LECTURE 6

MARITIME TOWAGE LAW

1.0 INTRODUCTION

In the realm of maritime law and shipping, towage refers to the provision of assistance, typically by specialized tugs, to facilitate the propulsion or hasten the movement of another vessel, known as the tow. Tugs vary in size, ranging from ocean-going vessels to coastal or harbor tugs equipped with specialized gear for pushing or pulling the tow.

The established contractual frameworks outlining the terms and conditions for parties engaged in towage services include the United Kingdom Standard Towage Conditions of 1986 (UKSTC), as well as the forms crafted by the Baltic and International Maritime Council (BIMCO) for International Ocean Towage (Towcon and Towhire), along with the BIMCO Supplytime 1989 Form. While the UKSTC predominantly favors the tug owner, Towcon and Towhire incorporate more equitable terms regarding the division of liability between the tow and tug, as well as their respective responsibilities to third parties.

Towage services are consistently provided under contracts negotiated between a tug and tow for specific services or purposes, with a predetermined price and adherence to the fundamental principles of contract law.

1.1 DEFINITIONS

The concept of towage, as outlined in The Princess Alice, refers to the utilization of one vessel to facilitate the journey of another, with the sole aim of hastening its progress. In accordance with the UKSTC 1986, clause 1(b)(i) provides a definition for 'towing,' encompassing various operations such as holding, pushing, pulling, moving, escorting, or guiding the hirer's vessel. The terms 'to tow,' 'being towed,' and 'towage' carry similar meanings. Additionally, the definition extends to include a broad interpretation of 'vessel,' covering any craft or object that the tug owner agrees to tow or provide services other than towing at the hirer's request. The term 'tender' includes any vessel or object not classified as a tug but supplied by the tugowner for towage or related services.

Furthermore, the definition of 'whilst towing' delineates the period from when the tug or tender is ready to receive direct orders from the hirer's vessel for various operations until the completion of the final orders to cease such operations or detach the towing line, with the tug or tender safely clear of the vessel.

Dr. Lushington, in The Kingalock, distinguishes between ordinary and extraordinary towage agreements. Ordinary towage involves expediting a vessel on its voyage, either homeward or outward, without any disability.

On the other hand, extraordinary towage pertains to an agreement entered into when a towing vessel encounters a disabled vessel and agrees, for a negotiated sum, to bring it from one port to another or a place of safety.

1.2 CONTRASTING TOWAGE AND SALVAGE

Towage and salvage are distinct concepts, with the key difference being that a salvor typically volunteers their services. However, in certain situations, there may be an overlap, where towage can transform into salvage under exceptional circumstances.

Article 17 of the 1989 Salvage Convention emphasizes that no payment is warranted unless the services provided go beyond the reasonable expectations of a pre-existing contract. Additionally, clause 6 of the UKSTC 1986 stipulates that the tugowner's legal rights, including salvage remuneration or special compensation for extraordinary services, are not limited by the contract.

In contrast, clause 15 of Towcon and Towhire doesn't explicitly address the tug owner's right to claim salvage. Still, it implies that any extraordinary services not covered by the agreement may qualify for salvage. The second paragraph primarily addresses the tug's duty to reconnect the towline in case of a breakaway without making a salvage claim, highlighting the importance of continuous service.

In common law, the conversion of a towage contract into salvage is in line with the general principles summarized as follows:

1. Salvage arises when unforeseen circumstances in towage necessitate new and special services not covered by the original contract.
2. Tugowners must demonstrate that, without fault on their part, they performed services beyond the contract's scope to prevent danger to the tow.

The case of **The Leon Blum** illustrates that salvage services, being voluntary, cannot coexist with contracted towage services simultaneously. Moments of transition between towage and salvage must be identified, even if challenging to pinpoint.

The Annapolis case provides guidance on recognizing situations where towage may evolve into salvage, emphasizing that unforeseen occurrences demanding new services can lead to salvage reward.

