

Lecture 2 — Maritime Enterprise, Ship Finance, Salvage and Towage

Company formation, Co-ownership of the ships, management, mortgages, salvage, towage

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Seminar Roadmap — What We Will Cover Today

- How shipowning businesses are structured and why companies are commonly used
- Co-ownership of ships and the relationship between co-owners
- The role and authority of the ship's manager / ship's husband
- Why ship mortgages are central to maritime finance /security
- The legal requirements of salvage and the 1989 Salvage Convention
- Salvage reward, LOF and environmental protection
- Towage contracts, standard forms and contractual allocation of risk
- Distinction between towage and salvage

Learning Outcomes

Explain why the corporate form is commonly used in shipowning

Distinguish joint ownership from part ownership / co-ownership of a ship

Explain the manager's role and the limits of managerial authority

Identify the function, priority and enforcement consequences of a ship mortgage

Apply the basic legal requirements for a salvage claim

Explain the basis on which a salvage reward is assessed

Distinguish ordinary towage from salvage and identify the role of standard forms

I — The Maritime Enterprise

Company formation • ownership structures • commercial organisation

From the Ship → to the Shipowning Enterprise

- A commercial ship is normally operated through an organized business structure
- The legal owner may be an individual, several co-owners or a corporation
- The corporate form is common in shipowning → because the vessel can be registered in the company's name
- The company is legally distinct from its shareholders
- Ownership of the company and ownership of the ship must therefore be kept analytically separate
- A company has a separate legal personality from its shareholders.
 - Where the company is the registered shipowner, the company owns the ship; the shareholders own shares in the company, not shares in the ship.
 - Corporate share ownership must therefore be distinguished from co-ownership of the vessel.

Why Use a Company to Own a Ship?

The company provides a **separate legal vehicle**

--> through which the vessel can be owned and operated

The ship is **registered under the corporate name** rather than the names of individual shareholders

Ownership interests in the company can change without necessarily changing the registered owner of the vessel

The structure facilitates commercial organization, management and financing

The formation of a limited liability company is a common practice in the shipowning business

The Shipowner and the Shareholder Are Not the Same

If the vessel is registered in the name of a company → the company is the shipowner

Shareholders own shares in the company → they do not individually own the company's ship

The ship is an asset of the corporate entity

This distinction matters for

contracts, liabilities, mortgages and enforcement

A company has a separate legal personality from its shareholders.

- Where the company is the registered shipowner, the company owns the ship; the shareholders own shares in the company, not shares in the ship.
- Corporate share ownership must therefore be distinguished from co-ownership of the vessel.

Question to Consider

A family owns all the shares in Blue Sea Shipping Ltd.
Blue Sea Shipping Ltd is the registered owner of M/V Horizon.
Who legally owns the vessel?

Separate the ownership of shares from ownership of the ship.
Ask which legal person appears as owner in the ship register.

Question to Consider

A family owns all the shares in Blue Sea Shipping Ltd.

The Blue Sea Shipping Ltd is the registered owner of M/V Horizon. Who legally owns the vessel?

Answer

Blue Sea Shipping Ltd legally owns M/V *Horizon*.

The company has a separate legal personality from the family members who are its shareholders.

The family owns shares in Blue Sea Shipping Ltd, not shares in M/V *Horizon*.

Even though the family owns 100% of the company, the vessel remains an asset of the company.

Question to Consider

A family owns all the shares in Blue Sea Shipping Ltd.

The Blue Sea Shipping Ltd is the registered owner of M/V Horizon. Who legally owns the vessel?

Answer

The company therefore exercises the rights of ownership over the vessel.

This is different from co-ownership of a ship, where individuals directly own shares in the vessel.

Example: A owns 40/64 shares and B owns 24/64 shares in M/V *Horizon*.

A and B are co-owners of the vessel itself.

Each has a distinct proprietary interest in the ship corresponding to their shares.

Conclusion:

Corporate ownership → company owns the ship; family owns the company.

Co-ownership → individual co-owners directly own shares in the ship.

II — Co-ownership of Ships

Co-ownership — Two Categories

Joint owners → property in the ship or share is vested jointly, with unity of title and no distinction of interest

Part owners / co-owners properly so called. → each holds a distinct share but has an undivided interest in the whole ship

Joint owners resemble joint tenants

Part owners resemble tenants in common in respect of their respective shares

Co-ownership — Two Categories

1. Joint owners

Joint owners own the same interest together.

Common: → their individual interests are not separated.

Example: A and B are jointly registered as owners of **16/64 shares** in a ship.

