewing and maintenance of the ship during the time of the charter, assuming the legal responsibilities of the owner and is known as a disponent owner. In a voyage charter, the charterer hires the vessel for a single voyage, and the vessel's owner provides the master, crew, bunkers and supplies.

CASE LAWS

1. Karlander v Eriama Shipping Co. Ltd. [1965] PGSC 23; [1965-66] PNGLR 213 (17 April 1966)
2. National Trading Corporation Ltd v Huggett [1999] FJHC 6; Hba0011j,98s (19 February 1999)

1. Charter parties- Withdrawal of vessel for breach of contract by charterer-charterer's default- damages are difference between lost hire less profits earned after withdrawal

The plaintiff vessel owner sought arrears under a charter party as well as damages for breach of the charter. The defendant charterer had failed to make advance payments for hire as agreed in the charter party. The plaintiff withdrew the vessel from the service of the defendant. It attempted, but failed to find alternate charters for the vessel but arranged voyages for the vessel until it was sold. The plaintiff claimed to be entitled to damages being the difference between the hire as provided in the charter party less the profits earned after its withdrawal up until the sale.

DECISION: Plaintiff entitled to claim

HELD:

The clause which entitles the ship owner to withdraw the ship on default by the charterer on the payment for hire cannot be treated as cutting down the right of the owner to treat the contract at an end, and to recover damages based on the charterer's repudiation of the charter. The plaintiff had lost the benefit of the hire for the remaining period of the charter party and was therefore entitled to the difference between hire less the profits earned after the withdrawal.

2. Charter parties-implied warranty of seaworthiness at the commencement of the voyage- boat owner must indemnify charterer for repairs.

The first Defendant, the charterer was held to be liable to the Plaintiff for the repairs to the boat engine. The first Defendant was to be indemnified by the 2d Defendant, the owner of the vessel. The 2d Defendant appealed the findings. The vessel's engine had broken down and had to be towed in while on the charter.

HELD: Appeal dismissed

DECISION:

The ordinary rule is that there is an implied warranty that the ship is seaworthy at the commencement of the voyage. There was nothing in the Charter to exclude or limit this rule. The fault in the engine which caused the break-down existed when the vessel started and therefore the vessel was not seaworthy for

the voyage.

DISPATCH

Dispatch money refers to an amount paid by a ship-owner to the charterer of a vessel. This money is paid to the charterer of a vessel if the cargo is unloaded at the port rapidly or much before than actually provided for in the agreement between the charterer and the ship-owner. This is also known as dispatch. This money is actually given in the form of a reward to the charterer for unloading the goods quickly.

BILL OF LADING

Bill of lading is one of the most important documents in the shipping process. To ship any goods, a bill of lading is required and acts as a receipt and a contract. Bill of lading (BOL) is one of the most important documents in the shipping process. To ship any goods, a bill of lading is required and acts as a receipt and a contract. A completed BOL legally shows that the carrier has received the freight as described and is obligated to deliver that freight in good condition to the consignee. The information in the bill of lading is critical as it directs the actions of personnel all along the route of the shipment - where it's going, the piece count, how it's billed, and how it's to be handled on the dock and trailers. It could be on a prepaid or collect basis. The consignee has to check whether the shipment is collect on delivery which means that the driver will collect the cost of the merchandise on delivery of the freight.

CARRIAGE OF GOODS BY SEA

The Carriage of Goods by Sea Act COGSA is a 1936 United States statute governing the acts that a carrier is responsible for and defines the terms used in shipping. It says about the rights and responsibilities between shippers of cargo and ship-owners regarding ocean shipments to and from the United States. It is the U.S. enactment of the International Convention Regarding Bills of Lading, commonly known as the "Hague Rules". The Act amended the Hague Rules in a number of minor, but important, ways. It provides that the ship owner's liability will be limited to \$500 per shipping package, and it stipulates a one-year time limit for filing suit against the carrier. Conditions Contained in a Contract of Carriage by Sea. The terms included in a contract of carriage by sea are of two kinds. These are: (i) Express terms, and (ii) Implied terms.

Express terms are those which the parties have specifically agreed to and embodied in the contract. Implied terms are those which law implies in every contract of carriage by sea unless excluded specifically. There are four implied terms (i) Implied warranty of seaworthiness. The ship owner, when he enters into a charter — party for a voyage impliedly warrants that the ship is seaworthy. This is an assurance by the ship owner, at the time of entering into the charter party, that (a) the ship is fit to encounter the ordinary perils of navigation during voyage and (b) to carry the specific cargo. This warranty of seaworthiness extends only to (a) seaworthiness at the time of sailing and (b) 'fitness at the time of loading the cargo. Once the ship has sailed or the goods are on board, this warranty ceases to operate. But in case the voyage is divided into stages, the ship must be seaworthy at the commencement of each voyage. (ii) Implied warranty of commencement of voyage. Another implied warranty is that the ship shall be ready to commence the voyage and shall carry out the same with all reasonable dispatch and diligence. (iii) Non-deviation of voyage. Also there is an implied condition that there shall be no unnecessary deviation. Deviation means the going off from the settled or the usual or customary course of voyage between the two termini. (iv) Shipper not to ship dan-

gerous goods. The shipper (i.e., the consignor of goods in case the charterer undertakes to carry goods of others under bills of lading) shall not ship dangerous goods. If the shipper ships dangerous goods and if on account of it the charterer suffers any damage, he can recover it from the shipper.

CASE LAWS

1. *Hauhaea v Laurabada Shipping Services Ltd* [2005] PGDC 31; DC200 (13 July 2005)
2. *International Watersport Management Ltd v Pearl Creations Company Ltd* [2002] TOCA 7; CA 10 2002 (23 July 2002)

1. Sea Carriage- Bill of Lading- Action for loss of goods- Onus

The plaintiff arranged with the defendant company to ship his goods on two occasions. On both occasions a portion of the shipment was not received by the plaintiff and recorded as lost. The plaintiff sought to recover for these losses on the contract of carriage contained in the Bill of Lading. The complainant argued that the goods were not lost before loading or after discharge from the ship.

DECISION: Claim dismissed.

HELD:

Clause 6 of the Bill of Lading expressly limits the liability of the defendant to losses incurred during the time that the goods were on the ship. As such the onus is on the plaintiff to prove that the loss occurred during the period from when the goods were loaded to the time the goods were discharged as per the Sea Carriage of Goods Act 1951. The plaintiff failed to discharge the onus.

2. Sea Carriage- Charter- Authority of master to contract for the carriage of goods in the course of the business of the vessel.

The appeal arose out of the spoiling of a cargo of live oysters carried by a vessel owned by the appellant. The respondent chartered the appellant's vessel to transport the oysters. At the trial it was established that the duration of the voyage as well as the temperature were crucial to the preservation of the cargo of live oysters. The respondent spoke with the master of the vessel who stated that the voyage could be made in 8-10 hours overnight. The respondent then met with the managing director of the appellant and arranged for the charter and the payment. The lower court found that the duration of the voyage was not part of the oral contract between the appellant and respondent. Prior to the voyage the master arranged for pilotage for his arrival at his destination in 10 hours. The lower court inferred that the duration of the voyage and the pilotage had been left by the appellant for the master to settle and once settled became terms of the contract between the parties. The owner of the vessel appealed.

DECISION: Appeal dismissed.

HELD:

The owner could not claim the freight and at the same time repudiate the terms on which the cargo had been received. The owner was aware that the master would arrange pilotage on arrival and therefore duration of the voyage. It is settled law that the mast

REFERENCE

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