



Email:editorijless@gmail.com

Volume: 6, Issue 2, 2019 (April-June)

## **INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)**

<http://www.ijless.kypublications.com/>

ISSN:2455-0418 (Print), 2394-9724 (online)

2018©KY PUBLICATIONS, INDIA

[www.kypublications.com](http://www.kypublications.com)

**Editor-in-Chief**

**Dr M BOSU BABU**

**(Education-Sports-Social Studies)**

**Editor-in-Chief**

**DONIPATI BABJI**

**(Law)**

©KY PUBLICATIONS





## **LEGAL FRAMEWORK ON CONDUCTS BARRING LIMITATION OF SHIPOWNER'S LIABILITY IN NIGERIA**

**NZERIBE EJIMNKEONYE ABANGWU *Ph.D***

Lecturer, Department of Private and Commercial Law, School of Law and Security Studies,  
Babcock University, Ogun State, Nigeria.

E-mail: [nzeribeabangwu@gmail.com](mailto:nzeribeabangwu@gmail.com)

[doi.org/10.33329/ijless.6219.48](https://doi.org/10.33329/ijless.6219.48)

---

### **ABSTRACT**

The Merchant Shipping Act (MSA) 2007 permits the shipowner to limit his liability for maritime claims. However, section 354 of the MSA 2007, has made provision for circumstances under which the right to limit liability would be denied. This paper analysis the ingredients that need to be proved before liability is denied. These include intent to cause damage or other reckless acts or omissions of the shipowner or his servants or agents. The author recommends the amendment of section 354 MSA 2007 for being inequitable as it protects the interest of the shipowner to the detriment of the victim of damage.

**Keywords:** Conducts barring limitation, shipowner, liability, maritime claims; loss or damage, person liable.



---

### **Introduction:**

It is a well-known principle of Law that a person who commits a tort or causes injury or damage to another person or who fails to properly perform a contract, is liable for the damage he caused under tort or contract law principles.<sup>1</sup>

There are certain ways to determine the extent of liability. The person liable may be required, for instance, to compensate the full amount of the object which was the subject of total loss, or to compensate the difference between the former and the present value of the goods which suffered damage, or even to compensate the economic loss in some cases.<sup>2</sup> In the event of physical injury to or death of a person, there are certain principles for remunerating the injuries, disadvantages or losses sustained by the injured person or his relative.<sup>3</sup>

In all these cases, there appears to be no statutorily fixed limit on the amount of the compensation. The wrongdoer is obliged to pay the full amount of the damage he caused, once those damage have been assessed.<sup>4</sup> It is of no importance whether damage were caused by intentional wrongdoing or negligence. The wrongdoer should restore the aggrieved party to his former state, that

---

<sup>1</sup> Duygu Damar, *Wilful Misconduct in International Transport Law* (Springer Publications, 2011). See *Allied Trading Company Ltd v China Ocean Shipping Co. Ltd* (NSC) Vol. 3, at 617; *Rastico (Nig) Ltd v SGS* (NSC) Vol. 3 at 286.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> Patrick Griggs, *Limitation of Liability for Maritime Claims* (4<sup>th</sup> ed. London: Singapore, 2005) at 369.

is, the state he was before the contact was broken or the tort was committed.<sup>5</sup> This principle is known as *restitutio in integrum*. *Restitutio in integrum* is a common law principle which states that the plaintiff or claimant should be put back to the same position as he would have been had he not suffered the loss, damage or injury inflicted on him by the defendant. Thus, in *Allied Trading Company Limited v China Ocean Shipping Company Limited*,<sup>6</sup> the court held that the law governing liability is based on the principle of *restitutio in integrum*. That is, the aggrieved party is entitled to such compensation as would put him in as good a position as if his goods were not lost.

However, there are some legal exceptions to the principle of *restitutio in integrum*. One of the exceptions can be found in Shipping Law where liability limitation for shipowners is exalted.

