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— G R E E K L A W F I R M —

Papers on Shipping Law & Maritime Economics

Differences between towage and salvage
operations

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I. Introduction

The below paper is a critical evaluation of the differences between salvage and towage services.

II. Purpose

The purpose of this paper is to assess case and/or statutory law with a view to answering the two questions presented by the assignment.

III. Methodology & Data

The assignment is based on secondary data including case and/or statutory law as well as textbooks and articles published on the topics the present analysis focuses on.

1.1 Towage Service: Outlining the Differentiating Characteristics

According to Mandaraka-Sheppard (2013, p. 581): “Towage is the service provided, usually, by specialist tugs, generally to assist the propulsion, or to expedite the movement, of another vessel (the tow) that is not in danger and needing salvage”.

This is the main element that differentiates a towage service from salvage i.e. the lack of danger. If danger exists, then we are talking about salvage.

The basic characteristics of a towage contract that differentiate it from salvage can be said to be the following:

1. Lack of danger, as seen above
2. There is need for a contract (express or implied) (Master needs the confirmation of the ship-owners to legally enter into a contract)
3. There is no need for success for payment to commence
4. Absence of a Maritime lien upon the tow

1.2 Salvage Service: Outlining the Differentiating Characteristics

Salvage is a service conducted by someone with a view to:

- a. Saving maritime property from a danger at sea
- b. Conferring benefit upon himself/herself had the salvage service been deemed successful.

By maritime property we mean a ship or its cargo. It is important to draw a distinction between salvage and rescue as rescue refers to the duty of saving human lives not property.

The most important current legal instrument related to salvage is the 1989 Salvage Convention. Of importance are the Lloyd’s Open Form (LOF) 1980, and the Special Compensation of Protection and Indemnity Clause (SCOPIC) 2000 both related to the remuneration of salvors.

According to Article 1 of the Definitions section of the 1989 Salvage Convention “ Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever”.

The basic and defining characteristics of a salvage service that differentiate it from a towage contract are the following:

1. Element of danger is a prerequisite
2. Voluntariness – Master may not need the authorization of the ship-owners – Salvor may not need the consent of the Master on instances.
3. Success a prerequisite for remuneration (LOF, 1980 and no cure, no pay rule)
4. Maritime lien is possible

The next sections are devoted to exploring the differences and the drawing lines between towage and salvage as particularly with regards to the element of danger the lines are not entirely clear.

1.3. The element of danger as differentiating factor between towage and salvage

As noted in the previous sections a towage service is different to a salvage in that there is no danger. It is a service provided to assist the propulsion or expedite the movement of the tow.

An example may be useful:

Suppose a vessel (X) suffers from an engine failure and needs to reach a port of loading within the next 20 hours. Engines do not start and the repairs will take at least 24 hours. A nearby tug (Y) is requested to assist and to tow the vessel. A towage contract is signed and the tug (Y) provides its assistance and tows the vessel (X) to the indicated port. This is a typical towage contract.

Let us suppose that the Master in the above example orders repairs to begin (no tug is hired at this stage in this example). While repairing the vessel, a fire breaks out. A nearby tug is requested to assist as the fire threatens to sink the ship. Now, this is normally treated as a salvage contract as the tug is called to assist and save the vessel.

How is danger defined? The state of mind of those on board is a crucial factor.

In *The Smaragd*¹ for example, the court awarded a salvage award after the crew abandoned the vessel having mistakenly believed that the vessel was about to blow up. This also makes sense with a view to encouraging salvors aiding in the future as such decisions create incentives to salvors.

As it has been further clarified, when there is a reasonable and present apprehension of danger that (in order to avoid) any reasonable person would not refuse the salvor's offer for assistance in exchange of him/her paying a salvage award to the salvor (Rose, 2017).

The courts also explored the aspect of the future danger as well. It is interesting to see what types of future danger a court may consider before it assesses whether a salvage operation or a mere towage has taken place. An indicative case on the matter was *The Troilus*². In this case the vessel had lost its propeller and was taken in tow to Aden and then towed again to the UK. The court held that the whole service was a salvage service despite the fact the vessel could have been laid in any of the ports passed en route to the UK (e.g. Port Said) since none of these ports offered the ability for her propeller to be replaced safely. Although a borderline case it is indicative of the extent the notion of danger may reach.

1.4 Contract in towage vs Voluntary element in salvage

In a towage service there is need for an express or implied contract. The tug is a servant of the tow. In theory the contract needs to be signed or agreed upon between the tug owner and the ship-owners. The Master may under certain circumstances also enter into a valid contract with the tug owner.

A salvage agreement is also a towage agreement subject to the element of danger being present in order for it to be deemed as a salvage operation.

¹ [1927] Ll. L. R. Rep. 302

² [1951] 1 Lloyd's Rep. 467

There is a further equally important factor for an operation to be deemed as salvage though: The element of voluntariness.

According to Article 17 of the 1989 Salvage Convention sets out the following:

“No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose”.

The term of voluntariness is used to distinguish salvage from duties or agreements that pre-exist salvage, e.g. ship’s crew acting within the course of their employment as was the case in *The Albion*³, a towage contract where there is an associated duty to stand by the tow and assist without placing the tug or crew of the tug on risks.

As it was ruled in *The Neptune*⁴ a salvor is a person who without having any relationship to the ship in danger, without any pre-existing contract of employment for the preservation of the said vessel, provides useful service as a volunteer adventurer.

Of course, on the other hand, there have been cases such as the *San Demetrio*⁵ where the tanker *San Demetrio* was attacked by an enemy warship and the crew abandoned the boat. Two days later the plaintiffs (crew on the one of the three boats) spotted the tanker still in flames, got on board, extinguished the fire and took the vessel to safety. The court awarded them with a salvage award as 10,000 tons of cargo and the ship were taken to safety. The act of salvage was beyond their ordinary scope of employment which had been terminated when they abandoned the ship in flames.

³ [1942] P 81

⁴ [1824] 1 Hagg 227

⁵ [1941] 69 LIL Rep 5

1.5 No need for Success in Towage vs Success for Remuneration in Salvage

Although there are circumstances in towage services where success is also a prerequisite for payment, a right to payment will be subject to the contractual terms agreed upon by the tug and tow owners.

In salvage operations success is a strict prerequisite for remuneration which is analogous to the salvaged property.

1.6. Lack of Maritime Lien in Towage vs Maritime Lien in Salvage

The salvor will be entitled to a maritime lien upon the vessel up to the amount of his/her claim for the property salvaged in contrast with the towage contract where no maritime lien is placed upon the tow for the payment of the contractually fixed price for the towage services.

BIBLIOGRAPHY

- Mandaraka-Sheppard, A., 2013, *Modern Maritime Law, Volume 2: Managing Risks and Liabilities*, Informa Law, Routledge 3rd ed., London
- Rose, F., 2017, *Kennedy and Rose - Law of Salvage*, Sweet & Maxwell, 9th ed., London