Analysing Unseaworthiness With Respect To Settlement Claim

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ABSTRACT: ***Seaworthiness is considered a fundamental concept in maritime law and has historically been a key element in contracts related to maritime freight transport. Unseaworthiness can lead to significant legal and financial ramifications for seafarers, particularly when it results in accidents, injuries, or loss of life. This study seeks to critically analyse unseaworthiness as a settlement claim for seafarers by examining existing legal frameworks, industry practices and from case studies. By devolving into the intersections of maritime law, labour rights, and the lived experiences of seafarers, this research aims to illuminate the gaps in current practices and propose actionable recommendations for reform. It is based doctrinal legal research which involve the legal principles and concepts from various sources like International conventions, Statues, Regulations other concepts from case laws and precedents. To evaluate the effects of unseaworthiness claims on seafarers, particularly regarding their ability to secure compensation for injuries, illnesses, and other damages the interpretation of the definition of unseaworthiness has significant implications for seafarers' rights to claim settlements. In recent years, the intersection of international labour standards and maritime law has gained prominence, particularly with the adoption of the Maritime Labour Convention (MLC) 2006. This convention aims to enhance the protection of seafarers' rights, yet its efficacy in addressing unseaworthiness claims remains an area of ongoing debate. The complexities of jurisdiction, enforcement, and varying interpretations of maritime law across different nations contribute to the difficulties faced by seafarers in pursuing settlements.***

Keywords: Seafarers, Seaworthiness, Settlement claim , Unseaworthiness

INTRODUCTION

Seaworthiness is conceived to be one of the most pivotal concepts in maritime law and hereby has become a core component of every contract in respect of maritime freight transport throughout the history of shipping. However, the nature of work of the seafarers exposes them to various risks, particularly when vessels are not maintained to the required safety standards. The concept of unseaworthiness is a fundamental principle in maritime law that holds shipowners accountable for providing a safe working environment for their crew. Under this doctrine, a vessel is deemed unseaworthy if it is not fit for its intended purpose, which can include factors such as inadequate equipment, poorly trained crew members, or unsafe working conditions. Seafarers who suffer injuries due to unseaworthy conditions are entitled to seek compensation under maritime law. This entitlement is crucial for ensuring that injured workers receive the necessary support for recovery and financial stability. However, despite the legal protections afforded to seafarers, challenges persist in effectively claiming their rights related to unseaworthiness. These challenges include ambiguities in legal definitions, difficulties in proving unseaworthiness and economic pressures that may lead to unsafe working conditions. This project aims to analyse the complexities surrounding unseaworthiness as a settlement right for seafarers. It will explore the legal framework governing unseaworthiness claims, examine judicial interpretations and identify legislative gaps that hinder the effective pursuit of these claims. By investigating these aspects, the project seeks to provide insights into improving protections for seafarers and enhancing their ability to secure fair settlements for injuries sustained due to unseaworthy conditions.

Unseaworthiness can lead to significant legal and financial ramifications for seafarers, particularly when it results in accidents, injuries, or loss of life. Seafarers may seek settlements or claims against employers when they believe they have been placed on unseaworthy vessels, which raises critical questions about legal liability, employer obligations, and the enforcement of maritime safety standards.

In recent years, the intersection of international labour standards and maritime law has gained prominence, particularly with the adoption of the Maritime Labour Convention (MLC) 2006. This convention aims to enhance the protection of seafarers' rights, yet its efficacy in addressing

unseaworthiness claims remains an area of ongoing debate. The complexities of jurisdiction, enforcement, and varying interpretations of maritime law across different nations contribute to the difficulties faced by seafarers in pursuing settlements.

Enhancing our understanding of unseaworthiness claims is essential for promoting safer working conditions, ensuring equitable treatment of seafarers, and advancing the broader objectives of maritime safety and labour rights in an increasingly complex global maritime landscape.

HISTORY OF SEAWORTHINESS

Seaworthiness is conceived to be one of the most pivotal concepts in maritime law and hereby has become a core component of every contract in respect of maritime freight transport throughout the history of shipping . The doctrine of seaworthiness had initially been constituted to safeguard the diverse interests of parties exposed to the possible perils of the marine adventure, and then it has been enhanced in response to the current needs of marine adventure.

The concept of seaworthiness dates back to hundreds of years ago. To exemplify, the Sea Law of Rhodes, which did not impose explicitly the obligation of seaworthiness on ship owner though, established three particular elements as "the condition of the vessel itself, the tackle and the mariners", which the carrier was to check out before loading. These elements might be considered to correspond with the modern seaworthiness standard in some respects.

Likewise, the Laws of Oleron of about 1150 AD, which is conceived to be the foundation of all the European Maritime codes, encompassed several provisions in respect of seaworthiness in the sense that the master was obliged to provide the vessel with sufficient crew in order for the ship owner to be able to exculpate himself from liability in the case of damage or loss. Even so, the term of seaworthiness was not explicitly enunciated. Ultimately, it is suggested that the concept of seaworthiness initially began as a recommendation to the merchants who were to make an inspection as to whether particular aspects of the vessel's structure are in sound condition. This understanding has been evolved and maintained as an obligation upon the shipowner over time.[1]

One of the earliest English cases, the Charter party of the Cheritie (1531), contains an undertaking that

"And the sayd owner shall warant the sayd shyppe stronge stanche well and sufficyentlye vitalled and apparellyd with mastys sayles sayle yerds ancors cables ropes and all other thyngs nedefull and necessarie to and for the sayd shype during this presentt viage And the sayd owner shall ffynd in the sayd shippe xj good and able maryners"…[2]

We can note from this charterparty that, even at this point, the shipowner undertook that its vessel was 'strong and staunch and sufficiently vitalled and apparelled' for the intended voyage, together with 'good and able maryners'[3].

