LECTURE 7

HARBOUR AND PILOTAGE LAW

1.0 INTRODUCTION

Various statutes and bylaws exist to govern the rights and responsibilities of harbours in ensuring the safety of ports, preventing accidents, addressing hazardous or unsafe ships, safeguarding environmental concerns, and performing other related functions. The British Government has in the past outlined a new approach to port marine operations, encompassing the accountability of port authorities, contingency plans, emergency response, navigation and pilotage management. Concurrently, the European Commission also proposed a comprehensive policy on ports and maritime infrastructures. The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 mandate harbour authorities to have approved oil pollution emergency plans.

A Port State, into whose port a ship voluntarily enters, must ensure compliance with international conventions addressing vessel-source pollution. Port State Control, part of an international regulatory framework, oversees adherence to global standards, inspects entering ships, reports deficiencies to the Flag State, and imposes penalties. In Europe, the Paris Memorandum of Understanding (MOU) 1982 established a unique Port State Control system, ensuring substandard ships do not jeopardise safety, property, and the environment. This mechanism acts as a deterrent to ship owners who may underestimate the risks associated with allowing unsafe vessels to leave ports.

1.1 SOURCES OF POWERS AND DEFINITIONS

Harbour authorities are obligated to judiciously exercise powers to enact bylaws and issue directions, including pilotage directions, to regulate activities within their waters. These powers should align with the safety management system policies and procedures of the authority. The definition of a 'harbour' as per the Merchant Shipping Act (MSA) 1995 includes estuaries, navigable rivers, piers, jetties, and other works where ships find shelter, load or unload goods, or transport passengers. In the context of pollution matters, the definition extends to ports, estuaries, havens, docks, or places within UK national waters empowered by an enactment for which charges can be levied.

1.2 POWER, DUTIES, AND LIABILITIES OF HARBOUR AUTHORITIES

Harbour masters, appointed by harbour authorities, play a crucial role in running harbours. Powers are derived from specific Acts of Parliament or general Acts related to harbours. The Merchant Shipping Act (MSA) 1995 empowers harbour authorities to regulate activities, issue directions, and detain ships violating pollution regulations. . This lecture emphasises the duty of harbour authorities to operate ports, keep them open, and offer facilities for shipping and unshipping goods, subject to regulations and compliance monitoring. Case law, such as **LNER v British Trawlers Federation Ltd and JH Pigott** & **Son v Docks and Inland Waterways Executive**, illustrates the interpretation of Section 33 of the Harbours, Docks, and Piers Clauses Act (HDPCA) 1847. Section 33 imposes a duty on harbour authorities to keep harbours open for shipping and unshipping goods, with access subject to valid and confirmed bylaws. Courts have affirmed the right of access for various service providers, including those providing towage services and facilities for lawful trade. The principle of non-discrimination and equal access to port facilities is crucial, as demonstrated in **R v Coventry CC ex p Phoenix Aviation and Others**, where public authorities were held accountable for refusing to handle certain trades due to potential disruptions from protests.

The lecture concludes by underlining the importance of safeguarding lawful trade and upholding the rule of law, emphasising the obligation of harbour authorities to maintain open access to ports for all users.

2.0 MARINE SAFETY AND LEGAL RESPONSIBILITIES

The statutory obligation for ensuring navigational safety, along with other safety protocols, places the responsibility on each harbour authority to effectively and safely manage port operations. Board members of these authorities are expected to hold themselves accountable for the safe and efficient functioning of the port. The national standard for evaluating the policies, procedures, and performance of harbour authorities is outlined in the code of good practice on port marine operations.

Clear assignment of executive and operational responsibilities for marine safety is crucial, and those entrusted with these responsibilities must be held accountable for their performance. Harbour authorities are required to appoint a 'designated person' who can independently assure the effectiveness of their marine management systems, with direct access to the board.
The importance of lighthouses, beacons, and buoys in marking channels and warning of dangers is emphasised. Legislative frameworks, such as the Merchant Shipping Act of 1995, consolidate provisions related to powers, functions, and duties of harbour authorities concerning lighthouses and property management. The Act places responsibility on the harbour authority for lighthouse management and general property maintenance.