Limitation of liability is a concept by which shipowners are allowed by law to limit or restrict compensation payable by them for damage caused by their ship. In other words, limitation of liability is a doctrine that allows those who are parties to marine adventure, with particular reference to shipowners and their representatives, to limit their liability in the event of loss or injury to persons or things caused by or on board a ship.<sup>7</sup>

The basic reason behind the right to limit liability was that every encouragement should be given to shipowners to carry on their business. This was because going to sea in ship was considered an adventurous and risky pursuit that needed to be encouraged rather than discouraged in the interest of the promotion and flourishing of international trade.<sup>8</sup>

Various domestic laws and international conventions have made provisions for the protection of shipowners in the event of maritime claims by limiting the extent to which a shipowner could be liable. Specifically, section 351 of the Merchant Shipping Act (MSA) 2007<sup>9</sup> gives legal backing to a shipowner to limit liability for maritime claims in Nigeria.

Under the MSA 2007, the claims that are subject to the procedure of liability limitation are:

- (a) claims in respect of life or personal injury or loss or damage to property occurring on board or in direct connection in the operation of the ship or salvage operation;<sup>10</sup>
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passenger or their luggage;<sup>11</sup>
- (c) claims in respect of other loss resulting from the infringement of right other than contractual right occurring in direct connection with the operation of ship or salvage.<sup>12</sup>

### **Conducts barring limitation of liability**

The right of a shipowner to limit liability in practical terms appears not to be limitless. Thus, there are situations under which his act or omission would deny him of the right to limit liability. This circumstance has been provided for in section 354 MSA 2007. The said section states:

---

<sup>5</sup> Duygu Damar (n1) at 6.

<sup>6</sup> (NSC) Vol. 3, at 617.

<sup>7</sup> Gottard Gauci, 'Limitation of Liability in Maritime Law: An Anachronism?' (1995) *Maritime Policy*, Vol 19, No1, at 65-74.

<sup>8</sup> Christopher Hills, *Lloyds Practical Shipping Guides* (6<sup>th</sup> ed. London: Hongkong, 2003) at 394.

<sup>9</sup> It is worthy of note that the MSA 2007 adopted the relevant limitation clauses from the Limitation of Liability for Maritime Claims Convention (LLMC) 1976 with its Protocol of 1996. The application of the Convention was provided for in section 335 MSA 2007.

<sup>10</sup> MSA, 2007. s. 352(1)(a)

<sup>11</sup> MSA, 2007, s. 352(1)(b)

<sup>12</sup> MSA, 2007, s. 352(1)(c)

A person liable shall not be entitled to limit his liability if it is proved that the loss or damage resulted from his personal act or omission or the act or omission of his servants or agents acting within the scope of their employments committed with the intent to cause such loss or damage or recklessly and with It is a product of the most radical change in the philosophy knowledge that such loss would probably result.

This provision has some similarity with the provision of Article 4 of (LLMC) 1976 although with some minor variations. Griggs, commenting on Article 4 of the LLMC 1976,<sup>13</sup> stated that:

underlying the concept of a shipowner's right to limit the extent of his liability for his acts and those of his servants.'<sup>14</sup>

Under the repealed Merchant Shipping Act (MSA) 1962, limitation of liability was available to a shipowner unless such claim giving rise to liability resulted from 'his actual fault or privity'.<sup>15</sup> The meaning of 'actual fault or privity' was explained in *Splithofts Bevrachting Skantool BV v*

*Attorney General of the Federation (The Leliegracht)*<sup>16</sup> where the court stated that:

The words 'actual fault or privity' infer something personal to the shipowners as distinguished from constructive fault or privity of his servants or agents, and in respect of a company whose action is the very action of the company itself.

This decision was similar to the previous English decisions on what constituted 'actual fault or privity' for the purposes of liability.

For instance, in *Lennard's Carrying Co. Ltd v Asiatic Petroleum Co. Ltd*,<sup>17</sup> Buckley L.J. stated:

The words 'actual fault or privity' in my judgment infer something personal to the owner, something blame worthy in him, as distinguished from constructive fault or privity such as the fault or privity of his servants or agents.

However, under section 354 MSA 2007, the conduct that can bar a shipowner from limiting liability no longer involves 'actual fault or privity' of the shipowner. The new requirement is for the victim of loss to prove that the loss resulted from the 'personal act or omission' of the person liable the 'act or omission of his servants or agents in the course of their employment', and which must be 'committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result'.