"The shipowner is by the nature of the contract impliedly and necessarily held to warrant that the ship is good and is in a condition to perform the voyage then about to be undertaken or in the ordinary language seaworthy"[4]

This principle has evolved from the concept of protection against loss by maritime perils known in modern times as Marine Insurance which has been in existence since Roman times'. Writers on the history and origins of International Maritime Law agree that modern unification of this law has been greatly influenced and aided by a number of maritime codes which developed from customs and usage of trade and gradually assumed a binding character on merchants and traders of all nations'.

One aspect of shipping that received little attention during its long history was the safety of the ship itself. It was not until Samuel Plimsoll, a member of British Parliament, in 1863 publicly agitated against unsafe

[1] SOYER, Warranties, p. 58; KARAN, Liability, p. 7-12.

[2] Reginald G Marsden (ed), Select Pleas in the Court of Admiralty, vol 1 (Selden Society 1892) 35. The High Court of Admiralty is said to have heard its first charterparty case in 1369: see F D MacKinnon, 'Origins of Commercial Law' (1936) 52 LQR 30, 32. For older charterparty examples, see Walter Ashburner, The Rhodian Sea-Law (Clarendon Press 1909) clxxix-clxxx.

[3] See also the Charter party of the George (1538), ibid, 81. This later charterparty also refers to the presence on board of 'an hable maister', ibid, 82. See below, text to n 114.

[4] Kopitoff v. Wilson (1874-80) All E.R..Rep.609 at 613

ships in his book titled "Coffin Ships" that a bill on unseaworthy ships was passed in 1876. This led to the British Government setting up a body with the responsibility to survey ships, pass them as fit for the sea, and have them marked with loadlines indicating the legal limits of submersion -the Plimsoll Line'[5].

Prior to the passing of the above mentioned legislations, cases on seaworthiness in England developed on a case by case basis.

In hindsight, the standard of seaworthiness had been interpreted in the grip of national laws of different countries. However, after the maritime transport of goods had turned out to be a universal activity, the concept of seaworthiness was required to have been enshrined within international carriage of goods conventions in order to unify certain rules and to make sure that the parties to any maritime activity are considerably wary of the severe consequences of breach of the obligation[6]. In essence, the first regulation regarding seaworthiness was introduced by U.S. Harter Act in 1893[7]. Afterwards, the principles established in the Harter Act became in many respects the basis of liability and then followed by the Hague Rules (HR, 1924)[8] , the Hague-Visby Rules (HVR, 1968)[9] , the Hamburg Rules (1978)[10], and the Rotterdam Rules (2009)[11] consecutively[12] .

DEFINITION OF UNSEAWORTHINESS AND SEAFARERS

1.Definition of seaworthiness Under Carriage of Goods by Sea

Though the applicable law regarding seaworthiness under Carriage of Goods by Sea underwent major changes, as it was originally subject to common law, then it became subject to the Harter Act followed by the Hague /Hague-Visby or the Hamburg Rules, the definition of seaworthiness did not vary much as it still includes the same principles.

Under common law, Field J in Kopitoff v. Wilson[13], stated that the carrier should provide a vessel

"fit to meet and undergo the perils of the sea and other incidental risks which of necessity she must be exposed in the course of the voyage".

Also, Channel J, in McFadden v. Blue Star Line[14], cited Carver, Carriage by Sea, which defined seaworthiness as

[5] Edgar Gold, Maritime Transport: The Evolution of International Marine Policy and Shipping Law, p. 40, Lexington Books, D.C. Heath and Company, Massachusetts, Toronto, 1984.

[6] KARAN Hakan, The Carrier's Liability Under International Maritime Conventions The Hague, Hague-Visby, and Hamburg Rules, New York, 2004, p. 43; KASSEM, p. 3; BAATZ Yvonne, "Charterparties" In Maritime Law, edited by BAATZ Yvonne, pp. 117-177, 3rd ed., Abingdon, 2014, p. 121; KENDER Rayegân/ÇETİNGİL Ergon/YAZICIOĞLU Emine, Deniz Ticareti Hukuku –Temel Bilgiler, Volume 1, Istanbul, 2019, p. 203; CHACÓN, p. 174

[7] The significance of the Harter Act of 189 stems from the fact that the first introduction of the duty to exercise due diligence, instead of absolute warranty, in making a vessel seaworthy has been laid down in Sec. 191 of the Act. See KASSEM, p. 74; KARAN, Liability, p. 19-20; DJADJEV Ilian, The Obligations of the Carrier Regarding the Cargo-The Hague-Visby Rules, Cham, 2017, p. 41; CHACÓN, p. 70; ZHANG/PHILLIPS, p. 55; SÖZER, Deniz Ticareti, p. 566.

[8] International Convention for the Unification of Certain Rules Relating to Bills of Lading was adopted on 25 August, 51 Stat. 233, 120 L.N.T.S. 155. (in force 2 June 1931)

[9] Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Visby Amendments), Feb. 23, 1968, 1412 U.N.T.S. 127. (in force 23 June 1977) . The Visby Protocol introduced slight changes and did not amend the seaworthiness provisions of HR

[10] United Nations Convention on the Carriage of Goods by Sea was adopted on 31 March 1978, 1695 U.N.T.S. 3. (in force 1 November 1992)

[11] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was adopted on 11 December 2008, G.A. Res. 63/122, U.N. Doc. A/RES/63/122, Annex (Feb. 2, 2009) (hereinafter the Rotterdam Rules) As of October 2024, the rules are not yet in force.

