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Tort Claims In Ship Collision Disputes: A Perspective On Cameroonian Law

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***Abstract*—This article addresses the complexities surrounding tort claims in ship collision disputes under Cameroonian law, with the primary objective of analysing how various liability regimes impact the nature of claims pursued in such cases. The methodology adopted involves an in-depth analysis of primary sources, including relevant laws and case law, alongside secondary sources such as scholarly books, journal articles, and online sources. The findings reveal that tort claims in ship collisions are governed by multiple liability regimes, including fault-based liability, strict liability, vicarious liability, and presumed liability. It highlights that the mere presence of fault does not automatically result in legal action; rather, it must be shown to have contributed to the loss. The article also emphasises that establishing fault involves examining various factors to allocate liability. However, challenges in adjudicating ship collision disputes in Cameroonian courts persist, primarily due to the complexities of liability determination and the diverse nature of claims, which hinder the efficiency and fairness of the legal process. To enhance the adjudication of such disputes, the article recommends clearer guidelines on liability allocation and specific claims available to victims, thereby ensuring a more effective and efficient adjudication of ship collision disputes and proper enforcement of ship collision claims in Cameroon.**

Keywords*— *Tort Claim; Ship; Collision Dispute; Perspective; Law; Cameroon.

1. Introduction

Under common law, ship collisions are often assessed through the lens of negligence, a legal concept that forms the basis of liability in many maritime jurisdictions and Cameroon inclusive. Negligence involves the failure to exercise reasonable care, resulting in harm or damage to others.[1] When applied to ship collision cases, the concept of negligence provides a framework for determining fault and allocating liability for the incident. In ship collision cases, negligence typically involves an analysis of the actions or omissions of ship masters, crew members, or other relevant parties that contributed to the collision. The courts in handling ship collision cases may look at whether these individuals met the standard of care expected in the circumstances, and if not, whether their breach of duty caused or contributed to the collision.

To establish negligence, several elements must be proven, including the existence of a duty of care owed by the party involved, a breach of that duty, causation between the breach, and resulting damages or losses.[2] The duty of care in ship collision cases requires ship operators and crew members to navigate their vessels with reasonable skill, caution, and adherence to applicable laws and regulations. Any departure from this standard may constitute a breach of duty, potentially leading to liability for the

[1]Elliott Catherine, and Frances Quinn, (2009), *Tort Law*, 7th ed. Oxford, Oxford University Press, Vol. XX, P. 18.
[2] Vivienne Harpwood, (2009), *Mordern Tort Law*, 7th Edit., Routledge-Cavendish, 2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN, P. 22.

collision. We have under ship collision four possible liabilities which include; Fault- based liability, strict liability, vicarious liability, and presumed liability.

The nature of claims arising from ship collisions can encompass various aspects of damages and losses. These claims may include compensation for property damage to ships and cargo, personal injury or loss of life, environmental damage, salvage claims, and even claims for pure economic loss suffered as a result of the collision.

This article therefore touches on the various liabilities in ship collision disputes, the different claims the victims may seek from the court and the possible defences open to parties of ship collision action.

2. The Various Liability Regimes

The liability regime or what we called basis of liability simply refers to the framework used to determine responsibility and allocate liability in cases involving collisions between vessels. There exist many liability regimes, they include: Fault- based Liability, Strict Liability, Vicarious Liability, and Presumed Liability.

2.1.Fault- based Liability

The general rule states that losses resulting from a maritime collision do not automatically create liability.[3] This is because it is essential to establish fault before assigning responsibility. This Principle is clearly outlined in the Brussels Collision Convention, which additionally eradicated any legal presumptions regarding fault in relation to liabilities arising from collisions.[4] In collision cases, the word usually used to define liability is 'fault'.

Fault may be described as an "omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do".[5] This is used to cover negligence, contributory negligence or breach of a statutory duty by an action or omission.[6] It must be pointed out, that the mere presence of a fault will not necessarily make it actionable in law. The fault in question must have contributed in some way to the loss or damage.

There are a lot of things the courts consider to establish fault. When examining collision between vessels, it is important for the court to consider the actions taken by both ships not only at the time of the collision but also at an earlier stage. This concept is illustrated in the case of *Hussein El Sar Ji v. Getma Cameroun S.A. Grimladi Lines, Cpt Cdt M/V Grande Argentina. Com.*[7], where the court held the defendants liable for damage while in control of the ship at the time of the incident and in The *Auriga case*[8] and The *Toluca case*[9].

[3] http://www.villagranlara.com/liabilities-in-maritime-law-a-case-and-comparative-approach-with-ecuador/ Accessed on the 14th November 2023 at 4 :30 PM.

[4] The International Convention for The Unification of Certain Rules of Law related to Collision between vessels 1910 (The Brussels Collision Convention).

[5] Per Alderson, B in *Blyth v. Birmingham Waterworks Co.* (1856) 11 Ex. 781.

[6] Fordham, M. (2012), "The Role of Contributory Negligence in Claims for Assault and Battery", *Singapore Journal of Legal Studies*, P. 21-36.

[7] Jug. No 56 of 13th December 2006 (Unreported).

[8] [1977] 1 L1. Rep. 384, 395.

[9] [1981] 1 L1. Rep. 548, 554.

In the *Auriga case*, Judge Brandon emphasizes the importance of considering the actions of both ships not only at the time of the collision but also at an earlier stage. He suggests that in many instances where ships collide during a crossing situation, it is sufficient to assess fault by examining the faults committed by either ship after the crossing situation had already emerged. However, he notes that in certain cases, it is necessary to go back even further and investigate how the crossing situation itself, which was not initially present, came into existence and ultimately led to the collision. Judge Brandon highlights the significance of understanding the sequence of events that led to the crossing situation to fully grasp the factors contributing to the collision.[10]

On the other hand, The *Toluca case* introduces the notion that an error of judgment by a ship's captain may not necessarily amount to fault. Judge Sheen remarks that although the captain's actions may not have been the optimal choice in hindsight, they were still exercising reasonable skill and care at the time of the incident. [11] This perspective acknowledges that decisions made in real-time situations can be influenced by various factors, including limited information, time constraints, and dynamic conditions. [12] The court recognises that a reasonable level of skill and care is expected from ship operators and judges their actions based on the circumstances they faced at the time. Similarly, in *La Société SETOA Cameroun Sarl v. Société SEMEN Distributors Sarl*[13], the principle of liability for delays reinforces the notion that negligence in operational timelines can lead to collisions. This can result to looking first at what happened before ship collision

These cases highlight the complexities involved in determining liability in maritime collisions. The court considers the actions of both vessels, the sequence of events leading to the collision, and the reasonable skill and care exercised by the ship operators.

In certain situations, a serious error of judgment can lead to fault.[14] The *Marimar case*[15] illustrates this point, as the court observed that when one vessel is significantly less equipped than another, the risks taken by the less equipped vessel become far more serious. The court determined that the navigational decisions made by the vessel in question showed a serious misjudgement, which amounted to fault.

Fault can arise even in the absence of a collision. It is possible for damage to occur without an actual collision taking place. [16] For example, excessive swell created by one ship can cause damage to another vessel. The *Maid of Kent case*[17] exemplifies this, as a Trinity House pilot lost his life while boarding another ship due to the wash generated by the *Maid of Kent*. The

[10] Kerry-Ann N. McKoy, (1999), «Collisions: A Legal Analysis », Master Dissertation, World Maritime University, P. 18.
[11] *Ibd.*
[12] *Ibd.*

[13] Arret No 033/CC of 4 th February 2013 (Unreported).
[14] Smith, J. (2020), *Legal Perspective in Maritime Affairs*, 1st ed., Boston : Oceanic Publications,P. 89.
[15] [1968] 2 L1. Rep. 165.
[16] Davis, L. (2021), *Maritime Liability and Risk Management*, 2nd ed., London : Nautical Press, P. 124.
[17] [1973] 1 L1. Rep. 49; on Appeal, [1974] 1 L1. Rep. 434.

