

MSc SHIPPING MANAGEMENT- MARITIME LAW

FOR SESSION / SEMINAR / LECTURE 1 - WEEK 1

WEEK 1 — INTRODUCTION TO MARITIME LAW, THE SHIP, NATIONALITY, IDENTIFICATION, OWNERSHIP, COLLISIONS AND PILOTAGE

1. Introduction to Maritime Law

1.1. The significance of maritime law

Maritime law is the body of law governing ships, navigation, maritime commerce and the legal relationships arising from the operation of ships. It is not a completely self-contained legal system. Rather, it brings together principles drawn from several areas of private and public law and applies them to the distinctive commercial and physical environment of shipping.

Maritime law is, in effect, a field combining fundamental principles of contract, tort and property with the realities of shipping and commodity markets, while crossing the traditional boundary between private and public law.

The economic importance of the subject follows from the central role of shipping in international trade. Commercial vessels are built, financed, sold, registered, chartered and insured; they carry goods between international markets; and their operation creates relationships involving shipowners, charterers, cargo interests, banks, insurers, P&I Clubs, classification societies, port authorities, masters and crews.

The legal significance of a ship therefore extends far beyond the physical vessel. A single commercial voyage may simultaneously involve ownership and mortgage rights in the vessel; a charterparty governing use of the ship; contracts for carriage of cargo; bills of lading and international sale contracts; marine insurance; employment relationships with master and crew; flag-State and port-State regulation; collision, salvage or pollution liabilities; jurisdiction, arrest and enforcement questions.

Maritime law is consequently best understood as a network of interrelated legal regimes centred upon the ship and its commercial operation.

1.2. Why do we have a specialised law for ships and shipping?

There are two main reasons why maritime law evolved. The first reason is that ships travel in order to trade. Trade is a parameter leading to prosperity for the

states involved. Subjecting ships to radically different rules will discourage them from visiting some ports and reduce trade. The second reason is that large parts of the oceans are not subject to the jurisdiction of any particular state. Thus, when something, a collision, an oil discharge or a crime, takes place on the high seas (a legal term for the areas of the ocean beyond the national jurisdiction of every state), questions arise on what law will apply, which court will have jurisdiction and what a court in the jurisdiction of which the wrongdoer has entered can do to punish the crime or remedy the damage.

As a result, maritime law is characterised by international harmonisation through numerous international conventions, trying to make the commercial and physical operation of ships safe and efficient for all states. These conventions go well beyond the laws applicable on land. For example, apportionment of liability for collisions was developed well before apportionment between tortfeasors was accepted under the law of negligence. Moreover, one will find in maritime law systems of strict liability which work efficiently as well as systems of shared liability (general average) and systems where voluntary assistance is rewarded (salvage).

Furthermore, the particularities of maritime law have used the freedom of contract to develop practical solutions to commercial problems, which appear peculiar and strange to ordinary contract lawyers. Thus, contracts where the price to be paid is left to be determined later, contracts where one party is liable for any damage both parties may cause, and contracts where an allocation of liability replaces liability in negligence according to the physical object involved in the damage are all parts of maritime law.

Thus, the study of maritime law will enrich and broaden your understanding of how the legal system operates, will enable you to utilise your knowledge of the law of negligence and the law of contract, and will open your mind to the flexibility of the law of contract and its utilisation in commercial matters.

2. Public and Private Maritime Law

A useful introductory distinction is between public maritime law and private maritime law.

Public maritime law concerns the regulatory relationship between ships, States and the international community. It includes matters such as ship nationality, flag-State jurisdiction, safety regulation, pollution prevention, port-State control and the international law governing navigation.

Private maritime law concerns relationships between private parties arising from shipping activity. It includes ship ownership, shipbuilding and sale, charterparties, carriage of goods, marine insurance, collision liability, salvage, general average, maritime liens, mortgages and ship arrest.

The distinction is useful but not absolute. The two dimensions frequently overlap. A collision provides a good illustration. The navigational conduct of the vessels is regulated internationally by the COLREGs, but breach of those navigational rules may become highly significant in determining civil liability between the shipowners.

Similarly, nationality is a matter of international and public law, but registration of a vessel can have major private-law consequences for questions of title, mortgages and the evidential status of ownership.

2.1. The International Maritime Organisation

The IMO is a United Nations body where international regulations and laws are negotiated and agreed upon. These are then enacted as national laws and implemented by the flag states on ships. Thus, there is significant harmonisation of maritime laws around the world, although there are distinct differences too.

2.2. The classification societies

Classification Societies are independent bodies that perform some very important functions within the shipping world. The work of Classification Societies can be separated into two categories:

- Statutory surveys are performed under formal authorisation by flag states. During these surveys, the Classification Society discharges obligations of the state, thus, in essence, though not necessarily in law, acting as a Governmental Agency. When they work in this capacity, they are called Recognised Organisations.
- Any other survey work not concerning statutory duties.