[12] THOMMEN, T. Kochu, "Carriage of Goods by Sea: The Hague Rules and Hamburg Rules", JILI, V. 32, N. 3, 1990, p. 285; KASSEM, p. 14; KARAN, Liability, p. 7; ZHANG/PHILLIPS, p. 55.

[13] Kopitoff v Wilson (1876) 1 QBD 377 at p 380

[14] McFadden v. Blue Star Line, [1905] 1 K.B. 697, at p 706.

"… that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it".

Under common law, the duty of seaworthiness means that the carrier is under an absolute obligation, hence 'the vessel must have that degree…', to provide a vessel that is fit, in every way, to receive the cargo and to encounter the ordinary perils of the sea, which a ship of its kind at that time of year, might be expected to meet in such a voyage. But this absolute obligation does not mean that the ship must be perfect; it means that she should be made "as seaworthy as she reasonably can be or can be made by known methods"[15] to undertake that particular voyage, since Carver's definition takes into consideration the behaviour of the prudent carrier

Carver introduced a test to find out whether the shipowner/carrier exercised his duty to provide a seaworthy vessel or not. The test is: "Would a prudent owner have required that it (the defect) should be made good before sending his ship to sea had he known of it? If he would, the ship was not seaworthy within the meaning of the undertaking"[16]

In deciding the seaworthy condition of a vessel the surrounding circumstances should be considered, e.g. the type of ship, the route she is going to take, the cargo she is carrying or going to carry and the season of the year in which she is to sail[17]. A further important factor that should be taken into consideration is the degree of knowledge available at the relevant time[18].

When the Harter Act was introduced in the United States in 1893, there were no changes to the definition of seaworthiness; however, there was a change to the nature of the obligation[19] and limitation of liability for errors of navigation, dangers of the sea and acts of God was provided[20].

This approach of the Harter Act was then adopted by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 1924 (Hague Rules) and its Visby Amendments in 196811 (Hague-Visby Rules) and the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) in 1978 and the duty to

[15] McFadden v. Blue Star, ibid , Channel J. provided: "…. the shipowner… undertakes absolutely that she is fit, and ignorance is no excuse" at p. 706. The Glenfruin, (1885) Q.B.D 103, at p. 106. Readhead v. The Midland Railway Company, 18 Law Rep. 4 Q. B. 379, at p. 379. And in Steel et Al. v. The State Line Steamship Company, (1877-78) L.R. 3 App. Cas. 72 Lord Blackburn referred to Readhead v. The Midland Railway at p. 86-87

[16] - The test was first introduced by Carver on Carriage of Goods, 18th Ed. The test then was applied to many cases e.g. Mcfadden v Blue Star Line, ibid, at 703..M.D.C., Ltd. v. N.V. Zeevaart Maatschappij, [1962] 1 Lloyd's Rep. 180.

[17] - Mcfadden v Blue Star Line, Ibid, the vessel "must have that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it", at p. 706

[18] - The carrier cannot be responsible if he did not supply his vessel with the latest technology if this technology is not properly tested and widely implemented. Demand Shipping Co. Ltd. v. Ministry of Food Government of the People's Republic of Bangladesh and Another, (The Lendoudis Evangelos II), [2001] 2 Lloyd's Rep. 304. F. C. Bradley & Sons, Ltd. v. Federal Steam Navigation Company, Ltd. (1926) 24 Ll. L. Rep. 446. President of India v. West Coast S.S.Co, [1963] 2 Lloyd's Rep 278 at p. 281

[19] section 2 of the Act provided: "That it shall not be lawful for any vessel transporting merchandise or property from or between the ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of the said vessel to exercise due diligence to properly equip, man, provision, and outfit said vessel, and to ma ke said vessel seaworthy and capable of performing her intended voyage ... shall in anywise be lessened, weakened, or avoided".

[20] Section 3 provided: "If the owner of any vessel transporting merchandise or property to or from any port in the United State of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel…"

exercise due diligence became a positive obligation on the part of the carrier. The Harter Act was the first step towards increasing the carrier's liability, although some would say that the Act reduced the carrier's obligation with regards to seaworthiness from an absolute duty into a duty to exercise due diligence. However, it invalidated[21] any attempt by the carrier to reduce or exempt himself from responsibility for not exercising due diligence to provide a seaworthy vessel .

Along with that the Hague/Hague-Visby Rules took a further step in defining seaworthiness, by providing detailed articles about what factors constitute seaworthiness in Art III rule 1[22] . The Hamburg Rules, in contrast to the Hague/Hague-Visby Rules, further increased the carrier's liability. The Hamburg Rules make the carrier responsible unless he proves that there was no privity on his part, or that of his agents or servants. Moreover, the Hamburg Rules did not allocate a separate Article for seaworthiness; it only used a general article for the carrier's liability, leaving it to the courts to define seaworthiness. Finally and more importantly Art 5[23], r1 and 4 (a) makes the carrier responsible for any loss or damage occurring while the cargo is in his possession.

2. Definition of seaworthiness under Marine Insurance Law

The Marine Insurance Act (MIA) states in S. 39 (4) thus

'A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured'.

S. 39(4) of the Act did not specifically point out what seaworthiness should include, it preferred to say instead that she should be reasonably fit in all respects.. The reason behind this is explained by the drafter of the Act, Sir Mackenzie Chalmers, who said: "the words 'in all respects', in s.39 (4) include 'manning, equipment and stowage', but these additional words were cut out in the Lords, being regarded as unnecessary and probably restrictive" .