A cannot say, “8/64 belong to me and 8/64 belong to B.” They **jointly own the whole 16/64.**

This is why → compared to **joint tenants**.

Co-ownership — Two Categories

2. Part owners / co-owners

Here, each person owns a separate, identifiable share in the vessel.

Example:

A owns **40/64** of the ship.

B owns **24/64** of the ship.

A's 40/64 and B's 24/64 are distinct proprietary interests.

But the ship itself is not physically divided: A does not own 40/64 of the bow, decks or engine!

Each owner's share is an undivided interest in the whole vessel.

This resembles tenancy in common.

Co-ownership — Two Categories

The easiest distinction

Joint ownership:

A + B → **together own the same 16/64**

Part ownership:

A → **40/64**

B → **24/64**

Together → **64/64 of the same ship**

So, the phrase “undivided interest in the whole ship”

→ means that the fraction describes the extent of the owner's legal interest, not a physical portion of the vessel.

The Traditional 64-Share Structure

- A ship has traditionally been notionally divided into 64 shares
- The device simplifies dealings with and transfers of ownership interests
- One person or corporation may own several shares
- Joint ownership of a share is conceptually different from separate ownership of fractions of that share
- The register records the proprietary structure

Co-owners — How Are Their Relations Regulated?

- The starting point is any express agreement between the co-owners
- Management may be delegated to a ship's manager or ship's husband
- The manager may or may not himself be a part owner
- In the absence of agreement, the English-law principle applies which states that the will of the majority prevails
- The interests of a dissenting minority must nevertheless be protected

Co-ownership Does Not Automatically Mean Partnership

- Part owners are not necessarily partners in the strict legal sense
- They may nevertheless participate together in particular ventures undertaken by the ship
- They may share profits and losses
- Their exposure to obligations incurred by a manager depends on the manager's actual or implied authority
- Registration of a manager does not by itself create unlimited authority

Co-ownership Practical Scenario

Four part-owners disagree about whether their vessel should accept a profitable but commercially risky charter.

The manager wants to conclude the fixture immediately.

- What agreement governs the co-owners *inter se*?
- What is the position if there is no express agreement?
- Does the manager have authority to conclude the charter?
- How might a dissenting minority protect its position?

Co-ownership Does Not Automatically Mean Partnership

First, we need see the co-ownership agreement between the part-owners.

It may determine how decisions are made.

It may define the powers of the manager.

It may specify whether particular decisions require majority or unanimous approval.

If there is no express agreement:

The general principle is that the majority interest may determine the employment of the ship.

The majority is determined by ownership interests rather than simply by counting the number of co-owners.

A minority cannot normally prevent the majority from commercially employing the vessel.

Co-ownership Does Not Automatically Mean Partnership

The manager may have authority to conclude the charter:

Authority may be express or implied.

Ordinary employment of the ship, including fixing a charter, may fall within the manager's implied authority.

The precise scope of authority depends on the arrangements between the co-owners and the manager.

A dissenting minority may protect its position:

It may rely on restrictions contained in the co-ownership agreement.

It may challenge an act falling outside the manager's authority.

In appropriate circumstances, a dissenting co-owner may seek security against the risks of the proposed voyage or employment.

Overall:

Examine the agreement → then the ownership interests → then the manager's authority → then any protection available to the minority.

III — Management of the Ship

Why Does a Ship Need a Manager?

- Commercial operation requires decisions to be made continuously
- It is impractical for multiple owners to approve every operational transaction
- Management may therefore be delegated to a ship's manager / ship's husband
- The manager acts as the commercial and administrative link between ownership and operation
- The precise scope of authority remains legally important

Why Does a Ship Need a Manager?

- Where a ship has several part-owners, it would be impractical for every owner to participate in every operational decision.
- The owners may therefore appoint a ship's manager, traditionally called the ship's husband, to manage the vessel on their behalf.
- The manager acts as the link between ownership and the commercial operation of the vessel.
- The manager may enter into transactions with third parties on behalf of the owners, provided that these fall within the manager's authority.
- The manager's authority may be:
 - express → specifically granted by the owners
 - implied → arising from the normal functions of managing and employing the ship

Managerial Authority — The Central Issue

- Registration of a manager is not itself the source of every power
- Authority must exist independently of the formal register
- The manager will commonly possess implied authority for ordinary employment of the ship
- E.g.: arranging employment through charter or another commercial contract
- More fundamental alteration or cancellation of contracts may fall outside implied authority

Why Implied Authority Matters Commercially

- Shipping markets move quickly
- A profitable fixture may need to be concluded at short notice
- Prior consent of every part owner may be commercially impossible
- The law therefore recognises practical managerial authority while protecting owners against unauthorised acts
- Always consider --> what authority did the manager actually possess?