In **The Homewood**, it is highlighted that for a tug to claim salvage, the tow must be in danger due to unforeseen circumstances, and the tug must incur risks or perform duties beyond the contract's scope.

Examining specific cases, such as **The Aldora** and **The Albion**, further clarifies the boundary between towage and salvage. The circumstances surrounding each incident determine whether the events were within the contemplation of the contract.

The North Goodwin case contrasts with The Albion, illustrating that in certain situations, despite challenges, the tug's actions may fall within the agreed towage services, negating a salvage claim.

Ultimately, each case is unique, and the determination of whether towage transforms into salvage depends on the specific facts and circumstances involved.

1.3 SHIPMASTER AUTHORITY: LEGAL OVERVIEW

The authority of the ship's master to bind the shipowners is outlined in legal principles, specifically in **Bowstead**. According to this source, agency is a fiduciary relationship where one person allows another to act on their behalf, affecting relations with third parties. The one on whose behalf the acts are done is the principal, and the one acting is the agent. The agent's authority can be actual (express or implied) or apparent.

In the context of a ship's master, their implied actual authority, stemming from the employment contract, allows them to enter towage contracts when necessary and reasonable. This authority is in addition to what is needed for the ship's preservation and safe voyages. The master's authority is limited by reasonableness, as established in legal cases such as **The Ocean Steamship v Anderson.**

The master's authority can also extend to binding the cargo-owners in cases of general average. Without agency of necessity or express authority from cargo-owners, the master lacks the authority to bind them to towage contracts. The master is considered the agent of the ship, with agency of necessity only applicable in specific emergency situations.

The tugmaster of a professional tug company has actual authority within their employment contract to enter towage contracts. In contrast, the master of a merchant ship can only bind their owners to a towage contract if it aligns with the usual scope of their employment or in situations justifying assistance to a distressed vessel.

Pre-contractual duties, as per English contract law, require negotiating parties not to mislead each other. While there is generally no duty to disclose all facts, contracts of utmost good faith, like insurance contracts, have additional disclosure obligations.

In The Unique Mariner, it was argued that salvage and towage contracts are contracts of utmost good faith, referencing The Kingalock. However, it was clarified that not all salvage contracts fall under this category. The Admiralty Court may invalidate contracts if deemed seriously inequitable, but misrepresentation in salvage contracts should follow ordinary legal principles without requiring additional equitable jurisdiction.

2. COMMENCEMENT, INTERRUPTION, AND TERMINATION OF TOWAGE

2.1 COMMENCEMENT OF TOWING

In adherence to common law principles, the towage contract initiates when ropes are exchanged between vessels. As per the UKSTC 1986, commencement may occur earlier, when the tug is prepared to receive orders from the hiring vessel. Specific details about the commencement location are outlined in Towcon and Towhire contracts.

The UKSTC 1986 establishes a broader timeframe for the towage operation compared to common law. Clause 1(b)(iv) states that "whilst towing" includes the period from the tug being ready to receive orders to the completion of the hirer's instructions, specifying actions like holding, pushing, pulling, and more.

Understanding the commencement, duration, interruptions, and termination of a towage contract is crucial for determining the liabilities, obligations, and the impact on exception clauses and indemnity provisions.

The subsequent case examples illustrate varying commencement clauses and their implications on exemption from tug liability or indemnification for damages incurred by the tow.

The Clan Colquhoun Case:

In this instance, the towage contract was deemed to commence when the tow-rope was passed onto the tug and ended when the tow-rope finally slipped. A collision occurred, and the court ruled that the contract had not commenced as the tow-rope had not been passed, absolving the tug from the exception clause.

The Uranienborg Case:

The commencement clause in this case referred to the tug being in a position to receive orders. The court clarified that "in a position to receive orders" entails not just physical proximity but also readiness. The tug was not considered ready, and thus, the exemption provisions did not apply.

The Glenaffric Case:

Here, the towage commenced when the tug was in a position to receive orders, and the tug was indemnified for damage under the towage agreement, as the conditions specified a period before actual towing.

