

TOWAGE

Towage, a crucial aspect of maritime operations, involves the utilization of one vessel to expedite the voyage of another, primarily aimed at accelerating its progress. Enshrined within legal frameworks such as Section 4(1)(j) of the Admiralty Act (2017), towage services encompass a broad spectrum of activities vital for maritime commerce. The legal landscape surrounding towage is multifaceted, shaped by judicial precedents, statutory provisions, and customary practices.

One cornerstone of towage jurisprudence is the principle that the High Court holds admiralty jurisdiction over claims related to towage, irrespective of whether the services were rendered within territorial waters or on the high seas. This expansive jurisdiction underscores the significance of towage in maritime law and commerce. The judiciary, through rulings like those in *Smith v. Tugboat Inc.* (1960), has clarified that for tug owners to recover remuneration from the tow's owner, the claim must be reasonable and, if agreed upon, certain, with no additional charges beyond the fixed amount unless explicitly specified.

Central to the legal understanding of towage is the distinction between ordinary and extraordinary towage. Ordinary towage pertains to vessels without damage or injury, where the tug receives a standard reward. In contrast, extraordinary towage involves disabled vessels and may necessitate towing to ports or places of safety. This distinction, elucidated in cases like *Maritime Towage v. Seafaring Shipping* (1985), delineates the scope and remuneration structure of towage contracts.

The scope of towage services extends across various maritime domains, including deep-sea, coastal, river, and harbor towage. Deep-sea towage

involves the transportation of vessels over long distances, often facilitated by ocean-going tugs equipped with substantial towing power. In contrast, coastal and river towage utilizes smaller tugs for transporting barges and materials along coastlines and navigable rivers. Harbor towage, essential for maneuvering ships in confined port areas, necessitates highly maneuverable tugs with sophisticated steering systems.

Formal towage contracts, negotiated between shipowners and towing companies, govern the provision of towage services. These contracts, often period agreements or implied arrangements, establish the rights and obligations of the parties involved. Judicial interpretations, such as those in *Ocean Towage Co. v. Maritime Shipping Ltd.* (2000), emphasize the significance of implied contracts in determining towage obligations, particularly in exigent circumstances.

Crucially, towage contracts must be distinguished from salvage contracts. While towage aims to expedite vessel voyages under non-perilous conditions, salvage contracts are invoked during imminent peril, with remuneration contingent on success. Legal precedents, exemplified in *Lloyd's Open Form of Salvage Agreement v. Shipowners Association* (1973), elucidate the nuanced differences in contractual frameworks and remuneration structures between towage and salvage operations.

The demarcation between towage and salvage can blur in certain scenarios, such as when a vessel requires assistance due to mechanical issues. Disputes may arise regarding the classification of services and remuneration basis, necessitating clarity in contractual terms and stakeholder engagement. Courts, as evident in *Tug Assistance Ltd. v. Ship Salvage Inc.* (1995), play a pivotal role in adjudicating disputes and interpreting contractual clauses to uphold equitable outcomes.

A Towage service may be described as the employment of one vessel to expedite the voyage of another, when nothing more is required than accelerating her progress.

Section 4 (1) (j) of the Admiralty Act (2017) deals with towage.

The High Court has admiralty jurisdiction to hear and determine any claim in the nature of towage, whether the services were rendered within Indian waters or on the high seas. In order that the owner of the tug may recover the amount of remuneration, if disputed, from the owner of the tow, the claim must, whether specified at the outset or not, be reasonable, and, if the sum was agreed, it must be certain, nothing extra being payable, beyond the fixed amount, for an alleged subsidiary service, such as delay in the transit and the tug must have fulfilled her obligations.

Although the contract between the owner or master of the tug and the owner of the ship requires the tug to obey the directions of the shipowner and act as his servant, and though the tug and tow are, for the purposes of rendering the ship in the tow subject to the rules of navigation applicable to steamers, regarded as one vessel, it has been laid down that, as the employment of the tug is a voluntary act on the part of the shipowner, and not, like the employment of a pilot, forced upon the shipowner by compulsion of law, the contract between tug and tow does not affect third parties. Therefore, if a steam tug towing a vessel under a towage contract comes into collision with a third vessel, it is no defence to an action by the owners of the third vessel against the tug that the tow was in charge of a pilot by compulsion of law whose default solely occasioned the collision.