In one of the early cases on this issue, Dixon v. Sadler[24], seaworthiness of the vessel was defined thus: "she (the vessel) shall be in a fit state as to repairs, equipment, and crew, and in all other respects to encounter the ordinary perils of the voyage".

The term seaworthiness means exactly the same in both Marine Insurance and Carriage of Goods contracts, as was clearly illustrated by Lord Esher in

[21] This was made clear By Hague/Hague-Visby Rules Art III r8: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability."

[22] 1 The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
a_ Make the ship seaworthy;
b_ Properly man, equip and supply the ship;
c_ Make the holds, refrigeration and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation'.

[23] "1_ The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, or damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.
4_ (a) The carrier is liable: i. 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; ii. for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or negligence of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences".

[24] Dixon v. Sadler, 5 M. & W. 405, 414. Cited in Hedley v. The Pinkney and Sons Steamship Company, Limited, [1894] A.C. 222 at p.227. See also Steel v. State Line Steamship Co, (1877-78) L.R. 3 App. Cas. 72, Lord Cairns, defined seaworthiness as that 'the ship should be in a condition to encounter whatever perils of the sea a ship of that kind, and laden in that way, may be fairly expected to encounter on the voyage´

Hedley v. Pinkney[25], where, after he cited the definition used in Dixon v. Sadler, he stated that,

"The term "seaworthy" is a well-known term in nautical matters. In this Act it is used with regard to such matters. It appears to me that, in the absence of any reason to the contrary, it must receive in this Act its ordinary meaning in nautical matters. What is that meaning? It has been well explained by Parke, B., in Dixon v. Sadler … The question being one of insurance, he is dealing with the time of sailing, but the legal definition given of seaworthiness, which is not applicable only to insurance cases, is that the ship must be in a fit state as to repairs, equipment, and crew, and in all other respects to encounter the ordinary perils of the voyage".

Consequently, seaworthiness can be defined as: the fitness of the vessel in all respects, to encounter the ordinary perils of the sea; that could be expected on her voyage, and deliver the cargo safely to its destination.

3.Definition of "seafarer" generally and in International Maritime labour law

The term "seafarer" can be defined as "shipboard crew personnel involving Ships' Officers and seamen/ratings"[26].

Black's law dictionary defines "seaman" as follows: Under the Jones Act and the Longshore and Harbour Workers' Compensation Act, a person who is attached to a navigating vessel as an employee below the rank of officer and contributes to the function of the vessel or the accomplishment of its mission. (…) Also termed crew member, mariner, member of a crew. (…) The traditional seaman is a member of the crew of a merchant vessel. .... However, vessels are not limited in their function to the transportation of goods over water. The performance by a vessel of some other mission, such as operating as a cruise ship, necessitates the presence aboard ship of employees who do not `man, reef and steer` the vessel .... Exploration for oil and gas on navigable waters has led to further expansion of the concept of a `seaman`[27].

In accordance with the other law dictionary a "seaman" is: a person who by national law or regulation is deemed competent to perform any duty which may be required of a member of the crew serving in the deck department[28].

The terms "seaman", "mariner", and "member of the crew" are used as equivalent terms to the term "seafarer"

The term "seafarer" is defined in many international labour conventions currently in force which were reconsidered during the MLC drafting process and many of them were revised by the MLC. The oldest conventions use the term "seaman", which is considered to be an equivalent term to the term "seafarer".

So under Article 1 (1) of the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) the term "seaman" includes all persons employed on any vessel engaged in maritime navigation.

Then under Article 2 (b) of the Seamen's Articles of Agreement Convention, 1926 (No. 22):

"the term seaman includes every person employed or engaged in any capacity on board any vessel and entered on the ship's articles. It excludes masters, pilots, cadets and pupils on training ships and duly indentured apprentices, naval ratings, and other persons in the permanent service of a Government"[29]

The term "seafarer" is used by later conventions which define the term "seafarer" as any person who is employed in any capacity on board a seagoing ship to which the conventions apply. Article I (1) (d) of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) contains a slightly different definition: the term seafarer means any person who fulfils the conditions to be employed or engaged in any capacity on board a seagoing ship.

[25] Hedley v. The Pinkney and Sons Steamship Company, Limited. [1892] 1 Q.B. 58 at p. 64

[26] A.E. Branch, D. Branch (eds), Dictionary of shipping. International business trade terms and abbreviations, London, Witherby, 2005, p. 301.

[27] B.A. Garner (ed.), Black's law dictionary, St. Paul, Minn, West, 2009, p. 1468.

[28] J.R. Fox, Dictionary of international and comparative law, New York, Ocean Publications, 2003, p. 294.

[29] The same definition is contained in the Repatriation of Seamen Convention, 1926 (No. 23)

The definition of "seafarer" is given by the MLC Article II (1) (f) which states that "seafaremeans any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies". Additionally it is emphasized by Article II (2) of the MLC that the convention applies to all seafarers, except as expressly provided otherwise.

Although the definitions of "seafarer" under different existing labour conventions are slightly different the main criterion for a person to be considered as a seafarer is their work on board a ship to which the convention applies. Additionally sometimes other criteria are mentioned (e.g., work in the deck department, entered in the ship's articles). The content of many ILO conventions primarily speaks to the employment situation of personnel involved in some way in the operation of the ship – the "crew"[30].