The work of Classification Societies, in addition to their authorised statutory surveys, includes:

- They set detailed standards for ship design and construction. Thus, a shipowner who wants to enrol his vessel with a particular Classification Society must demonstrate that the ship meets the Classification Society's requirements. An alternative for the shipowner is to have his ship built under the auspices of a classification society.
- Classification Societies reassess the vessel's condition throughout her life through a number of regular surveys.

- The Classification Societies, because of their global character, provide the means by which uniform standards can be applied, irrespective of the vessel's Flag State.

3. The Ship as the Central Concept of Maritime Law

The ship occupies the centre of many maritime legal relationships. It is simultaneously a physical object, an economically valuable asset, a means of transportation and the focal point around which numerous rights and liabilities arise.

In the academic literature, it is often described as a thing both economically and legally. It is capable of use and commercial exploitation and is capable of being the object of proprietary rights. At the same time, maritime law treats it differently from ordinary movable property.

The ship is individually identifiable. It has a name, nationality and port of registry. It moves between jurisdictions and encounters risks. It can be sold, mortgaged and arrested. In common law maritime procedure, it may even become the object of an action *in rem*. Nevertheless, the ship does not itself possess legal personality merely because maritime law sometimes appears to treat it as an independent juridical object.

This special treatment helps explain why maritime law contains property rules that sometimes resemble those applicable to immovable property even though a ship is physically movable.

4. The Legal Definition of a Ship

There is no single universal definition of "ship" that applies for every purpose of maritime law. The meaning can vary according to the particular statute, convention or legal issue involved.

This is important methodologically. When confronted with a problem asking whether something is a "ship", the correct question is not simply asking "What is a ship?", but instead "What constitutes a ship for the purposes of the particular legal regime being applied?"

Different definitions may be adopted because different legal regimes pursue different objectives.

Whether a structure is a ship is usually decided as a matter of fact on a case-by-case basis taking into account the use of the particular structure in question, its ability to navigate and also the policy reasons or the practicalities that may

suggest that a structure should or should not be described as a ship. The term “used in navigation” is arguably not satisfied by “controlled travel over water” but “ordered progression over the water from one place to another”. Thus, jet skis do not satisfy the “use in navigation” criterion, while a jack-up oil rig was considered under a different statute to fulfil the navigation criteria even if its primary purpose was not navigation.

Considering the reasons why Admiralty Law has been developed, it is worth considering whether smaller craft, rowing boats, boats and yachts used for recreation should be subject to the same rules as commercial ships. Perhaps the answer should be that they should be subject to the same rules in some respects but not on every aspect.

4.1. The traditional Greek private-law definition

In Greek private law, the traditional definition is to be found under Article 1 of the former Greek Code of Private Maritime Law (KINΔ) which defined a ship by reference to four cumulative elements. In effect, it had to be a hull or vessel, possess a minimum net tonnage, be capable of self-propulsion and be intended to move at sea. Thus, under that traditional approach, the following elements were significant.

4.1.1. A vessel or hull

There must first be a physical craft capable of constituting the relevant maritime object.

4.1.2. Minimum tonnage

The former Code required a net capacity of at least ten tons.

4.1.3. Self-propulsion

Self-propulsion could arise through mechanical propulsion or wind power. Objects lacking autonomous propulsion, such as certain barges, floating cranes and floating lights, were therefore distinguished from ships.

4.1.4. Movement at sea

The craft had to be intended for navigation at sea rather than merely on inland waters. What is important is the function rather than superficial appearance. Submarines and hydrofoils may fall within the concept, whereas a seaplane is not converted into a ship simply because it can land on water.

The law also distinguishes ships from floating constructions. That distinction matters because not every provision governing ships necessarily applies to floating structures.

The above is describing the former Code of Private Maritime Law (CPML – ΚΙΝΔ) framework; current Greek law must now be read in light of Law 5020/2023, which replaced the previous Code.

4.1.5. The New Greek Code of Private Maritime Law (Law 5020/2023)

The position under Greek law has now changed significantly with the adoption of the new Code of Private Maritime Law (Κώδικας Ιδιωτικού Ναυτικού Δικαίου – ΚΙΝΔ), Law 5020/2023, which entered into force on 1 May 2023 and replaced the former Code.

The reform modernises Greek private maritime law and adapts it to contemporary forms of shipping and maritime activity. Importantly for present purposes, the new Code adopts a broader and more functional conception of the ship, moving away from some of the restrictive elements of the former definition, particularly the traditional requirement of a minimum tonnage.

It also expressly addresses floating constructions (πλωτά ναυπηγήματα) as a separate category and determines when provisions relating to ships apply to them.

This change is important because the legal classification of an object as a ship is not merely descriptive. It determines the application of a range of private maritime-law rules concerning matters such as ownership, transfer, registration, mortgages and maritime privileges, arrest and enforcement, and liability.

The new CPML – ΚΙΝΔ therefore reflects a more modern approach, whereby instead of defining the ship principally through rigid physical criteria inherited from the earlier Code, the emphasis is increasingly upon the vessel's function and intended use in maritime navigation.