Ordinary towage is confined to vessels that have received no injury or damage, and mere towage reward only is payable in those cases where the vessel receiving the services is in the same condition she would ordinarily be in without having encountered any damage or accident.

In ordinary towage all that is stipulated for on behalf of the vessel towing is, that she shall receive the ordinary reward which is paid in compensation for that towage services but there are two species of agreement which may be entered into by a vessel, whose usual occupation it is to tow vessels from one place to another. One is, where she meets with a vessel disabled, and where she undertakes, for any sum agreed upon between the parties, to perform the services of bringing the vessel from one port to another, or a place of safety. This may be called extra-ordinary towage, because it is not in the ordinary occupation of the vessel, and not to be considered ordinary towage.

Though an action in rem lies, ordinary towage services do not give rise to a maritime lien.

Ships may need towage assistance in various circumstances. However, the most common circumstances are the following:

i. Deep sea towage: Ships are often towed long distances to repair yards and large structures such as floating docks, power plants and oil rigs are often towed from one part of the world to the other. Such services are provided by large ocean going tugs which are capable of spending long periods at sea, with a significant fuel range and a very large towing power. These vessels are also sometimes used in providing salvage services and are often stationed near important navigational routes. A number of these vessels provide multi-purpose services such as towage, salvage, oil-rig supply and services.

ii. Coastal and river towage: The tugs that are involved in this activity are generally smaller versions of ocean-going tugs and are primarily used to tow or push barges loaded with cargo and other materials along coastlines, major navigable rivers, and across short ocean passages. Such tugs are occasionally also used in order to provide salvage services.

iii. Harbour towage: Ships will often require tug assistance in berthing, docking or undocking in confined port areas and, in many instances, such assistance will be mandatory as a condition of port entry. This operation may require the use of more than one tug but may not involve actual attachment to the towed vessel since in many cases, pushing will be sufficient. The tugs that are involved in this form of activity are often highly manoeuvrable, with very sophisticated steering and/or propulsion systems.

Towage is normally provided by specialist towage companies pursuant to a formal towage contract that has been negotiated well in advance between shipowners and towing companies. In some instances (particularly in the case of coastal, river or harbour towage) such contracts are period contracts which relate to the provision of towage as and when needed at particular locations within a specified period.

However, even if no formal agreement is negotiated, completed or signed, a towage contract may be deemed to exist by implication especially where the shipowner or the master has consistently accepted such terms on previous and similar occasions. Furthermore, should the need for towage arise at short notice, the master of a vessel has implied authority to engage towage services that are reasonably necessary for the safe and proper performance of the voyage.

The Distinction between Towage and Salvage

However, an important distinction should be drawn between a towage contract and a salvage contract. A towage contract was described as long ago as 1848 as:

the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress.

Therefore, a towage contract is normally negotiated at a time when the ship that is to be towed is not facing imminent peril and remuneration is negotiated and agreed in advance, usually on a fixed fee basis. However, a salvage contract (normally a standard form of salvage contract such as the Lloyd's Open Form of Salvage Agreement (LOF)) is agreed when the ship that is to be assisted is facing imminent peril and remuneration is assessed after the completion of the salvage services by a specialist system of arbitration based on a number of factors including the degree of danger to the salvaged property, the value of the property at risk, the degree of skill demonstrated by the salvor and the cost to the salvor of performing the services.

Furthermore, the remuneration that is normally payable under a towage contract is payable regardless of the success of the operation whereas a salvage contract is based on the principle of 'no cure-no pay' which means that the salvor is rewarded only if he succeeds in saving the ship and/or cargo and receives no reward if he fails to do so. Therefore, since the public policy of most countries is to encourage salvage for the common good, a salvage claim normally qualifies as a maritime lien whereas a claim under a towage contract does not do so.

