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Legal Nature of Seaworthiness Obligation in Charter Party Agreements

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Abstract

As one of the most popular means of trade in the world, shipping by sea has always been subject to maritime hazards. Thus, the implicit commitment of a ship lease contract is that the transport operator provides a seaworthy ship. There is, however, no specific definition of the legal nature of this obligation in most conventions or international laws, and it is only in this regard that the statement of seaworthiness is cited as an implied obligation. Having been written in the descriptive-analytical method, this study attempts to explain the legal nature of this obligation, its position among absolutes or relatives, primaries or subsidiaries, implicit fundamentals or customs, its compliance with the conditions of article 234, the burden of proving seaworthiness, and the lack of performance guarantees caused by its absence. According to the results of the study, a transport operator is under a relative obligation to provide a seaworthy vessel. The existence of this obligation can be mentioned both as a main condition and a secondary condition, and if there is no specification in the contract, it is referred to as a customary implied obligation. Additionally, the condition of seaworthiness would be close to the verb condition in accordance with Article 234 of the Civil Code of Iran. For a claimant (the owner of the goods) to prove a lack of seaworthiness, they only need to provide evidence that the loss has occurred. For the sea transport operator to be relieved of responsibility, s/he must prove that s/he took the necessary precautions at the start of the voyage. The owner, otherwise, is responsible for compensating the victim for the damages caused by the violation of unseaworthiness through restoring the previous situation by providing the property and if an excuse is provided, by supplying a substitute.

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1. Introduction

One of the oldest, most diverse, and most difficult areas of law is maritime law. As a result, the value of the seas and their contribution to fostering global trade, as well as the contribution of powerful commercial fleets to national economies, have had an indisputable impact from ancient times to the present. According to statistics, more than 90% of international transportation is performed by water, with the remaining 10% being transported by other means such as land, air, and train (Melkem, N, Shaw, 2015: 17). Accordingly, the majority of nations worldwide are now interested in using shipping by sea as one of their primary means of commerce. However, because perils of the sea are an inherent component of the voyage, the chartered ship must always be ready to handle any sea risks that may arise. As a result, one of the most significant implicit obligations in charter party agreements is the owner's duty to supply a seaworthy ship (Al-Daboubi, 2021).

The key idea in expressing the concept of seaworthiness is that it encompasses more than just the ship's physics; it also refers to people, documents, and the ship's capacity to carry cargo. The concept of seaworthiness will be expressed from various angles depending on the type of cargo, the mode of transportation, the route, and the time of year that it is being transported. However, seaworthiness is one of the assumed responsibilities of the owner in this context because, in the majority of treaties and international laws, the legal character of this obligation is not explicitly defined (Maulinasari, 2022). For instance, it is stated that "the sea carrier is obligated to take the following measures before every voyage and at the commencement of it" in both Article 3 of the Brussels Convention and Article 54 of Iran's Maritime Law. 1. Preparation of the ship for sailing 2. Prepare and furnish the ship's crew, equipment, and supplies appropriately. 3. Set up and prepare all of the ship's cargo-transporting areas, including the cool rooms and warehouses. Therefore, it is believed that the idea of "due diligence," one of the fundamental concepts of this article, has not been

clearly stated, and it is unclear whether the legislator meant professional and technical diligence or customary diligence, or whether the legislator meant the reasonable effort of the operator? Additionally, the examination of the ship's loading capacity, one of the most crucial elements of the obligation of seaworthiness, will serve as a reminder that the sea carrier is responsible for covering damages incurred because the cargo could not be carried; as a result, the transport operator's responsibility extends beyond just shipping to include the storage, moving, unloading, and delivery of goods. Because the loading capacity varies depending on the type of cargo and the route taken by the ship, the notion that they are equivalent is unacceptable (Nurtjahjo & Nofrial, 2022). Additionally, one of the issues that may be resolved in a situation like how to make up for a lack of seaworthiness is to examine the seaworthiness obligations in the form of the primary or secondary provisions of the agreement. In other words, if we see the owner's duty to ensure the seaworthiness of the ship as the primary condition, then the owner of the goods will have the right to end the agreement in the case of a breach. Conversely, if the guarantee of seaworthiness is regarded as a secondary obligation, the owner of the goods will only be entitled to compensation if this guarantee is violated (Sara & No & Timur, 2021). One of the challenges this article faces is putting the common law condition of seaworthiness in the form of civil law conditions, such as qualifications, performance, and corollaries. If possible, this will have an impact on how maritime court judges decide to compensate parties and whether or not to require the owner to prove seaworthiness. For instance, if we see the need for seaworthiness as an obligation to carry out essential actions, this responsibility will fall more into the condition of the performance group. According to Article 239 of the Civil Code, “If it is not possible to force the fulfillment of an act by the person who should perform it and if the act is of such a kind that no one else could perform it on his behalf, then the other party shall have the right to cancel the agreement”. On the other hand, the majority of maritime agreements and Iranian maritime law do not address the main or ongoing evaluation of the duty of seaworthiness, which will also be one of the areas of interest in assessing the owner's liability. Indeed, as previously indicated, the sea carrier is required to take the appropriate measures before every voyage and at the commencement of the voyage, under paragraph 1 of article 3 of the

Brussels Convention and paragraph 1 of article 54 of Iran's maritime legislation. But what does it mean to "at the beginning of the voyage" and "before every voyage" signify? Therefore, the answers to these questions in this article, taking into account the development of the maritime transport industry and its growing significance in global trade, can lessen the disputes brought on by such agreements and help determine the extent of the owners' obligation to provide seaworthy ships.

2. Charter Party Agreement

A charter party is an agreement for the transportation of commodities from one place to another (from one port to another, nationally or internationally), taking into account the quantity of cargo and all or most of a ship's capacity. The bill of lading serves as the receipt, ownership document, and legal transfer document for the ownership of the cargo in this form of agreement, which also includes the rights and duties of the parties to the agreement (Sadiq, 2013: 278). Generally, the charter party agreement is divided into three types. In a voyage charter party, a ship is chartered for a specific voyage or voyages, and the owner is required to deliver the ship—as long as it is in legal seaworthiness—to the charterer, provided that the ship is moving reasonably quickly toward the designated port or dock and is prepared to freight at the scheduled time. One of the other duties of the owner is to ensure that the ship is at the port or dock designated in the present agreement for unloading at the designated time. This capacity is necessary to complete a sea voyage at an acceptable and safe speed (Zhang & Phillips, 2016). A time charter party agreement is different from a voyage charter party agreement in that it allows the charterer to hire the full ship's net capacity for a certain amount of time[1] (Baughen, 2018: 201). Indeed, the ship is hired under this kind of agreement for a specific amount of time, regardless of how many voyages are taken during that time. Another sort of charter party agreement known as a charter by demise agreement places the ship entirely at the charterer's disposal and gives them total power to the point where they may

[1] In contrast to a voyage charter, a time charter is defined not by a geographical voyage, but by a period of time, for example, six months.

be considered the ship's temporary owner Since the charterer assumes responsibility for the ship's seaworthiness under this sort of charter party agreement, and the owner is not the employer of the captain or the crew. The main distinction between a voyage and time charter party agreement and a charter by demise agreement is that, under the first two types, the charterer will have the right to receive the goods at the destination port in exchange for paying the charter, but not to control or employ the captain and crew. Under these two situations, the ship is in the owner's possession and control, but in the charter by demise, the charterer has full possession and control of the ship and is therefore considered the owner of the interests of the ship, literally called "Possessory interests"[1] (Baughen, Ibid: 10).