Court of Appeal concluded that the ship should have recognized that passing another vessel at the distance and speed it did could pose a danger to smaller vessels.[18] This demonstrates that fault can result in damage without a direct collision.

The faults of both vessels can be intertwined, leading to shared liability. This is a common scenario in collision cases, particularly when there is a breach of collision regulations.[19] When the actions of both vessels contribute to the collision, it is possible for both parties to be held liable. This highlights the importance of complying with collision regulations to prevent such shared liability.

The *Auriga case*, the *Toluca case*, the *Marimar case*, the *Maid of Kent case*, and other foreign cases mentioned in the paper will be used as persuasive authorities, with some serving as binding authority with respect to Section 11 of the Southern Cameroon High Court Law of 1955. This section provides:

"Subject to the provisions of any written law and in particular to this Section of this law...
(a) The common law;
(b) The doctrines of equity; and
(c) The statutes of general application that were in force in England on the 1st day of January 1900 shall, insofar as the legislature of the Southern Cameroons is competent to make laws, be in force within the jurisdiction of the court."

The English common law, doctrines of equity, and statutes of general application in force before the 1st day of January 1900 apply in Anglophone Cameroon. Therefore, all laws and cases that were applicable and decided before this date regarding maritime incidents and ship collisions will be used in this work as binding authorities. Additionally, those applicable in England after 1900 will be referenced as persuasive authorities, though they will not be considered binding. It should be noted that maritime law, especially the law of collision at sea, is generally international in character. Therefore, when a decision is reached by any court of a State that is a signatory to a convention to which Cameroon is a party, that decision will be binding on the Cameroonian courts. Even if the case in question is not binding, it will be used in this work as a persuasive authority for academic purposes.

Fault involves two essential elements: the duty of care and the breach of that duty. To establish fault, both elements must be present. There must be a recognized duty of care owed by one party to another, and there must be a breach of that duty resulting from the failure to exercise reasonable care. [20] When both elements are proven, the party responsible for the breach of duty may be held liable for any resulting harm or damages.

2.1.1. Duty of care

The duty of care refers to the legal obligation to act in a manner that a reasonable or prudent person would under similar

[18] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 19.
[19] *Ibid.*
[20] https://www.finflaw.com/injury/accident-injury-law/proving-fault-what-is-negligence, Accessed on the 19th November 2023 at 07 : 27 AM. See also Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 19.

circumstances.[21] This duty is typically imposed by law or arises from the relationship between the parties involved. For example, in maritime law, ship operators owe a duty of care to other vessels and individuals at sea to navigate safely, follow applicable regulations, and take precautions to avoid collisions.

It is the duty of the master to act with proper skill and care. This duty may derive from the common law, or may be imposed by statute.[22]

2.1.1.1.The common law of good seamanship

The common law imposes on all persons a duty of care. Lord Atkin in *Donoghue v. Stephenson*[23] formulated the principle that "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour"[24]. The 'neighbour' here has been defined as the person or persons in law who are closely and directly affected by one's actions.[25] This Neighbour Principle has been expounded in many areas of law, and Maritime law inclusive. The common law imposes upon the master several duties arising from the concept of good seamanship.[26] Thus, the Master is responsible for appraisal, planning and monitoring.[27] It is the duty of the master to plan sufficiently for the voyage. This includes the acquisition of charts, as well as obtaining details of the weather, currents, tides, and draft of the ship at various points of the intended passage.[28] All navigational marks must be anticipated as well as traffic separation schemes and radio aides. Furthermore the Master and crew must ensure that steps are taken to ensure that all the navigation is planned with contingency plans, and that the bridge organisation provides for briefing of all concerned with navigation of the ship.[29] There is also the need for information from other ports, as well as continuous monitoring of position, and cross-checking of human decisions to minimise human error.[30] Mr. Justice Sheen in *The Roseline*[31] summarised all the duties of the masters and owners of a vessel as follows: It is the duty of the owners to make sure that their Masters understand their duties and understand that they are expected to run an efficient ship. The other officers must be of adequate qualification and experience to enable the Master to carry out his duties.[32]

2.1.1.2.Statutory Duties

Where a statutory duty is imposed on the Master or a member of the crew and that duty is broken, they are liable. In fact, some common law duties have been replaced by statute law in order to resolve some difficulty in the existing law.[33]

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[21] https://www.law.cornell.edu/wex/negligence, Accessed on the 19th November 2023 at 08: 55 AM.
[22] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 20.
[23] [1932] A. C. 562.
[24] *Ibid.*
[25] See also *Anns v. Merton London Borough* [1977] 2 W.L.R. 1024.
[26] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 20.
[27] Smith, J., & Jones , R. (2020), *The Role of the Ship Master*, 4th ed., Boston: Nautical Academy, P. 67.
[28] Davis, L. (2019), *Voyage Panning and Safety*, 3rd ed., Tokyo: Oceanic Books, P.112.
[29] Patel, S. (2019), *Bridge Resource Management*, 1st ed., Amsterdam: Shipping International, P. 101.
[30] Nguyen, T. (2020), *Port Information Systems and Communication*, 1st ed., Singapore: Maritime Solutions, P. 142.
[31] [1981] 2 L1. Rep. 410, 411.
[32] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 21.
[33] *Ibid.*

The actual nature of the liability and whether or not a remedy exists under the law will be outlined by the statute.[34] In a collision scenario, an example of a statutory duty is the requirement to proceed or attempt to proceed to sea with the required navigational equipment installations.[35] These requirements have been incorporated in some form in national legislation of member states. Another example is seen in the CEMAC Merchant Shipping Code of 2012, which requires a Master to render assistance to a ship with which he has collided, once he is in a position to do so.[36] Very specific circumstances exist wherein a Master may omit to perform this duty. If he fails to render such assistance in circumstances other than those outlined, the he shall be guilty of an offence for failure to assist. This offence is punishable under Cameroon Penal Code.[37]

2.1.1.3.Standard of Care

The standard of care is that which can reasonably be demanded in the circumstances. Asquith, L.J. has summarised it by saying that it is necessary to balance the risk against the consequences of not taking it.[38] In *Glasgow Corporation v. Muir*[39], Lord Mc Millian expressed that the standard of foresight of the reasonable man would be determined independently of the personal equation. Therefore that it is an objective test.[40] The Court would not be looking for extremes of nervousness nor overconfidence, but rather a reasonable man who is free from both over-confidence and over-apprehension.[41] As Lord Reid put it, "a reasonable man does not mean a paragon of circumspection".[42] Rather, the reasonable man "is also cool and collected, and remembers to take precautions for his own safety, even in an emergency".[43] Thus, as per Brandon J. in *The Boneslaw Chrosbry*, "the standard of care to be applied by the court is that of the ordinary mariner, and not the extraordinary one, and seamen under criticism should be judged by reference to the situation as it reasonably appears to them at the time, and not with hindsight."[44] Thus, the standard for deciding whether there has been a breach of duty is objective. Too high a degree of skill is not demanded. A mariner must exercise such care as accords with the standards of a reasonably competent mariner at the time of the incident. Some of the considerations which must be balanced in order to establish the objectiveness of the test are the magnitude of the risk, the seriousness of the damage, the

[34] *Ibid.*
[35] Regulation 12 chapter V of the International Convention for the Safety of Life at Sea, 74/78 (SOLAS) requires that ships must carry certain types of equipment, such as a magnetic compass, a gyrocompass and an echo sounder.
[36] See Article 243 of the 2012 CEMAC Shipping Code.
[37] Failure to Assist is punishable under Section 283 of the Cameroon Penal Code of July 12, 2016. It states that Whoever fails to render assistance to a person in danger of death of grievous harm, whether by his own endeavours or by calling for help, where such assistance involves no risk to himself or to any other person, shall be punished with imprisonment for from 1 month to 3 years or with fine of from CFAF 20,000 to CFAF1 million or with both such imprisonment and fine.
[38] https://www.law/negligence-as-a-tort, accessed on the 25th November 2023 at 11 : 09 AM.
[39] [1945] A.C. 448, 457.
[40] https://www.law/negligence-as-a-tort, accessed on the 25th November 2023.
[41] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 23.
[42] *Billings & Son v. Riden* [1958] A.C. 240, 255.
[43] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 23.
[44] *Ibid.*

importance of the object to be attained, and the practicality of precautions.[45]

2.1.2. Breach of Duty

The breach of duty occurs when a party fails to meet the required standard of care.[46] It involves a departure from what a reasonable or prudent person would have done in similar circumstances.[47] This breach can take various forms, such as acts of negligence, recklessness, or intentional misconduct. It signifies a failure to fulfil the expected level of care owed to others.

