

## **LOSS OR DAMAGE DONE BY ANY SHIP**

The admiralty jurisdiction regarding claims for damage done by a ship is a crucial aspect of maritime law, which allows claimants to proceed in rem against the offending vessel. This jurisdiction is invoked when the damage is caused by the negligent act or behavior of those in charge of the ship, leading to the creation of a maritime lien. The claimant must establish that the ship has caused the damage to successfully invoke admiralty jurisdiction.

### 1. Legal Basis in Indian Law:

Section 4 (1) (d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 explicitly addresses claims for damage done by a ship. This provision allows the High Court to exercise jurisdiction over such claims, providing a legal foundation for parties seeking redress.

### 2. Understanding 'Damage Done by a Ship':

The term 'damage done by a ship' encompasses any harm caused by the ship through the negligent actions or omissions of those in control of the vessel. This can include direct physical damage from collisions or other forms of maritime accidents.

### 3. Historical Case Law:

In the case of *The Clara Killam* (1870) L.R. 3 Ad. & Eccl. 161, the injury was directly caused by the wrongful act of the ship against which the action in rem was brought. This case set a precedent for considering direct acts of negligence by the ship as grounds for claims.

#### 4. Direct Damage from Collisions:

In *The Energy* (1870) L.R. 3 Ad. & Eccl. 48, the court similarly dealt with direct damage resulting from a ship's actions. The case reaffirmed that a ship could be held liable in rem for damage directly caused by its wrongful actions.

#### 5. Indirect Damage:

The case of *The Batavier* (1889) L.R. 15 P.D. 37 involved a ship passing close to a boat, causing a disturbance that led to the boat capsizing. This case extended the scope of 'damage done by a ship' to include indirect harm resulting from a ship's proximity and actions.

#### 6. Damage to Submarine Cables:

In *The Clara Killam*, the ship entangled itself with a submarine cable, and the cutting of the cable to free the ship caused the injury. This case highlighted that damage caused during the operation of a ship, even if not a collision, could fall under admiralty jurisdiction.

#### 7. Damage to Property:

The case of *The Industrie* (1871) L.R. 3 Ad. & Eccl. 303 further confirmed the principle that damage to property, caused by the negligent actions of those in charge of a ship, could be subject to claims in rem.

#### 8. Indian Case Law:

In *VSNL vs. Kapitan Kud*, an admiralty action was initiated in the Bombay High Court for damage done by the ship *Kapitan Kud*, which broke a submarine cable. This case is a prominent example of Indian courts exercising jurisdiction over claims for damage done by a ship, particularly in the context of telecommunications infrastructure.

#### 9. Interpretation by English Courts:

In *The Vera Cruz* (1884) 10 App. Cas. 59, Lord Justice Bowen interpreted 'damage done by a ship' to mean damage done by those in charge of a ship, using the ship as a noxious instrument. This interpretation has been influential in shaping the understanding of maritime damage claims.

#### 10. The Role of the Ship:

The Master of the Rolls, in the same case, emphasized that the jurisdiction covers any claim in which the ship was the active cause of the damage. This means that the physical actions of the ship, whether direct or indirect, are central to the claim.

#### 11. Modern Interpretations:

The Singapore High Court in *The Vinalines Pioneer* [2016] 1 SLR 448 confirmed that damage or loss to cargo caused by the carrying ship did not constitute a claim for 'damage done by a ship' and did not give rise to a right of arrest. This case highlights the nuances in interpreting maritime damage claims.

#### 12. Enforcement of Maritime Liens:

A maritime lien arises when a ship causes damage, providing the injured party with a secured interest in the vessel. This lien can be enforced through an action in rem, allowing the claimant to arrest the vessel and seek compensation.

#### 13. Jurisdiction and Procedure:

To proceed with a claim for damage done by a ship, the claimant must file an action in rem in the appropriate admiralty court. The court will then

determine whether the damage falls within its jurisdiction and whether the claimant has established a valid maritime lien.

#### 14. Arrest of the Vessel:

If the court finds in favor of the claimant, it may order the arrest of the vessel to secure the claim. The arrest ensures that the vessel cannot leave the jurisdiction until the claim is resolved or adequate security is provided.

#### 15. Sale of the Vessel:

In cases where the claim is upheld and the vessel owner fails to satisfy the judgment, the court may order the sale of the vessel. The proceeds from the sale are then used to compensate the claimant.

#### 16. Priority of Claims:

In distributing the proceeds from the sale of a vessel, claims with maritime liens, such as those for damage done by the ship, typically take priority over other claims. This ensures that the injured party is compensated before unsecured creditors.

#### 17. Comparative Analysis:

Comparing Indian and international case law reveals common principles and variations in the application of admiralty jurisdiction. Understanding these differences can help parties navigate the complexities of maritime claims.

