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Maritime Salvage
A Study of Kuwaiti Law, English Law and 1989 International Salvage Convention

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1. Abstract:

Salvage refers to an act of a vessel to rescue another vessel, cargo and life from immediate danger threatening their safety. International shipping is risky. A vessel may encounter various natural disasters or conditions that threaten the safety of the vessel or the cargo and life on board the vessel. Often a vessel in danger needs external assistance from another vessel to avoid or reduce damages to the vessel or its cargo and life.

For example, a stranded vessel may need external assistance to move; a damaged vessel may need to be towed or escorted to a safe port or a place for repair or preservation; property and life on a sinking vessel may need to be saved; a vessel that has caught fire may need assistance to extinguish the fire; a vessel that has sustained damage from a natural disaster may need provisions of supplies from another vessel to continue the voyage. Without such assistance, the vessel or the cargo and life on board the vessel may suffer a great or total loss. In order to encourage vessels to provide necessary and adequate assistance to vessels when needed, international shipping practice rewards the rescuing acts of salvors. For this purpose, the international shipping practice recognises the right of a salvor to offer assistance in exchange for compensation.

The purpose of this article is to study the law relating to maritime salvage in England, Kuwait and under the 1989 International Convention relating to Salvage.

II. INTRODUCTION

The sea can be a dangerous place. A ship in difficulties cannot rely, unless very close to the coast, on assistance coming from land. The responsibility of the States may be non-existent in areas beyond their jurisdiction or it may be only to assist by saving lives without any interest in preserving the ship or its cargo. In addition there is no general duty to save property at sea. Thus, historically, assistance was most likely to come from other passing ships, or from ships preto leave the safety of the port and willing to risk severe weather conditions in order to assist stricken vessels.

In order to facilitate and encourage this practice public policy has been develencouraging assistance to endangered vessels by recognising that such assistance entitles the salvors of the property to a salvage reward. This principle has been accepted almost universally and has been confirmed by two international maritime conventions (i.e. the 1910(1) and 1989 Salvage Conventions)(2) that have codified almost all traditional salvage principles established in the subject's lengthy history. In practice, most commercial salvage services are today performed under some sort of salvage contract. The best known of these is the Lloyd's Open Form of Salvage Agreement, which widely recognized internationally; in addition to stating the "no-cure-no-pay" principle, this agreement provides for a system of arbitration for the settlement of salvage claims.

This article attempts to explore various issues within the salvage system itself in the context of *Kuwait Maritime Law 1980*(3) (hereinafter referred to *KML*) and 1989 International Convention relating to Salvage (hereinafter referred to the *Convention*). It will cover the following main issues:

1 - Definition of Salvage
2 - Subjects of Salvage.
3 - Element of a Salvage Service.

(1) Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, 1910 (Assistance and Salvage Convention 1910).
(2) Kuwait is not a signatory to any of these Conventions.
(3) The provisions concerning salvage are laid down in Articles 234 till 243 of the *Kuwait Maritime Law 1980*.

4 - Persons entitled to a Salvage Reward.

5 - Assessment of Salvage Reward.

6 - Apportionment of the Salvage Reward among Salvors

Because of the lack of decided cases in salvage matters in Kuwait, reference will be made in the present study to English law because owing to more activity in its courts, England has developed the law of salvage. Kuwait has enjoyed no opportunity to do the same.

It should be noted that in the maritime context the word "salvage" has two accepted meanings: first, the act of saving, or assisting in saving, or rescuing' maritime property, such as a vessel, cargo, freight, or other recognized subject of salvage, without any prior legal or contractual obligation, from a danger at sea; and, second, the actual reward, remuneration, or compensation payable to the successful salvor by the beneficiary of such service.

1. DEFINITION OF SALVAGE

Salvage can best be described as a service which saves or helps to save a recognized subject of salvage when in danger, if the rendering of such services is voluntary in the sense of being solely attributable neither to pre-existing contractual or official duty owed to the owner of the salved property, nor to the interest of self preservation.(4)

KML does not give a definition of salvage. Article 235(1) of the *KML* simply states that 'every act of assistance or salvage which has had a useful result gives a right to equitable remuneration.'

The *KML* refers the subject as assistance and salvage (مساعدة وإنقاذ). It does not however give a definition of these terms.

(4) Brice defines salvage as a right in law, which arises under English law when a person, acting as a volunteer (that is, without any pre-existing contractual or other legal duty so to act) preserves or contributes to preserving at sea any vessel, cargo, freight or other recognised subject of salvage from danger. This is known to be the 'civil salvage' as opposed to military, which is the rescuing of property from the enemy at a time of war for which a reward is made by the Court of Admiralty sitting as a Prize Court; see Brice, G, *Maritime Law of Salvage*, 4th ed. 2003. In Kennedy, salvage is defined as a service which confers a benefit by saving or helping to save a recognised subject of salvage when in danger from which it cannot be extricated unaided, if and so far as the rendering of such service is voluntary in the sense of being attributable neither to a pre-existing obligation, nor solely for the interests of the salvor; see *Kennedy's Law of Salvage*, 6th ed. 2002.