3. Sea Carrier Liabilities; From the Past to the Present

The legal framework governing sea carriers has changed significantly over time. Before the Hague Rules were adopted, the sea carrier was regarded as a public carrier under the common law legal systems of England, America, and Australia, and the obligation of public carriers was seen as an absolute liability. This implies that the sea carrier was liable for any damage to the goods or their absence, regardless of whether the harm was brought on by his carelessness, his fault, another party's negligence, or both (Alaie Fard, 2007:135). As a result, the American and English sea carriers eventually came up with the concept of putting clauses in the transportation agreement to release them from particular circumstances of liability. Therefore, it is specified in the agreement of affreightment that the sea carrier will not be liable in situations like fire, perils of the sea, mistakes made by the captain and technical crew of the ship, seizure of the ship, gross average, etc. The scope of these exceptions gradually expanded to the point where, as Professor Honnold: stated, "Until the Harter Law was adopted, maritime transport was carried out at the cost of the owner of the goods under the liabilities of the goods owned by the carrier." This was caused by the unequal power of the goods owners and ship owners as well as the unity and union of sea carriers (Honnold, 1993: 102).

[1] "Such a Charter is known as a demise charter. Unlike an ordinary charterer, the demise charterer obtains a possessory interest in the chartered vessel."

The sea carrier releases himself from any liability by inserting the obligations in the shipping agreement. The insurance firms that paid the losses brought on by maritime transport by earning comparatively high insurance premiums were the owners of the products' only remaining chance at this point. The United States of America Chambers of Commerce and Industry Owners Union gradually took action against this situation and put pressure on the American central government to take measures regarding the rights of the owners of goods in maritime transport as businessmen and artisans entered the global trade scene. Depending on the circumstances, merchants and owners of commodities in England and throughout Europe sought the annulment of the agreement's provisions because they conflicted with the laws controlling commercial agreements and responsibilities. The freedom of agreement[1] was regarded by courts in Europe, particularly in England, as a holy and honorable concept. American commercial and marine courts, in contrast to English courts, held that ship owners and sea carriers cannot absolve themselves of minimal financial liability (Peter-Ivar, 2014). American attorneys and judges, particularly the New York State Court, believed that the terms of marine bills of lading, which grant total protection to shippers and immunity to sea transport operators, go against the public interest. Commercial interests are an obvious illustration of national interests, according to American attorneys. Accordingly, the courts in America and England nullified a number of the conditions of the maritime transport agreement and issued a judgment to penalize the sea carriers for their carelessness and tardiness in preserving the products throughout the maritime transport[2] (Farrell Lines, Inc. v. Jones, 1976). Insurance firms worked hard to rectify this scenario. Insurance companies stated that the sea carrier or his employees' deficiencies, carelessness, or errors are the basis for the legal liability of sea carriers. Making these people guiltless leads to public unrest

[1] The Principle of the autonomy of the will of parties

[2] A vessel owner, pursuant to the Limitation Act, is entitled to limit its liability after a maritime incident or casualty to the post-casualty value of the vessel and the pending freight, except when the loss occurred due to its "privity or knowledge." 46 USC App. §183(a). In other words, privity or knowledge will be found to exist where the acts of negligence or unseaworthiness that caused the casualty were known or should have been known by the vessel owner.

and a disregard for professional obligations. As a result, the absence of duty is against both professional ethics and public order (Josifovska, 2012). The Harter Act was adopted in America in 1884 as a result of these objections. This legislation mandates that the sea carrier make every effort to guarantee that the ship is seaworthy before and at the start of the sea voyage in maritime transport. Two elements in this statute were later included in all maritime transport laws and regulations, including the Hamburg and Brussels conventions, and they continue to serve as the basic foundation for the sea carrier liabilities. First, the sea carrier attempts to supply a seaworthy ship, and then their efforts to provide a suitable ship with the capacity to carry freight (Alaie Fard, ibid: 137).

4. Analyzing the Details of Seaworthiness Obligations

The freight carrier is required to take the following measures before and at the beginning of each voyage under Article 3 of the 1924[1] Brussels Convention and Article 54 of Iran's Maritime Law: a) Preparing the ship for sailing. a) Providing adequate staffing, equipment, and supplies for the ship, c) Setting up and preparing all areas of the ship utilized for delivering cargo, including warehouses, refrigerated storage, and other areas (freighting capacity).

4.1. Due Diligence

Regarding the definition and criterion of the term "due diligence," which is given at the beginning of Article 54 of the Maritime Law, there are differing viewpoints. According to some lawyers, "due diligence" implies "reasonable diligence." The second group, made up of German attorneys, holds the opinion that because the issue of ship equipment is a professional and specialized one, both professional and regular diligence will be ineffective. The third group, in this regard, adheres to the notion of customary diligence and holds that seaworthiness suggests that maritime customs will be the necessary and fundamental elements for seaworthiness (ibid:139). Indeed, courts also adhere to the first group's viewpoint, and in the event of a

[1] The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy.