#### 18. Key Indian Statutes:

The Merchant Shipping Act, 1958, and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, are the primary statutes governing maritime claims in India. These laws provide the framework for the creation, enforcement, and priority of maritime liens.

#### 19. Procedural Requirements:

To establish a claim for damage done by a ship, the claimant must follow specific procedural requirements, including filing the appropriate legal documents and providing evidence of the damage and the ship's involvement.

#### 20. Evidence and Proof:

The claimant must present evidence to prove that the ship's actions directly or indirectly caused the damage. This may include witness testimony, expert analysis, and documentation of the incident.

#### 21. Defense by the Vessel Owner:

The vessel owner may raise defenses against the claim, such as arguing that the damage was not caused by the ship's actions or that the claimant has not met the legal requirements for establishing a maritime lien.

#### 22. Role of Admiralty Courts:

Admiralty courts play a crucial role in adjudicating claims for damage done by ships. These specialized courts have the expertise and authority to handle complex maritime disputes and enforce maritime liens.

#### 23. International Conventions:

Various international conventions, such as the International Convention on Maritime Liens and Mortgages, 1993, influence the treatment of maritime liens and claims for damage done by ships. These conventions aim to harmonize maritime law across jurisdictions.

#### 24. Importance of Registration:

Registering a maritime lien or mortgage is essential for establishing priority and providing notice to third parties. Proper registration ensures that the

claimant's interests are protected in the event of subsequent claims or transactions involving the vessel.

#### 25. Impact on Maritime Commerce:

The ability to claim for damage done by a ship and enforce maritime liens plays a vital role in maritime commerce. It provides a mechanism for parties to seek redress and ensures that vessels operate safely and responsibly.

#### 26. Liability and Negligence:

Claims for damage done by a ship often hinge on proving negligence by those in charge of the vessel. Establishing liability requires demonstrating that the ship's actions fell below the standard of care expected in maritime operations.

#### 27. Role of Marine Insurance:

Marine insurance plays a critical role in mitigating the financial risks associated with maritime claims. Insurance policies can cover damage done by a ship, providing compensation to injured parties and protecting vessel owners from significant financial losses.

#### 28. Challenges in Enforcement:

Enforcing claims for damage done by a ship can be challenging, particularly when dealing with international vessels and multiple jurisdictions. Coordinating legal actions and securing assets across borders require expertise and strategic planning.

#### 29. Admiralty Practice:

Practitioners in admiralty law must be well-versed in the procedural and substantive aspects of maritime claims. This includes understanding the

intricacies of maritime liens, vessel arrest procedures, and the priorities of different claims.

### 30. Role of Shipowners:

Shipowners have a responsibility to ensure their vessels are operated safely and in compliance with maritime laws. Negligence or wrongful acts by the crew can lead to significant legal and financial consequences for the owner.

### 31. Case Study: The Kapitan Kud:

In *VSNL vs. Kapitan Kud*, the Bombay High Court dealt with a claim for damage done by the vessel to a submarine cable. The court's decision emphasized the importance of protecting infrastructure and highlighted the court's role in adjudicating complex maritime disputes.

### 32. The Clara Killam Case:

In *The Clara Killam*, the court addressed the issue of a ship causing damage by entangling with a submarine cable. The case illustrated how maritime claims could extend beyond collisions to other forms of damage caused by a vessel's actions.

### 33. The Vera Cruz Case:

In *The Vera Cruz*, Lord Justice Bowen's interpretation of 'damage done by a ship' expanded the scope of maritime claims to include any harm caused by the ship as an instrument. This broad interpretation has been influential in subsequent cases.

### 34. The Batavier Case:

The *Batavier* case demonstrated that even indirect damage, such as a disturbance caused by a ship's movement, could fall under the ambit of

'damage done by a ship.' This case underscored the importance of considering all aspects of a ship's operation in maritime claims.

#### 35. The Vinalines Pioneer Case:

The Vinalines Pioneer case from Singapore clarified that damage to cargo or property carried by the ship does not fall within 'damage done by a ship' for the purposes of arrest. This distinction is important for understanding the limits of admiralty jurisdiction.

#### 36. Comparative Law Analysis:

Comparing maritime laws and case precedents from different jurisdictions provides valuable insights into the principles and practices governing claims for damage done by ships. This comparative analysis can help harmonize legal approaches and improve maritime law's predictability.

#### 37. Legal Developments:

Recent legal developments in maritime law, including amendments to statutes and new case law, continue to shape the landscape of admiralty jurisdiction. Staying informed about these changes is essential for practitioners and stakeholders in the maritime industry.

#### 38. Practical Implications:

Understanding the legal framework and precedents for claims for damage done by a ship has practical implications for vessel owners, operators, and insurers. It informs risk management strategies and legal compliance efforts.

