DELFT UNIVERSITY OF TECHNOLOGY

MARITIME FINANCE, BUSINESS AND LAW

MT44040

Law Essay

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December 2022

Introduction

This law essay will analyze the collision occurred on November 1st, 2014 in the Drogden Channel, Denmark, between two ships, the Marshall Islands-registered chemical/products tanker KRASLAVA and the St. Kitts & Nevis-registered refrigerated cargo ship ATLANTIC LADY. Despite the restricted visibility both ships were aware of each other's presence, but made misjudgments in their and the other's positions. This eventually led to a situation where a collision was unavoidable. Based on applicable rules and regulations an assessment of the incident can be made leading to the liability of both parties involved in the accident.

After a detailed analysis of the Marine Accident Report published by the The Danish Maritime Accident Investigation Board [4], the Atlantic Lady's liability is considered 60% while Kraslava's liability 40%. This essay will illustrate all the laws and considerations that led to this decision.

The accident occurred in the Drogden Channel, an area difficult to navigate within, and on that day it was even more difficult due to the weather conditions: restricted visibility caused by high density fog and a strong current (NE 2 knots). The collision was the result of several factors that coincided within a short time-frame that created a risk of collision, which was not recognized by the bridge teams on either ship until within a minute of the collision.
To approach Drogden Channel, Atlantic Lady necessitated a large turning manoeuvre. Due to the north-easterly current and the restricted visibility, which delayed the start of the turn until buoy no. 16 was abeam, the turning manoeuvre brought the ship into the centre of the channel, where it crossed ahead of Kraslava. Kraslava, on his side, taught to be on the right side of channel while, as shown by the AIS in The Danish Maritime Accident Investigation Board [4], it was actually in the centre of the channel. Based on the fact that Atlantic Lady taught Kraslava to be more on the right side of the channel, the crew onboard Atlantic Lady tried to pass on the left side of the channel but then it crashed with the Kraslava. The most important issues that brought to the collision were that both ships made misjudgment in their and the other's positions and in the other ship's intentions and that there was a lack of communication between the crews onboard the two ships.

Ship definitions

As stated before, the collision in exam occurred in Denmark between ships flying two different flags, Marshall Islands and St. Kitts & Nevis. First of all, it is important to analyze the definition of "Ship" in these the three different countries involved. This definition is a topic of some debate, as different laws and regulations may provide different delineations.

The main body of law governing Danish maritime law is the Danish Merchant Shipping Act (the "DMSA") [3]. It contains varying definitions of both "ship" and "vessel", depending on the specific part of the DMSA. These different definitions derive from both Danish legislation and incorporation of international conventions. They are contained in section 11, section 165 and section 441. In all these definitions what is really important is that the term "ship" includes all the seagoing vessels of any type capable of navigation.
The Marshall Islands gives the definition of ship in the Marshall Islands Maritime Act of 1990 [6] that defines a ship as "any vessel used for the carriage of goods by sea", while for the St. Kitts & Nevis International Ship Registry [16] "ship includes every description of vessel used in navigation".
Moreover, the International Regulations for Preventing Collisions at Sea (COLREGs) [15] provide a broad definition that includes any type of watercraft that is used or capable of being used as a means of transportation on water. This would include non-displacement craft and seaplanes, in addition to traditional ships.

When interpreting these definitions, it is important to consider the context in which they are used. In general, the local law of the country where a ship is registered will take precedence over the COLREGs, unless the local law is in conflict with international law. In such cases, the provisions of international law should be followed. According to the definitions from the flag states of the parties involved, both parties are considered a ship. And there are no conflicts between the local and international laws on the definition of a ship. As both flag states and the coast state ratified COLREGs, it should be followed as the relevant legal framework for assessing the incident.

Accountability for the accident

In order to make a judgement on the the liability of the different parties in the different circumstances, it is important to analyze the event and form an opinion on which party is to blame. Based on the collision report issued by the Danish Maritime Accident Investigation Board and different rules and regulations that are applicable in the situation, a legally funded opinion can be formed on the degree of fault that can be attributed to both parties.