Why Implied Authority Matters Commercially

- Shipping is a fast-moving commercial business and decisions often need to be made immediately.
- A charter opportunity may be available only for a short period.
- Requiring the manager to obtain specific approval from every part-owner for every transaction could make effective operation of the ship impossible.
- The manager may therefore have implied authority to carry out transactions normally associated with the management and employment of the vessel.

Why Implied Authority Matters Commercially

- This may include:
 - negotiating and concluding ordinary charterparties
 - appointing agents
 - arranging routine repairs and supplies
 - dealing with ordinary operational expenses
- Implied authority does not mean unlimited authority.

Why Implied Authority Matters Commercially

- An unusual or fundamental transaction may require express authority from the owners.
- The distinction protects both:
 - third parties dealing with the manager in the ordinary course of business
 - owners against transactions outside the manager's authority
- Key issue to ask → was the transaction within the ordinary scope of the manager's authority?

Management Scenario

A ship manager fixes the vessel under a voyage charter without first obtaining the consent of every co-owner.

One minority owner objects after the market falls.

Was fixing employment within the manager's actual or implied authority?

Does registration of the manager answer the question by itself?

What is the significance of the commercial need to act quickly?

Why Implied Authority Matters Commercially

Fixing a vessel under a voyage charter is normally part of the ordinary commercial employment of the ship.

The manager may therefore have implied authority to conclude the charter without obtaining the consent of every co-owner.

Consider whether:

- the co-owners have expressly granted the manager authority to fix the vessel;
- the management agreement restricts that authority;
- the transaction falls within the ordinary scope of managing and employing the ship.

Why Implied Authority Matters Commercially

Fixing a vessel under a voyage charter is normally part of the ordinary commercial employment of the ship.

The manager may therefore have implied authority to conclude the charter without obtaining the consent of every co-owner.

Registration of the manager does not, by itself, determine the scope of authority.

- Registration identifies the manager.
- Authority must arise from the relationship between the manager and the owners, expressly or by implication.

Why Implied Authority Matters Commercially

Fixing a vessel under a voyage charter is normally part of the ordinary commercial employment of the ship.

The manager may therefore have implied authority to conclude the charter without obtaining the consent of every co-owner.

Commercial context is important:

- freight markets can change quickly;
- charter opportunities may require an immediate decision;
- requiring approval from every co-owner for each fixture would make commercial management impractical.

Why Implied Authority Matters Commercially

- Fixing a vessel under a voyage charter is normally part of the ordinary commercial employment of the ship.
- The manager may therefore have implied authority to conclude the charter without obtaining the consent of every co-owner.
- If the manager acted within actual or implied authority, the fact that one minority owner subsequently objects does not normally invalidate the charter.
- The subsequent fall in the market does not retrospectively remove authority that existed when the charter was concluded.
- Key question → did the manager have authority to fix the vessel at the time the charter was concluded?

Why Implied Authority Matters Commercially

- Key question → did the manager have authority to fix the vessel at the time the charter was concluded?

Fixing a vessel under a voyage charter is normally part of the manager's ordinary commercial role and may therefore fall within the manager's implied authority without obtaining every co-owner's consent.

Key question → did the manager have actual or implied authority when the charter was concluded? A later objection or fall in the market does not retrospectively remove that authority.

IV — Ship Mortgages and Finance

Why Ship Finance Matters

- Ships are capital-intensive assets
- Acquisition is commonly financed through external capital
- There is a distinction between secured lending from leasing arrangements
- Under secured lending, the borrower receives funds and undertakes to repay principal and interest
- The lender requires security against the risk of non-payment

The Ship Mortgage — Core Function

- A ship mortgage is a principal form of security for maritime lending
- The mortgage links financing to the ship register
- The vessel stands as security for the secured obligation
- Registration gives the lender a legally recognised proprietary security interest
- The mortgage does not ordinarily make the bank the owner of the ship

Mortgagor and Mortgagee

- Mortgagor = the shipowner / borrower granting the mortgage
- Mortgagee = the bank or other lender receiving the security
- The owner continues to operate and commercially employ the vessel unless enforcement rights arise
- The mortgage protects the lender if the borrower defaults or the security is threatened

Why Registration of the Mortgage Matters

- The mortgage is entered on the ship register
- Registration gives publicity to the security interest
- It also determines priority between competing registered mortgages
- The relevant date is the date of registration rather than merely the date of the underlying loan agreement
- The register therefore performs an important private-law financing function

Priority Between Mortgages

- Where several registered mortgages exist, chronological registration is central
- Earlier registered security normally takes priority over later registered security
- A subsequent mortgagee's enforcement position is therefore affected by prior mortgages
- Priority matters most when the vessel's value is insufficient to satisfy every secured creditor

Priority Between Mortgages

- A ship may be subject to more than one registered mortgage.
- The mortgages do not normally rank equally.
- As between registered mortgages, priority is generally determined by the order in which they are registered.
- The mortgage registered first has priority over a mortgage registered later.
- This is so even if the later-registered mortgage was actually created or signed earlier.