#### 39. Future Trends:

As maritime commerce evolves, new challenges and opportunities will arise in the enforcement of claims for damage done by ships. Technological



advancements, regulatory changes, and international cooperation will play significant roles in shaping the future of admiralty law.

Claims for damage done by a ship are a fundamental aspect of admiralty jurisdiction, providing a mechanism for redress and ensuring accountability in maritime operations. The legal framework, historical precedents, and contemporary cases collectively inform the principles governing these claims.

#### 41. Indian Legal Context:

In India, the Admiralty Act, 2017, and key case laws such as *VSNL vs. Kapitan Kud* provide a robust framework for addressing claims for damage done by ships. Indian courts have demonstrated their commitment to protecting maritime interests and ensuring fair adjudication of disputes.

#### 42. Global Perspectives:

Examining global perspectives on maritime claims enriches the understanding of how different jurisdictions handle similar issues. International conventions and comparative law studies contribute to a more cohesive and effective maritime legal system.

#### 43. Key Takeaways:

Key takeaways from this detailed exploration include the importance of proving negligence, the role of maritime liens, the procedural requirements for filing claims, and the significance of court decisions in shaping the interpretation of maritime law.

#### 44. Practical Guidance:

For practitioners, this note provides practical guidance on navigating admiralty claims, including the steps to file an action in rem, the evidence required, and the potential defenses available to vessel owners.

#### 45. Future Research:

Future research could explore the impact of emerging technologies on maritime claims, the effectiveness of international conventions in harmonizing maritime law, and the evolving role of admiralty courts in addressing new types of maritime disputes.

The claimant must establish that the ship has, done the damage (whether by collision or otherwise) to invoke admiralty jurisdiction over any claim for damage done and some authority must be shown that the damage as caused in the present case entitles the parties to proceed in rem. Damage done by a Ship means the damage done by any negligent act or behaviour of those in charge of the ship and a maritime lien arises.

Section 4 (1) (d) of the Admiralty Act (2017) deals with the above subject maritime claims.

In, *The Clara Killam* (1870) L. R. 3 Ad. Eccl. 161., and *The Energy* (1870) L. R. 3 Adm. Eccl. 48 cases the injury was directly caused by the wrongful act of the ship against which the action in rem was brought. In the case of *The Batavier* (1889) L. R. 15 P. D. 37., it was the 'disturbance made by the ship passing close to the boat that upset the boat. In the case of *The Clara Killam* (1870) L. R. 3 Ad. Eccl. 161., it was the fact that the ship entangled herself with a submarine cable, and that the cable was cut in clearing her, which was the direct cause of injury to the cable; and in the case of *The Industrie* (1871) L. R. 3 Ad. & Eccl. In *VSNL -vs- Kapitan Kud*, an admiralty action was initiated in the Bombay High Court for damage done by ship *Kapitan Kud* by breaking submarine cable.

In the case of *The Vera Cruz* (1881) L. R. 9 P. D. 96., decided in 1884, the question 'arose, and Lord Justice Bowen, in interpreting the meaning of the expression "damage done by a ship," says that it means "damage done by those in charge of a ship, with the ship as a noxious instrument;" and the

Master of the Rolls, in interpreting the same words, says 'The section indeed seems to intend by the words 'jurisdiction over any claim' to give a jurisdiction over any claim in the nature of an action on the case for damage done by any ship, or in other words, over a case in which the ship was the active cause, the damage being physically caused by the ship.

In the case of 'The Vinalines Pioneer [2016] 1 SLR 448. The Singapore High Court has confirmed that damage or loss to cargo or other property caused by the carrying ship (i.e. offending ship) was not a claim within the meaning of 'a claim for damage done by a ship' and did not give rise to a right of arrest.

Admiralty jurisdiction over claims for damage done by a ship is a core principle of maritime law, allowing injured parties to proceed against the offending vessel directly through an action in rem. This jurisdiction is typically invoked when damage results from negligent acts or omissions by those in control of the ship, leading to the creation of a maritime lien. The claimant must demonstrate that the ship's actions directly or indirectly caused the damage, enabling the court to exercise its admiralty jurisdiction.

#### 1. Legal Basis in Indian Law:

Section 4(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 specifically governs claims for damage done by a ship. This provision empowers the High Courts to exercise jurisdiction over such claims, forming the statutory basis for maritime lien enforcement against the offending vessel.

#### 2. Understanding 'Damage Done by a Ship':

The term 'damage done by a ship' covers any injury or harm caused by the vessel due to the negligent conduct of those responsible for its operation. It encompasses both direct physical damage, such as collisions, and indirect harm resulting from the ship's movements or actions.