LEGISLATIONS PERTAINING TO SETTLEMENT CLAIMS REGARDING UNSEAWORTHINESS

1.DOCTRINE OF UNSEAWORTHINESS

The doctrine of unseaworthiness comes from the concept of absolute duty. This is a concept in maritime law that states the vessel owner has a duty and responsibility to provide seamen with a seaworthy ship. This means that the owner must keep the vessel in good working order and must update or replace any aspect of the ship that could cause injuries. The failure to do so makes the owner strictly liable for the expenses of any sailor injured because of it.

2.HUMAN RIGHTS OF SEAFARERS

The human rights issues of seafarers can be divided into two categories: during on board service and before/after time on board. According to the UNGPs, at a minimum the human rights that companies must respect along their supply chains are those core rights set out in the International Bill of Human Rights [31]and the fundamental labour standards set out in the ILO Declaration on Fundamental Principles and Rights at Work. The five fundamental principles elevate 11 core ILO Conventions and include protection of the right to: A safe and healthy working environment. On July 11, 2024, the UN Human Rights Council adopted *Resolution 56/18*, which emphasizes the human and labour rights of seafarers.

3. HAGUE (1924) AND HAGUE-VISBY RULES (1968)

Article III Rule 1 of both the Hague and Hague-Visby Rules stipulates that a carrier must exercise due diligence to make the ship seaworthy before and at the beginning of the voyage. This means that while the obligation is not absolute, carriers must take reasonable steps to ensure that the vessel is fit for its intended purpose, including being properly manned, equipped, and supplied. If a vessel is found to be unseaworthy at the time of sailing, the carrier may be held liable for damages resulting from that condition. However, under these rules, if the unseaworthiness is due to a latent defect that could not have been discovered through due diligence, the carrier may not be held liable. The Hague-Visby Rules also provide limitations on liability in cases of unseaworthiness. Article IV(5)(a) states that carriers can limit their liability based on the weight of cargo lost or damaged.

4.MARITIME LABOUR CONVENTION,2006

The basic rights of seafarers and the principles of occupational health and safety while seafarers are on board are set out in the ILO's Maritime Labour Convention, 2006 (MLC, 2006), an international agreement that came into effect on August 20, 2013. Compliance with this convention is compulsory for vessels having a gross tonnage of 500 tons or more. The MLC includes many provisions for a healthy and safe environment on board, including the maximum length of time on board, the right to shore leave, the right to medical treatment, the crewing of vessels, and the standards of accommodation and food. There are a range of occupational health and safety risks associated with the living and working conditions of seafarers. Regulation 4.3 emphasizes that seafarers should work in a safe environment, which includes the proper maintenance of equipment and safety gear. Regulations regarding accommodation and recreational facilities (Regulation 3.1) ensure that seafarers have adequate living conditions onboard.

[30] Preparatory Technical Maritime Conference ILO, 13-24 September 2004. Consolidated maritime labour Convention - Commentary to the recommended draft. ILO Doc. No. PTMC/04/2, p. 8.

[31] Consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights ('ICCPR'), and the International Covenant on Civil and Political Rights (ICESCR) and its two Optional Protocols

The MLC obligates shipowners to maintain all equipment in good working order (Regulation 3.2).

5. SOLAS,1974

SOLAS places an obligation on shipowners to ensure that their vessels comply with safety standards, which contributes to the overall seaworthiness of the ship. If a vessel fails to meet these standards, it may be deemed unseaworthy, which can lead to liability for any resulting damages or injuries. SOLAS consists of multiple chapters that cover various aspects of maritime safety, including construction, fire protection, life-saving appliances, and safety of navigation. For instance: deals with construction and stability. Chapter III outlines requirements for life-saving appliances. Chapter V focuses on safety of navigation.

6.International Safety Management (ISM) Code,1993

The ISM Code requires shipowners and operators to implement a Safety Management System that ensures safe ship operations. The ISM Code emphasizes that shipowners must demonstrate due diligence in managing safety and operational risks. Part A: This part outlines the requirements for implementing a Safety Management System (SMS) and consists of 12 elements, including: Safety and environmental protection policy, Master's responsibility and authority, Emergency preparedness, Maintenance of ship and equipment.

7.ISPS CODE, 2004

The ISPS Code was adopted by the International Maritime Organization (IMO) and became mandatory under Chapter XI-2 of the SOLAS Convention on July 1, 2004. The ISPS Code establishes three security levels: Level 1: Normal security measures maintained at all times. Level 2: Heightened security measures applied when there is a heightened risk of a security incident. Level 3: Exceptional measures during periods of probable or imminent risk. Ships over 500 gross tonnage (GT) engaged in international voyages must have a comprehensive Ship Security Plan (SSP). Ship Security Officer (SSO): Oversees security measures on board.

8.JONES ACT

The Jones Act, formally known as Section 27 of the Merchant Marine Act of 1920, is a significant piece of legislation in U.S. maritime law. It provides injured seamen with the right to seek compensation for injuries caused by their employer's negligence. Unlike unseaworthiness claims, which do not require proof of negligence, Jones Act claims are based on establishing that the employer's actions contributed to the injury. It allows injured seamen to file lawsuits for damages in federal or state courts, with the right to a jury trial.