Priority Between Mortgages

- Priority becomes particularly important if the shipowner defaults and the vessel is sold.
- The sale proceeds are distributed according to the applicable ranking of claims.
- As between the two registered mortgagees, the first-ranking mortgagee is paid before the second-ranking mortgagee.

Priority Between Mortgages

- If insufficient money remains, the later mortgagee may recover only part of its debt or nothing.
- Being the first registered mortgagee does not necessarily mean being the first creditor paid from a judicial sale.
- Certain maritime liens and other claims may rank ahead of registered mortgages under the applicable priority rules.
- Usually, priority between registered mortgages is generally determined by registration, but mortgage priority must also be considered within the wider ranking of maritime claims.

Priority Problem Question

Bank A signs a loan and mortgage on Monday but registers the mortgage on Friday.
Bank B signs on Tuesday and registers on Wednesday.
Which mortgage has priority on the source materials?

Focus on registration, not merely the date of the loan agreement.
Why is a public register commercially valuable to lenders?

Default — When the Mortgage Becomes Operationally Important

- The mortgage is primarily a security device, not a day-to-day management mechanism
- On default in repayment, or where the security is threatened, enforcement rights may arise
- Possession and interference with operation → as possible mortgagee remedies
- The mortgagee may also proceed towards private or judicial sale
- The extent of the rights depends on the mortgage and the contractual security package

Mortgagee in Possession

- A mortgagee may take possession when enforcement conditions are satisfied
- Possession can bring rights over the earnings of the ship
- It also brings responsibilities concerning the prudent use of the vessel
- Enforcement rights are exercisable for the purpose of protecting and realizing the scope of the security
- The lender is not simply transformed into the beneficial shipowner for every purpose

Sale by the Mortgagee

- The mortgagee may have a power of sale
- A sale must be undertaken consistently with the mortgagee's enforcement duties
- There has to exist good faith in the exercise of the power
- Any surplus after discharge of the secured debt is held for the mortgagor
- A private sale does not have the same cleansing effect on maritime liens as a judicial sale

The Deed of Covenants

- The mortgage is usually supported by a wider contractual security package
- The deed of covenants regulates how the vessel must be owned, registered, classed, surveyed, insured and managed
- It may restrict additional borrowing or material modification of the ship
- It may give the bank inspection rights
- It defines events of default and the remedies available when default occurs

Additional Security Commonly Required by the Bank

- Assignment of the ship's earnings — hire and freight
- Assignment of insurance proceeds
- Assignment of compensation payable on requisition
- The commercial objective is to capture the principal income and value streams connected with the vessel
- The ship mortgage therefore sits within a package of complementary securities

Mortgage (Process)

- Bank advances funds → shipowner acquires / finances vessel
- Shipowner grants registered mortgage → vessel secures repayment
- Owner operates vessel → earnings service the debt
- Covenants protect the condition and value of the security
- Default → possession / enforcement / sale may become available
- Sale proceeds → secured debt paid according to priority

Mortgage Scenario

A shipowner stops paying interest, allows the vessel's insurance to lapse and begins negotiations to grant a second mortgage to another lender.

- Which aspects threaten the first bank's security?
- Which covenants are likely to matter?
- What enforcement responses are identified in the attached materials?

Mortgage - Analysis

Threats to the bank's security:

- non-payment of interest → financial default
- lapse of insurance → vessel and bank's security are exposed
- proposed second mortgage → additional competing security interest

Relevant covenants:

- obligation to make payments when due
- obligation to maintain adequate insurance
- restriction on creating further mortgages or security without consent

Mortgage - Analysis

Possible enforcement:

- declare an event of default
 - accelerate repayment of the loan
 - take possession of the vessel
 - enforce the mortgage and exercise the power of sale
- The bank may intervene before the value of its security is further endangered.

V — Salvage

Why Does Maritime Law Reward Salvage?

