

A shipowners duty to provide a seaworthy ship under the charterparty

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It is worth noting initially that the Shipowners Duties are the Charterers' Rights, the various duties of the Shipowners can be summarised as follows:

1. To provide a seaworthy ship which complies with the charterparty description;
2. To properly and carefully load, handle, stow, carry, keep, care for, discharge and deliver the cargo;
3. To comply with charterers' legitimate employment instructions;
4. To prosecute voyages with reasonable dispatch

THE DUTY TO PROVIDE A SEAWORTHY SHIP:

Most of contracts of carriage "particularly charterparties" provide expressly that the ship should be seaworthy. For instance, clause 1 of ASBATANKVOY provides that "...and being seaworthy and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage..."

Notwithstanding that, other clauses in the charterparties may not mention the seaworthiness expressly but nevertheless, have the same effect. For example; clause 2.1 of BPTIME states that; "Upon delivery the vessel shall be tight, staunch and strong and in every way fit for service..."

Even if there is no express seaworthiness clause, the duty to provide a seaworthy ship is, nevertheless, implied at law.

It was provided in *Kopitoff v Wilson*, [(1876) 1 QBD 602], that "The shipowner is, by nature of the contract, impliedly and necessarily held to warrant that the ship is good, and is in a condition to perform the voyage then about to be undertaken, or, in ordinary language, is seaworthy, that is, fit to meet and undergo the perils of the sea and other incidental risks to which she must necessarily be exposed in the course of the voyage."

Moreover, the same was enacted at the [UAE Maritime Law](#), Article 227 under Section 2 of Chartering the Vessel for a Voyage, which provides: "The disponent owner must put the vessel in question at the disposal of the charterer at the time and place agreed in a seaworthy condition and properly equipped in such a manner as to carry out the voyage or voyages specified in the charter-party and likewise he must keep the vessel in such condition throughout the voyage or voyages the subject of the charterparty".

In addition Article 245 Section 3 "Time Charter" and Article 253 section 4 "Bareboat Charter" of the said law, provided the same wordings of the aforesaid article.

However, the same duty to provide a seaworthy vessel was lessened for the carrier, to only provide a seaworthy vessel before and at the commencement of each voyage, as per Article 272 (1) of the said law which provides that: "1. The carrier must before setting sail and upon the commencement of a voyage use the necessary care to put the vessel in a seaworthy condition and to fit it out, man it and provision it properly. He must prepare the holds and cold rooms and other parts of the vessel to receive, carry and preserve the goods".

What is seaworthiness?

It was stated by Channell J in *McFadden v Blue Star Line*, [(1905) 1 KB 697], that: "A vessel must have that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the

commencement of her voyage having regard to all the probable circumstances of it...Would a prudent owner have required that it (i.e. the defect) should be made good before sending his ship to sea, had he known of it? If he would, the ship was not seaworthy..."

Accordingly, the essential standard of seaworthiness depends not only upon physical fit, but also to the nature and age of the ship, the type of the carried cargo, the manner of voyage envisaged, and all other relative conditions.

It is worth noting that the following examples would amount to unseaworthiness breach of duty;

1. An incompetent crew
2. A crew which is insufficiently instructed or insufficient in numbers
3. Out of date charts
4. Insufficient bunkers for the voyage (depends on the type of charterparty).
5. Stowage which affects the safety of the ship.
6. Deficient systems ashore or on board.
7. The absence of documents required by law (including local law) for the satisfactory prosecution of the contemplated voyage e.g. a deratting certificate.
8. SMS or ISPS certificates are likely to be treated in the same way; however, documents which are not required by law (e.g. ITF Blue Cards) may not render the ship unseaworthy [The Derby (1985) 2 Ll. Rep 325].

What is Uncargoworthiness?

Cargoworthiness is categorised under the seaworthiness requirements, the vessel must be in every way reasonably fit to receive and carry the contemplated cargo in order to be considered as a seaworthy vessel. It was stated as well in "The Good Friend" [(1984) 2 Ll. Rep 586] that the ship would be considered as uncargoworthy due to the presence on board of other cargoes which may affect the potential cargo.

The same was stipulated impliedly under Article 234 of the UAE Maritime Law, which provides that; "It shall not be permissible for the disponent owner to load upon the vessel or upon the part thereof which is chartered goods which are not the charterer's without the charterer's consent, otherwise the freight for the goods loaded without consent shall belong to the charterer who shall also have the right to claim compensation for damages if appropriate".

Doctrine of Stages

It is crucial to tackle the issue of Doctrine of Stages, since the voyage might be performed in stages; therefore, the shipowner's duty is to ensure that the ship is seaworthy for/ and in each stage prior the commencement of that stage.

For instance, a ship should be considered seaworthy with regards to stage 2 of a voyage, even if she does not have enough bunkers when leaving stage 1 to complete stage 2, provided that the carrier is able to obtain further bunkers at the end of stage 1.