Provisions in Part IX, Chapter I of the Act address salvage and wrecks, while Chapter II deals with vessels in distress and the duties of harbour authorities in such situations. The Act grants authorities the power to remove wrecks causing obstructions, even allowing for their destruction in certain cases.

The Merchant Shipping (Port State Control) Regulations of 1995 require port authorities to inform the Maritime Safety Agency if a ship within their port poses safety concerns or environmental threats. Failure to do so constitutes an offence.

The Merchant Shipping (Carriage of Cargoes) Regulations of 1999, implementing SOLAS regulations, mandates ship masters and terminal representatives to agree on a loading plan for safe loading and unloading of bulk cargoes.

2.1 PORT DUTY LIABILITY

Maintaining the port in good condition and effectively managing risks constitute a statutory duty. Port authorities are well aware of their potential liabilities to shipowners and others if they fail to comply with this duty and ensure the safety of the port. While statutory controls exist, it's important to note that common law also addresses liability in the event of a breach of the duty to exercise reasonable care.

The case of **Bede SS v River Wear** illustrates that an implied warranty of port accessibility arises from a port authority's advertisement regarding specific port characteristics. If, due to negligence, the port becomes inaccessible and causes ship detention, the port authorities can be held liable for damages to the shipowners.

Apart from the statutory duty, harbour authorities are also bound by a common law duty of care to ensure the safety of the port. Failure to exercise reasonable care may lead to liability for damages. In the case of **Mersey Docks Trustees v Gibbs**, liability was established when accumulated mud rendered the port unnavigable.

The decision in **The Grit** further emphasises that even when no dues are charged, the duty to exercise reasonable care persists, as there is a general benefit derived from the use of the port. Liability was established in a case where a motor barge sustained damage due to stones in a berth alongside a wharf, and the wharf owners were held accountable for not ensuring the safety of the berth.

The Neptun case clarifies that the liability of authorities, such as the Humber Conservancy Board, arises from their special relationship with vessel owners due to levying dues. This relationship imposes duties similar to common law obligations, emphasising the need for reasonable care in maintaining safe navigation channels.

In summary, the duty to maintain port safety involves both statutory and common law obligations, with authorities being held accountable for damages resulting from negligence in ensuring port accessibility and overall safety.

2.2 CONTRACTUAL OBLIGATION TO ENSURE THE SAFETY OF THE PORT

When a private owner of a dock extends an invitation to shipowners for the use of their dock, a contractual warranty is implied. This warranty stipulates that the dock owner has taken reasonable measures to guarantee the safety of the berth offered to the boat. If the berth is found to be unsafe, the dock owner is obligated to notify the shipowner. The dock owner may absolve themselves of negligence liability through a clearly visible notice with unambiguous language, as exemplified below.

This was the case of **The Ballyalton**, where the plaintiffs' vessel suffered significant damage due to the unevenness of the berth under the defendants' management, and the plaintiffs alleged negligence, breach of contract, and breach of warranty. The defendants asserted protection under a notice, of which the plaintiffs were aware. The notice emphasised that vessels using the berths were at the owners' risk, and the corporation would not be held responsible for any damage resulting from the use of the berth.

The court held that the defendants were shielded from liability for vessel damage, as the exemption clause covered negligence and was wide enough to preclude any other interpretation. However, exception clauses are subject to the reasonableness test of the Unfair Contract Terms Act 1977, and liability cannot be excluded for death or personal injury.

2.3 DUTY OF A COMPETENT HARBOUR AUTHORITY

In the aftermath of The Sea Empress incident in 1997, a review of the functions assigned to harbour authorities was deemed necessary. The review emphasises key points, including the integration of pilotage as a harbour authority function, the clear assignment of responsibility for piloted vessel safety, regular review of powers and duties, and increased accountability for port safety functions.

The principal recommendation was the development of a Marine Operations Code for Ports, serving as a national standard for all port safety functions. The code, published in January 2001, mandated harbour authorities to have competent pilots and certified boats, ensure the fitness and qualifications of assigned pilots, and base pilotage services on a continual risk assessment process.

Sections 2 and 4 of the Port Act - PA 1987 define the duty of a competent harbour authority to provide pilotage services and designate compulsory pilotage areas. Section 22 addresses the limitation of liability for authorised pilots' acts or omissions. Criminal liability under s 85(1) of the Water Resource Act - WRA 1981, which imposes strict liability for permitting water pollution, may arise in connection with inexperienced pilots.