- Ships and maritime property may face serious danger far from immediate public assistance
- Maritime law encourages private parties to render useful assistance
- The reward is an incentive to preserve maritime property and, under the modern regime, to protect the environment
- The right to reward can arise independently of a pre-existing contract
- Salvage is therefore a distinctive maritime institution

A Short Definition

- Salvage → as the voluntary saving of maritime property from danger at sea
- The modern Convention definition focuses on an act or activity undertaken to assist a vessel or other property in danger
- The sequence → recognised property + danger + voluntary service + useful result
- Each element must be examined separately

The Four Core Issues to Examine

1. Is the subject a legally recognised subject of salvage?
 2. Was the service voluntary?
 3. Was the property in real maritime danger?
 4. Did the service produce a useful result?
- Only then does the analysis move to
- the amount and apportionment of reward

What Property Can Be Salvaged?

- Vessels and their equipment
- Cargo and merchandise
- Bunkers
- Wreck and other recognised maritime property
- Freight at risk may also be relevant in the traditional analysis
- The law of salvage is concerned with maritime property rather than every item rescued from danger

Salvage and Life Saving

- Saving human life is a fundamental maritime obligation
- The legal treatment of life salvage differs from property salvage
- Under the modern framework, a person who saves life may share in a property salvage reward in appropriate circumstances
- The master also has a duty to render assistance to persons in danger at sea, subject to safety constraints
- Do not confuse the duty to save life with the proprietary basis of the ordinary salvage reward

Voluntariness

- The salvor must act voluntarily in the legal sense
- A person already under a pre-existing duty to perform the same service may not qualify merely by doing that duty
- The issue is not whether the salvor expects payment
- A salvage agreement does not necessarily destroy voluntariness
- The question is whether the service is legally outside an existing obligation that already required it

Danger — It Must Be Real

- The property must be in danger
- The danger need not be immediate
- It must be real and reasonably apprehended rather than imaginary or remote
- Whether danger exists is assessed objectively in the circumstances
- The degree of danger is also relevant later when assessing the reward

Danger — Practical Indicators

- Loss of propulsion or steering
- Grounding or risk of grounding
- Fire, flooding or structural damage
- Drifting towards hazards
- Collision risk
- Weather, sea state, location and availability of alternative assistance all affect the assessment

The Modern Expression of Success

- Article 12 of the 1989 Salvage Convention links reward to a useful result
- Traditional language expresses the idea as ‘no cure — no pay’
- A wholly unsuccessful service does not generate the ordinary property salvage reward
- Partial success may still justify reward where the service contributes to preservation of property
- Causation between the service and the useful result remains important

The 1989 Salvage Convention — Why It Matters

- It provides the principal modern international framework for salvage
- It regulates the rights and duties of salvors and owners
- It sets criteria for the salvage reward
- It addresses environmental protection through special compensation
- It also recognises the role of salvage contracts and coastal-State interests

Duties of the Salvor

- Carry out the salvage operation with due care
- Exercise due care to prevent or minimise environmental damage
- Seek assistance from other salvors when circumstances reasonably require it
- Accept intervention of other salvors when reasonably requested by the owner or master, subject to the Convention
- Failure to perform duties may reduce or eliminate reward

Duties of the Owner and Master

- Co-operate fully with the salvor during the operation
- Exercise due care to prevent or minimise environmental damage
- When the ship or property has been brought to safety, accept redelivery when reasonably requested
- Salvage is therefore not a one-sided legal relationship

When Does the Right to Reward Arise?

- A salvage operation with a useful result gives rise to a right to reward
- Liability for the reward attaches to the interests in the salvaged property
- The burden is distributed in proportion to the salvaged values
- The reward is not simply an ordinary contractual fee agreed before performance
- Its amount is assessed under the specialist salvage regime

Article 13 — Criteria for Fixing the Reward

- Salved value of the vessel and other property
- Skill and efforts in preventing or minimising environmental damage
- Measure of success obtained
- Nature and degree of danger
- Skill and efforts of the salvors in saving vessel, property and life
- Time used, expenses and losses incurred

Article 13 — Further Reward Factors

- Risk of liability and other risks run by salvors or their equipment
- Promptness of the services rendered
- Availability and use of vessels or equipment intended for salvage
- State of readiness, efficiency and value of the salvor's equipment
- The criteria encourage professional preparedness as well as successful performance

The Reward Cannot Exceed the Salved Value

- The ordinary salvage reward is linked to the value preserved
- The salved fund therefore places an economic ceiling on the property reward
- This creates a difficulty where environmental protection requires expensive work but the property itself has little or no residual value
- That problem explains the development of special compensation

Environmental Protection and Special Compensation

- The 1989 Convention moved beyond a purely property-based incentive
- Article 14 addresses specified salvage operations involving a vessel threatening environmental damage
- Special compensation can respond where the ordinary Article 13 reward is insufficient
- The policy objective is to encourage intervention even where property salvage alone would not provide an adequate incentive

Why Environmental Salvage Changed the Traditional Model

- Traditional model: reward depends on property successfully saved
- Modern casualty: the greatest social value may be preventing pollution
- A badly damaged tanker may have little salved value but enormous pollution potential
- A purely 'no cure — no pay' property model could under-incentivise intervention
- The Convention therefore supplements, rather than simply abandons, the traditional model

VI — Salvage Contracts and Lloyd's Open Form

Why Use a Salvage Agreement?