Some factual statements can be made about the situation that occurred. The ships were unable to make large deviations from their course, as the draught of the ships limited them both in the ability of sailing outside of the Drogden Channel.[4] The ships were sailing in restricted visibility, and could not see eachother. Only the Kraslava was making use of a fog signal, although rule 35 of COLREG requires both ships to do so. The circumstances with restricted visibility mean that rule 19 of COLREG applies in this situation, and from this, both ships were required to 'reduce her speed to the minimum at which she can be kept on her course.'.[15]

As can be derived from the accident report, the ships both misjudged their positions. However, only at 13 seconds before the collisions the situation was seen as not-normal. Given that rule 19 of COLREG was applicable to the situation, this would lead to the observation that the extreme caution and speed reduction that is required in the circumstances that were present were not followed. On the other hand, it can be concluded that within the draught limits and the water current that was present, a speed reduction would have greatly reduced the ability to manoeuvre, leading to a unsafe situation as well. Both ships did make an estimation on what would be the safest speed. The pilot, who had experience navigating these exact waters, did not regard the speed of any vessel extraordinary under these exact circumstances.[4]

Rule 2 of COLREG states 'due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger'.[15] Only the outcome of the events would suggest that, as the named avoidance was not achieved, there was not taken enough care.

Everything taken into consideration, the degrees of fault for both parties are set at 60% for the Atlantic Lady and 40% for the Kraslava. The collision can to a large degree be classified as an accident. As both ships should have taken more care and could have done more to prevent the collision and as both ships only recognised the danger of the situation too late, both ships have liability for what happened. However, because the Atlantic Lady made a manoeuvre that made the vessel end up at a wrong location in the channel while the crew on the Kraslava expected them to follow a normal course, the Atlantic Lady is assigned a bigger degree of fault. The fact that the decision of the Atlantic Lady to set a course that was 'easier' to sail contributed to a more unusual final approach to the channel and ending up at the wrong location in the channel. This contributed to a assigning a larger of the degree of fault. That fact that the Kraslava also determined their own position wrong, doe not exclude the Atlantic Lady from blame.

Damage to the Vessel

As result of the collision, the vessels involved were damaged. The accountablity of the different parties involved in the collision towards the damage is covered in different conventions adopted by the IMO. The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels is a treaty that sets out rules for determining the liability for damages caused by ship collisions. This convention was ratified by Denmark, as well as the flag states of both involved parties. As article 1 states '...The compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place' [14] this convention is relevant regarding the damage to the vessel by the collision.

Different articles in the convention address the question of liability for the damage suffered from collisions. Article 2 of the convention states 'if a collision is accidental, caused by force majeure, or the cause is left in doubt, the damages are borne by those who have suffered them'.[14] This would mean that if the actions leading to the collision in the light of the applicable rules and regulations can be regarded as accidental the damage to the vessels has to be paid for by the parties themselves without imposing liability at the other involved party. Article 3 states that 'If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault'. Article 4 states 'If two or more vessels are in fault the liability of each vessel is in proportion to the degree of the faults respectively committed.' Article 5 says 'he liability imposed by the preceding Articles attaches in cases where the collision is caused by the fault of a pilot, even when the pilot is carried by compulsion of law'.

Considering the articles in the Brussels Convention of 1910 mentioned above, the liability of the damage in the event of the collision is fully proportional to the degree of the faults of both parties. Besides, the fact that the Kraslova had a pilot on board doesn't grant the Kraslova the right to blame any errors made by their side to the pilot and by this shifting liability to the pilot in question. As the degree of fault was determined to be divided 60/40, the shares of the damage that needs to be paid by the different parties is also divided 60% for Atlantic Lady and 40% for Kraslava.

Pollution of the water and nearby impact on public beach

Since maritime pollution is a very sensitive and complex subject in the analysis of its regulations, the correct approach to assessing its laws for the purposes of the parties' responsibilities will be carried out following a progressive logic. There are different types of maritime pollution, all of which are regulated and grouped in different annexes within the international MARPOL Convention. Therefore, considering the nature of the accident, only the laws that would be called into question if the accident between the Kraslava and Atlantic Lady had resulted in pollutants from the type of hazardous cargo transported and oil are of fundamental consideration. To this end, it is possible to identify a liable party in order to ensure compensation and the protection of the surrounding marine environment. In this situation, since the impact took place in the Drogden channel, the analysis of hypothetical pollution on public beaches is not essential, as they do not appear to be present within the 100-mile radius.[9]

In order to best consider the applicable laws relating to pollution caused by the accident, it is important to define and understand the two parties involved in the incident. Kraslava is a Chemical/Product tanker and Atlantic Lady a Refrigerated cargo ship. Carriage of chemicals in bulk is covered by regulations in SOLAS Chapter VII - Carriage of dangerous goods and MARPOL Annex II - Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk. Both Conventions require chemical tankers built after 1 July 1986 to comply with the International Bulk Chemical Code (IBC Code), which sets out the international standards for the safe carriage, in bulk by sea, of dangerous chemicals and noxious liquid substances.[11]