In England, Lord Stowell once declared:[5]

"It has been said that no exact definition of salvage is given in any of the books. I do not know that it has, and I should be sorry to limit it by any definition now".

However, this dictum most obviously emphasises the necessarily flexible approach of the Admiralty Court to the practical problems arising under the law of salvage rather than precluding the essaying of a workable definition.

A salvage service, in the view of the Court of Admiralty, may be described, sufficiently for practical purposes, as a service which confers a benefit by saving or helping to save a recognised subject of salvage when in danger from which it cannot be extricated unaided, if and so far as the rendering of such service is voluntary in the sense of being attributable neither to a pre-existing obligation nor solely for the interests of the salvor[6].

2. SUBJECTS OF SALVAG

KML, Article 234 states that:[7]

'(Free Translation) Assistance and salvage of sea-going vessels[8] in danger, of any things on board, of freight...are subject to this chapter...'

(5) The Governor Raffles (1815) 2 Dods. 14, 17.

(6) See also ***The Cythera*** [1965] 2 Lloyd's Rep. 454, 459; ***The Meandros [1925] P.61, 68; and The Lord Dufferin (1848) 7 N.O.C. xxxiii (Bombay S.C.), where Sir T. Erskine Perry C.J. said, at pp. xxxiii-xxxiv:***

"***Without attempting to lay down a complete definition of what salvage is,-for all definitions in law are said to be dangerous,-it does not seem open to objection to hold that salvage occurs whenever assistance is rendered to a ship at sea which is in such a dangerous position that in all human probability she will not be able to extricate herself by her unassisted efforts.***"

(7) KML, Article 234 reads in Arabic:

"تسري أحكام هذا الفصل على مساعدة وانقاذ السفن البحرية التي تكون في حالة الخطر، والأشياء التي تنقلها وأجور النقل..."

(8) KML, Article 1 defines the vessel as follows:

(Free translation)

1- .a ship shall mean any structure which is seaworthy by itself normally working or prepared to be working in maritime navigation even if it is not intended for profit.

2- To be considered as part of the vessel, the accessories needed for its utilization."

"١- السفينة... هي كل منشأة صالحة بذاتها للملاحة تعمل عادة أو تكون معدة للعمل في الملاحة البحرية ولو لم تستهدف الربح.

٢- تعتبر ملحقات السفينة اللازمة لاستغلالها جزءا منها".

The above definition includes ships and other craft, as well as ships' equipment, stores, apparel, cargo, bunkers,(9) and freight at risk. Freight at risk would not include "hire" payments but would cover pre-paid and advance freight and, possibly, chartered freight(10).

As regards any other structure, it must be 'capable of navigation'; a structure may not necessarily be a ship in the strict sense, but it could be any other property having the essential characteristic of being capable of navigation, provided it is not permanently and intentionally attached to the shoreline(11).

Could a sunken ship, or wreck, come within the meaning of Article 234 of the *KML*?

A wreck could come within Article 234 of the *KML*, 'vessel in danger', provided it is still in danger itself, apart from the fact that it causes danger to navigation. Although a wreck may still be a ship, or structure, for the purpose of Article 234, it will no longer be capable of navigation, unless the *KML* does not require the ship to be capable of navigation, or unless its original use of being used in navigation prior to becoming a wreck is taken into account in order to fall within Article 234.

By Article 1 of the *Law Decree No. 28 of 1980 Promulgating the Law of Maritime Commerc*e the provisions of the *KML* relating to salvage matters does not apply to warships or non-commercial vessels owned or operated by the Government(12).

(9) Save when the ship is on time charter, when the bunkers will be the property of the charterers, the bunkers are usually a valuable element of the salved value. The House of Lords, in The Span Terza, [1984] 1 Lloyd's Rep. 119. has made it clear that the position of the shipowner in relation to the bunkers, when the ship is time chartered, is that of a bailee and the charterers remained the owners of the bunkers until re-delivery.

(10) See Brice, above note 4,219-25. See also ***The Pantanassa*** [1970] p. 187 at 192. 34

(11) 'Shore line' is defined in the Oxford English Dictionary as the line where shore and water meet. So, if a vessel or a buoy were attached to the seabed or moored at sea, it would not be included in the definition of 'property'; see Brice, op cit, fn 1, p 224.

(12) Article 1 of the Law Decree No. 28 of 1980 Promulgating reads as follows:
'The provisions of the Commercial Maritime Code shall not applied to the following vessels: (Free translation)
1- Military vessels.
2- Vessels owned by the Government or a public body which are assigned by any non-commercial public utility. =

Things carried on board in Article 234 of the *KML* naturally include goods or merchandise being carried on the vessel excluding personal effects of the crew or master and passengers' luggage.