- A casualty may require immediate action
- Lengthy negotiation over price can increase danger and loss
- A standard salvage form allows the operation to begin while remuneration is determined later
- The agreement provides procedural and contractual certainty without turning salvage into ordinary towage
- The underlying salvage requirements remain important

Lloyd's Open Form (LOF)

- LOF is the best-known standard form used for marine salvage
- Its traditional commercial principle is 'no cure — no pay'
- The amount of reward is not fixed in advance
- Reward is determined after the event through the agreed arbitration machinery
- The structure enables urgent assistance without prior bargaining over a final price

LOF Does Not Destroy the Character of Salvage

- Salvage rights can exist independently of contract
- But parties may regulate the operation through a salvage agreement
- Signing LOF does not by itself mean the service is ordinary contractual towage
- The legal character depends on the salvage context and the applicable regime

Master's Authority to Enter Salvage Arrangements

- The master may need to act urgently on behalf of the ship
- The modern salvage framework recognises broad authority to conclude salvage contracts
- The commercial rationale is obvious: delay may worsen danger
- Authority must nevertheless be exercised bona fide and reasonably in the interests represented

SCOPIC — Commercial Response to Environmental Risk

- The source materials describe the evolution from the environmental concerns that challenged strict ‘no cure — no pay’
- SCOPIC operates alongside LOF as a contractual mechanism addressing specified salvage expenses and environmental-response incentives
- It reduces reliance on uncertain salvaged value where costly pollution-prevention services are required
- It should be understood together with, not as a substitute for, the Convention framework

VII — Towage

What Is Towage?

- Towage is essentially a service by one vessel to another for agreed remuneration
- The tug may pull, push, manoeuvre, berth, unberth or escort the tow
- Port towage is commonly short-term and operational
- Ocean towage may involve long-distance movement of ships, barges or offshore structures
- The legal relationship is primarily contractual

Towage -Contract

- The towage contract defines the agreed service
- It allocates rights, duties and financial risks between tug and tow
- Standard terms are especially important
- Contractual allocation may differ substantially from ordinary fault-based liability
- The wording of the applicable form is therefore central

Port Towage and Ocean Towage

- Port towage: routine assistance connected with harbour navigation and berthing
- Ocean towage: specialized operation over distance, often involving unusual or high-value tows
- The risk profile is different
- The standard contractual forms used are correspondingly different
- Insurance arrangements are closely linked to the contractual allocation

Standard Forms — Port Towage

- UK Standard Conditions for Towage and Other Services
- These conditions may place substantial contractual risk on the tow / tow-owner
- The exact effect depends on the wording of the applicable version
- The purpose is to allocate operational risk in advance and support predictable insurance arrangements

Standard Forms — Ocean Towage

- BIMCO forms such as TOWCON and TOWHIRE are commonly used for ocean towage
- We have knock-for-knock allocation
- Specified losses relating to each side's property and personnel are borne by that side, subject to the contract
- The allocation can operate irrespective of ordinary fault
- The commercial purpose is predictability and insurability

Standard Forms — Ocean Towing

- TOWCON and TOWHIRE are BIMCO standard contracts used for ocean towing.
 - TOWCON → towing for a lump-sum price.
 - TOWHIRE → towing services paid on a daily hire basis.
- They commonly use a knock-for-knock system to allocate risk between the tugowner and tow-owner.
- Under knock-for-knock:
 - each party generally bears specified loss or damage to its own property;
 - each party generally bears specified claims relating to its own personnel;
 - this allocation can apply regardless of which party was negligent, subject to the terms and exceptions of the contract.

Standard Forms — Ocean Towing

- Example:
 - tug negligently damages the tow → under the agreed knock-for-knock allocation, the tow-owner may bear the loss to the tow rather than claim it from the tugowner.
 - tow causes damage to the tug → the tugowner may similarly bear its own property loss.
- Each party can therefore arrange insurance for the risks allocated to it rather than relying upon proving fault against the other party.
- Main commercial purpose → certainty, fewer disputes over fault and predictable allocation of insurable risks.