disagreement over the ship's seaworthiness, they issue a directive to consult a specialized expert, who must provide his or her views based on professional and technical standards (Chacon, 2016). Therefore, a ship must possess several technical, commercial, educational, skilled, and seafaring qualities to be seaworthy. Seaworthiness is a term used to describe a ship's capacity to withstand typical perils of the sea. It can refer to a ship's physical qualities as well as other aspects of the ship, such as its documentation, insurance, crew qualifications, and appropriateness for the cargo it is carrying (Zhan & Zhang, 2023). The concept of seaworthiness is that the ship owner or carrier, when agreeing for the carriage of goods by sea, provides a vessel that is both strong and appropriate for carrying the desired goods and can deal with perils of the sea, as Judge "Viscount Cave" stated in the case of "Rader v. Patterson." (Elder, Dempster & CO. LTD. V. Paterson zochonis, 1924:135). Therefore, before embarking on a sea voyage, the ship must be seaworthy for that particular voyage and be able to carry the desired cargo. It is important to note, however, that seaworthiness depends greatly on several factors, including the type of cargo being transported and the direction and duration of the voyage. A ship that can sail in the ocean, for instance, would not necessarily be able to do the same in rivers and lakes (Kassem, 2006:26). Also, although the ship is capable of sailing during the summer, it is not prepared to do so during the winter. As a result, the ship owner must take due diligence to ensure the ship is seaworthy and ready to deal with the perils of the sea that the winter season will bring. The ability of the ship to withstand the typical risks of a sea voyage, in addition to its design, construction, structural conditions, and equipment are what is meant by seaworthiness. Regardless of its capacity and whether the voyage is intercontinental, intercontinental, or unlimited, the ship must have a commander and a qualified staff in a specified number and at different ranks (Sediq, ibid: 195). The ship owner must thus take all necessary efforts to have the ship ready for sailing, and his argument that he was unaware of the fault is unacceptable. As a result, to determine whether or not a ship is seaworthy, the actions of the ship owner are typically compared to those of a prudent owner. If the prudent owner was aware of the defect before the voyage, should he have taken action to fix it or not? However, he cannot guarantee that his ship is resistant

to any type of stormy weather. If the response is positive, it may be deduced that the ship lacked the seaworthiness component (Ivamy, 2004: 29).

4.2. Capability and Adequacy of the Ship's Crew

As mentioned above, one of the most crucial parts of the seaworthiness obligations is equipping the ship with the required amount and sufficient crew, which is why Article 14 of the United Nations Convention on Agreements for the Carriage of Goods by Sea considers it one of the duties of the sea carrier to provide crew and qualified crew both before and during the sea voyage. This element will be directly related to the ship's capacity, the time of year, the weather, and the services that are planned for it. If the ship lacks technical and trained personnel, it will lack seaworthiness. Undoubtedly, a ship lacking a skilled commander and an adequate crew is not seaworthy, as "Lord Atkinson" states in the instance of "Enlarging" (1924) (Alaie Fard, ibid: 142). Historically speaking, this is sometimes referred to as "reasonable equipment" (Alayee, 2001: 98). To guarantee the ship's seaworthiness, the ship owner must pay special attention to the appointment of skilled and capable personnel (Lesni, 2012). Competent crew members are individuals who are knowledgeable enough about the ship and its components to be aware of any issues that could arise while at sea. Additionally, it is critical to understand how to lead a capable crew in emergency scenarios the ship may face while at sea. As a result, if a ship is chartered without an adequate and knowledgeable crew, it will be unable to sail (Emami Meibodi, 2015: 48). For instance, the ship "Hong Fire" was chartered to the Kawasaki firm for 24 months in the case of "Hong Kong Fire Shipping" (1951), and the agreement required that the ship be prepared for the same journey at all times and on each voyage. While the ship's engine is outdated and this is indicated in the agreement, the ship owner is required to provide the necessary technical maintenance during the charter time. However, the ship's technical officer, who is constantly drunk, causes the ship to halt mid-tour, losing its cargo. The English Court of Appeals also declared the ship owner responsible for the ship's seaworthiness and for not using the proper technical staff (Alaie Fard, ibid: 143). The crew's reasonable and customary skill and adequacy are thus the criterion for the sufficiency and competence of the ship's workforce, and in any situation, it should be

considered that if the ship and its cargo suffer an accident, what actions should the crew and captains of the ship take? The distinctions between crew ignorance, carelessness, malpractice, and crew mismanagement do exist, though. Neglect is an act that should have been done but was not, and negligence means indifference and failure to do the necessary thing. For instance, if there was no harm as a result of the carrier's obligation to employ a qualified crew, the carrier would not be eligible for the Hague-Visby rules' exemptions (Clarke & Mercatoria, 2021). This is because hiring a qualified crew is one of the carrier's responsibilities under the rules. However, in cases of poor management, even when the crew was qualified and met the obligations for employment, damage to the ship or its cargo is still caused because of improper carelessness in the administration of the ship's equipment. In such cases, the carrier is nonetheless liable under Article 4 of the Hague-Visby Regulations even if the ship still has to be seaworthy (Baker, 2020). The broad discrepancies between the regulations in Brussels, Hague-Visby, and Hamburg addressing the carrier's obligation to its crew and workers are outside the purview of this article. However, regardless of the outcome, the carrier will be held accountable for the goods' loss, damage, and delay in delivery while under his diligence, unless the loss, damage, or delay is due to the negligence of him and the individuals listed in Article 18 of the Rotterdam rules, or he provides evidence of the coercive power mentioned in Article 17 of the Rotterdam Rules, Paragraph 3 (Mathias, 2022).

4.3. Lading Capacity

The basic goal of a ship's seaworthiness is to ensure that it can transport cargo to its destination safely. In a broad sense, seaworthiness encompasses load-bearing capacity in addition to technological and physical readiness. Lading capacity refers to a ship's capacity to carry a certain cargo throughout a voyage. The freight operator is responsible for securing compensation for any harm brought on by the ship's incapacity to do maintenance and carry out work as a result of failing to carry the cargo (Girvin, 2017). As a result, the role of the carrier extends beyond maritime operations and includes the storage, transportation, loading, and delivery of products, etc. Indeed, the ship has to be capable and powerful for carrying cargo. It should be

highlighted that being able to load the ship differs from improperly conveying the products. Even if the ship can load correctly, the cargo may still be damaged if it is moved improperly or during the loading, unloading, or stowage process. The carrier cannot rely on the exemption of seaworthiness since such damage is outside the bounds of seaworthiness and loading capacity. Indeed, the transport operator bears complete and irrevocable responsibility for the ship's seaworthiness in its unique sense (Lok Kan So & Poomintr Sooksripaisarnkit, 2021:21). The marine freight operator must take due diligence to ensure the ship is seaworthy before each voyage and at the start of it, as stated in Article 54 of Iran's maritime code. This responsibility is personal and cannot be assigned, and even if the ship's owner transfers seaworthiness management to a different person or organization, the transport operator is still responsible for fulfilling this duty. The carrier cannot release himself from responsibility based on the technical certificate issued by the ship's classification institutes and assume the ship is equipped and suitable although the ship's classification certificate does not, in and of itself, indicate the seaworthiness of the ship. According to Iranian maritime law, even the parties' agreement to transfer responsibility for equipping the ship to a third party is unlawful (ibid. 154). According to paragraph 8 of both article 54 of Iranian maritime law and paragraph 8 of article 3 of the Hague Rules: Any clause in the freight agreement that limits or disclaims the duty of the ship or the freight operator if the cargo is lost or damaged as a result of negligence, fault, or tolerance in carrying out the duties and obligations outlined in this chapter is void. The aforementioned judgment will likewise apply to insurance benefits or comparable phrases that are meant to benefit the carrier.