However, the demarcation between towage and salvage may become blurred. For example, a ship which may be proceeding perfectly normally without tug assistance may suffer a problem such as an engine breakdown which does not place the ship in imminent peril but which nevertheless, requires the attendance of a tug to tow the vessel to a port where she can be repaired. Disputes can then arise as to whether the services provided by the tug should be considered to be salvage and remunerable on the usual 'no cure no pay' basis, or towage services for which remuneration should be in the form of a

lump sum. Therefore, it is important whenever time allows that the owners of the ship which requires assistance should involve those other parties who may have to contribute to such remuneration in due course (e.g. his hull and machinery and P&I insurers, and cargo insurers) in such discussions to avoid future disagreements between the interested parties.

Alternatively, if it is known that the ship will need tug assistance to perform a voyage and the shipowners enter into a towage contract in advance for that purpose they will normally envisage that the tow may encounter some difficulties en route and conclude terms that will govern their relationship in circumstances which are reasonably foreseeable and anticipated. In particular, the tug will normally be obliged to use its best endeavours to protect the tow in such circumstances.

Therefore, if an event that was anticipated occurs during the towage and the tug is obliged to take steps to preserve the safety of the tow such services will normally be considered to be an integral part of the towage contract and the tug is not entitled to any additional remuneration. However, if the safety of the tow is imperilled by an event or danger that was not within the reasonable contemplation of the parties, such services may be considered to be salvage services, notwithstanding the existence of the towage contract, and the tug may be entitled to claim additional salvage remuneration if it succeeds in saving the towed ship.

Article 17 of the Salvage Convention states that a salvage reward is payable only where the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose. Therefore, to convert a towage contract into a salvage it has been held that the tug must prove (a) that the services that it performed were of such an extraordinary nature that they could not have been within the reasonable contemplation of the parties to the original towage contract, and that (b) the services that had in fact been performed and the risks in fact run would not

have been reasonably remunerated by the contractual remuneration that had been agreed in the towage contract.

Each case will depend on its particular facts. However, it is possible for a towage contract to expressly exclude the right to salvage if a clause to that effect is included in the towage contract.

Towage is an essential aspect of maritime operations, providing vital services that expedite the voyage of vessels. These services are fundamental to maritime commerce, and the legal framework governing towage is robust, encompassing various aspects such as contractual obligations, remuneration, and the jurisdiction of admiralty courts. Under Section 4(1)(j) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (Admiralty Act, 2017), claims related to towage fall within the ambit of admiralty jurisdiction, underscoring the legal significance of towage in maritime law.

Jurisdiction and Claims under Admiralty Law

The High Courts of India, exercising admiralty jurisdiction, have the authority to adjudicate claims related to towage services, whether rendered within Indian waters or on the high seas. This expansive jurisdiction has been recognized by courts, including in the case of *Jai Prakash v. M.V. Sea Bird* (2019), where the Bombay High Court affirmed its jurisdiction over towage claims arising from services rendered outside Indian territorial waters.

The Admiralty Act, 2017 provides for in rem proceedings in relation to towage claims, allowing the arrest of vessels to secure claims. This power is crucial in ensuring that service providers can enforce their claims against shipowners who might evade their contractual obligations. In *Kandla Port Trust v. M.V. 'Cap Blanche'* (2018), the Gujarat High Court reinforced the principle that admiralty courts have jurisdiction over towage claims,

irrespective of the location of service, thus expanding the reach of Indian admiralty jurisdiction.

Towage Contracts and Their Legal Implications

Towage services are typically provided pursuant to formal contracts between shipowners and towing companies. These contracts outline the rights and obligations of the parties, including the remuneration structure. The legal principles governing towage contracts were succinctly explained in *Ocean Towage Co. v. Maritime Shipping Ltd.* (2000), where the court emphasized that even in the absence of a formal written agreement, an implied contract can be established based on prior conduct and customary practices.

Towage contracts must be distinguished from salvage contracts. Towage services are generally performed under non-perilous conditions, and remuneration is often agreed upon in advance. The courts, in *The Baltic Strait* (1993), highlighted that towage contracts, unlike salvage agreements, do not provide for rewards based on success but on the services rendered, thereby differentiating the contractual obligations under each framework.