9.MERCHANT SHIPPING ACT, 1995

The Merchant Shipping Act 1995 addresses unseaworthiness in several sections, particularly focusing on the obligations of shipowners regarding the seaworthiness of their vessels. Key Sections Related to Unseaworthiness-Section 94 - Duty of Care: This section imposes a duty on shipowners to ensure that their ships are seaworthy. It establishes that there is an implied obligation in every contract of employment at sea for the owner to ensure the seaworthiness of the vessel. Section 95 - Criminal Offense:it is a criminal offense under this section to send or attempt to send an unseaworthy ship to sea. This provision highlights the seriousness of maintaining seaworthiness and establishes penalties for non-compliance. Section 96 - Liability for Unseaworthiness: This section outlines the liability of shipowners for injuries caused by unseaworthy conditions. It allows crew members to bring claims against their employers if they can prove that an unseaworthy condition contributed to their injury.

10.MERCHANT SHIPPING ACT ,1958

In the Merchant Shipping Act, 1958, the provisions addressing unseaworthiness and settlement claims for seafarers can primarily be found in the following sections: Section 80 - Duty of Care: This section imposes a duty on shipowners to ensure that their vessels are seaworthy. It establishes that the owner must maintain the vessel in a condition that is fit for its intended purpose. Section 81 - Sending Unseaworthy Ships to Sea: This section makes it an offense for any person to send or attempt to send an unseaworthy ship to sea from any port in India. If this action endangers lives, the individual may face penalties unless they can prove they took all reasonable measures to ensure the ship was seaworthy. Section 82 - Liability for Unseaworthiness: This section outlines the liability of shipowners for injuries caused by unseaworthy conditions. It allows seafarers to claim damages if they can prove that an unseaworthy condition contributed to their injury.

CHALLENGES RELATED TO THE APPLICATION OF THE UNSEAWORTHINESS DEFINITION IN SETTLEMENT CLAIMS

1. Interpretation of the definition and its ambiguity

The term "unseaworthy" can be interpreted in various ways, leading to inconsistencies in claims. Different jurisdictions may have different standards for what constitutes unseaworthiness, complicating legal proceedings. Unseaworthiness refers to the state of a vessel, its parts, its equipment, the training of its crew, and anything else on the vessel that might cause harm. However, to understand what constitutes unseaworthiness, we have to understand what qualifies as seaworthy. A seaworthy vessel is one in which all parts and equipment are reasonably fit for their intended use and where it is operated by a crew that is reasonably adequate and competent to perform the work assigned. What constitutes a vessel to be seaworthy is another challenge.

Actis Co. Ltd. v. The Sanko Steamship Co. Ltd., (The Aquacharm)[32], Lord Justice Griffttths stated "As I understand the authorities, there are two aspects of seaworthiness. The first requires that the ship, her crew and her equipment shall be in all respects sound and able to encounter and withstand the ordinary perils of the sea during the contemplated voyage. The second requires that the ship shall be suitable to carry the contract cargo"

Vessel seaworthiness is divided into physical seaworthiness, human seaworthiness and documentary seaworthiness.

A. Physical seaworthiness

The physical seaworthiness of the vessel deals with the state of the vessel itself, i.e. its readiness to encounter the ordinary perils of the sea that it might face during its voyage, taking into consideration the type of the vessel, its age, the type of navigational water, the route it is going to take, and the time of the year at which it is going to embark on the journey. Consequently, this kind of seaworthiness takes into consideration the engine of the vessel, its holds, pipes, bunkers, tackles, engine…. etc.

Daniels v. Harris[33] -In s. 719 it is said: "The warranty of seaworthiness varies in different places: a vessel considered seaworthy for a voyage in one place may not be so considered in another: the standard of seaworthiness also varies from time to time in the same place"

The Quebec Marine Insurance Company v. The Commercial Bank of Canada[34], the vessel was insured for a trip from Montreal to Halifax, which included navigation in a river and the sea. The boiler of the vessel had a defect which was not apparent in the river leg of the voyage, but as soon as the vessel touched salt water the defect became apparent and she had to put in for repair. The court decision was that the ship was not seaworthy because she was not fit to embark on the sea leg of the voyage.

Moore v. Lunn[35], the vessel was loaded in Baltimore with, amongst other things, a number of hardwood logs on deck to be delivered to Hamburg. Part of the journey was a river trip followed by an open sea leg. The vessel in this case was not seaworthy in many respects as to its crew, physical damages… etc but one of the points which was raised as to constitute unseaworthiness was the fact that the logs were not lashed when the ship started from Baltimore; as the practice was, in that area with such cargo, that the lashing took place while in the river before reaching the open sea, L.J. Atkin was of the opinion that there was 'considerable evidence' that it was proper not to lash the logs at the start of the journey provided they are lashed before embarking on the next leg of the journey.

When the vessel is going to perform a voyage which involves sailing in two different types of water, sea leg, river leg…etc, then the carrier has to make the vessel ready to sail through these legs before she sails, or he should arrange, at the beginning of the voyage, for the vessel to be made ready before embarking on the next part of the voyage[36]

The type of the vessel is essential when assessing its seaworthiness, as a vessel which is seaworthy to navigate in rivers may not be seaworthy for sea or ocean voyages even if she was modified for that purpose. However, although the vessel might be of

[32] [1982] 1 Lloyd's Rep. 7
[33] (1874-75) L.R. 10 C.P. 1 at p. 6
[34] (1869 -71) L.R. 3 P.C. 234
[35] Moore v. Lunn, (1923) 15 Ll. L. Rep. 155
[36] The Quebec Marine Insurance Company v. The Commercial Bank of Canada, (1869-71) L.R. 3 P.C. 234.

the type suitable for a particular voyage, its type may not be suitable to carry certain cargo.