4.4. Seaworthiness Obligation, Absolute Obligation or Obligation to Take the Necessary Measures, According To the Rules of The Hague-Visby, Hamburg, and Rotterdam

One of the most crucial questions that arise when discussing seaworthiness obligations is whether the owner's responsibility to provide a seaworthy ship is an absolute liability or just a responsibility to take due diligence. This question affects not only readers but also anyone who is involved in a maritime case, including lawyers, judges, ship owners, and charterers.

Generally, the difference between the Brussels Convention and the Rotterdam Convention regarding seaworthiness is that the former only requires the carrier to take the due diligence "before and at the beginning" of each voyage, whereas the latter makes this obligation a continuous one (Sooksripaisarnkit, 2014). Although the carrier's carelessness in this area and in general will be his guarantee under the Brussels Convention, the difference will show up in the burden of evidence of liability and the method of proof. According to Article 80, paragraph 4, the parties cannot change the obligatory obligation that the ship be seaworthy (Ülgener, 2011:142). Therefore, it can be claimed that the transport operator's liability to seaworthiness is one of the crucial and ongoing obligations outlined in the Rotterdam Convention, and failing to do so will unquestionably result in liability (Taghizadeh, 2014: 457). Seaworthiness is also a mandatory obligation in English law (Hendrikse, 2008:133), which is why it is known as an "Over-Riding Obligation" under Common Law. The Hague regulations have an English structure, so paragraph 1 of article 2 of these regulations, which deals with seaworthiness, also introduces it as such an obligation. This means that if the damage is caused by two factors, one of which is the lack of seaworthiness and the other is a case of exemption from responsibility, these cases will not prevail over the other factor (Ibid: 85-86). As a result, some legal systems, like the English legal system, have viewed the obligation of seaworthiness as an absolute legal obligation, while other systems, like the Iranian legal system, adhere to the Brussels Convention of 1924, which states that an owner owes a relative duty to exercise the level of diligence that a reasonable person would use under similar circumstances. Indeed, the fault and neglect rules have taken the place of the principle of absolute liability in this type of responsibility, and under these rules, the carrier will be held liable for compensating the damage and compensation incurred when it is established that he was negligent and careless in carrying out the tasks that were assigned to him (Alaie Fard, Ibid: 165). Under Article 5 of the Hamburg Rules, the carrier will also be absolved of liability if he can show that he and his crew took all reasonable and ethically due diligence to prevent harm, but damage nonetheless happened (Jnr, 2016). However, the carrier is under an absolute liability to equip the ship so that it can withstand any perils that may

arise during the journey, not to deliver a fully functional ship. If there is a breach of agreement, regardless of whether the carrier was at fault, absolute liability applies, taking into consideration the length of the voyage, the type of water in which he is sailing, the type of ship and cargo he is carrying, and the location where the cargo is stored. He is liable even if the flaw is concealed and not seen during the examination (Kassem, Ibid: 26). As previously indicated, there is due diligence, which was first specified in the Harter Law in 1893 and then in the Hague-Visby, Hamburg, and Rotterdam laws, as opposed to the absolute obligation. Indeed, taking the essential steps to ensure that a ship is seaworthy, including supplying the personnel, expertise, and equipment at the appropriate times, constitutes exercising due diligence (Ibid: 76). For example, failing to check that the valves are completely closed, failing to provide enough fuel, issues with the ship's rudder system, boiler tubes bursting, inadequate training for engineers working with the fuel system, etc. are considered instances of failing to exercise the due diligence (Ivamy, 2004:114). Therefore, historically, the seaworthiness obligations on the part of the carrier and the ship owner were an absolute liability, and in the event of non-fulfillment and failure to deliver the result, even if it was not the owner's fault, it would result in liability and there was no need to establish the owner's fault. Additionally, common law tended to support the first opinion or absolute liability. The Harter Act of the United States of America established the concept of due diligence after that, and the Conventions of Brussels (1924) and Hamburg (1987) both utilized it to determine the carrier's obligation to prepare the ship for the voyage (Bengtsson, 2010). As a result, Iran's Maritime Law adopted this standard under the Brussels Convention, and in Article 54 of the Maritime Law issued in 1964, the carrier was required to take the appropriate safety procedures. As a result, the carrier is required to exercise due diligence under Article 3 of the Brussels Convention of 1924 and Article 54 of Iran's Maritime Law before each voyage and at its start. a) Preparation of the ship for sailing, b) Appropriately prepare and provide the ship's crew, equipment, and supplies, c) organize and ready all of the ship's cargo-transporting areas, including the warehouses, cold storage, and other areas (loading capacity).

4.5. Seaworthiness; Main or Secondary Condition

Is the obligation of the ship's owner to ensure its seaworthiness regarded as a primary condition, in which case the owner of the goods will have the right to end the agreement, or is it a secondary condition, in which case the owner of the goods will only be entitled to compensation in the event of a violation? We will first provide a brief definition of the primary and secondary conditions before solving the aforementioned question. The main condition is an obligation that is part of the agreement's core or essence; if it is not satisfied, the agreement will be broken, and the party who was damaged may regard the agreement to have been terminated. However, if the ship is in the middle of the voyage when it is determined that it is unseaworthy, the termination of the agreement will not be advantageous to the carrier or the owner of the cargo. Typically, the right to cancel the agreement arises before the commencement of the agreement. This means that the shipping company's obligation to be seaworthy is neither an essential condition nor can its violation be considered a condition breach (Emami Meibodi, ibid. 82). The secondary condition, on the other hand, refers to the clauses in the agreement that, if violated, allow the other party the right to sue for damages but do not result in the termination of the agreement; in other words, the breach of such a promise has nothing to do with the nature of the agreement. As a result, the losing or injured party is not denied the advantages of the agreement and is simply entitled to compensation; he cannot break the agreement. Now, it is impossible to categorize seaworthiness as a main or secondary condition according to the criteria of main and secondary obligations (ibid. 83). Unseaworthiness can have a variety of causes, some of which can be swiftly and easily corrected while others may be too serious to be resolved in a reasonable amount of time. Therefore, just because the parties to the agreement view a particular clause in the agreement as a main or secondary condition does not mean that it is a main or secondary condition. Instead, the said clause should be evaluated in the context of the entire agreement, taking into account industry convention, the law, and the terms of the transport agreement, to determine the parties' true understanding of the agreement and its legal classification (Kassem, Ibid:170). Accordingly, the impact of a transport company's obligation violation should vary depending on the nature of the issue and how quickly it is resolved. The

obligation of the carrier can therefore be thought of as an unclassifiable condition that is included in both main conditions and secondary conditions and changes depending on the gravity of the violation, how quickly it is corrected, and the type of transport agreement (ibid: 173).

