

BENTLEYS

The legal relationship between the ship and the port

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For NI Conference

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Legal Position Favours the Port

- The legal relationship may be governed by statute, international convention, English common law or contract
- The legal position generally favours the port over the ship, which has strict liability to third parties and the port for pollution, acts of pilots, damage to the port and when under tow, with limited recourse
- But ports exist for the benefit of shipping

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The Legal Basis of the Relationship

- Statute, e.g.
 - Harbour Docks and Piers Clauses Act 1847 (HDPCA) and local legislation
 - The Pilotage Act 1987
 - Merchant Shipping Act 1995
- Conventions: ISPS Code, Bunkers Conv.
- Common law – duty of reasonable care
- Contracts

A Port's Contractual Services

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- Types of contractual services:
 - Pilotage
 - pilotage services to ships
 - pilot's employment (or contract for services?)
 - Towage: TOWCON, TOWHIRE
 - Port agents, stevedoring and storage
- Cf. port's statutory obligations

What Can Go Wrong?

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- Acts that give rise to criminal liability
 - For both shipowner and port
 - Oil pollution from tankers, bunker oil pollution
 - MSA 1995 s. 131, Water Resources Act 1991
- Acts that give rise to civil liability
 - Pilotage
 - Unsafe port or ship causing damage
 - Tug and tow

Tanker Oil Pollution

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- Civil Liability Convention 1992 (CLC 92)
 - Supplementary Fund Protocol 2003
 - Compensation for damage caused by persistent spills of oil from tankers
 - Owner has strict (no fault) liability, but:
 - exempt if public authority's negligence in maintaining nav. aids was wholly responsible
 - hard to prove: usually some contributory neg.

Bunker Oil Pollution

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- Shipowner has strict liability:
 - Merchant Shipping Act 1995, s.154
 - Bunker Pollution Convention 2001
- Exceptions, Bunkers Conv. Art 3.3, 3.4
 - Wholly caused by negligence of govt. in maintaining navigational aids, or
 - Wholly or partially caused by negligence of person suffering damage – port?

The Port's Pilotage Services

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- Pilots:
 - “any person not belonging to a ship who has the conduct thereof”
 - Duty to use reasonable care and skill but liability of pilot limited to £1,000 (Pilotage Act '87)
 - Pilotage Act 1987, s16: “The fact that...pilotage is compulsory...shall not affect any liability of the owner for any loss...caused by the ship or by the manner in which it is navigated”

Liability for Pilot's Negligence

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- Claims by third parties.
 - Shipowner alone is vicariously liable for the pilot's negligence
- Claims by ship:
 - Port unlikely to assume obligation for safe pilotage
 - *The CAVENDISH (1993)*: port required only to provide authorised pilots, but no duty to pilot the ships.
 - Port cannot be vicariously liable for the negligence of one its pilots (cf *SEA EMPRESS*)

Port's Liability for Pilots

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- Statutory duty to train, licence, provide, allocate and charge for pilots
- If a casualty results from port's deficiency
 - Port may be in breach of statutory duty or liable for negligence
 - Independent of vicarious liability for pilot's actions
 - SEA EMPRESS: Milford Haven Port Authority convicted of a breach of statutory duty for failing to properly train and allocate a suitable pilot

Port Marine Safety Code

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- Produced as a result of the SEA EMPRESS incident
- Section 3.1 requires a port to "develop and maintain an effective safety management system"
 - Risk assessments, risks to be kept ALARP
 - Qualifications of those involved in navigation
 - Publish plans, assessments, record keeping

Unsafe Ports: Recourse for Ship's Strict Liability?

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- General duty to take reasonable steps to ensure port is safe for navigation
 - Exercise reasonable skill and care to search for / remove / mark known wrecks and other hazards
 - Maintain lights and navigational aids
 - Failure to show hazards on charts
 - Unsafety of dredged channels (cf. error in navigation or pilot negligence)

Unsafe Ports: Direct Action

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- Common law duty of care: *Mersey Docks v Gibbs* (1886)
- Occupier's Liability Act 1957
 - Intended to regulate the "obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft"
 - "Occupier of premises" includes waters of a harbour *The CHARLOTTE C* (2005)
 - Contributory negligence of the ship?

Damage to the Port by a Ship

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- The HDPCA s. 74
 - The registered owner of a ship which damages a port is strictly liable for that physical damage (not consequential losses) regardless of whether the "wrongdoer" was a servant of the shipowner
 - Ship itself also liable under maritime lien
 - Defence: Contributory negligence? Act of God?
- Shipowner may have recourse against port under Occupier's Liability Act 1957

Salvage Inside the Port

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- MSA 1995 s. 252 / HDPCA 1847 s. 56
 - Port has wide powers to deal with vessels "sank stranded or abandoned in or near any approach to any harbour [which is] an obstruction or danger to navigation"
 - Raise, remove or destroy the vessel
 - Reimbursement from sale of what is recovered
- Salvage Convention 1989 – includes ports/ closed docks, but not inland waters

Towage Contracts

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- 'Towage expresses the idea of work done under a towage contract as distinguished from towage work done by a salvor'
- Standard terms / contracts
 - UK Standard Towage Conditions 1986
 - TOWCON (fixed price) TOWHIRE (hire)
 - Hirer of tug is vicariously liable for its crew
 - Tugowner has wide exemption from liability even from negligence and indemnity from tow

Vessel Traffic Service (VTS)

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- What are the obligations and liabilities of a VTS operator? A legal vacuum..
- Does the VTS operator owe a duty of care?
 - Arguably no general obligation to provide warnings of dangers
 - But if VTS directions are given, the standard is of reasonable care and skill
 - Contributory negligence of ship

The Port's Power to Detain

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- The port has a range of statutory powers of detention and sale, e.g. to recover unpaid port dues
 - ss. 44 and 74 of HDPCA 1847
 - Statutory power overrides the priorities of all other claims, including the Admiralty Marshal and holders of maritime liens
 - Statutory power of sale will not give title free of maritime liens and must be exercised, or lost
- For ship under arrest by third party, port can require AM to pay port dues *pro tem*

Questions BENTLEYS



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