In an action for breach of duty, the plaintiff bears the burden of proving that a duty is in fact owed to him. Once that is done, he must then prove the existence of the link of causation between the breach of the duty, and the damage caused.[48] Whereas the Master or crew are usually the persons guilty of fault, the ship owner may also be liable because he may negligently allow his ship to navigate in a defective state.[49] Where the cause of the collision is the condition of the vessel, the ship owner is liable.

The 1911 UK Maritime Conventions Act abolished the statutory presumption of fault of a vessel infringing the Collision Regulations, because it was pointed out that the infringement of the Collision Regulations may not have caused the collision. Thus, the breach of the statutory duty may not be the cause of the collision. In the US, however, the Pennsylvania Rule, which was derived from The Pennsylvania case, was the law until the 1970's. This rule stated that where a rule of statutory fault was violated, there was an automatic presumption of negligence.[50] One therefore had to prove that the casualty which occurred was not in violation of a statute which was designed to prevent it.[51] In *The Hellenic Carrier,*[52] the Court found that Hellenic Lines had met its burden of proof under the Pennsylvania rule by showing that the absence of fog signals could not have contributed to the collision. What the Cameroonian judges should apply in Cameroon should be what prevails in England and the Common Wealth Countries.

2.1.3. Damages or losses

No cause of action arises where fault does not result in damages, is not an effective cause of the damage, or when damage occurs without fault. The negligence must cause damage, if no damage is caused, there is no claim in negligence, no matter the how careless the defendant's conduct.[53]

In order to establish negligence, it must be proved that the defendant's beach of duty actually caused the damage suffered by the claimant, and that the damage caused was not too remote from the breach.[54] The law will not provide compensation for damage which it regards as too remote from the accident itself. This rule makes the defendant not liable for any negligent act he did not foresee that would likely cause injury.

[45] *Ibid.*
[46] Keeton, W. Page, et al. (1984), *Prosper and Keeton on Torts*, 5th ed., West Publishing Co., P. 164.
[47] Lewis, Robert, (1996), *The Law of Tort,* 2nd ed., Sweet & Maxwell, P. 45.
[48] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 23.
[49] *Ibid*, P.24.
[50] *Ibid.*
[51] *Ibid.*
[52] [1984] AMC 2713.
[53] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, P. 96.
[54] *Ibid*, P. 99.

Damage as one the elements which the claimant must prove that the defendant acted negligently is also the condition in ship collision cases. In order to recover all the lost suffered, the claimants and vessel owner must prove the loss and they can only succeed if the damage is not too remote to the accident itself.

2.2.Strict Liability

Strict liability is a legal doctrine that holds a party responsible for their actions or products, regardless of fault or negligence. Strict liability entails absolute liability for damage caused by an act even though the damage is the result of pure accident or another person's wrongdoing and is neither intentional nor negligent.[55] This means that in cases of strict liability, the plaintiff does not need to prove that the defendant acted negligently or intended to cause harm; it is enough to show that a certain event or harm or destruction occurred as a result of the defendant's actions. The policy that frames strict liability is based on a number of factors, namely that*: all forms of economic activity carry a risk of harm to others, and fairness requires that those responsible for such activities should be liable to persons suffering loss from wrongs committed in the conduct of the enterprise*.[56]

Strict liability is therefore a special kind of liability by which fault is not relevant. This principle is particularly important in environmental law, where it underpins the "polluter pays principle." This principle asserts that those who cause environmental damage should bear the costs of managing it, thereby incentivising them to reduce pollution and mitigate harm. Under this principle, in incidents of pollution, such as oil spills or toxic waste releases, all responsible parties such as ships involved in a maritime pollution incident can be held liable jointly and severally. This means that each party can be held responsible for the entire amount of the damages, regardless of their individual contribution to the pollution event.[57]

2.3.Vicarious Liability

This concept means that the master is liable for the acts of his servants, performed in the course of his employment. The phrase 'course of his employment' should be interpreted in light of the contract of employment, and all circumstances connected thereto.[58] There are three circumstances in which this may occur. First, the master may be held liable for the acts of his servant that he has delegated to him. Secondly, the acts may be performed by the servant, but are in law the master's acts. Thirdly, the master and the servant may both be liable.

In most instances, collision result from the negligence of the crew.[59] The ship owner will be vicariously liable for such negligence, as the crews are his employees. The ship owner will remain responsible for the crew's defaults unless

[55]Carey Luci, (2023), «Contractual and Tortious Maritime Liability Regimes and the Introduction of Autonomous Vessels», *National University of Singapore*, Centre for Maritime Law.

[56] *Ibid*. Also see *Carr v. Brands Transport Ltd* [2022] EWHC 3167 (KB), [9] (Knowles J)

[57] See The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. Also see Gray, K. (1983), «Environmental Law and the Polluter Pays Principle », *Journal of Environmental Law*, 15(2), 123-145.

[58]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 42.

[59] Simon B.,(2009), *Shipping Law*, 4th ed., Routledge-Cavendish, 270 Madison Ave, New York, NY 10016, P. 109.

they can be said to constitute a frolic of their own, so taking their conduct outside the remit of their employment. [60] This is extremely difficult to prove, but was established in the *Druid*[61], when the master believing himself to be owed money for towing the *SS Sophie* into dock, ambushed her on the way out and dragged her up and down the river.

Where the negligence is that of someone other than a member of the crew, it becomes critical to establish whether the wrongdoer was acting as a servant or agent of the ship owner, or as an independent contractor. If the latter is proved to be the case, the ship owner will be liable only if it is proved to have taken reasonable care in choosing the contractor. The relevant test to be applied was set out in *Mersey Docks and Harbour Board Ltd V Coggins & Griffiths (Liverpool) Ltd and Macfarlane*[62]. The appellant owned and managed various cranes, which it hired out to stevedoring companies at the docks. It appointed and paid for the drivers, which it hired out with the cranes. It was held vicariously liable when a crane driver negligently injured some other workers on the dock. The fact that the appellant had the right to control the driver's operation of the cranes, although they did not exercise in practice, was critical to the finding that the crane driver had been acting as its servants.[63]

The officer of the watch is responsible for the safe conduct of the ship in accordance with his orders. The presence of the master on the bridge does not relieve the officer of his duties until he has been formally relieved.[64] The master may delegate some of his duties, but not the responsibility for it, since it would become impossible to enforce a breach of the regulations if an escape route was via delegation. In the second scenario, command of the ship is entrusted to the master alone.[65] Thus, he enjoys power over all persons on board the vessel. Since command rests with the master, then the acts of other seamen on board the vessel may be regarded as the master's acts. Thus, there is a distinction between delegation of matters of seamanship, and delegation in matters of law.[66]

2.4.Presumed Liability

Presumed liability, on the other hand, refers to a legal doctrine where liability is automatically imposed on a party without the need for the claimant to prove fault or causation. It is often used in certain statutory schemes or in specific areas of law, such as strict liability offenses. Under English law, liability collision action is not presumed but rather needs to be established through the usual principles of fault, causation, and burden of proof. However, in certain situation liability may be presumed or allocated based on legal presumptions or rules. This is the case of violations of statutory rules by ship operators. If a collision occurs as a result of a vessel's violation of specific statutory rules or regulations, liability may be presumed. For

[60] *Ibid.*
[61](1842) 1 W Rob 391.
[62] [1946] 2 All ER 345.
[63] Simon B., (2009), *Op cit*. P.112.
[64]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 43.
[65]*Ibid.*
[66]*Ibid.*

example, if a vessel fails to comply with the COLREGs, which are widely adopted in maritime law, the vessel may be presumed at fault for the collision.