4.6. Seaworthiness; an implicit construction or conventional condition

As previously mentioned, one of the most critical implicit conditions in the ship charter agreement is the responsibility of seaworthiness (Yilmaz, 2021). The implicit conditions in each agreement, however, are of several forms, including the implicit construction condition and the conventional implicit condition, according to Iranian domestic law. It is separated, and each of these conditions will have a distinct impact. Construction depends on the commitment to the initial negotiations and is included in agreements (Katouzian, 2002: 548). In other words, a construction condition is one that, while not explicitly stated during the offer and acceptance, is still agreed upon by the parties before the agreement and is used as the basis for the agreement's composition. Such conditions are not stated in the agreement's terms, but it is assumed that they were considered when the document was drafted. For instance, if the seller and the buyer agree to sell a factory product before the offer and acceptance are made, it is then made on the basis that the condition is valid as a collusion or construction condition (Article 1128 of the Civil Law). Therefore, if it is agreed upon by the parties to the ship charter agreement and before the agreement, the owner must offer a seaworthy ship. If it is not specified in the agreement terms, it might be interpreted as a construction condition obliging the owner to remove any obstructions to seaworthiness. The need for seaworthiness, however, might be thought of as a conventional implicit condition. The items that the convention imposes on the agreement parties as objective and external criteria are what is indicated by the term "conventional implicit condition." Since it is expected that the parties to an international commerce agreement are aware of what custom means, this condition is particularly crucial in international trade law. Therefore, convention can be a source of learning about the implicit obligations and conditions of the agreement parties as long as there is no agreement to the contrary (Article 9, Paragraph 2, of the Vienna Convention). Nevertheless, there is no question that the genuine or presumed desire of the

agreement parties, and not custom, is the analytical basis of the legality of these conditions (ibid). Therefore, the question of whether the owner has an implicit obligation to provide a seaworthy ship or if such diligence derives from maritime norms emerges. The major source of the obligation of seaworthiness, common law, must first be examined to determine the status of implicit conditions in common law, which must then be examined to determine the obligation's original form, before being compared to Iranian domestic legislation. The method of proving and verification often determines whether a condition is explicit or implicit in the common law. If the condition is stated verbally, it is obvious whether it is included in the agreement's text or before the agreement. However, it is an implicit condition if it is not stated and must be deduced from the agreement by a court of law. As a result, there is just one variable that affects whether a condition is explicit or implicit—whether it is mentioned at all. Thus, from the perspective of common law, what we refer to as a construction condition and which we place in the category of inferred conditions under Imamiyyah jurisprudence is not an explicit condition (Simaei Saraf, 1996: 32). Accordingly, if the parties to a ship charter agreement agree on the obligation of seaworthiness before the agreement and without mentioning it in the text of the agreement, this obligation is regarded explicit and the owner will be required to equip the ship with seaworthiness. The owner must demonstrate that he has taken the required steps to meet the construction condition under paragraph 1 of article 54 of Iran's marine legislation since this duty is an implicit construction condition under domestic Iranian law. Contrarily, there are conditions known as "conventional implicit conditions" under common law, which, even if they have not been explicitly stated by the parties, are assumed to be included in the agreement as a matter of convention. There are several points of view in this respect; some think that the presumption of the parties' will is the basis for this condition. Treitel believes that this idea is impractical, probably because there are occasions when a condition is implied into an agreement by convention even when neither party is aware that it exists. While science is the basis of will, will cannot exist without it. Another hypothesis that may be deduced from the writers of this system's words and expressions is that these conditions are fundamentally true since

they have been given a kind and conventional will. In other words, the accessories and consequences of the agreement—which immediately come under its purview if the parties remain silent—are the general and conventional conditions. Therefore, if the obligation of seaworthiness is not agreed upon by the parties before the agreement and is not stated in the text of the agreement, this obligation is considered to be a conventional implicit obligation under common law, and in this regard, it is regarded as being equivalent to Iranian law. Indeed, the only aspect of implicit conditions that differs between Iranian law and common law is the pre-agreement provisions. Such agreements will be regarded as explicit conditions under common law and as implicit construction conditions under Iranian law, respectively. However, in English law, the obligation of seaworthiness, which is sometimes known as "an overriding obligation with precedence," has a particular status (Lloyd's Rep, 1990:282). The owner is required to construct and remove any barriers to the ship's seaworthiness if it is assumed by the parties to the ship charter agreement that it is an implicit condition and is not explicitly stated in the agreement. However, this is only possible if the reasons for seaworthiness are minor enough to be resolved immediately and without delay; otherwise, making the necessary repairs and compensating the affected parties would be unreasonable and would result in the termination of the charter agreement for the ship.

4.7. Seaworthiness as a Qualification, Performance, or Corollary Condition

It is challenging to include this responsibility under such titles given that the common law, which is the primary source of the obligation of seaworthiness, has no conditions with the names qualifications, performance, or corollary condition. In essence, English and American law do not reflect Iranian law's segmentation of the agreement condition into qualifications, performance, or corollary conditions or its statement of the distinct legal provisions and consequences of each. Although it cannot be disputed that the aforementioned criteria exist in various legal systems, by reading legal publications and judicial opinions and considering the descriptions of the agreement conditions, we may find examples of qualifications, performance, or corollary conditions in actual situations. Our understanding of the

obligation of seaworthiness is therefore correct thanks to the original analysis of it in the context of civil situations and the subsequent adaption to English law.