These cases underscore the importance of precise commencement clauses in towage contracts and their impact on liability and indemnity provisions.

2.2 INTERRUPTION OF TOWING

When towage is interrupted, it is the tug's duty to return to the tow or ensure its safety.

Failure to do so constitutes a breach of contract, causing the towage terms to cease. The case of The Refrigerant emphasized that the tugmaster must stand by the tow throughout the towage service.

The Cap Palos Case:

In a contract with a broad exception clause, the court held that exceptions only apply during the tugowner's actual performance of duties, not during a period of ceasing activities. Leaving the tow without justification was considered outside the scope of the exception clause.

2.3 TERMINATION OF TOWING OPERATIONS

The cessation of towage operations will occur under the following circumstances: either (i) when the final instructions to the tug, directing it to stop holding, pushing, pulling, moving, escorting, guiding, or standing by, or to release ropes, wires, or lines, have been executed; or (ii) when the towing line has been definitively slipped. The later of these events will be considered, provided that the tug is safely clear of the tow. It is important to note that the term "slipped" regarding the towing line does not include the accidental parting of the towline.

In the case of **The Walumba**, which involved the refloating of a grounded vessel outside Melbourne, the tug, operating under the UK Standard Towage Conditions (UKSTC), was carried away by the tide, resulting in the tow-line breaking. Subsequently, the tug's propeller became entangled, leading to the tug seeking salvage assistance. When the costs of salvage were claimed from the tow owners as indemnity under clause 3(b) of the UKSTC (which indemnifies the tug for any loss, damage, or claims arising during towing), the key issue was the applicability of the clause.

The argument presented on behalf of the tow was that since the towage had terminated with the parting of the tow-line, the clause did not apply. However, the Supreme Court of Victoria, Australia, held that the term "slipping" in the clause did not encompass the accidental parting of the line. Until the propeller fouling occurred, there was no abandonment of the towing operation. Therefore, the fouling of the propeller took place "whilst towing," and the tug owner's liability for salvage services, incurred when in peril, was a direct consequence of damage sustained during towing. Consequently, clause 3(b) was deemed applicable, and an appeal to the High Court of Australia by the tow owners was dismissed.

Understanding commencement, interruptions, and termination clauses is vital for interpreting towage contracts and determining the rights and responsibilities of contracting parties. This is more so in practice for maritime lawyers and practitioners to know exactly the legal standpoint of their arguments by interpreting the towage contracts correctly, and being able to determine the rights and responsibilities of contracting parties.

3.0 TUG FITNESS OBLIGATION

The contractual relationship between a tug and its tow is defined by the explicit terms of the agreement. In the absence of expressly stated terms, certain obligations are implied, provided they do not conflict with explicit terms or have been intentionally excluded.

This duty is typically inferred within the contract and encompasses an obligation that the tug, its crew, tackle, and equipment meet reasonable expectations for a vessel of its class. Whether this obligation constitutes an absolute warranty, akin to the commitment of a common carrier to furnish a seaworthy ship in a goods carriage contract **Steel v State Line Steamship (1877) 3 App Cas 72 (HL), remains unsettled.**

A breach of an absolute warranty has two potential consequences. Firstly, the party alleging a breach by the tug owner regarding the tug's fitness would not need to prove negligence on the part of the tug owner. Secondly, such a breach might negate the tug owner's ability to rely on a contractual exception from liability, assuming the exception clause's language doesn't cover such a breach.

3.1 TUG'S ABSOLUTE WARRANTY OF FITNESS

In **The Undaunted**, where the tug lacked sufficient coal for the voyage, Butt J asserted that there was an implied obligation on tug owners to provide an efficient tug. The decision in The West Cock, while important, was not conclusive on the issue of an implied warranty of fitness in towage contracts.