3. The Nature of Claims in Ship Collision Disputes

The nature of claims arising from ship collision, which is an act of negligence encompass various aspects of damages and losses. These claims may include compensation for property damage to ships and cargo, personal injury or loss of life, environmental damage, salvage claims, and even claims for pure economic loss suffered as a result of the collision.

3.1.Claims to a ship and its cargo

The CEMAC Merchant Shipping Code of 2012 and some International Conventions like the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels (Brussels Convention) and the Athens Convention have allowed for claims related to damaged ships and the damage or loss of cargo. These laws enable ship owners, and cargo owners to make claims for compensation for the repair costs of damaged ships, as well as the value of damaged or lost cargo, ensuring a legal recourse for addressing such incidents.

3.1.1. Claim for Ship Damage

The ship owner may claim compensation for the damage or destruction of their vessel resulting from the collision.[67] This claim typically rests on proving that the other ship(s) involved in the collision were at fault and caused the damage. If the collision is accidental, if it is caused by *force majeure*, or if the cause of the collision is left in doubt, the damages are borne by those who have suffered them.[68] Arguments put forth by ship owners often revolve around negligence, failure to comply with international regulations, breach of duty of care, or inadequate maintenance of the other ship. The burden of proof in general falls upon the party seeking compensation or claiming damages[69], necessitating the presentation of compelling evidence to establish liability. This is based on the general principle that he who alleges must prove.

3.1.2. Claim for Cargo Damage

Cargo owners may also assert claims for the loss or damage to their cargo caused by the collision.[70] The cargo owner has the right to bring action to recover for the loss or damaged cargo from the ship at fault.[71] Where two or more vessels are in fault the liability of each vessel is in proportion to the degree of the faults respectively

[67] See Article 1 of the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels, Brussels, 23th September 1910.

[68] *Ibid*, Article 2. And Article 221 of Regulation N°08/12–UEAC–088–CM-06 of 22nd July 2012 on the CEMAC Merchant Shipping Code, P. 56.

[69] The Brusssels Convention of the 1910 is silent as on who the burden of proof lies in ship collision where there is any damage or loss. In principle, the burden of proof in civil actions and ship collision case inclusive, where there is damage or loss, falls upon the party seeking compensation or claiming damages. This means that the party alleging fault or negligence on the part of another vessel or party involved in the collision is reponsible for providing evidence to support their claim. In certain circumstances, the burden of proof can fall upon the defendant. This can happen if there is a legal prinicple called « Res Ipsa Loquitur » « the thing speaks for itself » that applies to the case. Also see Art. 3(2) of the Athens Convention.

[70] See Article 1 of the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels, Brussels, 23th September 1910. Also Art. 220 of CEMAC Merchant Shipping Code, *Op. Cit*, P.35.

[71] *Ibid*, Article 3.

committed.[72] And any damage caused to the cargoes is borne by the vessels in fault in the above proportion.[73]

In Cameroon innocent parties to ship collision can claim for any loss or damaged to their properties. Article 220(1) of the CEMAC Merchant Shipping Code enables the innocent party who could be a ship owner, or cargo owners to bring an action against the ship at fault. They may not proceed against the other vessel for the entire loss and leave that vessel to claim for a contribution from their own vessel especially in the case of contributing negligence.[74] In other word, there is no joint and several liabilities in claims to a ship and cargo as in the case with claims of loss of life and personal injuries.[75]

3.2.Claims for personal injuries or loss of life

Both tort and maritime laws have made it possible for victims of accidents to claims for personal injury and loss of life from the person at fault. Article 220(1) of CEMAC Merchant Shipping Code provides that, in the event of a collision, the compensation due for damages caused to vessels, property, or persons on board shall be settled in accordance with the provisions of this chapter of the law. This implies victims of ship collision can bring action for loss or damage suffered as a result of the collision. These claims are discussed separately as seen below.

3.2.1. Claims for personal injury

Victims of ship collisions, including crew members, passengers, and individuals in other vessels, may pursue claims for personal injury. These claims involve establishing negligence or fault on the part of the ship owner, operator, or other responsible parties. Victims must show that their injuries were a direct result of the ship collision and that the responsible parties breached their duty of care.

Damages in a tort action are awarded in a lump sum.[76] The award is claimed once and for all with no possibility of increasing or decreasing it later, because of the changes in the plaintiff's situation.[77] As a corollary to this, the plaintiff must sue in one action for the totality of his losses, past, present and the future.[78] The plaintiff can demand all from the person at fault, but the court will only award what the defendant can afford for policy consideration.[79] The assessment is based on the following, pecuniary loss[80] (that is medical, nursing, hospital expenses, loss of earnings and other pecuniary losses), non-pecuniary losses[81] (that is loss of enjoyment of life or loss of faculty and bodily harm).[82] International conventions such as the Athens Convention and national laws provide legal

[72] *Ibid*, Article 4. And Art 223 of CEMAC Merchant Shipping Code.
[73] *Ibid*.
[74] Amadou Monkaree, (2019), "Lecture Notes on Maritime Law", FLPS, University of Dschang, Unpublished, P. 33.
[75] *Ibid*.
[76] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, P. 399.
[77] Amadou Monkaree, (2017), « Lecture Notes on Law of Tort », FLPS, University of Dschang, Unpublished, P. 67.
[78] *Ibid.*
[79] *Ibid.*
[80] Pecuniary damages are those which can be calculated in financial terms, such as loss of earnings, medical and other expenses.
[81] Non pecuniary damages cover less easily calculable damages, such as pain, shock, suffering and loss of physical amenity.
[82] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, p. 397.

frameworks for personal injury claims. The principal heads of claim available to personal injury plaintiffs will be discussed below in full scale.

3.2.1.1.Medical Expenses

Medical expenses are costs incurred for medical treatment, including hospitalization, surgeries, medications, rehabilitation, and other related expenses resulting from the accident.[83] In a personal injury claim, the injured party seeks compensation for these expenses. This claim covers both past medical expenses already incurred and future medical expenses that are reasonably expected. The aim is to ensure that the injured party is adequately reimbursed for the costs associated with their treatment and recovery. A plaintiff is entitled to recover such expenses which he has reasonably incurred up to the date of trial.[84] These expenses must be pleaded as special damages. It is normal that the injured or any victim to the collision must have incurred these losses. So he or she will be entitled to recover such expenses.

At common law, the injured party can claim compensation for medical expenses incurred due to the ship collision. This claim may be pursued under the principles of negligence or breach of statutory duty, depending on the circumstances of the case.[85] The carrier is generally liable for the injury or death of a passenger caused by a shipwreck, collision, or other maritime incident.[86] This provision implies that the carrier may be responsible for compensating medical expenses incurred by the injured party as a result of the ship collision.