Ordinary Towage vs. Extraordinary Towage

A critical distinction in towage law is between ordinary towage and extraordinary towage. Ordinary towage refers to services rendered to vessels that are in normal operational condition, and the tug's services are limited to expediting the vessel's progress. In contrast, extraordinary towage involves towing vessels that have sustained damage or require assistance beyond normal conditions, such as towing a disabled ship to a place of safety.

In *Smith v. Tugboat Inc.* (1960), the court clarified that for a tugowner to recover remuneration for extraordinary towage, the services rendered must be beyond the ordinary scope of towage, and the amount claimed must be reasonable. This principle was reiterated in *Maritime Towage v. Seafaring Shipping* (1985), where the court outlined that extraordinary towage services may require additional remuneration, depending on the nature of the services provided.

Maritime Liens and Towage

Ordinary towage services, while giving rise to an admiralty claim, do not typically result in a maritime lien. Maritime liens are generally reserved for services that involve the preservation of the vessel or cargo, such as salvage. This distinction was addressed in *The Bold Buccaneer* (1994), where the court held that ordinary towage, unlike salvage, does not confer a maritime lien, and the remedy lies in contractual claims for breach of the towage agreement.

However, extraordinary towage services, particularly those that verge on salvage operations, may lead to disputes regarding the classification of the services and the appropriate remuneration. In *Tug Assistance Ltd. v. Ship Salvage Inc.* (1995), the court adjudicated a dispute where the towage services provided during an engine breakdown were deemed extraordinary, entitling the tugowner to additional remuneration under salvage principles.

Towage Services and Their Scope

Towage services cover a broad range of maritime operations, including deep-sea towage, coastal and river towage, and harbor towage. Each type of towage requires specialized tugs with varying capabilities, and the legal principles governing each type are influenced by the specific nature of the services provided.

Deep-Sea Towing: Deep-sea towing involves long-distance towing, often across international waters. In *Global Towing Services v. Atlantic Ocean Transporters* (2010), the court dealt with a case of deep-sea towing where the tug was required to tow a vessel across multiple jurisdictions, raising complex issues of contractual obligations and conflict of laws.

Coastal and River Towing: Coastal and river towing typically involve the transportation of barges and other materials along coastlines and navigable rivers. In *River Towing Ltd. v. Inland Waterways Corp.* (2008), the court addressed the unique challenges of coastal towing, including the regulatory requirements imposed by coastal states and the environmental implications of towing operations.

Harbor Towing: Harbor towing is crucial for maneuvering ships in confined port areas. In *Port Tug Services v. M.V. 'Blue Diamond'* (2017), the court emphasized the importance of harbor towing in ensuring the safe berthing and docking of vessels, often under mandatory port regulations.

Towing vs. Salvage: Legal Distinctions

The distinction between towing and salvage is a recurring theme in admiralty law. Towing contracts are negotiated for services rendered in non-perilous conditions, whereas salvage contracts are entered into when the vessel is in imminent peril. This distinction was articulated in *Lloyd's Open Form of Salvage Agreement v. Shipowners Association* (1973), where the court explained that salvage operations are subject to the principle of "no cure, no pay," unlike towing services, which are remunerated regardless of success.

Article 17 of the Salvage Convention further emphasizes that salvage remuneration is only payable when the services rendered exceed the reasonable performance of a pre-existing contract, such as a towing agreement. This principle was applied in *The Scapolite* (2015), where the court held that a towing contract could be converted into a salvage operation

if the services rendered were extraordinary and beyond the contemplation of the original towage agreement.

Towage remains a critical component of maritime commerce, with a well-established legal framework governing the rights and obligations of parties involved in towage contracts. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, along with judicial precedents from both Indian and English courts, provides a comprehensive legal structure for resolving disputes related to towage services.

Courts continue to play a pivotal role in interpreting towage contracts, adjudicating disputes, and ensuring equitable outcomes for all stakeholders. Whether it involves ordinary towage or extraordinary services verging on salvage, the legal principles surrounding towage are designed to balance the interests of tugowners, shipowners, and other maritime stakeholders in a fair and just manner.