In deciding the seaworthiness of the vessel the court must take into account the existing practice, knowledge and technology available to the shipping industry at the time of the incident; the knowledge of hindsight should not be taken into consideration. But once the new practice, knowledge or technology proves to offer a safer environment to the vessel, its crew and the cargo, and becomes widely used and acceptable, if the ship was not then fitted with such equipment it can be considered unseaworthy[37]

The carrier should also ensure that his vessel is supplied with the necessary equipment to ensure the safe navigation of the vessel; e.g. radar, satellite navigation. The carrier is not required to provide his vessel with the latest technology as long as it has not become widely used or proved to be essential for the increasing safety of navigation[38]

B. Human Seaworthiness

Even though the ship is physically seaworthy, it might not have sufficient or competent crew, and this could increase the possibility of its being involved in an accident that could lead to sdamage or loss of the cargo, human casualties or loss of property. Consequently, it is the carrier who has to make sure that his vessel is provided with a sufficient number of trained, competent crew. He also has an obligation to make sure that they know about the specification or any special requirements of the vessel, because a competent crew might still be unable to navigate the vessel safely if managing her needed special knowledge regarding one of its particularities which, if no one knew about, it might expose the vessel to danger[39] .

The competence of the crew would also include their ability to handle the vessel on board which they are employed to work[40]

Therefore, if the vessel sailed without a sufficient number of crew she would not be seaworthy and the carrier would be in breach of his duty to provide a seaworthy vessel[41]

Where the crew is competent and has all the required skills but the carrier failed to communicate to them certain key information about his vessel the awareness of which is important to avoid endangering the ship, its crew and cargo. It could be referred to as ignorance of the crew[42].

If the cause of the loss has nothing to do with the unseaworthiness of the ship or the failure to exercise of due diligence then the shipowner will be able to exempt himself from the liability for the damage if it was a result of the negligence of the crew, using the exception in Art IV r.2 (a)49. But under the Hamburg rules he will still be liable for damages resulting from the negligence of the crew which means that the carrier, under the Hamburg Rules, does not enjoy the same protection offered by Art IV r2 of the Hague/Hague-Visby Rules.

The vessel must be provided with the navigational documents needed for the route she is going to take and ship plans. In addition if, the regulations in a specific port bind ships to carry particular documents, then if the ship does not have such documents this might affect its seaworthiness. Furthermore, if there was a certain practice in the trade that the ship must have certain documents, then the vessel must have them to be seaworthy[43]

In a nutshell, vessel seaworthiness includes three fundamental aspects, physical fitness of the vessel, which includes the physical readiness of the vessel and its equipment to undertake the voyage; human seaworthiness, a very important factor as most marine incidents could be traced back to an error on the part of the carrier or his crew, which includes ensuring the competence of the crew to deal with the vessel and its equipment, and also extends to cover their readiness to deal with emergencies, e.g. fire

[37] Virginia Co. v. Norfolk Shipping Co., 17 Com. Cas. 277, at p. 278

[38] Bradley v. Federal Steam Navigation, (1926) 24 Ll. L. Rep. 446, at p. 454-455

[39] . Papera Traders Co. Ltd. and Others v. Hyundai Merchant Marine Co. Ltd. and Another, The "Eurasian Dream". [2002] 1 Lloyd's Rep. 719.

[40] Standard Oil Company of New York; v. Clan Line Steamers, Limited. [1924] A.C. 100. p. 120-121

[41] Hongkong Fir Shipping Company, Ltd. v. Kawasaki Kisen Kaisha, Ltd, [1961] 1 Lloyd's Rep. 159

[42] Standard Oil Company of New York; v. Clan Line Steamers, Limited. [1924] A.C. 100. p. 120-121.

[43] Levy v. Costerton, 4 Camp. 389, cited in Chellew Navigation Company, Ltd. v. A. R. Appelquist Kolimport, A.G. (1933) 45 Ll. L. Rep. 190, at p. 193

fighting training. Finally vessel seaworthiness covers the documentary element of seaworthiness, e.g. navigational charts, ship plans… etc. Once the vessel has satisfied these three elements we can say that the vessel is seaworthy.

2.BURDEN OF PROOF

An individual pursuing an unseaworthiness claim under maritime law must prove the following elements:

1. That the injured party pursuing the claim (plaintiff) qualifies as a "seaman;"
2. That the vessel was, in fact, unseaworthy; and
3. That the unseaworthy condition was the cause of the plaintiff's injuries.

The common law rule is that the burden of proving unseaworthiness falls on the claimant, this going 'further than simply airing possibilities'[44]. In certain instances, however, there may be facts which might give rise to an inference of unseaworthiness and, where this occurs, this will shift the burden of proving that the vessel was seaworthy to the shipowner[45].

Until recently, tort liability was not imposed upon a shipowner for injuries suffered by a seaman and caused by the unseaworthiness of the former's vessel. The shipowner's duty under the unseaworthiness doctrine was limited to the ship's cargo and to coverage of the ship under a contract of marine insurance[46].The shipowner's liability to crewmen was narrowly limited to providing "maintenance and cure" (wages and medical carer to crewmen whose injuries were not the result of their own misconduct).

The American treatises began to indicate by 1869 that a seaman could, moreover, recover for injuries caused by unseaworthiness. The seaworthy doctrine has been in the American body of maritime law since 1789, when Peters, J., in Dixon v. The Cyrus, stated as two of the "engagements" implied in every seaman's contract: First, that at the commencement of the voyage, the ship shall be furnished with all the necessary and customary requisites for navigation, or, as the term is, shall be found seaworthy; and secondly, that the captain shall supply the mariners with good and sufficient provisions whilst they are in his service .... When from accidental neglect or otherwise there is a manifest and visible deficiency, the mariners may reasonably complain and remonstrate-as in the present case, when the seamen were obliged to go to the main top to command those ropes which are usually within reach of the deck[47].