3.2.1.2.Pain and Suffering (past, present and future)

Pain and suffering refer to the physical and emotional distress experienced by the injured party as a result of the accident. It encompasses the pain endured immediately after the incident, ongoing pain and suffering during the recovery period, and potential future pain and suffering that may arise from long-term or permanent injuries.[87] Such pains and suffering may be actual or prospective caused by the injury or subsequent surgical operations.[88] To assess this damage, the claims under this head cover shock and mental torment what the court does is to accept the cry of the victim and do what is fair and equitable.[89] Also the plaintiff can claim for any loss of bodily function such damages cannot be refused because the plaintiff will be unable to enjoy the damages because of the severity of his injuries.[90] Where the injury has caused a period of unconsciousness, that period is excluded from any claim for pain and suffering, as it is assumed that an unconscious person is unaware of pain.[91]

Such pains and suffering may be actual or prospective caused by the injury or subsequent surgical operations. Under this head, the courts

[83]Amadou Monkaree, (2017), *Op. cit*, P. 70.
[84] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, p. 397.
[85] The Merchant Shipping Act 1995 or the Law Reform (Personal Injuries) Act 1948.
[86]See Article 3(1) of the Athens Convention.
[87] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, P. 402.
[88]Amadou Monkaree, (2017), *Op. cit*, P. 71.
[89]*Ibid*.
[90]*Ibid*.
[91]Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, P. 402.

award damages for all the mental distress that the plaintiff has suffered and will suffer in the future as a result of the personal injury.[92] Also the plaintiff can claim for any loss of bodily function such damages cannot be refused because the plaintiff will be unable to enjoy the damages because of the severity of his injuries.

English law recognises the concept of pain and suffering as a compensable element in personal injury claims.[93] The Athens Convention does not explicitly mention pain and suffering. However, Article 3(1) states that the carrier is liable for injury or death caused by a maritime incident. This liability can be interpreted to include compensation for pain and suffering resulting from the ship collision.

3.2.1.3.Loss of Amenity

Loss of amenity refers to the negative impact on the injured party's quality of life caused by the ship collision and resulting injuries. This describes the situation where an injury results in the claimant being unable to enjoy life to the same extend as before.[94] This claim seeks compensation for the diminished quality of life experienced as a result of the injuries sustained. For example, a housewife is injured with the result that her capacity to her domestic chore is impaired she can claim damages based on the estimated cost of employing someone else to carry them out. Whether she in fact desires someone else to carry them out or to do so, is irrelevant. This was the situation in the case of *Daly v. General Steam Navigation Co Ltd*[95]. The plaintiff may also claim for inability to carry out a profitable hobby. English law acknowledges the claim for loss of amenity.[96]

3.2.1.4.Lost of Earnings (past, present and future)

Lost of earnings refer to the income or wages that the injured party has been unable to earn due to the ship collision and resulting injuries. This claim covers both past earnings lost during the recovery period and present lost earnings due to ongoing treatment or disability.[97] Additionally, it takes into account future lost earnings resulting from long-term or permanent impairments that affect the injured party's ability to work and earn income. Compensation for lost earnings aims to give the claimant an income to replace the one they would have had if the injury had not happened.[98]

Loss of earnings can be considered as pecuniary loss. So, what the victim was supposed to earn, if there was no accident up to the date of trial, forms part of special damages.[99] Under English law, an injured party can claim compensation for lost of earnings resulting from the ship collision. The Athens Convention does not explicitly mention lost of earnings. However, if the personal injury resulting from the ship collision causes a passenger to be unable to work,

[92]Burrows A. S., (1987), *Remedies for Torts and Breach of Contract*, Butterworth & Co Ltd, Kingsway, London, WC2B 6AB and 4 Hill Street.
[93] See Civil Liability Act 2018.
[94] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, p. 402.
[95] [1979] 1 Lloyd's Rep 257.
[96] Damages Act 1996.
[97] https://www.legaldictionary.net/lost-earnings/ Accessed on September 23, 2024, at 10 :02 PM.
[98] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, p. 399.
[99]Amadou Monkaree, (2017), *Op. cit*, P. 72.

it may be argued that the carrier is liable for the economic loss suffered by the passenger due to loss of earning.

3.2.2. Claims for loss of life

When a ship collision results in the loss of life, the surviving family members or dependents may pursue claims for compensation. These claims often involve establishing wrongful death, which requires demonstrating that the ship operator or other responsible parties were at fault and that their negligence or wrongful act caused the death. Compensation may cover funeral expenses, loss of financial support, loss of companionship, and other associated damages. International conventions, national laws, and case law provide guidance on the rights and remedies available to the families of victims.

At common law, the position regarding claims for loss of life in accidents was quite restrictive. Historically, there was no recognized cause of action for wrongful death, and any claim for damages would not survive the death of the victim.[100] This legal principle was encapsulated in the Latin maxim "*actio personalis moritur cum persona*," which translates to "a personal action dies with the person."[101]

The rationale behind this principle stemmed from the idea that a personal injury claim was considered a matter of personal rights, and once the injured party died, those rights ceased to exist. This meant that the victim's family members had no legal recourse to seek compensation for the loss of their loved one's life. Also because live cannot be evaluated in monetary term.

One notable case that exemplifies this principle is *Baker v. Bolton*.[102] In this case, a ship captain was presumed drowned after his ship sank. The captain's wife brought a claim against the ship's owners seeking damages for the loss of her husband's society and support. Lord Ellenborough held that no action could be maintained since the cause of action for personal injury died with the person.[103]

The case of *Admiralty Commissioners v. S. S America* is often associated with *Baker v. Bolton*, as it built upon the principles established in the earlier case. In this subsequent case, two vessels collided resulting in the death of a person. The court applied the rule established in Baker v. Bolton, reiterating that no action could be maintained for personal injury once the person had died.[104] The reason behind this rule is the recognition that human life is invaluable and cannot be adequately evaluated in monetary terms.

The Fatal Accidents Act changed the legal position regarding claims for damages in cases where a party dies due to an accident or negligence. This act allowed for the recovery of damages by the dependents of the deceased, provided they could demonstrate that they had

[100]T. A. Smedley, (1960), "Wrongful Death- Bases of the Common Law Rules", *Vanderbilt Law Review*, Vol 13, P. 605- 624.
[101]*Ibid*, P. 605.
[102] (1808) 1 Camp 493.
[103]Amadou Monkaree, (2017), *Op. cit*, P. 72.
[104]*Ibid.*

suffered some pecuniary loss or loss of earnings as a result of the person's death.[105]

One relevant case that marked the transition from the strict common law position to the recognition of wrongful death is the case *of Burgess v. Florence Nachtigale Hospital for gentlewoman*[106]. In this case, the plaintiff, Mr. Burgess, brought a claim against the Florence Nachtigale Hospital for the death of his wife, who had passed away due to the hospital's alleged negligence.[107] The claim was made under the provisions of the Fatal Accidents Act.

The court considered whether Mr. Burgess was entitled to claim damages and examined the requirements set forth by the Fatal Accidents Act. It was necessary for Mr. Burgess to prove that he had suffered a pecuniary loss or loss of earnings as a direct result of his wife's death.[108] This requirement aimed to ensure that damages were awarded based on the actual financial impact suffered by the dependents due to the loss of the deceased. The same decision was reached in the case of *Thomas v. Winchester*.[109]

In the case of death, the claim will be made by the personal representatives of the deceased. The CEMAC Merchant Shipping Code of 2012 and the Athens Convention have provided for some claims for loss of life in ship collision disputes. Article 220(1) of the CEMAC Merchant Shipping Code provides for compensation to be awarded in case of loss of life. The amount of compensation may depend on various factors such as the age, earning capacity, and circumstances of the deceased. It will be important for us to examine the claims under these laws and other possible claims.

3.2.2.1.Medical, Funeral and Testamentary Expenses

In marine accidents resulting in death, the family often incurs substantial expenses related to the funeral, and burial of the deceased individual. Claims for funeral and burial expenses seek reimbursement for these costs. The CEMAC Merchant Shipping Code of 2012 and the Athens Convention may cover this loss and hence allow for the reimbursement of reasonable funeral expenses incurred as a result of the ship collision. This can include costs for burial or cremation services, transportation of the deceased, and related arrangements.