If, therefore, a chemical spill had occurred as a consequence of the accident, the above-mentioned regulations would have legally represented the territorial protection of Danish waters, verifying that both ships complied with the requirements of physical integrity and that everything was in accordance with the law. Analysing, on the other hand, the MARPOL annexes relating to the transport of refrigerated cargo, there are no particular laws of considerable importance on the possible spillage of the cargo in question, thus proving to be of no importance for the analysis of our case. Turning next to regulations that protect the marine environment from oil and oil products, the application of the International Convention on Civil Liability for Oil Pollution Damage (CLC) is of crucial importance in order to determine the party most responsible for the incident and the subsequent compensation for the damage caused. [10]

The Convention holds the owner of the ship from which the contaminated oil leaked or was discharged liable for such damage. This obligation is strict and subject to a number of specific exceptions; it is the owner's responsibility to determine in each situation that one of the exclusions should operate. However, as long as the owner's fault is not proven, the owner may limit liability to a single event. The Convention requires covered ships to have insurance or other financial protection in an amount equal to the owner's total liability for a single occurrence.

Wreck removal

According to the official documentation of the accident that occurred, it is possible to find that no wreckage was a consequential cause of the incident. In the hypothetical case that the accident between the two ships had compromised the physical integrity of one of the ships to the extent that it had caused it to become a sunken ship and consequently a wreck, the Nairobi International Convention on the Removal of Wrecks, 2007, also known as the Wreck Removal Convention "WRC" would be called upon to legally protect the liability arising from the incident, in order to assign a responsible party and guidelines for removal and compensation arising from the consequence of a wreck resulting from an accident in one of the member countries of the convention.[13]

There are three key issues in understanding the importance in the application of the laws that are parties to the Convention: first, depending on its location, a wreck can pose a hazard to navigation, potentially endangering other vessels and their crews; second, and equally worrisome, depending on the nature of the cargo, a wreck can cause substantial damage to the marine and coastal environment; and third, in an age when goods and services are becoming increasingly expensive, the costs associated with marking and reporting a wreck. The Convention seeks to address all these and other related concerns.

In this case, it could have been the case that as a consequence of the type of cargo present in the vessels taken into consideration, in addition to the hypothetical total loss of the basic buoyancy requirement imposed by the IMO, some structural components or refrigerated containers on board the KRASLAVA could have become dangerous wrecks for the marine environment and the navigability of the channel. The WRC includes a requirement for owners of vessels 300 GT and higher to have compulsory insurance to provide for wreck removal costs. The Convention holds shipowners financially responsible and requires them to take out insurance or other financial security to cover the costs of wreck disposal. It also grants states the authority to take direct action against insurers.[13]

It is therefore crucial for the analysis of liabilities, within the convention, to have laws concerning the identification and attribution of the incident, such as measures to facilitate the removal of wrecks, including the rights and obligations to remove hazardous ships and wrecks, i.e., those laws that establish when the shipowner is responsible for the removal of the wreck and when a state may intervene. Consequently, the owner's responsibility for the costs of locating, marking and removing ships and wrecks, by verifying that the registered shipowner is required to maintain compulsory insurance or other financial security to cover liability under the Convention, and dispute resolution, becomes paramount.

It therefore appears, after careful analysis of the laws characterizing the accident, that the State, having guaranteed all possible safety services inherent to navigation and territorial waters as provided for by the Convention, is not liable to pay for the removal of the hypothetical wreck, but is encouraged to remove, through its own possibilities, the obstacles present in its territorial waters and consequently request the corresponding compensation from the owner of the responsible ship, which in this case turn out to be, after the evaluation of the facts, both Kraslava and Atlantic Lady. Should the offending party not respond to the state's call for compensation, the P&I (mandatory for ships) would be sued directly by the creditor in order to obtain compensation in any event. [13]

Damage to the cargo

From a physical point of view, the incident in question did not result in any actual cargo damage to either ship. This is mainly due to the type of impact that occurred, as by analyzing the accident report it can be deduced that such an impact with a collision angle of approximately 28° and a moderate speed inherent to the visibility conditions present, identifies a type of collision with an acute angle, which most often results in only superficial hull damage and deflection from damage to main structures and watertight cargo containment bulkheads. In addition, the initial impact on the ATLANTIC LADY occurred mid-hull, causing superficial hull damage but no penetration of the planking. As the KRASLAVA did not have a bulbous bow, damage to the hull was limited.[4]

However, it is essential to analyze the situation from a critical and pessimistic point of view, relating it to the respective responsibilities dictated by the international laws on cargo damage, especially considering the possible complications that could have resulted if the accident had caused greater damage to the ships' integrity, and considering that a person in the above situation was transporting sensitive and dangerous cargo, both in terms of the regulations concerning the protection of the marine environment and the protection of human life on board.