5. The Ship as a Special Form of Movable Property

Although a ship is movable property, maritime law has historically treated it differently from an ordinary movable object. In the literature it has been characterised as a *sui generis* movable. Certain rules applicable to it resemble rules ordinarily associated with immovable property.

For example, the Greek legal system attaches particular importance to registration of ownership and proprietary rights. Ships can also be subject to maritime

mortgages, whereas ordinary movable property is normally secured through different forms of security.

The reason is largely commercial. Ships are highly valuable assets that operate internationally. Third parties, including purchasers, mortgagees, banks and creditors, need reliable means of identifying both the vessel and rights existing over it.

The ship therefore illustrates an important characteristic of maritime law, i.e. that ordinary private-law concepts are often adapted to accommodate the distinctive requirements of international shipping.

6. Nationality of the Ship

6.1. The relationship between nationality and flag

Ships possess a nationality. In practical terms, nationality is expressed through the ship's entitlement to fly the flag of a particular State.

Under Article 91 UNCLOS, every State determines the conditions for granting its nationality to ships, registering ships in its territory and granting the right to fly its flag. Ships possess the nationality of the State whose flag they are entitled to fly. Article 91 also provides that there must exist a genuine link between the State and the ship.

Nationality is therefore not simply a decorative association between the vessel and a State. It provides the principal juridical connection through which the vessel is brought within an international legal order.

Article 92 UNCLOS establishes the basic principle that ships sail under the flag of one State only and, subject to recognised exceptions, are subject to that State's exclusive jurisdiction on the high seas. A vessel cannot simply alternate between flags according to convenience.

6.2. The importance of nationality

Nationality identifies the flag State, which has important regulatory responsibilities concerning vessels flying its flag.

The flag State's jurisdiction is particularly significant on the high seas because there is no territorial sovereign exercising general jurisdiction over the maritime space in which the ship is navigating.

Nationality therefore connects the vessel to a State and a legal system. It has consequences for registration; safety and technical regulation; manning requirements; administrative supervision; jurisdiction over the ship; enforcement of international maritime standards.

A ship without nationality would occupy a highly problematic position in the international legal order because the high seas do not fall within the territorial sovereignty of an individual State.

7. The Genuine Link and Open Registries

Article 91 UNCLOS requires a genuine link between ship and flag State but does not define precisely what that link requires. This has generated longstanding debate concerning open registries or what are sometimes called "flags of convenience".

In the UK, the British registration requirements seek to establish a British connection between vessel and State. There is, however, a broader international controversy surrounding the absence of a comprehensive definition of the genuine-link requirement.

The underlying regulatory concern is straightforward and explained as follows: international law gives the flag State substantial authority over vessels flying its flag. Effective flag-State regulation therefore depends upon the State being capable of exercising genuine jurisdiction and control. The existence of open registries, therefore, raises the question whether a formal registration connection is sufficient where the shipowner, beneficial owner, management company, crew and commercial operation may all be located elsewhere. This tension should not be simplified into an assumption that an open registry is necessarily unlawful. The legal question under UNCLOS is the relationship between nationality, the genuine link and the flag State's effective exercise of its international responsibilities.

8. Ship Registration

Nationality and registration are closely connected but conceptually distinct. Nationality describes the legal relationship between ship and State, whereas registration provides the institutional mechanism through which that relationship and important information about the vessel are formally recorded.

The modern UK Ship Register contains different parts for different categories of vessel. Current UK government guidance identifies four parts, covering commercial and pleasure vessels, fishing vessels, small ships and bareboat-

chartered vessels. Part I registration can also facilitate the registration of a marine mortgage. < <https://www.gov.uk/register-a-boat/the-uk-ship-register?>>

Registration serves both public-law and private-law functions.

From a public-law perspective, registration identifies the vessel as entitled to the nationality and flag of the registering State.

From a private-law perspective, the register can provide evidence concerning matters such as ownership and registered mortgages.

Ship registration has a dual role.

The first role concerns the public law character of registration which includes:

- the right to fly the flag of the ship register;
- freedom of navigation on the high seas without interference from foreign ships;
- the entitlement to protection by the flag state's navy;
- the right to diplomatic protection and consular assistance;
- rights to operate in the territorial sea and the internal waters of the flag state (for example, fishing or marine research)
- protection under the rules of war when the flag state is in a state of war.

The second role of ship registration concerns the private law issues of ownership and financial security.

Registration, in effect, bears an evidentiary importance. In *Hibbs v Ross* (1866) LR 1 QB 534, the certificate of registry was held to constitute prima facie evidence of ownership. The case illustrates an important private-law function of ship registration, i.e., that the register provides readily ascertainable evidence of the identity of the registered owner and may be relied upon as initial proof of title. What is needed is evidence demonstrating that the registered position does not correspond with the underlying legal or beneficial ownership.