Qualification condition: this condition concerns a qualification under the agreement. According to English law, the qualification condition is also provided for in the agreement, in essence, its failure gives the condition the right to be terminated. Under Iranian legislation, if the agreement's object of the transaction is given a special description but lacks that characteristic, the agreement may be considered to have violated the qualification condition and may be terminated. To put it another way, the option of rescission for the person in whose favor a condition is made occurs naturally and under the law, and its fulfillment is unrelated to the parties' intentions. However, the will of the person in whose favor a condition is made has the power to revoke it after realizing it, and the parties' will can prevent its realization (Shahidi, 2007: 74). The charterer will therefore have the right to end the ship charter agreement if the owner breaches the agreement's requirement that the ship is made seaworthy by failing to do so. This is because under Iranian law if the requirement for seaworthiness is specified in the agreement, the charterer or the person in whose favor a condition is made will have the right to do so. This is true although, in some circumstances, the condition's breach does not affect the agreement's legality and the agreement is still revocable even if it is violated, at least according to the texts of English law. In other words, English law writers have different ways of expressing the terms of an agreement. If an agreement obligation is listed as a condition, they view it as being so crucial that paying compensation in the event of a violation is considered unreasonable. However, if this obligation is listed as a warranty, compensation for a violation of the obligation may be accepted in exchange for payment of damages. However, maintaining seaworthiness is consistently one of the primary obligations of the ship charter agreement in the category of conditions, and in the event of a breach, the payment of an excessive fine will result in the termination of the ship charter agreement. The reason for this is that whenever a clause in an agreement is included in the condition group by law, its violation will automatically result in the termination of the agreement, even if there is no justification to connect that right with the

parties' intentions, even if it does not result in serious harm or any harm to the party, and even if the person in whose favor a condition seeking to end the transaction is trying to avoid an improper transaction (Treitl, 2011: 272).

Performance condition: as its name indicates, it is the need that one of the agreement's parties or a third party performs or refrains from performing an activity. Additionally, Article 234 of the Civil Law stipulates that "the condition of performance is that the action or non-action is conditioned on one of the parties or a foreign person" in this respect. Consequently, in addition to acting, it is also possible to not act as the subject of a performance condition (Shahidi, ibid: 65). Additionally, under Article 237 of the Civil Law, the party is obligated to perform the condition must do so if it is an affirmative or negative obligation of the act, and if the transaction party fails to do so, he may appeal to the ruler and request to be ordered to comply. The court will punish the person who is responsible to perform a condition to comply with the request of the person in whose favor a condition. In the common law system of law, the person that experienced loss as a result of the breach of the agreement will always be entitled to compensation. However, the court's ruling will ultimately determine whether to order the warrantor to perform the obligation (specific performance), however, the court cannot refuse to issue a judgment to pay the harmed party. However, the court's decision on whether or not to uphold the principle of the obligation will be final. In this case, the court will consider several factors, including not fully compensate the loss, and whether or not the obligation would cause the warrantor any indigestion and embarrassment if he is compelled to perform it. Therefore, under the common law system, the warrantee is not allowed to make his own decisions in response to the warrantor's infringement and only has the right to seek compensation from the warrantor; any request to enforce the duty will only be carried out with the court's permission (Furmston, 1960:517). The owner will be required by Iranian law, in the event of a violation of the obligation, to correct the defect and deliver the ship in seaworthy condition upon the injured party's request. This is because we view the requirement of seaworthiness in ship charter agreements as a performance condition. According to Article 239 of the Civil Code, if coercion of the person who is responsible to perform a condition cannot be used against the performance condition and it is not one that the other party can perform on

his behalf, the other party may terminate the transaction. However, under English law, the charterer is only entitled to receive damages, and the court will decide whether the owner is required to make the necessary repairs and determine the property's seaworthiness. Accordingly, English law does not address the possibility of agreement termination and only recognizes the victim of the unseaworthiness (performance condition) as being entitled to damages. However, under French law, the warrantee has the right to end the agreement and seek damages or compel the warrantor to perform the duty if the warrantee refuses to perform the obligation arising from the agreement or the obligation deriving from the condition. Additionally, the United Nations Convention on Agreements for the International Sale of Goods permits the termination of an obligation where it is deemed fundamental under its standards; otherwise, the opposite party will only be able to seek compensation. However, it appears that English courts adhere closely to the provisions of the Convention on Agreements for the International Sale of Goods concerning the seaworthiness obligations as a precondition of the act, and if they do not view the seaworthiness issue as impeding the full implementation of the agreement, they will not order the transaction to be terminated. In the "Hongkong Fir" case, for instance, the ship was chartered for 24 months, but early on in the charter, it needed to be repaired owing to damage, which cost the charterer nearly 5 months of the charter period. Subsequently, he urged the agreement be terminated, citing the ship's lack of seaworthiness and its inappropriateness for the charterer's needs. However, he stated in front of the court that there are still 17 months left in the charter agreement and that the total of 5 months lost is forgiven, rejecting the charterer's request. As a result, the charter remained in effect, and the owner was required to compensate the charter for the lost time by paying damages (Hongkong Fir, 1961:159).

Corollary condition: According to Article 234 of the Civil Law: "the corollary condition is the result of the fulfillment of an external condition..." and according to Article 236 of this law, "If the achievement of the corollary is not suspended for a specific reason, that result is achieved by the condition itself." As a consequence, the corollary condition is a need that arises from one of the legal actions. If this result is not hindered by the law, it will be

fulfilled as soon as it is incorporated into the agreement, negating the need to create a new agreement to achieve it. Since the corollary condition is violated if it is not met for any reason specified in the agreement, the breach of the condition also occurs on its initiative and without the conditional consent of the other party. Furthermore, if the fulfillment of the condition results from a particular cause, the condition is violated, and this breach is realized regardless of the intention or behavior of the person who is in charge of performing the condition (Shahidi, ibid: 137). The institution of suspension of agreement dissolution (Condition resolutoire) is another example of a corollary condition in the form of a pending result condition. In French law, the corollary condition might be regarded as proper following the idea of the sovereignty of the will. The condition of seaworthiness, one of the fundamental obligations of the ship charter agreement, is not one of the corollary conditions, and there is no analogous case in the common law. In light of the previous definitions, the idea of the owner's duty to supply a seaworthy ship as an obligation to do the appropriate actions is closer to the performance condition than the various forms of implicit conditions. However, the court's decision on whether to order a particular performance from the warrantor (owner) is final. As mentioned above, while the laws are silent on the subject, the court has adopted a strategy based on the circumstances regarding the possibility or impossibility of terminating the agreement. These factors include not fully compensating the loss, not causing indigestion and embarrassment for the warrantor if he is required to fulfill the obligation, etc.