The President, Sir Samuel Evans' decision in **The West Cock** emphasized that the primary obligation of a tug owner is to furnish a tug efficiently for the intended services. This obligation, whether considered an absolute warranty or an implied commitment to provide a fit and efficient tug, is comparable to the duty imposed on shipowners to provide a seaworthy vessel in contracts for sea carriage.

In The Minnehaha, it was articulated that there is an initial warranty that the crew, tackle, and equipment are efficient, followed by an implied obligation to employ competent skill and best endeavors in the task's execution.

The Marachal Suchet Case:

In The Marachal Suchet, the court held that the owners of the tug, engaged under a towage contract, were obligated to provide an efficient tug, yet the failure to accomplish the task could be excused under certain circumstances, such as major or unforeseen accidents.

Therefore, while some cases support an absolute warranty of fitness for a tug, others suggest a more nuanced approach, emphasizing that the tug should be reasonably fit for its intended service, subject to contractual modifications.

3.2 TOWAGE CONTRACTS: FITNESS ISSUES

The question as to whether the tug owner warranty absolute fitness for a tug depends on the specific terms and circumstances of each contract. In other words, what do the contractual terms in standard towage contracts specify?

According to Clause 4(c)(i) of the UKSTC, certain exceptions from the tug's liability and the indemnity given by the tow to the tug do not apply. Specifically, these exceptions do not cover claims resulting directly and solely from the tug owner's personal failure to exercise reasonable care in ensuring the tug or tender is seaworthy at the start of towing or other services. The term "personal failure" is limited to those individuals with ultimate control and chief management of the tug owner's business, excluding officers and crew, to whom the duty of reasonable care has been specifically delegated.

Under this contract, the tug owner is obligated to exercise reasonable care to ensure the tug is seaworthy at the commencement of towing. This duty is personal and applies to those in control of the business. While the duty can be delegated to servants, excluding officers and crew, it cannot be delegated to independent contractors or other servants or agents.

Similarly, Clause 13 of the Towcon and Towhire states that the tug owner will exercise due diligence to tender the tug in a seaworthy condition at the place of departure, without providing any other warranties, express or implied. This clause also reduces the obligation to that of reasonable care, but it does not specify whether the duty is personal to the tug owner.

Regarding the fitness of a specific tug, when a tow owner requests a known tug for ocean towage, the implied absolute obligation of the tug owner to provide a fit tug is unclear. There are two perspectives:

> **(i)** No absolute warranty of fitness: Some argue that there is no warranty of fitness when the tow owner chooses the tug, as they assume the risk of possible inefficiency.
>
> **(ii)** There can be no general rule about the absence of a warranty of fitness: Another perspective challenges the absence of a general rule and suggests that in ordinary hiring agreements of specific chattels, there is an implied obligation that the chattel should be fit for its intended purpose.

The conflicting decisions in these cases highlight the need for clear contractual agreements between parties, especially concerning the fitness of the tug and the associated risks. Parties engaging tug services should carefully consider and address these issues in their contracts to manage risks effectively, given the unsettled nature of the law in this area.

3.3 LEGAL PRINCIPLES: BEST ENDEAVOURS, PROPER SKILL AND DILIGENCE

To exert utmost efforts in completing the towage is a commitment not explicitly stated in standard contract forms regarding tug ownership. However, common law addresses this gap, as exemplified by Lord Kingsdown in **The Minnehaha**. According to this precedent, when a steamboat agrees to tow a vessel for a specified fee from one point to another, it doesn't guarantee an absolute outcome under all circumstances. Instead, it commits to employing its best endeavours, bringing competence, skill, and suitable resources expected in its class.

Lord Kingsdown clarified that the steamboat isn't obligated to fulfil the contract if unforeseen events, considered vis major, or unanticipated accidents make it impossible. Nevertheless, the steamboat remains bound if unforeseen difficulties arise during the task, and it's expected to overcome them unless they transform the contract into a more challenging endeavour.

The duty to exercise proper skill and diligence throughout is outlined in the Supply of Goods and Services Act (SGSA) 1982. Section 13 implies that a service provider, in the course of business, must perform the service with reasonable care and skill. Section 14 implies a reasonable time frame for service completion, a matter determined by factual considerations.