Registration should therefore be distinguished from an indefeasible system of title, as its importance lies in providing authoritative evidence of the registered ownership position rather than necessarily constituting conclusive proof of ownership.

9. Means of Identification of the Ship

Because vessels travel internationally, change ownership and may change names or flags during their operational lives, reliable identification is essential.

Traditional means of identification include the name of the ship; the port of registry; nationality and flag; registered tonnage; official registration particulars; the ship's IMO number; call sign and other regulatory identifiers.

Eventually, we must treat the ship's name and port of registry as important elements of its legal individualisation.

9.1. The IMO Ship Identification Number

The development of the IMO number is especially important because names, owners and flags can change.

The IMO Ship Identification Number Scheme was introduced in 1987. Its objectives include improving maritime safety and pollution prevention and combating maritime fraud. The number provides a permanent identifier for the vessel.

The standard IMO number consists of the letters IMO followed by seven digits. Most importantly, it remains attached to the vessel throughout its life even if the vessel changes name, owner, flag or type.

The number is not subsequently reassigned to another vessel. SOLAS made the identification scheme mandatory for specified categories of ships, and the number must be permanently marked as required by the relevant regime.

The IMO number therefore provides something that a ship's name cannot provide, i.e., continuity of identity across changes in the vessel's commercial and legal history.

10. Acquisition of Ship Ownership

Ownership of ships may be acquired through different legal mechanisms. The precise requirements depend upon the applicable national law, but it is useful to distinguish between derivative and original modes of acquisition.

Derivative acquisition occurs where the new owner derives title from a previous owner. The most obvious example is the sale and transfer of an existing vessel.

Original acquisition does not depend upon transfer of the previous owner's title. Shipbuilding provides an important example, although the precise moment at which ownership of a vessel under construction passes depends upon the governing law and contractual arrangements.

Other mechanisms recognised within maritime/property law may include judicial sale and depending upon the applicable domestic system, prescription or analogous forms of acquisition.

10.1. Sale and transfer of a vessel

The sale of a second-hand ship is not equivalent in commercial practice to an ordinary sale of goods. The vessel is a high-value registered asset and may be subject to mortgages, maritime liens or other encumbrances.

A purchaser therefore needs to establish not merely that the seller is prepared to deliver physical possession of the vessel but also that the seller can provide the agreed legal title free from prohibited encumbrances.

The distinction between possession and title is essential. Physical delivery of a vessel does not necessarily answer the proprietary question of who legally owns it.

10.2. Registration and transfer of ownership

Registration becomes particularly important when ownership changes. In systems that require registration of proprietary changes, the transfer must comply with statutory formalities before the purchaser obtains the legal status contemplated by the legislation. This is something distinctive and a special feature of ships when comparing them with ordinary movable property.

In other words, proprietary transfers concerning ships are subjected to registration requirements because of the vessel's distinctive legal and economic character.

10.3. Acquisition through judicial sale

Ownership may also be acquired through a judicial sale, commonly following enforcement against a vessel. This is particularly important in maritime law because ships may be arrested and sold in satisfaction of maritime claims.

A judicial sale performs an important commercial function because the purchaser ordinarily needs confidence that the vessel can emerge from the enforcement process with the legal effect attributed to the sale by the relevant system, rather than simply inheriting an uncertain collection of claims against the vessel.

This connects ship ownership with later topics such as maritime liens, mortgages, arrest and priority.

11. Collision Law

11.1. Nature of a collision claim

A collision between vessels may cause extensive loss: damage to the vessels themselves, cargo loss, personal injury, pollution, loss of earnings and consequential economic loss.

Under English law, collision liability is principally based upon fault. Every ship owes a duty of care to other users of the sea and that most collision claims are based upon negligent breach of that duty or negligent breach of statutory duty. Importantly, the mere occurrence of a collision does not itself prove negligence.

Collision law therefore combines ordinary principles of negligence with specialist navigational rules.

Navigational negligence and management negligence

An important distinction can be drawn between negligence in navigation and negligence associated with the management or operation of the vessel.

Immediate navigational negligence may involve the conduct of the master, officers, crew or pilot shortly before the collision.

However, the true cause of a collision may originate much earlier. Examples include the failure adequately to maintain engines or steering equipment; inadequate crew training; insufficient manning; fatigue caused by an inadequate watch system; failure by the management company to implement proper safety procedures.

Any collision analysis should not automatically stop with the person physically navigating the vessel at the moment of impact.

12. The COLREGs

The principal international navigational regime is the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs).

The Convention was adopted in 1972 and entered into force in 1977. It replaced the 1960 Collision Regulations. The IMO identifies the recognition of traffic separation schemes as one of the major innovations of the 1972 regime.

The COLREGs contain 41 Rules, organised into Parts dealing with general matters, steering and sailing, lights and shapes, sound and light signals, exemptions and verification of compliance.

Several Rules are particularly important when analysing collision problems.