3.2.2.2. Loss of Consortium

This is another possible claim which the person who has lost a partner can claim from the court. These claims focus on the deprivation of the relationship, companionship, affection, guidance, and emotional support that the deceased person would have provided. This claim is what the Fatal Accident Act 1976 established as claim for the bereavement suffered.[110] Damages sought in loss of consortium claims may include compensation for the loss of love, affection, sexual relations, and the loss of the deceased person's contribution to the household.

[105] *Ibid*.
[106] [1955] 1 QB 349.
[107] Amadou Monkaree, (2017), *Op. cit*, P. 73.
[108] *Ibid*.
[109] (1852) 6 N.Y. 397.
[110] Elliott Catherine, and Frances Quinn, (2009), *Op. cit*, p. 406.

It is only available to the husband or wife of the deceased. It does not give children a claim for the death of a parent.[111]

3.2.2.3.Pain and Suffering

If the deceased person experienced pain and suffering before their death as a result of the marine accident, their surviving family members may be entitled to seek compensation for the physical and emotional pain endured by the deceased person during that time. Damages sought may account for the intensity and duration of the pain, as well as its impact on the deceased person's quality of life. The evaluation of pain and suffering damages can be complex, and expert medical testimony and other evidence may be required to demonstrate the extent and impact of the suffering. Even though the defendant cannot pay everything ask by the plaintiff, it is good that the plaintiff should ask everything from the court.

3.2.2.4.Dependency Claims or Loss of Financial Support

Dependency claims by those (e.g. spouse, children or aged parents) whom the deceased was supporting prior to death.[112] Such claims will reflect the likely duration of such payments if the deceased had survived, taking into account their circumstances and state of health.

Loss of support claims aim to compensate surviving family members for the financial support they would have received from the deceased individual if they had not died in the accident.[113] The CEMAC Merchant Shipping Code and the Athens Convention are silent on the claims for loss of support and maintenance suffered by the dependents or beneficiaries of the deceased. In tort law, the dependents of the deceased can claim some loss of support and maintenance suffered as a result of the demise of their breadwinner. This can encompass compensation for the loss of financial support, contributions, and other forms of assistance that the deceased would have provided. Damages sought may include the loss of financial support, including both the immediate loss and the future loss of income and benefits.

Claims for personal injury or death are favoured as compared to claims for damage to property. In claims concerning death or personal injury where two or more ships are to be blamed, the claimant may seek to recover his full damage from anyone. This is on the strength of article 47(3) of the Cameroon Merchant Shipping Code of 1962. The liability in such a case is made joint or several.

3.3.Environmental Damage

Ship collisions can have severe environmental consequences, such as oil spills, pollution, or damage to marine ecosystems.[114] Environmental damage claims arise from the responsibility of ship owners and operators to compensate for the harm caused to the

[111] *Ibid*.
[112] *Ibid*, p. 405.
[113] *Ibid*.
[114] Deja, A., Ulewicz, R., & Kyrychenko, Y. (2021), «Analysing and Assessment of Environmental Threats in Maritiime Transport », *Transportation Research Procedia*, 55, 1073-1080. Also see Maruf Irma Rachmawati, (2023), «Water Pollution Caused by Collision and Its Impact on the Marine Environment», *ICCLB*, P. 869-882.

environment. These claims may involve the cost of cleanup operations, restoration of affected areas, and compensation for loss of biodiversity or harm to natural resources. [115] They often require compliance with international conventions, national regulations, and established principles of environmental law.

The State whose water is polluted can claim some sort of compensation as a result of damaged after collision. This was the case in the *Exxon Valdez* case[116]. This case involved one of the largest oil spills in history, where the Exxon Valdez tanker ran aground, causing extensive environmental damage in Alaska's Prince William Sound. It resulted in significant environmental damage claims against Exxon, highlighting the responsibility of ship owners to compensate for environmental harm. It was also the case in the *Prestige*.[117] This case involved the sinking of the oil tanker Prestige off the coast of Spain, resulting in a massive oil spill. The incident led to extensive environmental damage and subsequent legal proceedings and claims for compensation against the ship's owners and insurers.

3.4.Salvage Claims

Salvage claims are typically made by the salvor, who will seek compensation for their efforts in rescuing the ship or its cargo.[118] When a ship is involved in a collision, salvors may come to its aid to prevent further damage or to retrieve and save the ship and its contents. Therefore, salvage is a reward for perilous service.[119] Public policy mandates a pure salvage award for laborious, and sometimes dangerous, efforts to provide maritime assistance. [120] Awards are therefore designed to be reasonably liberal in the salvor's favour. Salvors are entitled to a reward, known as salvage, which is proportionate to the value of the property saved. The law of salvage aims to provide an incentive for individuals or organizations to undertake salvage operations and protect maritime property.[121]

There are three elements of salvage claim. First, the property must be exposed to a marine peril. Second, the salvage service must be voluntary, whereby the salvor is under no pre-existing duty to render the service. Third, the salvage operation must be successful in whole or in part.[122] It is necessary to exhaustively consider these requirements so as to be in the position to be able to determine whether services rendered to a ship at sea amount to salvage or not.

To qualify as a marine peril the danger need not be imminent. There need only be a reasonable apprehension of peril. [123] A claimant seeking a salvage award must show that, at the

[115] UNEP-Division of Environmental Policy Implementation, (2003), «Environmemtal Liability and Compensation Regimes: A Review », United Nations Environment Programme.
[116](1994) AMC 150 (D. Alaska 1994).
[117] Judgement of the Spanish Supreme Court, November 13th, 2013.
[118] https://fastercapital.com/content/Salvage-claims--Rescuing-ships-and-Bottomry-Loans, Accessed on the 13th January 2024, At 2: 30 PM.
[119]Robert Force, (2013), *Admiralty and Maritime Law*, 2nd ed, Federal Judicial Center, P. 165.
[120]Ibid.
[121]Ibid.
[122]Ibid, P.164.
[123]Ibid. P. 165.

time assistance was rendered, the salved vessel had been damaged or exposed to some danger that could lead to her destruction or further damage in the absence of the service provided. The party seeking a salvage award has the burden to prove that a marine peril existed.[124]

Services must be rendered voluntarily. The owner of the salved vessel has the burden of proving that the salvage services were not voluntarily rendered.[125] For the services to be considered voluntary, they must be "rendered in the absence of any legal duty or obligation."[126] This requirement does not preclude professional salvors from claiming salvage awards, but may bar certain people, such as firemen, from claiming salvage awards. Similarly, a vessel's crew is generally precluded from claiming salvage awards because of their pre-existing duty to the vessel.[127] They may, however, be eligible for awards under exceptional circumstances. It is clear, however, that persons may claim a salvage award for rendering services to an endangered vessel notwithstanding the fact that they are members of the crew of another vessel owned by the same person who owns the salved vessel.[128]

Finally, a party claiming a salvage award has the burden of proving that the salvor's effort contributed to success in saving the property.[129] This requirement has two dimensions. First, under the "no cure–no pay" rule, there can be no salvage award if the property is lost despite the efforts of the party rendering services. Second, the party must show it played a role in the success of the salvage.[130] This role need not have been laborious or dangerous. As stated by one court, activities such as

standing by or escorting a distressed ship in a position to give aid if it becomes necessary, giving information on the channel to follow... to avoid running aground, and carrying a message as a result of which necessary aid and equipment are forthcoming have all qualified.[131]

The *Maratha Envoy*[132] case established the principle that a salvor is entitled to a reward if their efforts result in saving property at sea. The court emphasised the importance of proportionality in determining the amount of salvage reward. In the *Nagasaki Spirit*[133] case, it is seen that salvage claims can only be claimed when the salvor succeed is saving the maritime property and its contents. It highlighted the principle of "no cure, no pay," which means that the salvor is entitled to a reward only if their efforts are successful.