4.8. Primary or Permanent Seaworthiness Obligation

When is the owner's obligation to maintain the ship's seaworthiness considered fulfilled in light of the concerns raised about its seaworthiness, and if the ship is located in the base port, should this seaworthiness also exist in the space between the base port and the source port? Is seaworthiness merely a factor at the start of a sea voyage, or should it also apply during the voyage and up to its conclusion? The carrier is required to take due diligence before each voyage and at the commencement of the voyage under Clause 1, Article 3 of the Hague Rules and Clause 1, Article 54 of Iran's Maritime Law. For the ship to load, leave the dock, and move at sea, the carrier must make

measures to ensure the ship is seaworthy before the commencement of loading and before the start of the ship's movement (Riverstone Meat, 1961:495). Pre-voyage refers to the time when the cargo is loaded into the ship, while the start of the voyage refers to the moment the ship sets sail after loading. For the ship to be ready for loading and to be seaworthy after that, the ship owner must perform the ship preparation activities before the time of loading (Nikpour& Sadeghi, 2021). As a result, if an accident occurs during loading that causes the ship to sink and the cargo to be lost, or if the ship loses its seaworthiness after the start of the voyage due to flaws that existed before seafaring but were concealed from the view of the shipping agent and the ship owner, then such a ship is not seaworthy, and the shipping agent is responsible for the damage to the goods. It is worth noting that the ship owner is required to offer a ship with total and limitless seaworthiness under the ship charter agreement or charter party; this time limit only applies to the ship's bill of lading transportation agreement. This implies that the ship's owner must provide the charterer access to the ship so that it can sail for the period of the charter or along the designated itinerary (Alaie Fard, ibid. 141). However, according to a contrary viewpoint known as "the doctrine of stages," if a ship loads, enters, and departs from several ports throughout a voyage, it must be able to do so from the same stage at the start of each stage. Indeed, "the doctrine of stages" or "the doctrine of seaworthiness of the ship according to various stages of the voyage" refers to the idea that the ship's seaworthiness is taken into account and inspected independently in each stage of the voyage. According to the different stages of the voyage, the ship's seaworthiness can be summed up as follows:

1. It is sufficient for the ship to be prepared to receive the cargo at the start of loading. In other words, the ship does not need to be seaworthy at this point for the voyage to begin.

2. The ship must be seaworthy when the loading procedure is complete to set out on a sea voyage, encounter perils, and have enough fuel to reach the next port (Omid, 1974, Vol. 2: 141). For instance, if an Iranian ship is traveling from Bandar Abbas to Hong Kong and makes stops in Colombo and other Asian ports en route, it must be seaworthy at the beginning of the voyage and be seaworthy again from Bandar Abbas after each port stop.

Seaworthiness at the origin cannot thus be considered a license for all routes by the carrier or ship owner. For instance, if a seaworthy ship in Bandar Abbas develops a technical issue in the following port and suffers damage to the ship's cargo as a result, the carrier cannot rely on the seaworthiness of Bandar Abbas and must instead demonstrate that he exercised the due diligence in the latter port and that the ship was seaworthy before loading and at the beginning of the voyage (ibid: 146). Generally, this result will be guaranteed, and the seaworthiness criteria will be the time of departure from the port of origin, not the base port if there is no seaworthiness in the distance between the base port and the port of origin. Regarding the importance of maintaining seaworthiness throughout the voyage, there are two presumptions. Generally, this result will be guaranteed, and the seaworthiness criteria will be the time of departure from the port of origin, not the base port if there is no seaworthiness in the distance between the base port and the port of origin. There are two assumptions regarding the importance of maintaining seaworthiness throughout the voyage. In certain cases, the ship's voyage merely begins at the port of origin and finishes at the port of destination, and unloading is completed in just one port. In these situations, the ship only docks in other ports to refuel, necessitating the renewal of the ship's seaworthiness in each port. In these situations, the ship only docks in other ports to refuel, necessitating the renewal of the ship's seaworthiness in each port. However, there are situations when the ship unloads in many ports. In these circumstances, the condition that the ship maintains its seaworthiness between ports may be incorporated in the ship charter agreement (Ivamy, ibid: 167). Indeed, the seaworthiness obligation is deemed completed when the ship departs from the port of origin, although this does not imply that it is not renewed in each port. The title of seaworthiness obligation after the commencement of the voyage and during the voyage becomes an obligation for its diligence, but it only lasts until the end of the voyage and must be renewed in each port. Indeed, under charter party agreements, the parties have the option to charter the owner from liability for lack of seaworthiness provided they do so explicitly in their words and following the agreement's conditions.

4.9. The Legal Nature of the Burden of Proving Seaworthiness Condition

According to paragraph 1 of Article 55 of Iran's Maritime Law, neither the ship nor the carrier shall be liable for the loss or damage resulting from the lack of seaworthiness unless they have made sufficient efforts to fit the ship's warehouses and cold stores, as well as all other parts of the ship in which the goods are transported, and make the due diligence on the ship's crew, equipment, and supplies. The carrier or other people claiming exemption from liability based on this item must demonstrate their efforts and diligence if the loss or damage is the consequence of their unseaworthiness. Under Part A of Clause 2 of this article, the ship, and the carrier are also exempt from liability for any loss or damage brought on by negligence, recklessness, or the actions of the captain, crew, guides, or the carrier's authorized agent while navigating or managing the ship's affairs. Therefore, to be absolved of liability for the ship's unfitness for the sea, the sea carriers must demonstrate both that the damage was caused by the ship's unfitness for the sea and that he took the due diligence for the ship's seaworthiness before the voyage began by providing staff and equipment for the ship, setting up warehouses and cold storages, etc. In other words, lack of seaworthiness in and of itself does not absolve the carrier from liability (Gouilloud, 1988: 332). Indeed, the carrier's exemption from seaworthiness is justified by the fact that the carrier can't exert control over the ship in specific circumstances. In these situations, the carrier's fault is presumed under paragraph 1 of article 55 of the Iranian Maritime Law and paragraph 1 of article 4 of the Hague Rules because he must first demonstrate that the ship was seaworthy at the start of the voyage and was not at fault in this regard and that he has exerted due diligence. That is, considering paragraph 1 of article 55 of Iran's maritime law, the burden of proof has been transferred from the claimant to the defendant (Omid, 1974, Vol. 1: 285). Contrary to some assertions, this helpful clause does not imply that the claimant is required to establish the existence of damages resulting from the lack of seaworthiness (Samadi Ahari, 2013: 81). Similarly, the recipient of the goods doesn't need to demonstrate that the ship was not seaworthy before or at the beginning of the voyage (Mehran, 1994: 66); instead, it is sufficient to demonstrate the harm to the claimant (the owner of the goods) and to prove that the ship was seaworthy at the beginning of the

sea voyage. The sea carrier is then held liable for the due diligence used during the voyage.