### 3. Historical Case Law:

Several historical cases have shaped the legal understanding of claims for damage done by a ship:

The Clara Killam (1870) L.R. 3 Ad. & Eccl. 161: This case established that a ship could be held liable in rem for damage directly caused by its wrongful actions.

The Energy (1870) L.R. 3 Ad. & Eccl. 48: Similarly, this case reaffirmed the principle that a ship's direct actions leading to damage could form the basis of a claim in rem.

### 4. Indirect Damage:

The Batavier (1889) L.R. 15 P.D. 37: This case extended the scope of admiralty claims to include indirect damage. Here, a ship's close proximity caused a disturbance that led to a smaller boat capsizing, illustrating that even non-collision incidents could fall under 'damage done by a ship.'

### 5. Damage to Submarine Cables:

The Clara Killam: In this case, the ship entangled itself with a submarine cable, and the resulting damage from cutting the cable was considered actionable under admiralty jurisdiction. This illustrates that damage done by a ship can extend to operational activities beyond mere collisions.

### 6. Damage to Property:

The Industrie (1871) L.R. 3 Ad. & Eccl. 303: This case further confirmed that damage to property caused by a ship's negligent actions could lead to claims in rem.

### 7. Indian Case Law:

A significant Indian case in this area is *VSNL vs. Kapitan Kud*, where the Bombay High Court dealt with damage caused to a submarine cable by the vessel *Kapitan Kud*. The court exercised admiralty jurisdiction, showcasing the practical application of maritime law in India concerning infrastructure damage.

#### 8. Interpretation by English Courts:

*The Vera Cruz* (1884) 10 App. Cas. 59: Lord Justice Bowen interpreted 'damage done by a ship' to mean any harm caused by those operating the ship, treating the vessel as a 'noxious instrument.' This broad interpretation has been influential in shaping modern maritime damage claims.

#### 9. Modern Interpretations:

*The Vinalines Pioneer* [2016] 1 SLR 448: This Singapore High Court case clarified that damage to cargo caused by the carrying ship did not fall within the definition of 'damage done by a ship' and, therefore, did not give rise to a right of arrest. This decision highlights the nuanced interpretation of maritime damage claims and the limits of admiralty jurisdiction.

#### 10. Enforcement of Maritime Liens:

When a ship causes damage, a maritime lien arises, providing the injured party with a secured interest in the vessel. This lien can be enforced through an action in rem, allowing the claimant to arrest the vessel and seek compensation for the damage caused.

#### 11. Jurisdiction and Procedure:

To initiate a claim for damage done by a ship, the claimant must file an action in rem in the appropriate admiralty court. The court will then assess whether the damage qualifies under admiralty jurisdiction and whether a valid maritime lien has been established.

#### 12. Arrest of the Vessel:

If the court rules in favor of the claimant, it may order the arrest of the vessel to secure the claim. The arrest ensures that the vessel cannot leave the jurisdiction until the claim is settled or appropriate security is provided.

#### 13. Sale of the Vessel:

Should the vessel owner fail to satisfy the court's judgment, the court may order the judicial sale of the vessel. The proceeds from this sale are used to compensate the claimant, with maritime lienholders typically receiving priority over other creditors.

#### 14. Comparative Analysis:

Comparing case law and statutory frameworks from different jurisdictions reveals both common principles and notable differences in the application of admiralty jurisdiction. Understanding these nuances helps parties navigate the complexities of maritime claims effectively.

#### 15. Key Indian Statutes:

The Merchant Shipping Act, 1958, and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, serve as the cornerstone statutes for maritime claims in India. They provide the legal structure for the creation, enforcement, and prioritization of maritime liens.

#### 16. Evidence and Proof:

Claimants must present evidence demonstrating that the ship's actions directly or indirectly caused the damage. This could include witness testimony, expert analysis, and documentation of the incident.

#### 17. Defense by the Vessel Owner:

Vessel owners may defend against such claims by arguing that the damage was not caused by their ship's actions or that the claimant has not met the legal requirements for establishing a maritime lien.

#### 18. Role of Admiralty Courts:

Admiralty courts play a pivotal role in adjudicating claims for damage done by ships. These specialized courts possess the expertise and authority to manage complex maritime disputes and enforce maritime liens.

#### 19. Practical Implications:

Understanding the legal framework surrounding claims for damage done by a ship is crucial for vessel owners, operators, and insurers. It informs risk management strategies and legal compliance efforts within the maritime industry.

Claims for damage done by a ship are an essential aspect of admiralty jurisdiction, providing a means of redress and ensuring accountability in maritime operations. The legal framework, along with historical and contemporary cases, continues to evolve, shaping the principles governing these claims in Indian and global maritime law.

This exploration underscores the importance of proving negligence, understanding maritime liens, and navigating the procedural requirements of admiralty courts to successfully enforce claims for damage done by a ship.