It is noteworthy that this apparently stringent test which has to be satisfied before a shipowner is held liable is not only available under the MSA 2007, or its pre-cursor, LLMC 1976, it can also be found in some other Limitation Conventions, although with some little variation in the wordings. For instance, Article 13 of the Athens Convention 1974, and its Protocol of 2002, provide thus:

The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 & 8 and paragraph I of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 25 of the Warsaw Convention<sup>18</sup> similarly provided thus:

---

<sup>13</sup>As stated earlier, Article 4 LLMC 1976 has some similarity with section 354 MSA 2007.

<sup>14</sup>Patrick Griggs, (n4) at 31.

<sup>15</sup>See MSA 1962, s.363.

<sup>16</sup>(1988) 3 NSC at 372

<sup>17</sup>(1915) A. C. 705: see also *The Lady Gwendolen* (1965) 1 Lloyd's Rep. 335; *The Marion* (1984) 2 Lloyd's Rep 1.

The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents done with intent to cause damage or recklessly and with knowledge that damage would probably result, provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

On its part, Article IV Rule 5(e) of the Hague-Visby Rules provides:

Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Furthermore, Article 8 Rule 1 of the Hamburg Rules provides that:

The carrier is not entitled to the benefit of the limitation of liability provided for in Article 6 if the loss, damage or delay resulted from an act or omission of the carrier done with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Nonetheless, Article 4 of the 1976 Limitation of Liability for Maritime Claims Convention made a similar provision. It states:

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly with knowledge that such loss would probably result.

A closer look at the wordings of section 354 MSA 2007 and the wordings of the Limitation Conventions mentioned above would appear to suggest that the following distinctions exist:

1. Section 354 MSA 2007 speaks of the 'loss and damage' as a result of 'personal act or omission' or that of his 'servants or agents acting within the scope of their employment'.
2. The LLMC 1976 speaks of the 'personal' act or omission of the person liable. The Athens Convention, Hague-Visby and Hamburg Rules merely state the 'act or omission of the carrier', while the Warsaw Conventions talks of 'the act or omissions of 'the carrier, his servants or agents'.<sup>19</sup>
3. The Warsaw Convention, the Athens Convention, the Hague-Visby Rules and the Hamburg Rules provide for the 'carrier' being unable to limit liability whereas the 1976 Convention speaks of the 'person liable' being unable to limit liability.<sup>20</sup> The same words were also used by the MSA 2007. However, 'each of the other Conventions and Rules have definitions of "carrier" and in some instances the 'carrier' includes parties who would be "persons liable" under the 1976 Convention'.<sup>21</sup>
4. The Warsaw Convention, the Athens Convention and the Hague-Visby Rules provide for 'damage' caused by the act or omission of the carrier. The Hamburg Rules speak of loss, damage or delay' so caused, whilst the 1976 Convention speaks only of 'loss'. However, the MSA 2007 speaks of 'loss or damage'.<sup>22</sup>

---

<sup>18</sup>As amended by Article 13 of the Hague Protocol 1995.

<sup>19</sup> Patrick Griggs, (n4) at 33. See also Sheppard Mandaraka, *Modern Maritime Law and Risk Management*, (London informa, 2009) at 888

<sup>20</sup>*ibid.*

<sup>21</sup>*ibid.*

<sup>22</sup> MSA, 2007, s.354.

5. The Warsaw Convention and the Hague-Visby Rules, when speaking of the intent to cause 'damage' or of acts done 'recklessly' and with knowledge of 'damage', refer to 'damage' in the abstract whereas the Athens Convention, the Hamburg Rules and the 1976 Convention provides in each case of 'such', damage (Athens Convention) 'such' loss, damage or delay (Hamburg Rules) or 'such' loss (1976 Convention). However, MSA 2007 speaks of 'such loss or damage'.<sup>23</sup>

It is submitted that these differences in the above provisions may appear insignificant, but they may have some material effects on the test of breaking limitation to some extent. However, Griggs posits that the court would always attempt, whenever possible, to give a consistent construction.<sup>24</sup>

Thus, in *The Lion*,<sup>25</sup>Hobhouse, J. stated that:

In my judgment it is clearly important and correct that there should be a consistent approach to the construction of similar Maritime Conventions using similar terms and expressing similar ideas.

This, it is submitted, would make the position of the law to be more certain.