By the 1870's, United States courts recognized the rights of seamen to indemnity for personal injuries resulting from unseaworthiness. Brown v. The D.S. Cage[48] includes the following: "It is the duty of the master and owners to employ . . . servants of sufficient care and skill, to make it probable that they will not cause injury to each other ....."

Expansion of the doctrine from its genesis in the wage case context to its present status was initiated by the Supreme Court in The Osceola[49]. The Court indicated, by way of dicta, that the shipowner could be held liable to a seaman far an indemnity beyond maintenance and cure for injuries caused by unseaworthiness of the vessel which were attributable to the negligence of the shipowner.

In International Stevedoring Co. v. Haverty[50], the Court defined the statutory term "seaman" as including longshoremen, thereby entitling longshoremen to recover under the Jones Act" against their employer for either the latter's negligence or that of his employees." Harbor workers were thus provided with some degree of protection against job related injury.

The Court concluded that the shipowner's obligation was not confined to seamen who perform the ship's service under his immediate hire but that it also extended to those "seamen" who render the ship's service with his consent or by his arrangement.

The English cases had steadily denied a warranty of seaworthiness or absolute duty with respect to seamen. In England, the shipowner was not liable to the seamen for injuries resulting from unseaworthiness of the vessel caused by the neglect or default of his agents or the master, but only for unseaworthiness caused by the shipowner's personal

[44] Lindsay v Klein (The Tatjana) [1911] AC 194
[45] Ross & Glendining Ltd v Shaw, Savill & Albion Co Ltd (1907) 26 NZLR 845, 854
[46] Tetreauit, Seamen, Seaworthiness and the Rights of Harbor Workers, 39 Cornell L. Q. 381, 394 (1954)
[47] 7 Fed. Cas. 755, No, 3,930 (D.Pa. 1789).
[48] 4 Fed. Cas. 367, No. 2,002 (C.C.E.ID. Tex. 1872)
[49] 189 U.S. 158 (1903)
[50] 272 U.S. 50 (1926).

neglect or within his personal knowledge at the moment the vessel got underway[51]. The rule was abolished in 1876 by the Merchant Shipping Act, 39 & 40 VICT. C. 80 § 5 (1877), The Act, which was re-enacted by the Merchant Shipping Act, 1894, 57 & 58 VICT. C. 60, § 548 (1895), imposed on the shipowner and his agents a standard of "reasonable means" to make the ship seaworthy.

One of the first full-fledged discussions of a shipowner's liability to a seaman for unseaworthiness is in The Lizzie Frank[52].The fact that unseaworthiness was not alleged seems further to indicate that it was as yet a doctrine of little recognition in seamen's injury cases. The case involved the breaking of a chock-typical seaworthiness question as the doctrine developed.

3. LEGISLATIVE STAGNATION

The concept of unseaworthiness lacks a universally accepted definition and is not explicitly codified in statutes or conventions. Instead, it has evolved over time as a nuanced, case-by-case interpretation within maritime law. While the Hague Rules and the Hague-Visby Rules provide a framework that addresses seaworthiness, they do not offer a specific definition of what constitutes unseaworthiness. Rather, these rules implicitly recognize the principle by outlining the obligations of carriers concerning the condition of vessels. Consequently, the concept remains an intricate and historically rooted aspect of maritime jurisprudence, subject to interpretation and contextual analysis in judicial proceedings.

CONCLUSION AND SUGGESTION

It could be concluded from the review of English case law that seaworthiness is a momentary concept. In other words, the standards of seaworthiness may vary according to the practices of the industry at the relevant time. It provides seafarers with a means to claim compensation for injuries sustained due to unsafe conditions aboard vessels. However, several challenges persist, including ambiguities in legal definitions, the burden of proof resting on the injured party, and varying interpretations across jurisdictions. Judicial interpretations have established that unseaworthiness encompasses not only the condition of the vessel but also the competence of its crew and the adequacy of safety measures. Despite these established principles, legislative lacunas and economic pressures on shipowners often hinder effective claims. Many seafarers remain unaware of their rights, and the complexities of maritime law can create barriers to justice.

There is continuing impact on the seaworthiness obligation, particularly as many charterparty standard forms are to be revised. Indeed, the notable trend is for these later revisions of the standard forms to embrace more specific detailed seaworthiness requirements. In particular, the real impact of new challenges, such as autonomous ships and the so-called fourth industrial revolution and ‘smart shipping’, are still to be felt

Legislative bodies should work towards establishing clearer definitions of unseaworthiness that encompass all relevant factors, including vessel condition, crew competence, and safety protocols. This clarity can help reduce inconsistencies in judicial interpretations.

The doctrine of seaworthiness should be extended such that both onboard and on-shore conditions are taken into account.

Implement training programs for seafarers to educate them about their rights under maritime law, particularly regarding unseaworthiness claims. Increased awareness can empower seafarers to pursue their rights effectively.

Propose the creation of standardized reporting systems for vessel conditions and incidents related to unseaworthiness. This data could inform regulatory bodies and help in the assessment of compliance with safety standards.

Develop standardized procedures for documenting conditions aboard vessels to facilitate easier evidence collection in claims. This could include mandatory checklists for vessel inspections and crew training records.

Establish accessible legal assistance programs for seafarers to help them navigate claims related to unseaworthiness. Ensuring that seafarers understand their rights and have the means to assert them is crucial for their protection.

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