These implied terms existed in common law before the SGSA. The case of **The Julia** highlighted the duties of vessels in a contract, emphasising that each vessel must perform its duty diligently, avoiding unnecessary risks and liabilities caused by negligence or misconduct. **The Ratata** case further reinforced the expectation that contractors for towage must exercise reasonable care and skill in fulfilling their obligations, considering the nature of the task and the potential risks involved.

4.0 TOW DUTIES AND RESPONSIBILITIES

4.1 OBLIGATION TO SPECIFY REQUIREMENTS AND DISCLOSE TOW CONDITION

It is a pre-contractual duty of the tow-owner to provide essential information about the tow before the commencement of the contract. This ensures that the tug can adequately prepare for the required towage services. The court has the authority to review agreements entered into without full knowledge of the tow's condition. Non-disclosure of material facts that would complicate the tug's job may lead to legal consequences, such as damages for breach of contract. The court could also determine a fair price based on the circumstances. Misrepresentation of material facts about the tow is subject to the provisions of the MA 1967.

In the case of **Elliot Steam Tug Co v New Medway Steam Packet**, the defendants breached their duty by not disclosing that the tow involved more than a simple towage contract. The court held them responsible for not putting the lighter in a position reachable by the tug.

The seaworthiness of the tow for towage depends on the specific circumstances necessitating the towage. There is no general rule requiring the tow-owner to provide a seaworthy tow, but the tow must be in a suitable condition for towage, considering the disclosed position and condition. The Towcon form, in clause 12 titled 'Tow-worthiness of the tow,' outlines the hirer's obligation to ensure the tow is fit for towage at the commencement.

As evidence of tow-worthiness, the hirer must provide an unconditional certificate issued by a recognized firm of marine surveyors upon the tug's arrival. The tow owner's duty is to exercise due diligence to make the tow tow-worthy.

4.2 DUTY OF THE TOW TO EXERCISE DUE CARE AND SKILL DURING TOWAGE

An implied term in the contract is the duty of the tow to exercise due care and skill during towage. Even if the tow is not in control of navigation, there is a responsibility to plan towage, navigate, and cooperate with the tug, unless the tow is an unmanned barge.

4.3 REQUIREMENT TO PAY REMUNERATION TO THE TUG

Towage is considered a service contract, and payment is typically made upon completion of the service. Failure to perform towage may result in no remuneration for a lump sum agreement on arrival. Payment for services on a 'per running day' basis depends on the completion of work. If the contract is frustrated by an unforeseen event, the recoverability of sums paid before discharge is determined by contractual obligations. Expenses incurred by the tug owner before discharge may be retained or recovered under the Law Reform (Frustrated Contracts) Act 1943, depending on the court's discretion.

5.0 TUG-TOW RELATIONSHIP AND LIABILITIES MODELS

Towage relationships involve distinct responsibilities and liabilities between the tug and tow, as defined by explicit or implied terms in the contract. Standard contracts often designate the tug's crew as servants of the tow. For instance, the UKSTC's clause 3 specifies that during towing or at the hirer's request for additional services, the tug's master and crew are considered the hirer's servants. This contractual provision shifts risks, arising from the tug's negligence, to the tow during towing or other agreed-upon services.

It's crucial to note that this contractual arrangement only affects the parties involved. If the tow suffers damage due to the tug's negligence, the tow-owner cannot claim damages from the tug. Conversely, if damage occurs to the tug due to negligence on board, the tow-owner is liable to the tug owner.

In legal precedent, such as **The President Van Buren**, similar contractual clauses have been interpreted to effectively make the tug's master and crew servants of the tow, aligning with the contractual intent.

This legal principle was upheld, stating that the tow is vicariously liable for the tug's negligence during towage.