Rule 2 — Responsibility

Rule 2 prevents the COLREGs from being treated as a mechanical checklist detached from good seamanship. Responsibility remains for failure to comply with the Rules and for neglect of precautions required by ordinary seafaring practice or by the particular circumstances.

Rule 5 — Look-out

Every vessel must maintain a proper look-out by sight and hearing and by all available means appropriate to the prevailing circumstances.

A collision problem will therefore frequently begin by asking whether a proper look-out was maintained.

Rule 6 — Safe speed

Every vessel must proceed at a safe speed so that appropriate and effective action can be taken to avoid collision and the vessel can be stopped within an appropriate distance.

"Safe speed" is contextual. Visibility, traffic density, manoeuvrability, weather, draught and radar information may all matter.

Rule 7 — Risk of collision

Vessels must use all available means appropriate to determine whether a risk of collision exists. Assumptions should not be made on inadequate information, particularly inadequate radar information.

Rule 8 — Action to avoid collision

Avoiding action should be positive, made in ample time and consistent with good seamanship.

Rules 13–17 — Encounters between vessels

These Rules regulate recurring navigational situations.

Rule 13 deals with overtaking.

Rule 14 deals with head-on situations.

Rule 15 deals with crossing situations.

Rule 16 regulates the conduct of the give-way vessel.

Rule 17 regulates the conduct of the stand-on vessel.

A frequent misunderstanding is that the stand-on vessel possesses an unconditional "right of way". It does not possess such a right. Rule 17 contains

obligations and ultimately requires collision avoidance where the conduct of the give-way vessel makes intervention necessary.

Rule 19 — Restricted visibility

Rule 19 deals specifically with vessels not in sight of one another when navigating in or near restricted visibility and requires navigation adapted to those circumstances.

The COLREGs therefore operate both as navigational safety rules and as an important framework for evaluating fault after a collision.

21.1. The flexibility of the COLREGs

The COLREGs deliberately combine relatively specific navigational rules with open-textured standards. Concepts such as “safe speed”, “risk of collision”, action taken in “ample time” and the requirements of “good seamanship” cannot sensibly be reduced to fixed numerical rules because safe navigation depends upon vessel type, manoeuvrability, visibility, traffic, weather and the particular circumstances of the encounter. This flexibility is one of the strengths of the COLREGs, but it also creates interpretative uncertainty.

Two navigators may assess the developing risk differently, particularly in complex or multi-vessel situations. Effective collision avoidance therefore depends not only upon formal knowledge of the Rules but also upon competence, situational awareness and professional judgment. This tension becomes particularly significant as navigational decision-making is increasingly automated.

12.2. Apportionment of Collision Liability

Where only one vessel is at fault, the basic position is straightforward, i.e., the party legally responsible for that fault bears the resulting collision liability, subject to applicable defences and limitation rules.

More difficult cases arise where both vessels are at fault.

Modern collision law rejects the old rule under which damages could simply be divided equally irrespective of the relative contribution of each vessel. Liability is instead apportioned according to the degree of fault, where that degree can be established.

This reflects the 1910 Brussels Collision Convention, whose principles have significantly shaped domestic collision law. Where it is impossible to establish different degrees of fault, liability may be apportioned equally.

12.3. Causation in Collision Cases

A breach of the COLREGs does not automatically establish liability for every loss following the collision. Ordinary principles of causation remain important.

The claimant must establish a causal relationship between the fault and the relevant damage.

This can become complex where several acts or omissions contribute to the casualty. For example, one vessel may initially create the dangerous situation through excessive speed, while the other subsequently fails to take proper avoiding action.

Collision therefore normally involves three related questions, i.e., a) what duty or navigational rule applied? b) was it breached? and c) to what extent did that breach cause the collision and resulting loss?

The analysis may then proceed to apportionment where more than one vessel was at fault.

12.4. Collision and Limitation of Liability

Collision liability should also be distinguished from the separate question of limitation of liability.

A shipowner may be liable for collision damage but nevertheless entitled to limit the total amount payable under the applicable limitation regime.

The modern international framework is primarily associated with the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol and subsequent amendments to the limits.

Thus, we need distinguish that liability asks whether and to what extent the defendant is legally responsible, whereas limitation asks whether the amount recoverable from that defendant is subject to a statutory or convention-based ceiling.

13. Towage

13.1. Nature of towage

Towage is the provision of services by one vessel, the tug, to assist another vessel or floating structure by pulling, pushing, manoeuvring, docking or escorting it. Port towage commonly involves relatively short operations connected with entering or leaving port, berthing or unberthing. Ocean towage may involve the

movement of ships, barges, offshore structures or other floating objects over considerable distances.

The legal relationship between tug and tow is primarily contractual. The towage contract therefore provides the starting point for determining the parties' respective rights, obligations and allocation of financial risk. This distinguishes towage from collision liability towards third parties, where the contractual allocation between tug and tow does not itself determine the rights of an innocent third party.