Knock-for-Knock — Why Use It?

- Complex offshore and ocean towage can involve multiple high-value assets
- Fault investigations may be lengthy and uncertain
- The parties allocate defined categories of loss in advance
- Each side insures the risks contractually allocated to it
- The system reduces litigation over fault between contracting parties, subject to the wording and limits of the clause

Implied Obligations of the Tug

- Be reasonably crewed, equipped and fitted for the contemplated service
- Exercise reasonable care, skill and diligence
- Make adequate preparations for the tow
- Use sufficient power and suitable towing arrangements
- Unforeseen difficulty does not automatically end the contractual obligation

Duty to Persevere

- Towage cannot simply be abandoned because performance becomes difficult
- A tug may be required to stand by and attempt to reconnect after interruption
- Abandonment is associated with impossibility rather than mere inconvenience

Obligations of the Tow

- The tow must be fit for the contemplated towage operation
- Proper preparation and cooperation may be required
- Manning and equipment may matter depending on the operation
- Responsibility is therefore not automatically concentrated on the tug
- The contract remains the primary source for the allocation between the parties

Collision During Towage

- Between tug and tow: the contract allocates their rights and liabilities
- Towards an innocent third vessel: the tug–tow contract does not itself determine the third party's rights
- Navigational fault, control and causation must be examined
- COLREGs and ordinary good seamanship remain relevant

Towage Claims and Enforcement

- A towage claim is fundamentally contractual
- We need distinguish the statutory in rem basis of a towage claim from the maritime lien supporting salvage
- This distinction affects enforcement and priority
- A salvage claim generally enjoys the stronger proprietary status associated with the maritime lien
- The classification of the service can therefore have major financial consequences

VIII — Towage or Salvage?

Towage v Salvage — Starting Point

- Towage = agreed contractual service for remuneration
- Salvage = voluntary assistance to maritime property in danger under the specialist salvage regime
- Ordinary towage does not become salvage merely because it is difficult
- A towage relationship may nevertheless encounter new danger and services outside the original engagement
- The facts and the scope of the pre-existing contract must be analysed carefully

Towage v Salvage — Payment

- Towage: remuneration is determined by the towage contract
- Salvage: reward is assessed after the event under salvage principles / agreement
- Towage liability for payment falls on the contracting party
- Salvage reward is borne by the salved property interests in proportion to salved values

Towage v Salvage — Legal Basis and Enforcement

- Towage rights normally arise from contract
- Salvage rights can arise independently of contract
- Towage claims may support statutory in rem enforcement where the requirements are met
- Salvage is supported by a maritime lien arising from the salvage service
- The salvage lien has important consequences for priority

Towage v Salvage — Standard of Performance and Risk

- Towage: duties and risk allocation are strongly shaped by the contract
- TOWCON / TOWHIRE may use knock-for-knock allocation
- Salvage: the Convention imposes duties of due care and specialist reward criteria
- Salvage remuneration reflects danger, success, skill, effort, risk and value saved
- Classification therefore affects both liability and remuneration

IX — Some Cases

The Horlock (1877) 2 PD 243

- Re ownership and documentary title
- A registered bill of sale supported the transferee's title despite an allegation of fraud by the transferor
- The broader point: registration and bills of sale are important evidence of ownership
- But documentary registration must be understood within the underlying proprietary transaction

The Myrto [1977] 2 Lloyd's Rep 243

- Illustrates the circumstances in which a mortgagee may protect its security
- Useful when explaining why a mortgage is more than a passive notation on the register

Downsview Nominees v First City Corp [1993] AC 295

- Deals with mortgage, enforcement and sale
- Mortgagee powers are exercised for the purpose of realising the security
- A surplus after satisfaction of the secured debt is held for the mortgagor
- Useful for explaining the boundary between security enforcement and ownership

The Neptune (1824) 1 Hag Adm 227

- Lord Stowell's classic description of the salvor as a volunteer adventurer
- The case captures the traditional idea of voluntariness
- It remains useful for understanding why a pre-existing duty can prevent a salvage claim
- Modern analysis must also be read with the 1989 Salvage Convention

The Five Steel Barges (1890) 15 PD 142

- Case re the equitable foundation of salvage
- The right to salvage remuneration does not depend exclusively on an ordinary contract
- The owner of property saved may incur liability to reward those who conferred the benefit
- This helps explain why 'salvage agreement' can be a better conceptual label than ordinary service contract

The Tojo Maru [1971] 1 Lloyd's Rep 341

- Important authority on salvage chapter
- Useful in exploring the relationship between salvage rights and contractual analysis
- Take away → salvage remains a specialist maritime regime even where an agreement exists

The Minnehaha (1861) Lush 335

- A towage contractor may have a duty to stand by and attempt to reconnect
- Difficulty does not necessarily justify abandonment

Towage and Knock-for-Knock

- interaction between performance obligations and knock-for-knock allocation
- A risk-allocation clause does not necessarily make the contract a mere declaration of intent
- The precise contractual wording and nature of the breach remain central

Problem on Salvage

A container ship suffers engine failure and drifts towards a lee shore.
A nearby tug voluntarily assists, prevents grounding and tows the ship to safety.

