

AUTHOR: MAXIMILIANO NAVAS GARATEA

**TITLE OF BOOK: 'VESSEL SEAWORTHINESS IN THE INTERNATIONAL MARITIME LAW'
Part. I.- 'The Public Legal Aspects of the Obligation'
Part. II.- 'The Private Legal Aspects of the Obligation'**

1. PERSONAL INFORMATION

Dr. & Captn. Maximiliano Navas Garatea

Degrees:

- Ph. Doctorate in Commercial and Maritime Law (also, Diploma or Certificate of Advanced Research Studies). University of Seville (Spain), Faculty of Law.
- LL. M. Master's Degree in Maritime Law. St. Paul CEU University in Madrid (Spain).
- LL. B. In Law (Specialty Private Law). University of Seville (Spain), Faculty of Law.
- Certificate of Captain Merchant Marine (Kingdom of Spain). University of Cadiz and the Spanish Ministerial Department for Transport.
- B. Sc. in Nautical Science & Maritime Transport. University of Cadiz. Faculty of Science.

Professional qualifications:

- Spanish Qualified Solicitor, ICA Huelva n.º 1418.
- Postgraduate Practical Course in Procedural Law (Spanish Law Society in Huelva. The School of Law).
- Maritime Consultant and Entrepreneur.
- Captain - Master Mariner.
- Nautical and Marine Surveyor. Specialized Course (Diploma) for Maritime and Average Surveyor. Spanish Ministry of the Treasury and the Institute of Superior Studies of Insurance (*Instituto de Estudios Superiores de Seguros, INESE*).

Present appointment and full address:

- Partner - Solicitor of *Gabinete Marítimo Mercantil, Ltd.* Maritime and Commercial Law Firm and
- Owner of *Gestión Marítima del Sudoeste, Ltd.* Shipowner & Master Mariner in different School Ships.

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- C/ Rico, 33 – 3.º A. 21001 Huelva (Spain). Phone: +34 959 251 323.

Previous appointments of relevance to the book:

2006 - 2009	Maritime C.O.R.P. North Reefer Vessels 'Sierra Nieves', 'Sierra Loba', 'Sierra Leire', 'Sierra Laurel' and 'Sierra Laura'. <i>Master Mariner (temporary labour contracts).</i>
November 1994 - 2005	Panama Bureau of Shipping of the Republic of Panama and the Liberian International Ship & Corporate Registry. <i>Nautical Surveyor for Spain and Portugal.</i>
February 1996 - June 1998	Business Innovation Centre Algarve – Huelva. Endogenous creation of wealth and employment in Andalusia, Consultancy service to entrepreneurs for the creation of innovative companies, to existing SME's and to public administrations. <i>Managing Director – Huelva.</i>
November 1994 - February 1996	J. J. Domínguez & Asociados Law Firm. <i>Lawyer (Private Law).</i>
April - October 1994	Atlántico Bank, Head Office (Huelva). <i>Head of Sales.</i>
1990 - 1992	Caleb Brett Iberian, Ltd. (Bilbao - Spain). Cargo Surveyors. <i>Crude Oil Tankers and General Cargo Surveyor, Huelva.</i>
1987 - 1990	Marítima del Norte, S. A. Liquid Natural Gas Vessel LPG 'Laieta'. Reefer Vessels 'Sierra Guadalupe', 'Sierra Guadarrama', 'Sierra Grana' and 'Sierra Gredos'. <i>Deck Officer – First and Second Mate.</i>

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Professional achievements which make me particularly qualified to write this book:

- More than 15 years of experience as a Lawyer in Private professional practice.
- More than 20 years as a Master Mariner and Chief/Second Mate (in LNG, Reefers and School Ships) and Maritime Surveyor.
- From 1989 dedicated to improve my knowledge in this area (22 years), with several academic dissertations, in particular:
 - *Seaworthiness in Maritime Safety Law* (Advanced Research Studies Diploma).
 - *Shipping Safety Management System Manual* (Certificate of Spanish Captain Merchant Marine).
 - *The Bareboat Charter in Spanish Law. BARECON 89 policy* (Master's thesis in Maritime Law).
 - *Shipping Liability in Spanish Code of Commerce. Special reference to Seaworthiness* (B. Sc. in Nautical Science & Maritime Transport).