#### **Analysis of Section 354 MSA 2007**

A look at section 354 above would indicate the use of certain terms or words which must be satisfied before the provision of this section is invoked. These words or terms include:

- (a) 'personal' act or omission or that of the servants or agents in the course of their employment;
  - (b) 'person liable';
  - (c) 'loss or damage' and 'such loss'
  - (d) 'intent to cause such loss or damage'
  - (e) 'or recklessly and with knowledge that such loss would probably result'.
- (a) 'Personal' act or omission or act or omissions of servants and agents.**

This aspect of the provision of section 354 MSA 2007 which penalizes the misconduct of servants or agents is similar to the provision of the Warsaw Convention<sup>26</sup> which also expressly provides that the misconduct on the part of the carrier's servants or agents acting within the course of their employment would result in the loss of right to limit liability.

In contrast to this, the LLMC 1976 provides that it is only the 'personal' act or omission of the person liable that will defeat the right to limit. This means that the shipowner would only lose his right to limit if it is proved that 'he personally misconducted himself in the necessary manner'.<sup>27</sup>

It is to be noted that under the repealed MSA 1962,<sup>28</sup> it was the 'act or omission of any person', whether on board the ship or not, acting in the navigation, or management of the ship, and not just the 'personal act or omission' of the person claiming limitation, that was taken into account for limitation purposes. Thus, in interpreting a similar provision under the 1957 Limitation

---

<sup>23</sup> Ibid.

<sup>24</sup>Patrick Griggs (n4) at 33.

<sup>25</sup>(1990) 2 Lloyd's Rep. at 149.

<sup>26</sup>As amended by Article 13 of the Hague Protocol 1995.

<sup>27</sup>Sheppard Mandaraka, (n19) at 888.

<sup>28</sup>MSA 1962, section 363.

Convention, the court held that the shipowners would not be able to limit their liability incurred by the fault of a person to whom a 'task had been delegated by them, such as the managers of the ship'.<sup>29</sup>

However, section 354 MSA 2007 has restricted the 'act or omission' or the 'fault of any person' to the 'personal act or omission' of the person liable or his 'servants or agents'. Thus, even if the act or omission which caused the loss or damage is that of the master of the ship or any of the crew members or agents acting in the course of their employment; the owner, or salvor, or the charterer or manager or operator of the ship, whoever was vicariously responsible for the acts or omissions of those servants, would still be able to limit his liability. It is the opinion of the author that this amounts to an unnecessary protection of the shipowner.

Furthermore, if the act or omission is that of the owner's agent, for example, the manager of the ship, the owner will still be able to limit. This differed from the repealed 1962 MSA where the owner would not be able to limit for the fault of his agents or servants, if he could not prove that the damage occurred without his 'actual fault or privity'.<sup>30</sup>

**(b) 'Person liable'**

Section 354 MSA 2007 stipulates of the 'personal' act or omission of a 'person liable'. It is submitted that these terms perhaps includes all the various parties identified in section 351 and titled 'persons entitled to limit'. Thus, a 'person liable' could be the shipowner, the charterer, manager, operator, salvor or the insurer of the ship. This may also include a further class of persons defined as 'any person for whose act, neglect or default the shipowner or salvor is responsible'.<sup>31</sup>

**(c) 'Loss and damage' or 'such loss'**

Section 352 MSA 2007 made references in various places to 'loss of life or personal injury', 'loss of or damage to property', etc. However, section 354 speaks of 'loss or damage' or 'such loss'. While it may be stated that this drafting style leaves much to be desired, it is however, submitted that the word 'loss' is intended to include all the various types of loss or damage or injury in respect to which section 352 refers.

**(d) 'Intent to cause such loss'**

Commenting on a similar provision in Article 4 LLMC 1976, Griggs stated that what can perhaps, be deduced from this phrase is that for a 'person liable' to forfeit his right of limitation, it must be proved that:

...the 'person liable' had the subjective intent (or *mens rea*) to cause the loss. It is not sufficient to prove that a reasonably competent person could not have failed to conclude that his act or omission would cause the loss. It must be shown that the 'person liable' himself intended the loss.<sup>32</sup>

This means that an act of wilful misconduct must be established against the person liable. Thus, in *Horabin v British Overseas Airways Corp*,<sup>33</sup> where the court defined this term in the context of air carriage as:

Wilful misconduct is misconduct to which the will is a party, and it is wholly different in kind from mere negligence or carelessness, however gross that negligence or carelessness

---

<sup>29</sup> See the *Marion* (n17). The provision interpreted by court here under the 1957 Limitation Act was similar to the provision of s.363 MSA 1962.