- Recognized maritime property?
- Real danger?
- Voluntary service?
- Useful result?
- Which Article 13 factors would influence reward?

Problem on Environmental Salvage

A damaged tanker is at risk of releasing oil. Salvors prevent pollution, but little property value is ultimately preserved.

- Why is the ordinary property reward potentially inadequate?
- What policy problem does Article 14 address?
- How does the modern regime encourage environmental protection?

XI — Overall Conclusions

Overall Conclusions — Maritime Enterprise

- The ship may be owned by an individual, co-owners or a corporate entity
- Corporate ownership separates the shipowning company from its shareholders
- Co-ownership requires rules governing shares, decision-making and minority interests
- Management allows the enterprise to operate commercially without constant direct action by every owner
- The scope of the manager's authority remains a legal question

Overall Conclusions — Maritime Enterprise

- The manager acts on behalf of the owners in the commercial operation of the vessel.
 - Authority may be express or implied.
 - Ordinary employment of the ship may fall within implied authority.
 - More exceptional transactions may require express authority.
- Questions to always ask →
 - who owns the ship?
 - who manages the ship?
 - what authority does the manager have?

Overall Conclusions — Mortgages

- The ship mortgage converts the vessel into security for financing
- Registration is central to publicity and priority
- The mortgagee does not ordinarily become the shipowner merely by taking security
- Default can activate possession and sale remedies
- The mortgage is normally reinforced by covenants and assignments of earnings, insurance and other proceeds

Overall Conclusions — Salvage

- Salvage rewards voluntary assistance to maritime property in real danger
- The core requirements are recognised property, voluntariness, danger and useful result
- The 1989 Convention provides the modern framework
- Reward reflects value, danger, success, skill, effort, risk and readiness
- Environmental protection modifies the traditional property-centred ‘no cure — no pay’ model

Overall Conclusions — Towage

- Towage is primarily contractual
- Standard forms can allocate risk very differently from ordinary fault-based liability
- Port and ocean towage present different commercial structures
- Knock-for-knock clauses seek predictability and insurability
- Towage can develop into a salvage situation, but only where the legal requirements for salvage are satisfied

More General Conclusions

- Company law determines who owns and organises the maritime enterprise
- Management determines who acts for it
- Finance and mortgages determine how the ship is funded and secured
- Salvage governs exceptional assistance when maritime property is in danger
- Towage governs an important category of contracted maritime assistance
- Always → identify the legal relationship before asking who bears the risk

Discussion

“Salvage is a distinctive maritime remedy rather than simply payment for services rendered.”

Critically discuss the requirements for a salvage claim and the principles governing the assessment of the salvage reward under the 1989 Salvage Convention.

Discussion

Salvage is a distinctive maritime remedy: entitlement to a reward arises from successful voluntary assistance to maritime property in danger, not simply from performing services.

Requirements for a salvage claim:

- recognised maritime property must be involved, e.g. vessel, cargo or bunkers;
- there must be real and reasonably apprehended maritime danger;
- the services must be voluntary, rather than merely performance of a pre-existing duty;
- there must be a useful result.

Article 12 reflects the traditional “no cure – no pay” principle:

- no ordinary salvage reward without a useful result;
- partial success may nevertheless justify a reward.

Discussion

- Article 13 governs assessment of the salvage reward, considering:
 - salved value of the vessel and other property;
 - degree of danger;
 - degree of success achieved;
 - skill and efforts of the salvors;
 - time, expenses and losses incurred;
 - risks undertaken by salvors;
 - promptness of the services;
 - availability and value of salvage equipment;
 - efforts to prevent or minimise environmental damage.

Core Sources

Christopher Hill, *Maritime Law*, 6th edn (2003), ch 1

Christopher Hill, *Maritime Law*, 6th edn (2003), chs 8–9

Yvonne Baatz (ed), *Maritime Law*, 3rd edn (2014)

Yvonne Baatz (ed), *Maritime Law*, 5th edn, ch 7