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) would have protected and regulated the hazardous cargo in the event that the accident would have resulted in greater damage to the KRASLAVA, as this law would have identified and protected the damage that occurred and subsequently ascertained that liability was apportioned on the basis of the analysis of the other conventions, in which case the majority would have been induced to the owner of the ATLANTIC LADY, as explained in the preceding paragraphs. The HNS Convention will create a two-tiered compensation structure in the event of a maritime catastrophe involving hazardous and noxious substances like as chemicals. It goes a step further, however, by covering not just environmental harm, but also the risks of fire and explosion, including loss of life or physical injury, as well as loss or damage to property.[12]

Since both parties could have sustained extensive damage to their cargo, and although Atlantic Lady was identified as the vessel more responsible for conducting the damage to its own cargo, it is also crucial and important to assess under which regulations a refrigerated cargo ship would be sued. The IMO declares under its HNS Convention that a refrigerated cargo ship must maintain certain characteristics and carriage properties as a result of the sensitivity of the cargo, consequently if these conditions are lost the cargo may be irreversibly damaged, as certain temperatures

are required for the purpose of the cargo type. Also in this case, the damage would be totally directed to the ship having the greater responsibility in the incident, which results in a greater liability for Atlantic Lady arising in the incident.[12]

Loss of income

At the moment of the collision the Kraslava was on a world-wide charter, mainly carrying gas oil and heavy fuel oil between various European ports. It departed from Tenerife, Spain some on the 25th of October 2014 and was headed in ballast condition to St. Petersburg, Russia. On the other hand, the Atlantic Lady was on a regular trade between Russian ports and the Barents Sea, carrying pack- aging material to fishing ships and carrying frozen fish in refrigerated cargo holds on the return voyage. It departed St. Petersburg, Russia on the 30th of October 2014 heading for the fishing grounds near Bear Island, Norway.

After the collision both ships reported damages that involved some days of repairing consisting in a loss of income for the owners of the two ships. The loss of income regulation is a legal provision that allows a ship owner to recover damages for the loss of income suffered as a result of a collision. This type of regulation is often included in maritime insurance policies and allows the ship owner to recoup lost profits and other related expenses that may have been incurred as a result of the collision. So the different insurance policies subscribed from the ship owners has to be analyzed.

Although this essay will focus only on the laws that applied for the loss of income due to a ship collision in Denmark, in St. Kitts & Nevis and in the Marshall Islands. In Denmark, the laws that apply to the recovery of damages for loss of income after a ship collision are primarily found in the Danish Maritime Code [2] and the Danish Act on Maritime Claims [1]. In the Marshall Islands, these laws are found in the Marshall Islands Maritime Act (MIMA) [6] and the Marshall Islands Maritime Liability Act (MIMLA) [5]. While in St. Kitts & Nevis jurisdiction the laws that applied for the loss of income due to a ship collision are found in the Maritime Act (Cap. M-11) [7] and in the Merchant Shipping Act (Cap. M-10) [8].

The laws of the three different states agree that a ship owner may be able to recover damages for loss of income if they can demonstrate that the collision was the result of the negligent or wrongful act of another party. The ship owner must also be able to prove the amount of loss suffered as a result of the collision. And they further specify the types of damages that may be recovered in relation to a maritime accident, including damages for loss of income. This act also sets out the time limits for bringing a claim for damages and the procedure for resolving disputes.

Conclusion

As demonstrated in this law essay, the the Atlantic Lady's liability is considered 60% while Kraslava's liability 40%. This was possible after a deep analysis on all the different laws involved in this case: the international laws and the local ones from Denmark, where the accident took place and from St. Kitts & Nevis and Marshall Islands where the two ships were registered. The analysis done led to the determined liability division for the both parties involved. In subsequent court proceedings, the court would come to a congruent opinion on the liability of both parties. Further IMO regulations could however enable both parties to limit their liability.

Bibliography

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