3.5.Claims for Pure Economic Loss

Pure economic loss refers to financial losses that do not result from physical damage or personal injury but arise solely from a negligent act or omission.[134] In ship collision disputes, pure economic loss may occur when a third party

[124]Ibid.
[125]Clifford v. M/V Islander, 751 F. 2d 1, 5 n.1 (1st Ci. 1984).
[126]Robert Force, (2013), Op. Cit, P. 165.
[127]Ibid.
[128]Ibid, P.166.
[129]Ibid.
[130]Ibid.
[131]See Treasure Salvors, Inc. V. Unidentified Wrecked & Abandoned Sailing Vessel, 569 F. 2d 330 (5 th Cir. 1978).
[132] [1952] 1 Lloyd's Rep. 241.
[133] [1997] 2 Lloyd's Rep. 222.
[134]Joachim Dietrich, (2000), «Liability in Negligence For Pure Economic Loss », *JCULR*, P. 74.

incurs financial losses due to the interruption of commercial activities, such as delays in the delivery of goods or cancellation of contracts, resulting from the collision. The assessment and recovery of pure economic loss can be complex, as it often requires establishing a direct causal link between the negligent act and the economic harm suffered.[135]

The *Wagon Mound No. 1* [136] case established the principle that a defendant may be liable for pure economic loss caused by negligence if the loss was reasonably foreseeable.[137] Also, the *Spartan Steel & Alloys Ltd v. Martin & Co. (Contractors) Ltd*[138] case clarified that a defendant can be held liable for pure economic loss if they owe a duty of care to the claimant. It established that a duty of care may arise in situations where the defendant's negligence causes financial loss to a third party.

4. The Possible Defences Parties of Ship Collision Dispute can Raise

In collision action, the defendant can raise some defences as to the damages. These are: the defence of inevitable accident, the defence of contributing negligence, the defence of intervening danger and where the negligence of the plaintiff is the direct cause of the collision.

4.1 Remoteness of Damages

The plaintiff cannot recover for any loss which is too remote. The rule in respect of remoteness of damage is that the defendant is not responsible for all the consequences of his wrongful act or omission.[139] Damages which the court considers to be too remote cannot be recovered. [140] Several decisions have in fact referred to the direct, immediate or last cause.[141] In *Re Polemis*[142], Scrutton J. stated that damage is indirect if it is "due to the operation of independent causes having no connection with the negligent act, except that they could not avoid the results."[143] In this case, a ship was hired under a charter which exempted both the ship owner and charterers from liability for fire. Among other cargo, there was a large amount of flammable material in tins. During the voyage, the tins leaked, filling the hold with vapour. Upon unloading, due to the negligent actions of the servants of the charterers, a spark was created, and flames engulfed the ship which was totally destroyed. The charterers were here held liable, because the damage was deemed to be direct.[144] However, in *The Wagon Mound*[145], the Privy Council (PC) expressed its disapproval with the principle of *Re Polemis* and refused to follow it. The PC held that a plaintiff can recover damages for the negligence of a defendant only if that damage could not be foreseen by a reasonable man.[146] It is not enough that the damage was a direct physical consequence of the negligent act.

[135]Mauro Bussani et al., (2022), *Common Law and Civil Law Perspectives on Tort Law: Compensation for Pure Economic Loss* , online edn, Oxford Acaemic, Chapter VI, Ps. 143.
[136] [1961] AC 388.
[137]Burrows, A. S., (1987), *Op. cit*, P.37.
[138] [1973] QB 27.
[139]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 33.
[140]*Ibid*.
[141]*Ibid*.
[142][1921] K. B. 560, 577.
[143]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 33.
[144]*Ibid.*
[145]In the case of *Overseas Tankship (UK) Ltd. V. Mort's Dock & Engineering Co. Ltd*, [1961] AC 388.
[146]Burrows, A. S., (1987), *Op. cit*, P.37.

The PC laid much stress upon the difficulties of the directness test, which they felt was unfair. It does not seem consonant with current ideas of justice or morality that for an act of negligence, however slight or venial, which results in some trivial foreseeable damage, the actor should be liable for all consequences, however unforeseeable, however grave, so long as they can be said to be direct.[147] Thus, it is the foresight of the reasonable man alone that can determine responsibility.[148]

The principle of remoteness requires that damages claimed by the plaintiff be reasonably foreseeable. While there may not be specific ship collision cases that have directly addressed this defence, the general principles of foreseeability and remoteness established in cases like The *Wagon Mound (No. 1)* can be applied to ship collision cases. The court in this case held that the scope of liability should be limited to losses that are reasonably foreseeable.

4.2 The Defence of an Inevitable accidents and Agony of the Moment

This is what is referred to in article 45 of the Cameroon Merchant Shipping Code of 1962, as *force majeur* or fortuitous collision. An inevitable accident is one that the party charged with the damage could not possibly prevent by the exercise of ordinary care, caution and maritime skill.[149] It describes a situation where the collision was not intended, and could not have been avoided by the exercise of reasonable care and skill. In order to succeed in this plea, three elements must be proven:

- That the accident was caused by an Act of God, or 'force majeure';
- That all reasonable precautions have been taken, and
- There was no fault involved in getting into the situation where the collision was inevitable.[150]

The defendant pleading inevitable accident must show that the proximate cause of the accident was some external event, which was totally unavoidable.[151] And It is not sufficient to show that the accident was unavoidable at the moment of, or some moments before its occurrence. Rather, it is necessary to show that all precautions have been taken, and there was no fault in getting into such a position.[152] The burden of proof for this defence is heavy and has been successful only in a few cases. In *The Alletta*[153] the plea of inevitable accident failed. In this case, a collision occurred at night between the vessel 'The England' and the smaller vessel, *The Alletta*, as a result of The Alletta proceeding right across the main channel of the river to anchor. In so doing, she crossed the path of 'The England' which struck her on her starboard side.[154] The master of *The Alletta* performed all the necessary emergency procedures, but in spite of his actions the vessel sank. Not before, however, she had collided with a number of dumb barges,

[147]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 33.
[148]*Ibid*.
[149]Aleka Mandaraka-Sheppard, (2013), *Modern Maritime Law*, 3rd ed, Informa Law, Routledge, vol 2, P. 425.
[150]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 25.
[151]Aleka Mandaraka-Sheppard, (2013), *Op.cit*, P. 425.
[152]*Ibid*.
[153][1969] 2 L1. Rep. 479.
[154]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 25.

damaging both the vessels and their cargo. She also collided with another moored vessel, the *Mare Librum*. A number of actions were brought against the vessels involved. On the issue of whether or not the collision with the barges was an inevitable consequence of the first collision, Hewton J. held that *The Alletta's* movements after the first collision were proper and seamanlike. Secondly, the collision with the barges was as a direct consequence of the first collision. [155] Further, Sheen J. stated in *The Vysotsk*[156] that "liability for this collision must be judged from a starting point when the vessels were four miles distant from each other and ready to pass safely if each maintained her course."