<sup>30</sup> The *Marion* (1984) 2 Lloyd's Rep. 1, see also *The Leliegracht*(n16).

<sup>31</sup>MSA 2007, section 351 (3).

<sup>32</sup>Patrick Griggs, (n4) at 37.

<sup>33</sup>(1952)2 Lloyd's Rep 450 at 459.

might be. The will must be a party to the misconduct, and not merely a party to the conduct of which complaint is made... to establish wilful misconduct on the part of ... (the pilot), it must be shown not only that he knowingly (and in that sense wilfully) did the wrong act but also that when he did it, he was aware that it was a wrongful act, i.e. that he was aware that he was committing misconduct.

Furthermore, in *Rolls Royce Plc v Heavy-Lift Volga Droeyr Ltd*,<sup>34</sup> the court held that:

For the finding of wilful misconduct the court must find on a balance of probabilities that the act (or omissions) alleged to constitute the misconduct must not only fall below the standards as to be capable of being regarded as "misconduct", and not just as careless, or very, or grossly careless. Second, the person must know that he is misconducting himself when he does (or fails to do) the acts complained of and does them intentionally or recklessly as to the consequence.

It is the opinion of this author that this provision appears to be intended to handicap the claimant by exposing him to double jeopardy and difficulty. This is because the claimant had already suffered loss by the fact that his goods were lost or damaged and at the same time he is expected to prove that the shipowner had the intention of causing the loss or damage. This is putting the claimant on an impossible status of a mind reader, which, it is submitted, is unconscionable. After all, 'the devil himself knoweth not the intention of man.'<sup>35</sup>

Furthermore, in order to deny or deprive the 'person liable' of the right to limit under section 354 MSA 2007, it must be proved that the 'person liable', or his servants or agents had the subjective intent to cause the loss or damage. Therefore, it is not sufficient to prove that a reasonably competent person could not have failed to conclude that his act or omission would cause the loss. It must be shown that the person liable himself or his servants or agents actively intended the loss.<sup>36</sup> Requirements like this makes it extremely difficult for a shipowner not to benefit from the rights of limitation. However, in *Margolleetal. v Delta Maritime Co. Ltd. et al.*<sup>37</sup> Gross J, found that foresight of the very loss which occurred was necessary for the shipowner's right to limit to be defeated.

**(e) '...or recklessly and with knowledge that such would probably result'**

For a shipowner to be liable for maritime claims in Nigeria, section 354 clearly requires either 'intent' or 'recklessness' and in addition to recklessness, the person liable or his servant or agent must have had particular 'knowledge that such loss would probably result'. As to what constitutes 'recklessness', the court, in the English case of *R.v Caldwell*,<sup>38</sup> gave the meaning of the word 'recklessly' or 'recklessness' as connoting:

...either carelessness or utter heedlessness of consequence with the result that the perpetrator is deemed to have considered neither the probability or even the possibility of a likely result.

However, the English House of Lords has extended this principle by identifying:

---

<sup>34</sup>(2000)1 Lloyd's Rep. 653.

<sup>35</sup> Per Bryan CJ, in *Year Book Pasch.* 7 Edw. 4 Fol. 2. pl.2.

<sup>36</sup> Patrick Griggs,(n4) at 41.

<sup>37</sup>(*The Saint Jacques II and Gudermis* (2003), Lloyd's Rep. 203.

<sup>38</sup>(1983) A.C 354; See also *R v. Lawrence (Stephen)* (1982) A.C. 520.



...a subjective element to the test whereby a defendant would not be regarded as culpable if due to his age or other personal characteristics he genuinely did not perceive the risks involved in his action.<sup>39</sup>

Nevertheless, Eveleigh L.J, has warned of the danger inherent in interpreting the provisions of international conventions as if they are English Statutes. This is because the Conventions are drawn up in a number of languages.<sup>40</sup>

In *Goldman*, the court had to interpret the word 'recklessly' in conjunction with 'and with knowledge that damage would probably result' as provided for in Article 25 of the Warsaw Convention to mean:

An act may be reckless when it involves a risk, even though it cannot be said that the danger envisaged is a probable consequence. It is enough that it is a possible consequence, although there comes a point when the risk is so remote that it would not be considered reckless to take it. We look for an element of recklessness which is perhaps more clearly indicated in the French term "*temerairement*". Article 25 however, refers not to possibility, but to the probability of resulting damage. Thus, something more than a possibility is required. The word 'probable' is a common enough word. I understand that to mean something is likely to happen. I think that is what is meant in Article 25. In other words, one anticipates damage from the act or omission.