For example, The Sea Empress, laden with light crude oil, struck rocks due to negligent navigation by its pilot, trained and authorised by the Milford Haven Port Authority. The port authority, prosecuted for pollution under s 85(1) of the WRA 1981, pleaded guilty without admitting fault. The judge, interpreting the section, applied strict liability and fined the authority £4 million for causing pollution.

3.0 SHIPOWNERS' LIABILITY FOR DAMAGE TO HARBOURS

In England and Wales, whether privatised by an Act of Parliament or publicly owned, ports or harbours are subject to regulation through statutes and bylaws. The obligations and rights regarding damage to their property are outlined in statutory provisions.

The statute governing this responsibility is the Harbours, Docks and Piers Clauses Act (HDPCA) 1847. Under this relatively old statute HDPCA 1847, specifically clause or section 74, shipowners bear strict liability if their ship causes damage to any property owned by the harbour or port authority. This liability exists irrespective of whether the damage resulted from negligence on the part of the shipowner or their servants. Notably, the port authority is not required to prove negligence; however, a defence may be raised if the damage resulted from the intervention of a non-human agent, such as a derelict ship or abandonment due to tempestuous weather.

Court cases, such as **River Wear Commissioners v Adamson**, highlight the challenges in interpreting this section. The courts grappled with determining whether the legislature intended shipowners to be liable even in cases where neither the master nor the crew were involved in causing the damage. The arguments centred on the language of the statute, particularly the inclusion of negligence or wilful acts and the reference to the master or person in charge.

In the **Adamson case**, the Court of Appeal concluded that the statute intended to excuse the owner from liability in situations involving acts of God, such as extreme weather conditions forcing the crew to abandon the ship. However, the House of Lords, while disagreeing with the broad interpretation given by the Court of Appeal, affirmed its judgement on different grounds. The majority held that strict liability was indeed created by the statute, and there was no intention to excuse the owner for acts of God in the same way as common law. The key distinction was that liability under the statute differed from liability under common law.

The decision introduced some confusion, especially with Lord Cairns suggesting that the statute did not create a new substantive right but a new procedure. This ambiguity prompted further clarification in subsequent cases, including The **Mostyn and The Towerfield.** The Mostyn emphasised that shipowners were generally responsible for damage to harbour works, regardless of fault, except in cases where the ship had been abandoned due to uncontrollable circumstances.

Therefore, the interpretation of shipowners' liability for damage to harbours involves a nuanced understanding of statutory provisions and court precedents, with a focus on the circumstances surrounding the damage and the application of strict liability principles.

3.1 HARBOUR FEES AND LEGAL PRIORITY

The port authority is authorised to seize a ship and arrange for its sale if the required port charges are not settled. In such cases, the authority's claim for the expenses incurred in the removal or preservation of a wreck takes precedence over other claims, including those associated with maritime liens, such as collision damage and salvage. This prioritisation is based on the rationale that the authority, by preserving the property, ensures there is something left to satisfy these claims, assuming the proceeds are adequate.

An illustrative case is that of The Veritas, which encountered distress outside the Mersey Docks. Salvage services were provided to bring the ship into the Mersey. Subsequently, a collision occurred with another steamship, leading to further salvage efforts by two tugs. The ship was brought alongside the dock wall but later drifted, causing damage and ultimately sinking. Under statutory powers, the Mersey Docks and Harbour Board intervened, removed the vessel, and sold it after becoming involved in a legal action initiated by salvors.

The court proceedings aimed to determine the priority of claims between judgement creditors. The court ruled in favour of the board. The reasoning of the Court was that the board's lien was one arising from a wrongful act rather than a contractual or quasi-contractual relationship. Justice Gorell Barnes clarified that liens arising from wrongful acts take precedence over prior liens arising from contractual relationships, as those suffering damage due to negligent navigation have no choice and reparations for such wrongs should be prioritised.