2. THE BOOK

As soon as we get closer to any of the institutions of the maritime Law- in which a vessel takes part directly or indirectly- we will find the more or less demanding duty that the vessel should be seaworthy. It has been said that it is the *key of the maritime safety system*; the shipowner's and maritime operator's *Achilles heel*; or a bomb obligation in the hands of these operators of ship.

Because of its importance, the detailed study of the seaworthiness obligation required a global approach well differentiated: the technical and the juridical; the Public Law obligation and the Private Legal aspects of the obligation. Only in this way it is possible to draw certain conclusions based on what they allow us to mark out the new course that they have taken and they have to bring us to the future.

So, after the analysis of the seaworthiness notion, we have suggested and updated. We comprehend that close to the traditional notion of *seaworthiness* and the one of the *cargoworthiness* (except for, example, the one of the *passengerworthiness* or *tow-worthiness*), focusing on the common element of the *human factor*, it exists a set of duties related to the aspects of the operational management of the ship and the other legal or regulation link to the shipowner's duty or owner's duty, which we should be named *managementworthiness*.

Although the safety of the vessel is in the heart of the seaworthy obligation, the aptitude or the good condition required to the ship, they make reference to the other aspects connected to the efficiency for a determined service (public legal conception) or with its ability to achieve the intended aim for the parts in the contract (private legal notion).

Because of this reason, the book '*Vessel Seaworthiness in the International Maritime Law*' should be published in *one book* but in *two parts*: '*The Public Legal Aspects of the Obligation*' (Part. I), around 300 pages; and '*The Private Legal Aspects of the Obligation*' (Part. II), around 1.000 pages.

The importance of vessels having good seaworthiness conditions and they fulfil the requirements of the maritime safety is bigger each time because of the social and political sensitization that the great disasters at sea have produced after the Second World War and, especially, for the rest of the twentieth century. This phenomenon seems to be happening in the more developed countries in the European Union and it finished the rest of the world by imposing. It was necessary, in our opinion, therefore, to sort out in all this *regulatory jungle* (of active and preventive politics) in existence nowadays. It was born as an international response to such events and takes a step forward going more deeply into the content and scope of the international requirements about the administrative control.

Throughout this, in the **first part** of this book, '*Vessel Seaworthiness in the International Maritime Law*', it will be developed an exhaustive study of the legal obligation of the seaworthy in accordance with the Spanish regulations of the domestic production (as a model of the Continental Law), of the Community dispositions in this matter (containing all the legal regime of the maritime safety), of the most important International Agreements and Legal Legislations from the United Kingdom and USA among others. We do not leave

behind the fundamental study of the public and private functions of the classification societies.

The conceptual study and the analysis of the legal regime of the seaworthiness of legal-public of the first part of the book have to be completed, necessarily, with the analysis of a more *iusprivatista* of the obligations and contracts in a **second part**.

It does not exist any text that realizes an exhausted analysis of the obligatory of the seaworthiness. The obligation of the seaworthiness has to be treated with the strictness that private law civil and commercial matters are worthy. From the static aspects of the obligation- to concept, the subjects or the object- to the most dynamics aspects- the non-fulfilment and the responsibilities of the obligation-. So we will begin, methodically, with the rules and basic ideas and we will finish with the specialities that our obligation presents. It would be easier in this way to clarify, base and discover new approaches serving to take part in a new debate knowing what one is talking about.

After the analysis of the object, in obligatory relation to the contracts of shipping construction and contract of sale of vessels, in which the debtor's services consist on the delivery of a suitable vessel, ready to sail. We are willing to pay attention to the shipowner's obligation to make, higher order, commissioning of the vessel at the disposal of the charterer in seaworthiness conditions in the agreed form, place and date (studying in it the different essential elements of the obligations and the contracts in the Private Law).

Once we had realized a panoramic view of the international rules of the obligation, we will be prepared to see how it deals with the Law the obligatory relation of seaworthiness: the moment of fulfilling the obligation, its objective and subjective aim and its legal foundation. So, we will be willing to state and judge with good judgement the particular regime of the obligation in each of the contracts of the exploitation of the vessel: those of charter of travel and time, those of hiring or those of towing or voyage.

A final chapter would be destined to set out what is the regime of the porter's liability in relation to the obligation commissioning of the vessel under conditions of seaworthiness in the transport of scheduled service, in The Hague Rules and Hague-Visby, in the Hamburg Rules, and in the current Rotterdam Rules.