Eveleigh L.J. further stated that:

...reading Art. 25 as a whole for the moment and not pausing to give an isolated meaning to the word 'recklessly', the article requires the plaintiff to prove the following:

- i. that the damage resulted from an act or omission;
- ii. that it was done with intent to cause damage; or
- iii. that it was done when the doer was aware that damage would probably result, but he did so regardless of that probability;
- iv. that the damage complained of is the kind of damage known to be the probable result.<sup>41</sup>

Therefore, a person acts recklessly and with knowledge that damage would probably result when he anticipates that damage would be likely to follow from his act or omission.<sup>42</sup>

As to what constitutes 'knowledge' to deny the 'person liable' the right to limit liability, the court further in interpreting Article 25 of Warsaw Convention<sup>43</sup> in *Nugent v Micheal Goss Aviation Ltd*,<sup>44</sup> where knowledge of the pilot was in issue, identified three types of knowledge that can ground liability. These are:

---

<sup>39</sup>*R v. G & Anor.* (2003) 3 WLR 1060. This interpretation was based in the context of the English Criminal Damage Act 1971, Section II.

<sup>40</sup> See *Goldman v. Thai Airways* (1983) 3 All E.R 693. It is submitted that this caution should be taken notice of in the interpretation of section 354 MSA 2007. This is because the provisions of limitation of liability for maritime claims in Nigeria have some similarities with the LLMC 1976.

<sup>41</sup>*ibid.*

<sup>42</sup>Sheppard Mandaraka (n19) at 500.

<sup>43</sup>As amended by Article 13 of the Hague Protocol 1995. Note that the provisions of Article 25 of this Convention is substantially similar to section 354 MSA 2007.

<sup>44</sup>(2000) 2 Lloyd're. 222.

(a) actual knowledge; (b) background knowledge and (c) imputed knowledge. The court held that the approach that should be followed is to 'identify actual knowledge and reject imputed knowledge'. It further held that:

As to the background knowledge, it was more difficult to determine its effect on actual knowledge... it should be regarded as the 'store' of knowledge being part of actual knowledge, albeit that it may be forgotten at the time.

Therefore, 'by reason of his training and experience, the pilot ought to have known that damage would probably result from his act or omission.'<sup>45</sup> However, 'there could not be a deemed provision of knowledge if the person did not have that knowledge present in his mind at the time'.<sup>46</sup> It is noteworthy, that under the Warsaw Convention, just like section 354 MSA, 2007, the act or omission of servants and agents are taken into consideration in determining liability. Although section 354 MSA, to the best of knowledge of the author, has not been a subject of litigation in any Nigerian Courts, it is the view of the author that the conclusions reached by foreign courts in respect of Article 25 of the Warsaw Convention and Article 4 of the LLMC 1976 would have a persuasive effect when interpreting the provision of section 354 MSA 2007. This is because, these laws have more or less similar provisions in terms of conducts barring limitation of liability for shipowners. The author submits further by stating that the provision of section 354 MSA 2007 appears to be inequitable as it protects the interest of the shipowner to the detriment of the victim of his action or omission.

### **Conclusion**

The right of a shipowner to limit liability is not limitless. Section 354 of the MSA 2007 has made provision for conducts that would deny a shipowner of the opportunity to limit liability.

However, for a shipowner to be denied the right of limiting liability for damage caused, the victim would need to prove, among other things, that the shipowner had the intention of causing such damage. This amounts to putting the claimant on an impossible status of a mind reader. The author recommends the amendment of section 354 MSA 2007 for being inequitable as it protects the interest of the shipowner to the detriment of the victim of damage.

---

<sup>45</sup>Sheppard Mandaraka (n19) at 901.

<sup>46</sup>*ibid.*