4.0 PILOTAGE LAW SIMPLIFICATION

The term 'pilot' denotes an individual possessing specialised knowledge of local conditions and navigational hazards. In accordance with the amendments introduced by the MSA 1995, Section 31(1) defines a pilot as 'an individual not affiliated with a vessel who is in charge of its management.' Typically, a pilot is engaged at a specific location to assist in navigating a vessel through a particular channel, river, or enclosed waters to or from a port. Their primary responsibilities include guiding vessels from open sea to port or vice versa, navigating a ship from anchorage to a berth or from berth to a terminal within a port, and aiding in the docking or undocking of a ship within a port.

Historically, the administration of a pilotage district fell under the jurisdiction of a pilotage authority. This authority licensed pilots for its district, issued pilotage certificates to masters in cases of compulsory pilotage, and oversaw various functions such as the establishment and enforcement of bylaws, pilotage charges, and approval of pilots' boats. While the majority of pilots were self-employed, the authority had the power to employ pilots as well. A new statute, the Pilotage Act 1987 was passed and came into effect 1988, aiming to streamline pilotage law. This statute brought about significant changes by transferring the pilotage functions from pilotage authorities to harbour authorities.

Despite this shift, certain provisions within the Act still lack clarity, potentially contributing to challenges faced by port authorities, as evidenced by the issues encountered by the Milford Haven port authority with The Sea Empress. This led to a review of pilotage regulations and the roles of harbour authorities concerning pilotage services. Section 1 of the Pilotage Act 1987 subsequently assigned the responsibility for providing pilotage services to a specific class of harbour authorities known as 'competent harbour authorities,' which manage their harbours under statutory powers.

4.1 DUTIES OF A CAPABLE HARBOUR AUTHORITY CONCERNING PILOTAGE

It is the responsibility of a competent harbour authority, as stipulated in section 2(1) of the PA 1987, to assess the necessity of providing pilotage services to ensure the safety of ships entering the port. Additionally, the authority must consider whether pilotage should be made mandatory in specific harbour areas for safety reasons. This duty is non-delegable but can be assigned to a joint committee established explicitly for pilotage functions involving multiple competent harbour authorities. Section 11 permits the delegation of the duty of providing pilotage services, as deemed necessary by a competent harbour authority under section 2, to another competent harbour authority or an agent through arrangement.

The designation of a compulsory pilotage area is at the discretion of the competent harbour authority, as outlined in section 7 of the Act, based on its assessment of safety interests.

These duties should be considered, emphasising accountability in the discharge of statutory duties related to safety of navigation and regulation of marine operations. While safety of navigation is a public right, the provision of pilotage is a specific duty to facilitate this right. A harbour authority failing to provide adequate pilotage services might face liability for damages sustained by a ship owner due to the absence of pilots in the port.

4.2 AUTHORIZATION OF PILOTS

Under section 3 of the 1987 Act, the harbour authority had the power to authorise individuals to act as pilots in their harbour. An authorization must specify its effective area, potentially limiting authority to specific parts of the harbour or certain types of ships. The harbour authority determines the qualifications, skills, age, fitness, local knowledge, and other qualities of the pilot. Suspension of authorization may occur if the pilot is found guilty of misconduct, loses relevant qualifications, or if the number of required pilots exceeds the area's needs. Section 8 enables a competent harbour authority to issue exemption certificates, allowing masters or mates of ships to navigate a compulsory pilotage area without a pilot if their experience, skill, and knowledge meet specified criteria.

4.3 CHARGES BY THE CAPABLE HARBOUR AUTHORITY

Section 10 of the PA 1987 authorises the authority to levy reasonable charges for pilot services, expenses related to pilot services, costs of providing, maintaining, and operating boats for the area, as well as other costs and penalties. There is no maritime lien right, and charges are recoverable as a debt, enforceable under section 20(2)(i) of the Supreme Court Act 1981 through an in rem claim form.

5.0 DUTIES OF MASTERS AND PILOTS IN A COMPULSORY PILOTAGE AREA

Once a compulsory pilotage area is designated, ships navigating in that area must beunder the pilotage of an authorised pilot, potentially accompanied by an assistant, or the master must hold an exemption certificate (section 15). Navigating a compulsory pilotage area without notifying the competent harbour authority is an offence,
subject to summary conviction (section 15(3)). If a ship is not under pilotage after an authorised pilot offers to take charge, the master is guilty of an offence, also liable to summary conviction (section 15(2)).

