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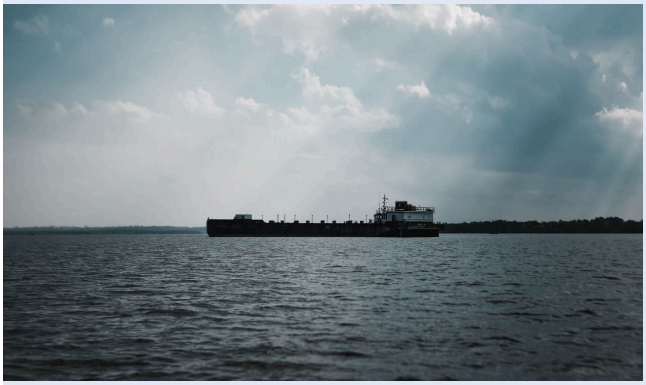
CMA CGM LIBRA[1] – Seaworthiness Revisited

The legal test for the seaworthiness of a vessel under English law is not something fixed and immovable, but something that must be regularly revisited. The decision of the UK Supreme Court in the CMA CGM Libra is an important illustration of this principle, writes ***Richard Hickey****, Senior Associate at CJC and* ***David Fittis****, Trainee Solicitor.*

From a narrow perspective, the judgment merely confirms that a vessel is likely to be unseaworthy if she begins her voyage without a passage plan or with a defective passage plan. However, it also represents an authoritative statement from the highest court in England and Wales as to the general principles governing the question of seaworthiness, and should be read by all those with an interest in the subject.

Background and procedural history

The appeal concerned the scope of a shipowner's responsibility to exercise due diligence in making a vessel seaworthy. The seaworthiness of a vessel is governed by the parties' contractual terms or by statute, such as the UK Carriage of Goods by Sea Act 1971. The case here concerned the seaworthiness obligation imposed by article III rule 1 of the Hague Rules.



The dispute arose following the grounding of the containership CMA CGM LIBRA (the **"Vessel"**) in Xiamen, China in 2011, after which the owners of the Vessel (the **"Owners"**) claimed general average contributions from cargo interests. At first instance, Mr Justice Teare held that the Vessel was unseaworthy at the commencement of its voyage owing to the fact that the passage plan was defective, as it failed to record a warning that the waters were shallower than shown on the chart outside the fairway.

The passage plan was contained in two documents: a "passage plan document", and the Vessel's working chart. For the part of the Vessel's passage involving departure from Xiamen, the relevant chart was British Admiralty chart no 3449 (**"BA 3449"**). During the passage planning process, the crew did not annotate BA 3449 to include an express reference to the uncharted depths warning, nor did they refer to it in the passage plan document.

Owners sought to argue that there was a distinction between seaworthiness – the attributes and equipment of the vessel – and the navigation and management of the vessel – how the crew operates the vessel using those attributes and equipment.

The defects here, however, were found to be causative given that, if the warning had been on the chart, the Vessel would not have left the fairway.

The Court of Appeal upheld the first instance judgment.

On appeal to the Supreme Court, Owners' main argument was that passage plans and working charts are not attributes of a vessel, but only records of navigational decisions taken by the crew.

Analysis

Lord Hamblen, giving the leading judgment, stated that the exceptions in Article IV rule 2 cannot be relied upon in relation to a breach of Article III rule 1. If a vessel is unseaworthy, it does not matter whether negligent navigation or negligent management causes the unseaworthiness, or is itself the unseaworthiness. He stated at para 121:

> *"The fact, if it be a fact, that the "act, neglect, or default" in the navigation of the ship is itself the unseaworthiness makes no difference. What matters is the fact of unseaworthiness. In any event, the negligence in this case was the decision not to note or mark the uncharted depth warning in the passage plan and on the chart. The unseaworthiness was the consequent defective passage plan and working chart. This is therefore a case where the negligent navigational act has caused the unseaworthiness."*

The carrier's primary responsibilities under Article III are (i) before and at the beginning of the voyage to exercise due diligence to make the vessel seaworthy, as provided in Article III rule 1(a)(b)(c), and (ii) to properly and carefully care for the goods, as provided in Article III rule 2.

In most cases, the relevant question will simply be whether a prudent owner would have sent the ship to sea with the relevant defect without requiring it to be remedied, had he known of it – the so-called 'prudent owner' test.

In declaring that passage planning is of "essential importance", Lord Hamblen reiterated that a vessel is therefore likely to be unseaworthy if she begins her voyage with an inadequate passage plan which risks the safety of the vessel.

The Supreme Court held that the carrier was liable for a failure by the crew to exercise due diligence in preparation of a passage plan. The appeal was dismissed.

CJC Perspective

1. It is easy to see why Owners took their argument all the way to the Supreme Court. In a sense, it is difficult to see what more they could have been expected to do on the facts. They had provided the crew with all of the material needed to prepare a safe passage plan, but the crew simply failed to do so on this occasion. It is also easy to have sympathy with Owners' argument that this was an example of a failure of navigation, rather than of some underlying problem with the Vessel or crew.
2. However, the fundamental problem with Owners' case was that the Supreme Court rejected the concept of a "bright line" between negligent navigation and unseaworthiness. It held that negligent navigation may cause unseaworthiness, and the key question is whether that unseaworthiness was present at the beginning of the voyage. On the facts, it was, and Owners were therefore squarely liable pursuant to Article 3(1) of the Hague-Visby Rules.
3. The judgment is likely to become a key reference point for anyone interested in questions of seaworthiness as a matter of English law, both under charterparties and bills of lading, and offers welcome clarification as to the interaction between unseaworthiness and negligent navigation.

[1]*Alize 1954 and another (Appellants) v Allianz Elementar Versicherungs AG and others (Respondents) – The CMA CGM LIBRA [2021] UKSC 51,* on appeal from [2020] EWCA Civ 293.

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