However, the contractual provision's scope is limited to the contracting parties. In cases of damage caused by the tug's servants, the tow-owner cannot seek damages from the tug, as specified in the contract (cl 4 (a)). Conversely, if damage occurs to the tug due to those on board, the tow-owner is liable to the tug owner (cl 4 (b)).

Contrasting the UKSTC, the Towcon contract establishes a balanced risk distribution and reciprocal indemnity between the parties. This includes indemnification for liabilities related to deaths or personal injuries during towage and each party bearing its own loss for property damage caused by their negligence or to third parties.

Regarding third-party rights, the contractual terms between the tug and tow do not affect third parties' ability to claim for damages caused by the negligence of the tug or tow's servants. Common law principles govern liability between third parties and the tug or tow, treating them as separate or joint tortfeasors.

Determining liability in tug and tow situations involves considering who was in control during the incident. If the tug was in control, it can invoke the indemnity clause to recover from the tow for liability to third parties. The Towcon contract follows a similar indemnity principle (cl 18).

Two theories—'unit' and 'control'—have been applied in common law to assess liability. The 'unit' theory considers the tow and tug as one entity, attributing the tug's negligence to the tow. In contrast, the 'control' theory assesses which party was in control during the specific act of navigation that led to damage.

Legal cases, such as **The Niobe** and **The Devonshire**, have shaped these theories. The Devonshire rejected the 'unit' theory, emphasising the importance of factual control in each case. The control theory emerged to assess control in towage situations, focusing on the facts of each case rather than presuming control for expediency.

In summary, contractual terms define the relationship between tug and tow, influencing liabilities. Legal precedent and theories like 'unit' and 'control' contribute to determining liability, emphasising factual control in assessing responsibility for damages in towage situations.

5.1 ADMIRALTY LAW AND JOINT TORTFEASORS

The common law rule pertaining to joint tortfeasors, as codified by the Civil Liability (Contribution) Act 1978, do not allow for contribution between such tortfeasors, rather, each joint tortfeasor was individually responsible for the entirety of the damage caused to an innocent third party by their collective wrongful actions. However, admiralty law differed from this common law principle, by incorporating a rule of dividing loss between two at-fault ships.

The case of **The Devonshire** brought forward the inquiry into whether the admiralty law's division of loss rule applied when the victim was entirely innocent. The owners of The Devonshire argued that they should only be held liable for half of the loss, contending that the tow (**The Leslie**) was not entirely innocent due to entrusting navigation to the tug. The House of Lords deliberated on whether an admiralty rule superseded the common law, with Lord Atkinson examining relevant precedents.

In subsequent cases, such as Union Steamship Company v Owners of the Aracan (1874) and the lightship Comet (The WH No 1 and The Knight Errant), the identity of the tow with the tug was considered a factual determination based on the specific circumstances of each case.

The House of Lords emphasised the distinction between cases where multiple ships collide and are all found at fault, triggering the admiralty law's division of loss rule under s 25(9) of the Judicature Act (JA) 1873, and cases like The Devonshire where an entirely innocent vessel suffered damage due to the joint wrongful act of two different ships.

The Maritime Conventions Act (MCA) 1911 later codified the admiralty law's division of loss rule between two vessels at fault, applicable after payment to the innocent third party by one wrongdoer. The case of The Cairnbahn involved an action for contribution between two tortfeasors, where the tug (Nunthorpe) and the steamship (Cairnbahn) were both at fault for a collision with an innocent barge. The President, Sir Samuel Evans, held that the MCA 1911 applied, mandating a proportionate liability for the damage or loss based on the degree of fault of each vessel, even when the damage did not arise from a collision between the vessels at fault.

The Court of Appeal upheld this view, clarifying that the MCA 1911 focused on the liability of the guilty parties and did not address the rights of the innocent party involved. This differed from cases like The Devonshire, which centred on the rights of the innocent party in a separate action for contribution between tortfeasors.