Standard contractual terms are particularly important. Port towage may be undertaken under standard conditions such as the UK Standard Conditions for Towage and Other Services, while ocean towage commonly uses forms such as TOWCON and TOWHIRE. These contracts can allocate risk in ways that differ significantly from the result which might otherwise follow from ordinary fault-based liability.

13.2. Allocation of risk — port and ocean towage

A particularly important feature of towage contracts is contractual risk allocation.

In port towage, standard conditions may place substantial risks upon the tow or tow-owner, including risks arising during the tug's performance of the service. The precise result always depends upon the wording of the applicable contractual terms.

Ocean towage under forms such as TOWCON and TOWHIRE commonly uses a knock-for-knock structure. Broadly, specified losses relating to each party's own property and personnel are allocated to that party irrespective of which party was at fault, subject to the terms and exceptions of the particular contract.

The commercial purpose is predictability. Instead of determining every loss by lengthy investigation into fault, the parties agree in advance where particular categories of risk will fall and can arrange insurance accordingly. Baatz explains that the TOWHIRE allocation can operate irrespective of whether the relevant liability would otherwise attach to the tug or tow and discusses the relationship between this allocation and seaworthiness/tow worthiness obligations.

This does not mean that fault becomes irrelevant for every purpose. The contractual allocation governs the parties who are bound by it and only within its scope. It does not automatically determine liability to an independent third party.

13.3. Implied obligations of tug and tow

Unless displaced or modified by the contract, the tug must exercise reasonable care and skill in carrying out the towage service. It must be appropriately crewed, equipped and fitted for the contemplated operation, and reasonable preparations must be made for the tow, including suitable towing equipment and arrangements.

The tug's obligations do not necessarily end when difficulties arise. Case law discussed in Baatz illustrates that a tug may have to stand by, reconnect and continue the towage rather than simply abandon the tow following a broken or released towline. Towage may ordinarily be abandoned only where performance has become impossible.

Corresponding obligations may rest upon the tow. The tow should be fit for towage and appropriately prepared and manned where necessary, while those controlling it must exercise proper skill and diligence.

13.4. Towage and salvage

Towage and salvage must be distinguished.

Ordinary towage is the performance of an agreed contractual service. Salvage, by contrast, concerns voluntary assistance to maritime property exposed to marine danger and gives rise, where the legal requirements are satisfied, to the specialist salvage reward regime.

A relationship that begins as towage can, however, encounter circumstances of danger capable of raising a salvage question. The important issue is whether what is being performed remains within the agreed towage service or whether the circumstances and services have changed sufficiently to engage the law of salvage.

13.5. Collision during towage

A collision during towage requires two relationships to be kept analytically separate.

First, as between tug and tow, their contractual arrangements will ordinarily govern their respective rights and liabilities.

Second, as against an innocent third vessel, the towage contract does not determine that third party's rights. Liability must instead be analysed by reference to navigational fault, causation, the COLREGs and ordinary principles of good

seamanship. The contractual relationship between tug and tow does not alter their legal relationship with a third party in a collision.

The fact that tug and tow are physically connected does not mean that they must automatically be treated as a single legal actor for liability purposes. The relevant issues and questions to pose and answer include: Who had navigational control? Which vessel committed the relevant fault? Did that fault cause or contribute to the casualty? Did the tug, tow and/or third vessel each contribute?

Where several faults contribute, the principles of collision apportionment discussed above become relevant.

13.6. Commercial significance

The distinction between port and ocean towage is also commercially important. Port towage is a routine component of ship operations and may be arranged by owners or, depending upon the contractual arrangements, charterers. Ocean towage is more specialised and may involve substantial operational risk, specialist contracts and dedicated insurance arrangements.

13.7. Wreck Removal

A vessel that sinks, strands or otherwise becomes a wreck may create risks to navigation, the marine environment and port operations. Wreck removal therefore involves both public regulatory powers and private financial responsibility.

Within ports and territorial waters, domestic law may empower competent authorities to mark, remove or require the removal of dangerous wrecks. Beyond the territorial sea, the Nairobi International Convention on the Removal of Wrecks 2007 provides an international framework addressing hazardous wrecks within its geographical scope.

Under the Convention, responsibility is principally placed upon the registered owner. The regime includes obligations concerning locating, marking and removing wrecks and requires compulsory insurance or other financial security for ships within its requirements. Baatz explains the Convention alongside domestic wreck-removal powers and the practical problem that removal costs can substantially exceed the residual value of the wreck.

The liability regime should again be distinguished from the contractual arrangements under which professional contractors actually carry out the removal. Wreck removal can therefore involve statutory liability on the shipowner on the one hand and a separate wreck-removal contract on the other.

A further issue is limitation of liability. Whether wreck-removal claims are limitable depends upon the applicable limitation regime and any reservations made by the relevant State. Students should therefore not assume that because a claim is maritime it is necessarily subject to the same limitation rules as an ordinary collision claim.

Commercially, wreck removal can affect the shipowner, cargo interests, P&I insurers, financiers and public authorities. Here we see one further example of the recurring maritime-law distinction between the person responsible for an operational casualty and the mechanisms through which its financial consequences are ultimately borne.