Causation:

Unseaworthiness gives rise to civil liability only if it actually causes loss or damage, and / or addressed in the charterparty, pursuant to Article 228 of the UAE Maritime Law. Bearing in mind that if loss or damage has been caused partly by unseaworthiness and partly by some other factors for which the carrier has a defence under the contract of carriage, or the applicable regime, then the carrier is not entitled to rely on that defence unless he can prove precisely the extent of the damage/loss has been caused solely by the exempted event.[Smith Hogg v Black Sea (1940) AC 99].

Article 228 of the UAE Maritime Law provides expressly that: "The lessor shall be liable for any damages

arising to the goods received by the master on board the vessel within the provisions of the charter-party, unless it is established that the lessor fulfilled his duties referred to in the preceding and the damage did not arise from his default."

Accordingly, the aforesaid article affirms the principal that a shipowner shall not be liable to any loss or damages arise to the cargo, if so proved that he exercised his duty of providing a seaworthy ship.

When is seaworthiness relevant?

Seaworthiness timing issue is significantly relevant in the absence of express terms to the contrary, which becomes as an implied duty. Under the common law, the carrier is under a duty to provide a seaworthy ship at the commencement of the cargo loading in order to consider his vessel as a cargoworthy vessel satisfies the purpose of the charterparty, and at the commencement of the voyage to be considered as a seaworthy.

However, where there are some express terms to the contrary, the carrier's duty will depend upon the construction of the particular term. Such duty might commence at the date of the charter, as provided for example in line 5 of NYPE, or the date of delivery into the charter (e.g. clause 2.1 of BPTIME) or, additionally, throughout the charter (e.g. clause 1 of BPVOY 4).

On the other hand, under the perspective of the UAE Maritime Law, Articles 227, 245 and 253 require the shipowner to provide a seaworthy vessel at the agreed time and location in the charterparty and shall continue throughout the voyage(s). However, with regard to the carrier, the same has a duty to provide a seaworthy vessel before and at the commencement of the voyage, pursuant to Article 272 of the aforesaid law.

How does the duty considered to be broken?

The duty to provide a seaworthy ship will be considered as breached/broken in various situations depending upon the applicable regime.

Firstly; in the absence of (a) The Hague or Hague-Visby Rules; or (b) express terms to the contrary in the charterparty; the carrier's duty is to provide a seaworthy vessel in fact. Therefore, if the vessel is not seaworthy in fact then the carrier shall be liable if the unseaworthiness caused loss or damage to the cargo, even if the defect was latent and not discoverable by due diligence.

Secondly; When The Hague or Hague-Visby Rules are applicable, then the severe duty aforementioned shall be replaced by a mere duty to exercise due diligence to ensure that the vessel is seaworthy before and at the commencement of the voyage, by a virtue of Article III and IV rule 1 of the Hague/ Hague Visby Rules..

Thirdly; Under the UAE Law, the shipowner's duty is to provide a seaworthy vessel at the agreed time and location stated in the charterparty and shall continue throughout the voyage(s), and the carrier's duty is to provide a seaworthy vessel before and at the commencement of the voyage, failure to do so by any of the concerned parties, this will establish a liability for any damages arising to the goods, unless it is established that the concerned parties satisfied the duties referred to in UAE Maritime Law and the damage did not arise from such default, as established in Article 248 of the UAE Maritime Law, which provides "1.The disponent owner shall be responsible for damage to the goods if such damage arises out of his default in carrying out his obligations".

THE ONUS OF PROOF

In conclusion, the onus of proof with regards to loss of damage to a cargo caused by unseaworthiness is regulated by the applicable law, for instance under the common law, if the cargo claimant alleges that the loss or damage has been caused by unseaworthiness, then he has the onus of proof to establish the followings:

- (i) That the vessel was unseaworthy at the beginning of the voyage; and that
- (ii) The loss or damage has been caused by such unseaworthiness.

Accordingly, if he proves (i) and (ii) then there is a assumption that the carrier has not exercised due diligence to make the ship seaworthy and therefore, the onus is then on him to prove that he has in fact exercised due diligence.[Minister of Food v Reardon Line (1951) 2 Ll. Rep 265]

However, if he fails to prove the same, then the carrier will not be entitled to rely upon the exceptions given in Article IV, rule 2 of the Hague/Hague Visby Rules.

On the other hand, if the carrier succeeds in doing so, then he can rely upon the exceptions in Article IV Rule 2 to defend his liability.[“Eurasian Dream” (2002) 1 Lloyds Rep. 719]

With regards to the UAE law, the onus of proof is on the carrier (lessor), since the liability to any loss or damages arise to the cargo, is a presumed one, unless the carrier proves the contrary and his satisfaction to the obligations stipulated in the articles of the Maritime Law.