5.2 RISK MANAGEMENT CONSIDERATIONS

The common law holds the tug owner responsible for any damage to the tow resulting from the tug's negligence. However, the UKSTC 1986 provides an exemption from such liability for the tug owner, along with an indemnity for potential negligence-related liability to third parties. It's important to note that the UCTA 1977 doesn't apply to towage contracts unless the tow owner acts as a consumer. In contrast, the Towcon contract places both parties on an equal footing, and each bears its own loss, with a mutual indemnity provision for third-party liability.

Liabilities between the parties and third parties are insured, and collision cross liabilities related to damage to the tug and tow are covered by H&M insurers and P&I clubs. Physical damage or loss of the tug or tow during towage is covered by their respective insurers under the Institute Marine clauses for H&M, with subrogation rights once insurance payments are made.

Liabilities to third parties, such as cargo damage or personal injury, are covered by the P&I insurance of the tow. The P&I insurer, after payment to its insured, is subrogated to the tow's rights regarding such liability against the tug or a third party. The clarity of exclusion from liability clauses is crucial, as vague and wide clauses may not be enforceable, being construed against the party claiming their benefit.

A case example, **The Carlton**, illustrates a towage contract clause where the tow owner indemnifies the Port Authority for any loss or damage occurring during towage. In a specific incident, the Port Authority invoked this clause when their lock foreman's negligence caused damage to the tow. However, the court ruled that the indemnity only applied to third-party claims, not party-to-party claims, and the damage did not occur in connection with towage.

Another cautionary example, The Cap Palos, involves a towage contract with a wide exclusion clause. The Court of Appeal held that the clause did not cover situations where the tug owner temporarily abandoned the tow, emphasising the importance of clear language in such clauses.

The Sumi Maru case underscores the need for careful drafting of exclusion clauses. The court emphasised that exclusion clauses should not render the entire contract nugatory and must be interpreted in line with the parties' intentions.

The UKSTC includes a comprehensive exclusion clause (cl 4(a)), which, while broad, is not ambiguous. The court will consider the intention of the parties based on the contract's wording in the context of the entire agreement.

The legal landscape also addresses the concept of fundamental breach, with recent rulings confirming that parties are free to include or exclude such terms in their contracts. The court's focus is on the parties' intentions as reflected in the contract's language.

6.0 LIMITATION OF LIABILITY: TUG CASES

The provisions of the 1976 Limitation of Liability Convention have since been integrated into the MSA 1995. Article 1 of the 1976 Convention outlines the parties eligible for liability limitation, specifically shipowners and salvors. An in-depth exploration of limitation of liability issues and principles, will be dealt with in Lecture 7, where we will be delving into the elucidating rights and liabilities of port authorities and pilots.

For the purpose of highlighting the application of the concept of limitation of liability, the term "shipowner" encompasses owners, charterers, managers, and operators of seagoing vessels. Consequently, both shipowners engaged in a towage contract can restrict their liability by considering their vessel's tonnage. The limitation is determined through a calculation based on the vessel's tonnage, establishing a limitation fund (Arts 11–14).

A significant concern in the context of tug and tow limitation of liability revolves around whether their tonnage should be combined to create a higher limitation fund—an issue commonly referred to as 'the flotilla issue.' The prevailing theory suggests that if a tug and tow operate as one unit, the aggregated tonnage may be considered for limitation purposes. However, collisions often result from the navigational errors of the party in control, be it the tug, tow, or both. Following the control theory, the limitation fund is calculated based on the tonnage of the vessel(s) at fault.

This becomes particularly relevant in cases where a small tug tows a large liner, raising concerns for claimants who may suffer losses due to the negligent navigation of the tug. If the limitation is based solely on the tug's tonnage, which may have a lower value, it could result in a correspondingly lower liability compared to calculating based on the aggregate tonnage of both tug and tow.

Several legal cases exemplify the application of these principles. In the Bramley Moore case, the tug's tonnage was considered alone for limitation calculation, with the court ruling in favour of the tugowners. Similarly, in the **Smjeli case**, where both the tug and tow belonged to the same defendant, the limitation was determined based on the tug's tonnage alone.