14. Pilotage

14.1. The nature of pilotage

Pilotage concerns the use of a person possessing specialist local navigational knowledge to assist in navigating a vessel through particular waters, especially ports, harbour approaches, rivers and other areas presenting particular navigational difficulties.

The pilot's expertise may include knowledge of local channels and depths; currents and tides; harbour geography; traffic patterns; berthing arrangements; local navigational practices and restrictions.

The presence of a pilot does not mean that the master simply ceases to have responsibility for the vessel. The relationship between master and pilot is more complex, particularly when determining responsibility for negligent navigation.

14.2. Master, Pilot and Bridge Team

The pilot's presence does not ordinarily displace the master's ultimate command of the vessel. The pilot contributes specialist local knowledge and participates directly in navigation, but the master and bridge team remain required to monitor the vessel's progress and safety. Effective pilotage therefore depends upon proper master-pilot information exchange, communication and continuing situational awareness on the bridge.

Where a pilot gives an instruction which creates an evident danger to the vessel, the master cannot treat the fact that a pilot is on board as justification for remaining passive. The distinction is important as compulsory use of a pilot does not mean compulsory obedience to an unsafe navigational instruction.

14.3. Voluntary and Compulsory Pilotage

A fundamental distinction is between voluntary pilotage and compulsory pilotage. With voluntary pilotage, the owner or master elects to obtain the services of a pilot. With compulsory pilotage, legislation or the competent harbour authority requires the vessel to take an authorised pilot when navigating within a designated area.

Under the Pilotage Act 1987, competent harbour authorities in the United Kingdom have regulatory responsibilities in relation to pilotage. They determine the need for pilotage services within their area and may establish compulsory pilotage requirements.

Where a vessel navigates in a compulsory pilotage area without the required pilot (or the relevant master or first mate does not possess the necessary exemption certificate) the master may commit an offence.

14.4. Liability of the Pilot

A pilot may incur personal liability where negligent acts or omissions cause damage. The Pilotage Act 1987 nevertheless places important limits upon the civil liability of authorised pilots.

The statutory limitation applies to an authorised pilot's liability and the pilot's liability is subject to a very low statutory ceiling by comparison with the potential scale of maritime losses. Also, particular criminal liability provisions applicable where specified conduct causes serious damage, injury or death.

The commercial reason for limiting the pilot's personal exposure is readily understandable. A navigational error by an individual pilot could produce losses worth many millions of pounds. It would be unrealistic to treat the individual pilot as the principal financial risk bearer for such casualties.

14.5. Liability of the Shipowner for Pilot Error

A particularly important question is whether the shipowner escapes liability where the collision results from the negligence of a pilot, especially where pilotage was compulsory.

The intuitive argument might be that an owner should not be responsible for a navigator whom the law required the vessel to employ.

English maritime law does not generally accept that proposition as a complete defence.

The statutory scheme preserves the shipowner's exposure for the navigation of the vessel notwithstanding compulsory pilotage. The fact that the owner was legally obliged to take the pilot does not automatically transfer collision responsibility from the vessel and owner to the pilot or harbour authority. Under English law, this position is reflected in s 16 of the Merchant Shipping Act 1995: the owner or master is not relieved from liability merely because the vessel was navigating under circumstances in which pilotage was compulsory.

This is commercially significant because the injured third party will normally look to the shipowner and the ship's liability insurance rather than to the personal resources of the pilot.

14.6. Liability of the Harbour Authority

The mere fact that a harbour authority authorised the pilot does not make the authority automatically liable for the pilot's negligence.

Fault on the part of the competent harbour authority itself must normally be demonstrated. Potential issues could arise, for example, in relation to breach of the authority's statutory responsibilities concerning authorisation, competence or regulation of pilots.

The distinction is therefore between negligence of the pilot while navigating the vessel and independent fault of the harbour authority in performing its own legal duties.

See e.g., *Oceangas (Gibraltar) Ltd v Port of London Authority (The Cavendish)* [1993] 2 Lloyd's Rep 292, where an attempt to derive a positive liability from the harbour authority's statutory responsibilities was rejected.

The court considered whether the statutory responsibilities of a harbour authority could themselves provide the basis for imposing a positive civil liability and as stated above the attempt was rejected.

The case illustrates the important distinction between the existence of statutory powers or public-law responsibilities and the existence of a private-law duty giving rise to liability in damages.

The fact that legislation confers functions or responsibilities upon a harbour authority does not, without more, mean that a person suffering loss can derive from those provisions an actionable positive duty.

Whether civil liability arises depends upon the proper construction of the statutory scheme and the applicable principles of private law; a statutory

responsibility should not automatically be converted into a corresponding duty owed to an individual claimant.

14.7. The Relationship Between Pilotage and Collision Liability

Pilotage and collision law should ultimately be studied together rather than as completely separate subjects.