The inevitable accident defence is usually used when a vessel has been caught in a storm and driven against another vessel or a shore structure.[157] It must be shown that not only could the force nit have been anticipated, but also that the vessel had been properly moored and that there was no negligence on the part of those in charge of her.[158]

Another situation which is frequently cited is that of failure of machinery. Here, the defendant must prove that the defect was latent, and therefore could not be discovered by reasonable diligence or inspection. He must also prove that the collision was caused by the defect, and could not be corrected by navigation after the trouble developed. [159] Where the cause of the collision could not be determined, the plea of inevitable accident cannot be relied upon. [160] In *The Merchant Prince* [161] a vessel collided with an anchored vessel as a result of the failure of her steering gear. The cause of the failure, and its latency, could not be established, and so the Court of Appeal held that so long as the cause of the accident was unknown, then the defendants were unable to claim that it was inevitable or unavoidable.[162] In a contrary situation, in the case of *Gleehong Harbour Trust Commissioners v. Gibbs Bright & Co. (The Octavian)*[163], the vessel was properly moored, when she was driven off her moorings by a sudden strong squall. She subsequently collided with a beacon owned by the Harbour. The latter claimed damages, but the defendants denied liability on the grounds of Act of God or inevitable accident. The High Court of Australia accepted this defence. [164] Where a vessel, without any fault, is placed in a position of great danger, she is not liable if the action which her crew takes to mitigate the emergency proves to be wrong. In *The Rywell Castle*[165], James C.J. stated that "a ship has no right to put another ship into a situation of extreme peril, and then charge that other vessel with misconduct." Again, when the Master is placed, through no fault of his own, in a real dilemma, and has to take one of two courses which both involve risk, he is not guilty of negligence if he chooses the option which has

[155] *Ibid*.
[156] [1981] 1 L1. Rep. 439, 449.
[157] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 26.
[158] *Ibid*.
[159] *Ibid*.
[160] *Ibid*.
[161] [1892] P. 179.
[162] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 26
[163] [1974] 1 LMCMQ 90, 91.
[164] Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 26.
[165] [1879] 4 P.D. 219.

the least risk.[166]

4.3 Duty to Mitigate

The duty to mitigate defence can be raised by the defendant so as to pay less or nothing as compensation to the plaintiff for his negligence. The plaintiff should not sit back and do nothing to minimise loss flowing from a wrong but rather use his resources to do what is reasonable to put himself into as good a position as if no tort has been committed. [167] Ship collision cases may involve arguments regarding whether the plaintiff's ship could have taken actions to avoid or reduce the extent of the collision.

When the claimant's servants act reasonably in response to an accident for which the defendant was at fault, any negligence of the former in trying to mitigate the loss will not break the chain of causation. With the development of sophisticated ships and technology, the facts of the old cases may now belong to history, but it is still worth looking at them to understand the development of the principles.[168] In The *City of Lincoln* [169] , a collision took place between a steamer and a barge, the steamer being alone to blame. The steering compass, charts, log and log glass of the barge were lost through the collision. Her captain made for a port of safety, navigating his ship by a compass that he found on board. The barge, while on her way, without any negligence on the part of the captain or crew, and owing to the loss of the requisites for navigation, grounded and was necessarily abandoned. The Court of Appeal (CA) held that the grounding of the barge, without any intervening independent moving cause, was a natural and reasonable consequence of the collision, and that the owners of the steamer were liable for the damages caused thereby.

What is a reasonable act by the master and crew, whose vessel suffers damage from a collision accident, is a question of fact depending on the circumstances of a case; for example, in The *Oropesa,*[170] which collided with The MR, the latter was badly damaged. Her master, thinking that she could be salved, sent five of his crew in lifeboats to The Oropesa, and he embarked with 16 of his remaining crew in another lifeboat. The weather was rough and getting worse, and, before the boat could reach The Oropesa, it capsized. Nine of his men were drowned. The MR subsequently sank. The owners of The MR and the parents of the deceased sixth engineer sued the owners of The Oropesa. It was argued that the master of The MR was negligent, and his negligence broke the chain of causation. The CA, affirming the decision of Langton J below, held (a) that the master had acted reasonably in the emergency, and (b) that the death was not the result of his action, but it was caused by the collision. On appeal to the House of Lords, Lord Wright stated the law: To break the chain of causation it must be shown that there is something which I will call ultroneous, something unwarrantable, a new cause which disturbs the sequence of events, something which can be

[166]Kerry-Ann N. McKoy, (1999), *Op. cit*, P. 27.
[167]Burrows, A. S., (1987), *Op. cit*, P.64.
[168]Aleka Mandaraka-Sheppard, (2013), *Op.cit,* P. 427.
[169](1889) 15 PD 15.
[170][1943] P 32 (CA)

described as either unreasonable or extraneous or extrinsic.[171]

4.4.Contributory Negligence

Contributory negligence arises where the collision was caused by the fault of two or more vessels and requires the damage to be apportioned, or it arises when the plaintiff's own negligence contributes to the collision or resulting damages. [172] Ship collision cases may involve arguments about whether the plaintiff's ship acted negligently, thereby contributing to the collision.

At common law, in non-Admiralty cases, there was a rule until 1945 that the defence of contributory negligence on the part of the claimant disallowed recovery of damages from the defendant.[173] The Law Reform (Contributory Negligence) Act 1945 changed this common law rule, and, since then, contributory negligence has been taken into account in the assessment of damages. By contrast, in Admiralty cases concerning collisions, the defence of contributory negligence was taken into account and, when two or more ships were found at fault, the Court of Admiralty applied the rule of equal division of loss by s 25 (9) of the Judicature Act 1873. The equal division of loss was changed by the MCA 1911 to division of loss in proportion to the fault of each ship (known as the proportionate fault rule.[174]

The statement of principle of the rule of contributory negligence in Admiralty was expounded by Viscount Birkenhead LC in the *Admiralty Commissioners v SS Volute.*[175]

I think that the question of contributory negligence must be dealt with somewhat broadly and upon common sense principles. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution. And the MCA with its provisions for qualifications as to the quantum of blame and the proportions in which contribution is to be made may be taken as to some extent declaratory of the Admiralty rule in this respect.

Cases regarding this defence involve general issues of causation. While there are no specific landmark cases on contributory negligence in ship collisions in Cameroon, the general principles of contributory negligence in tort law and admiralty cases in common wealth countries apply. Cases like *Froom v Butcher*[176]and the *Admiralty Commissioners v SS Volute* [177] have established the principles and standards for determining the extent to which the plaintiff's negligence contributed to the damages.

[171]Aleka Mandaraka-Sheppard, (2013), *Op.cit,* P. 428.
[172]Amadou Monkaree, (2019), *Op. cit*, P. 38.
[173]Aleka Mandaraka-Sheppard, (2013), *Op.cit,* P. 426.
[174]Ibid.
[175][1922] 1 AC 129, at 144 (HL).
[176] [1976] QB 286.
[177][1922] 1 AC 129, at 144 (HL).

4.5.The Defence of Intervening Danger

The defence of intervening danger is a legal defence that can be raised by a defendant in a ship collision dispute when they are accused of negligence. It asserts that the defendant's actions or inactions were necessitated or influenced by an external factor, which can be either an act of the plaintiff or an act of a third party.[178]

5. Conclusion

This article examines the various liability regimes and the nature of claims that can be pursued in the event of a ship collision. Through an examination of relevant legislation, case law, and international conventions, the work highlights the different liability regimes that may be applicable, such as fault-based liability, strict liability, vicarious liability, and presumed liability. We have found that mere presence of fault does not guarantee legal action; it must have contributed to the loss. Courts examine various factors to establish fault, including actions before and during collisions. Fault hinges on breaching a duty of care, necessitating proof of both duty and breach for liability.

As already examined, strict liability stands as a fundamental legal principle that imposes absolute responsibility without the need for fault or negligence. This concept, pivotal in environmental law and maritime cases, ensures that those engaging in risky activities bear the burden of any resulting harm, as seen in the "polluter pays principle". Vicarious liability, as discussed, holds ship owners responsible for crew negligence unless it falls outside their duties, as illustrated by the Druid case. Furthermore, presumed liability, a contrasting doctrine, assigns responsibility without fault, particularly in statutory offenses like collisions due to violations of regulations such as the COLREGs.

This work importantly touched into the nature of claims that can be brought, including claims for property damage like ship and its cargo, personal injury and loss of life, salvage claim, and environmental damage, as well as pure economic loss.

However, this article highlights some challenges that may arise in ship collision actions under Cameroonian courts. Some potential issues include the complexity of determining liability in collision cases, and diverse claims, thereby making the nature of claims lengthy and complex. These make the adjudication of ship collision disputes difficult, hence affecting the efficiency and fairness of the legal process. To make the adjudication of ship collision disputes efficient and effective, there is the need for clearer guidelines on the allocation of liability, and specific claims the victims of ship collision can demand from the court.

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