Being in a compulsory pilotage area without a pilot, without an offer made, is not an offence but requires the master to be vigilant. An offer by a pilot must be clearly communicated, and the mere display of the pilot flag may not suffice (section 15). The effectiveness of an offer depends on the specific circumstances of the ship's movement.

The obligations of the master also include displaying a pilot signal in a compulsory area, providing information about the ship when the offer is accepted, and facilitating the boarding and departure of the pilot. An authorised pilot has the right to supersede an unauthorised one, and it is an offence if the master has an unauthorised pilot on board without notifying the harbour authority or continues to employ them after an authorised pilot makes an offer (section 17).

5.1 PILOT'S AUTHORITY AND CONTROL

Section 31(1) of the PA 1987 defines a pilot as a person not belonging to a ship who has the conduct of her. The master remains in command, while the pilot's duties are limited to navigation, not superseding the master. However, the pilot's local knowledge makes them best qualified to assess the situation, requiring cooperation and assistance from the master in ensuring safety.

The master, before entering a UK port or a port of another EU Member State, must complete a checklist under the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995. Additionally, the master must report any deficiencies in the ship that may affect safe navigation to the pilot or port authority, with criminal penalties for non-compliance.

The clear division of duties between a pilot and master, emphasises the master's responsibility for the ship's sufficiency and the crew's obedience to the pilot's orders. The master can rely on the pilot's guidance but should only interfere in extreme necessity. Conflicts between the master and pilot are not uncommon, requiring justification by the master for countermanding pilot orders.

The obligations of shipowners for damages sustained by their ship under compulsory pilotage have evolved, eliminating the defence of shipowner negligence.

The pilot's role in providing local knowledge does not absolve the master and crew of their responsibilities to assist the pilot in navigation. The mutual cooperation between the master and pilot ensures the safety of navigation and avoids risks associated with divided command.

5.2 PILOT'S LIABILITY

According to Section 21 of the PA 1987, a pilot can face legal consequences, such as imprisonment for up to six months or fines, if their deliberate actions or negligence result in harm to the ship, its equipment, or individuals on board. This includes failure to fulfil duties essential for preserving the ship and its components or ensuring the safety of individuals on board. The pilot must operate with reasonable skill, consider local conditions, and may be held liable for negligence up to £1000 and pilotage charges for the relevant voyage (Section 22(2)).

In both voluntary and compulsory pilotage, the pilot's liability is directed at the shipowner, rather than pursuing the pilot for recovery. The PA 1913 eliminated the defence of compulsory pilotage, making the shipowner accountable for any loss or damage caused by the vessel's navigation, whether or not a pilot was mandatory. Subsequent statutes on pilotage law have maintained this provision for consistency.

5.3 HARBOUR AUTHORITIES AND PILOTAGE LIABILITY

Harbour authorities under the 1987 Act are tasked with providing adequate pilotage services and qualified pilots. Section 22(8) explicitly states that harbour authorities are not liable for losses caused by authorised pilots. While licensing or authorising pilots doesn't expose the authority to liability for pilot negligence, Section 22(3) suggests a potential conflict by allowing authorities to limit liability for a pilot's negligence they employ. This might be reconciled by distinguishing between mere authorization and the duty to provide qualified pilotage services. If inadequacies in pilotage services result from an unqualified pilot authorised by the authority, liability may ensue.

In cases where a pilot authorised by the harbour authority is not properly qualified and causes damage, the authority could be held accountable for resulting harm, as implied by good practice codes. The authority's duty extends to ensuring pilots are adequately trained. Questions about the harbour authority's duty of care to third parties for losses caused by a non-properly qualified pilot might draw parallels with issues related to classification societies.

5.4 SHIPOWNER LIABILITY FOR PILOT NEGLIGENCE

Historically, shipowners were held responsible for damages caused by a pilot in non-compulsory pilotage areas. Similarly, Section 16 of the PA 1987 provides that owners are liable for all damages caused by the vessel's navigation in compulsory pilotage areas. The principles outlined in relevant cases, such as The Towerfield and The Cavendish, affirm the shipowner's liability for damages caused by a pilot's negligence.

Recent cases, including The Cavendish, reinforce the shipowner's liability under the PA 1987, emphasising that the shipowner cannot rely on the negligence of a compulsory pilot to resist claims by third parties.