Consider a vessel entering a compulsory pilotage area. A pilot boards. The vessel subsequently collides with another ship.

A proper legal analysis requires several separate inquiries.

First, what caused the collision? The navigational conduct must be assessed, including compliance with the COLREGs.

Second, whose conduct was at fault? The fault may lie with the pilot, master, bridge team, shipowner or potentially more than one actor.

Third, who is legally responsible to the injured third party? This is not necessarily identical to identifying the individual whose immediate navigational error caused the collision.

Fourth, is another party independently liable? For example, there may be an issue concerning the harbour authority's own statutory duties.

Finally, even where liability is established, the separate question of limitation of liability may arise.

All of the above demonstrate why maritime law frequently separates physical causation, personal fault, attribution of legal responsibility, and financial limitation.

15. Overall Conclusions from Week 1

The starting point is the ship as the central juridical and commercial object of maritime law. Before applying specialist rules to a craft, it may be necessary to determine whether it qualifies legally as a ship for the particular statutory or convention regime. This classification has practical consequences for ownership, registration, mortgages, maritime privileges, arrest, enforcement and liability.

Once identified as a ship, the vessel is linked to a State through nationality and flag. Under UNCLOS, nationality identifies the flag State and provides the principal jurisdictional connection between the vessel and a State, particularly on the high seas. The requirement of a genuine link raises the broader question

whether formal registration is accompanied by effective flag-State jurisdiction and control, particularly in the context of open registries. Registration, although closely connected with nationality, performs separate public- and private-law functions and can provide important evidence of ownership and registered proprietary interests.

Because ships operate internationally and may change names, owners and flags throughout their working lives, maritime law also requires reliable means of identification. The IMO number is particularly important because it provides continuity of identity and, unlike the vessel's name, ownership or flag - it remains attached to the vessel throughout its life.

The ship is also a highly valuable form of property capable of being owned, transferred, mortgaged and judicially sold. Ownership may be acquired through derivative or original mechanisms, while transfer of a registered ship illustrates the importance of distinguishing physical possession from legal title. Judicial sale further connects ship ownership with mortgages, maritime liens, arrest, enforcement and priority.

At the same time, the ship is an operating navigational object capable of causing substantial harm. Collision law determines responsibility for losses resulting from faulty navigation, while the COLREGs provide internationally harmonised standards intended primarily to prevent collisions. Collision liability requires consideration not merely of breach but also of causation and, where more than one vessel is at fault, apportionment according to the respective degree of fault. Liability must, in turn, be distinguished from limitation of liability: establishing that a shipowner is legally responsible does not necessarily mean that the full amount of the resulting loss is recoverable without a statutory or convention-based ceiling.

Towage demonstrates particularly clearly the interaction between contract, navigational responsibility and commercial risk allocation. The legal relationship between tug and tow is primarily contractual, and standard forms may allocate losses between the parties through mechanisms such as knock-for-knock provisions. The tug and tow nevertheless remain subject to obligations concerning the safe performance of the operation, while their contractual allocation of risk does not determine the rights of an innocent third party injured in a collision. Towage must also be distinguished from salvage, although circumstances arising during an agreed towage operation may potentially develop into a salvage situation.

Wreck removal illustrates another characteristic feature of maritime law: an operational casualty may generate public regulatory obligations, private liability, insurance consequences and separate commercial contracts. The Nairobi Wreck

Removal Convention places responsibility principally upon the registered owner within its scope and provides for compulsory insurance or other financial security. Wreck-removal liability must again be distinguished from the separate question whether the resulting claim may be subject to limitation.

Finally, pilotage introduces a specialist navigator into the operation of the vessel but does not simply transfer command or legal responsibility from the master and shipowner to the pilot. The master and bridge team retain important responsibilities for monitoring the vessel and intervening where necessary, even where pilotage is compulsory. The law therefore distinguishes between the pilot's personal fault, the shipowner's legal responsibility and any independent fault of the harbour authority. A casualty involving pilotage demonstrates particularly well why maritime law separates physical causation, personal fault, attribution of legal responsibility and financial limitation.

Indicative Sources and Further Reading

Baatz, Y (ed), *Maritime Law* (5th edn, Routledge 2021), particularly Chapters 2 and 7.

Baatz, Y (ed), *Maritime Law* (3rd edn, Informa Law from Routledge 2014), particularly Chapters 2 and 7.

Rokas, I K and Theocharidis, G D, *Maritime Law* (3rd edn, Sakkoulas 2015), particularly Part B, Chapter 1 on the ship, including its legal definition, nationality, identification and acquisition of ownership.

UNCLOS

(https://static.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf?)

IMO COLREGS

(<https://www.imo.org/en/about/conventions/pages/colreg.aspx>?)

IMO Identification Number Scheme

<https://www.imo.org/en/ourwork/iiis/pages/imo-identification-number-schemes.aspx>?

UK GOV – Ship Registration

(<https://www.gov.uk/register-a-boat/the-uk-ship-register>?)