The work finishes taking out the derived consequences of the unseaworthiness of the vessel in the particular area of the breakdowns and the maritime insurance where, as it is known, the obligation shows important particularities.

A briefly book description in a couple of sentences and the unique selling points of the book

The author realizes in this book, in first place, an exhaustive analysis of the legal obligation of the seaworthiness from the point of view of the Continental Law and the British and American *Common Law*, systematizing the communitarian dispositions, the most important international Treaties, Conventions and other rules and Codes of Behaviour that all diligent mariners have to respect.

In the second part of the book, it is broached the analysis of the international legal-private - regulatory and jurisprudence regime- of the obligation of seaworthiness, as in the contracts of exploitation of vessel typical of the Maritime Law (*v. gr.*, the contract of sale, chartering, hiring ship on tow or voyage), as in the main rules that govern the maritime transport of goods of scheduled service: The Rules of The Hague and Hague-Visby; those of Hamburg; and those of Rotterdam. Finally, the obligation is studied in the limits of the maritime insurance and in the one of the breakdowns.

The relevance of the point is in itself. The seaworthiness is the first of the shipowner's or owner's obligations. It appears as the origin of most of the damages or harms that are caused during the execution of the contracts. The obligational law content of the forms and institutions of the Maritime Law is blinded or tied to the actual and technical content by means of the link of the *seaworthiness of the vessel*. Its relevance lies in that its technical regulations refer directly to the heart of the law-ecomc relations of the nearly all the maritime activities.

There are works about the subject, but it is always focused on a type of transport or framed in a specific contract or maritime form. There are no many that compile and study practically all of the rules and the most relevant sentences from West Europe and North America.

Please list any book published, or in preparation, which might be competitive in whole or in part with yours (give reference); say how they compare with your book; please be candid:

The international bibliography is very extensive (we have handled more than 350 books and guides about subjects directly or indirectly related to the obligation of the seaworthiness), but they usually follow a particular approach, never so general and detailed (normally the maritime carriage of goods by sea and the bill of lading).

SALES AND PROMOTION

This field is very extensive- we talk about the legal regime public and private- and requires a personal meeting for its explanation and development. There are more than 50 categories of professionals and of maritime business activities and more than 500 those of their under categories (sub-cats). In all of them, it can emerge, directly or indirectly, the interest for the book.

The product of my professional career and of some business that I have developed online in the Internet field, a list of more than 250,000 e-mails of contacts related to the sector is in my possession.

Book relevance in the overseas markets.

The book is specially marketed and distributed in Spain, Latin America, all European Union and, in general, in the UK, USA and Canada. That is why I understand that it is of general interest in a worldwide level.

The book has been pitched from that of *Ph. Doctorate in Commercial & International Maritime Law*. It will have been written from the point of view of a *Lawyer practitioner and researcher, Master's Degree in Maritime Law* and from the point of view of the navigation practice of a *Master Mariner, B. Sc. in Nautical Science and Maritime Transport and Nautical & Marine Surveyor*.

Institutions/departments and/or courses do I expect it to be used

Among the most important, I will point out the libraries in the offices of lawyers, the judges and associations of jurists from all over the world, provincial professionals' associations and universities (not only in their Faculty of Law, but in those of Administration of Companies, Naval Engineering, Navigation and Maritime Transport, among others). Students and young lawyers and maritime economists, the port authorities, shipyards, repairers, naval engineers and their corresponding associations, etc.

Any course or particular study of the maritime Law (those that walk on tiptoe when they hand this obligation without going into to see what is its material reach or to interpret or include the contents of the contracts), should go to -at least for comfort- this manual to treat the obligation of the seaworthiness of the maritime debtor, then in it, it can be found systematized and studied the most important international laws, sentences and judgements.

The book is being revised and directed by two Lecturers Professor Doctors from the University of Seville, distinguished members of the Spanish Association of Maritime Law (*Asociación Española de Derecho Marítimo, Comité Maritime International* of Spain). Once the suggested changes and corrections from these two Doctors are finished, the text is going to be revised by the Professor Cathedatic of the Department of this University, D. Alberto Díaz Moreno who, among other professional etiquettes and mentions, is a member of the General Commission of the Codification, Special Section of Law of Transports and other subject matters of Private Law (one of the five most distinguished commercial minds in the Spanish legal scene).

If looking at your interest, you think that it would be interesting that the text would be revised by any distinguished person of the international maritime scene, it does not exist any objection on this matter from our part.