4.10. The Warranty for the Implementation of Unseaworthiness

As mentioned above, according to Article 55 of Iran's maritime law, the ship owner and sea carrier are not liable for any loss or damage brought on by an impossibility to sea, unless they have exercised reasonable diligence in getting the ship ready for sailing, meeting its requirements for personnel, supplies, and equipment, and outfitting the warehouses, cold storages, and all other areas of the ship in which the goods are transported, as well as the due diligence of the transportation arrangements. Therefore, the carrier or other people who assert their immunity from liability based on this article must demonstrate their efforts and due diligence whenever the loss or harm is caused by the unseaworthiness. Therefore, if the owner cannot demonstrate his innocence and fails to take due diligence, he will be liable for paying the victim's losses as a result of the infringement of seaworthiness (Fang, 2022). In other words, unless the parties have explicitly considered the violation of some of the agreement's terms to give the other party the right of termination, the owner of the goods may only request the termination of the sea transportation agreement when the lack of seaworthiness fundamentally deprives him of the benefits of the agreement and does not fulfill his purpose for agreeing (Kassem, ibid: 173). Therefore, in all other circumstances and in situations where the lack of seaworthiness does not violate the basic terms of the agreement and does not fundamentally deprive the other party of all its benefits, the injured party may only pursue damages for the lack of seaworthiness up to the number of losses he suffered (ibid:171). The "restitution integrum" technique is one of the approaches to compensation that is recognized by the majority of legal systems. Naturally, it should be emphasized that it is not possible to return the damaged condition to its prior state, except for situations when the harm is financial or extremely slight. This general rule's intent in these situations is that the awarded compensation must put the claimant's circumstances back to how they were before the injury. Rejection of the object and, in the event of an impossibility for performance, reciprocation might serve as the victim's primary methods of compensation (Emami Meibodi, ibid: 99). The Hague and Hague-Visby, Brussels, Hamburg, and Rotterdam treaties have simply limited such

payments to the equivalent value of the lira and have not addressed the means of compensating the sea carrier for damages (Aladwani, 2015). Additionally, while the Hamburg and Rotterdam Conventions include explicit provisions in this area, the Hague and Hague-Visby Conventions do not address compensation for delay losses brought on by a lack of seaworthiness. For instance, it has been stipulated in paragraph b of Article 6 of the Hamburg Convention the sea carrier must compensate the victim with 2.5 times the charter of the delayed products, provided that this sum does not exceed the overall cost of transportation. Additionally, the Rotterdam Convention's Article 60 mandates that the sea carrier must compensate the receiver of the goods for delays up to 2.5 times the freight cost, as long as the total amount of compensation paid to the recipient does not go above the law's maximum limit (Asia Classification Research Center, 2009: 7).

5. Conclusion

International merchants are usually interested in ship charter agreements since sea transportation is currently one of the most widespread and commonly utilized routes of transportation. One of the factors that can be taken into consideration in determining the extent of the owner's responsibility, compensation strategies, and ultimately in the judgments of maritime court judges is the legal nature of the seaworthiness obligations, one of the owner's most significant and complex obligations. Generally speaking, in the past, the liability to seaworthiness made by the sea carrier and the ship owner was thought of as absolute liability, and in case of non-fulfillment and failure to achieve the result, even if this failure was not the owner's fault, would lead to liability and there was no need to establish the owner's fault. Subsequently, the Harter Act of the United States of America established the concept of due diligence, which was later used by the Conventions of Brussels (1924) and Hamburg (1987) to determine the carrier's obligation to prepare the ship for the sea voyage. Then, Iran's marine law adopted the Brussels Convention and used this standard to establish the sea carrier obligation. As a result, the carrier was required to exercise due diligence under Article 54 of the Maritime Law issued in 1964. However, there have always been varying viewpoints on what constitutes "due diligence" and what

it means. Many legal professionals think that "due diligence" refers to "reasonable diligence." The second group, which includes German attorneys, contends that because the topic of ship equipment requires professional expertise and specialization, due diligence implies professional diligence and conventional diligence will not be effective. The third group, in this respect, believes that seaworthiness refers to that which specifies the vital goods for equipping, and seaworthiness will be maritime convention. However, the courts also adhere to the first group's viewpoint, and in the event of a disagreement over the ship's seaworthiness, they issue a referral order to an expert in the field. Therefore, the sea carrier must apply the seaworthiness operation from the port of origin before the commencement of the ship's movement and before the start of the loading process to take the appropriate protections for the ship to be able to load, depart from the pier, and navigate the sea. Additionally, a ship must be seaworthy from the same section at the start of each section if it makes port stops and loads cargo at several ports along a voyage. The employment of adequate labor by the sea carrier will also be one of the other determining factors that influence the seaworthiness of the ship, and in this regard, as previously stated, the criterion of the adequacy and capability of the human force is the reasonable and conventional skill and adequacy of the crew, which is known as reasonable equipment in maritime conventions. However, we also discovered that just because the parties to the agreement view a particular clause in the agreement as a main or secondary condition does not necessarily mean that it is a main or secondary condition, and this has implications for understanding the seaworthiness obligation among the main or secondary conditions of the agreement and its impact on the compensation method since, as mentioned above, there are occasions when the causes of unseaworthiness are so trivial that they may be rectified right away, but there are other situations when they may be too serious to be fixed in a reasonable amount of time. As a result, depending on the nature of the issue and how quickly it is resolved, the impact of a violation of the obligation of seaworthiness varies, and the transport operator's obligation can be viewed as an unclassifiable clause that falls under both the main and secondary conditions categories. We also discovered that if we consider the owner as one of the parties to the agreement to take the appropriate steps in the ship charter agreement, this

responsibility may be included in the form of conditions such as qualification, performance, or corollary conditions. In this sense, the condition of seaworthiness will be similar to the condition of performance, and we will only consider the charterer to be capable of terminating the agreement if the lack of seaworthiness is deemed to be the main condition based on the terms of the agreement and the factors affecting the lack of seaworthiness. If not, the charterer is not permitted to do so. In this regard, the burden of proving the lack of seaworthiness rests with the claimant (the owner of the goods), and the sea carrier must demonstrate that, before the voyage, he exercised due care to ensure the ship's seaworthiness by providing crew and equipment, setting up warehouses and cold storages, and arranging for the transportation of other ship components. Therefore, should he violate the law regarding unseaworthiness, he will be held liable for paying the victim's losses. One of these is the "Restitution integrum" technique, which allows the injured party to be returned to their prior position by rejecting the item or, if performance is impossible, by returning it. This approach is acknowledged by the majority of legal systems as a type of compensation. It should be emphasized that it is not possible to return the damaged condition to its prior state, except for situations when the harm is financial or extremely slight.

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