The *Convention*, by Art l(a), defines 'salvage operations' as including services rendered to vessels, or to any other property in danger.

Article 1(b) defines a vessel as meaning 'any ship or craft, or any structure capable of navigation'.

'Property' means any property not permanently and intentionally attached to the shoreline,(13) and includes freight at risk(14).

The *Convention* makes an important exclusion for offshore drilling units and platforms as follows:

"This convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources."(15)

Accordingthis exclusion only applies if such structures are on location and engaged in sea-bed mineral resource exploration, exploitation, or proThis means that, if such a structure is otherwise engaged, such as being moved, awaiting instructions, undergoing repairs, or being delivered, it could become a proper subject of salvage.

The *Convention* also recognises as subject of salvage the protection of the marine environment. Although skill and effort by salvors exerted successfully to protect the environment is taken into account in calculating the award for property salvage, protecting the environment

= 3- Small vessels whose gross tonnage is not exceeding 150 (one hundred and fifty) tons.

4- Wooden vessels of primitive make.'

"وفقاً لنص المادة 1 من المرسوم بالقانون رقم 28 لسنة 1980 بإصدار قانون التجارية البحرية فأنه:

لا تسري أحكام قانون التجارة البحرية المرافق على:

١- لسفن الحربية.

٢- السفن المملوكة للحكومة أو أحد الأشخاص العامة والتي تخصصها لمرفق عام غير تجاري.

٣- السفن الصغيرة التي لا تزيد حمولتها الأجمالية على مائة وخمسين طناً.

٤- السفن الخشبية بدائية الصنع."

(13) 'Shore line' is defined in the Oxford English Dictionary as the line where shore and water meet. So, if a vessel or a buoy were attached to the seabed or moored at sea, it would not be included in the definition of 'property'; see Brice, op cit, fn1, p 224.

(14) Article 1(c) of the *Convention*.

(15) Article 3 of the *Convention*.

is treated separately from property salvage by special compensation, as will be seen later.

Under *KML*, Article 239, the saving of human life will not, by itself, justify a claim for salvage if it not connected with the salvage of some 'maritime property'. *KML*, Article 239 reads as follows:(16)

'(Free translation)

1 - No reward should be made for saving human Ivies.

2 - Nevertheless. the persons rescuing the human lives shall be entitled to a fair share from the remuneration awarded to the salvors of the vessel and her cargo'.

The question of life salvage is dealt with under the *Convention* by Article 16, which provides that 'No remuneration is due from persons whose lives are saved.' However, a salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment(17).

Article 242(18) of the *KML* and Article 10(19) of the *Convention*

(16) KML, Article 239 reads in Arabic:

١- لا تستحق مكافأة عن إنقاذ الأرواح البشرية.

٢- ومع ذلك يستحق الاشخاص الذين أنقذوا الأرواح البشرية نصيبا عادلا في المكافأة التي تعطي لمن قاموا بإنقاذ السفينة والبضائع بمناسبة الحادث."

(17) Article 16 of the *Convention* provides that:

'Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.'

KML, Article 242 reads as follows:

(18) "(Free translation)

1- Every master is bound, so far as he can do without serious danger to his vessel, her crew and her passengers, to render assistance to every-body, even to an enemy, found at sea in danger of being lost.

2-Themaster who did not offer the help stipulated in the preceding paragraph shall be penalized with imprisonment for a period not exceeding six months and a fine not greater than six thousand Kuwaiti Dinars or by either penalty. Neither the shipowner nor the disponent owner shall be liable to the judgment made against the third party regarding the remuneration due to this crime.' =

impose an obligation upon the shipmaster to save life at sea provided this can be done without serious danger to the ship or persons onboard. Breach of these duties can entail criminal sanctions (fines and imprisonment) but not civil liability. *KML*, however, does not expressly state whether or not a vessel owner or charterer may be penalised for breach of Article 242.

Under English law the right to salvage arises only if maritime property is saved. According to Lord Esher MR in The Gas Float Whitton (No.2)[20] such property is limited to the 'ship, her apparel and cargo... and the wreck of these and freight'. Section 313(1) of the Merchant Shipping Act 1995 defines 'ship' as including every description of vessel used in navigation. By section 311 of the Merchant Shipping Act 1995, the Secretary of State has power to decide that a thing designed or adapted for use at sea is or is not to be treated as a ship for the purposes of the provisions of the Act.

Services rendered to or by an aircraft in, on or over the sea are treated as salvage if salvage would have been awarded for a vessel. Thus when a Harrier jump jet landed on the Spanish ship ***Alraigo*** in June 1983 after having run out of fuel a salvage award was in order[21].

With regard to the 'live salvage', the saving of human lives, will not, by itself, justify a claim for salvage. The reason for this was given by Brett MR in ***The Renpor***, as follows:

= "يجب على كل ربان في حدود استطاعته ودون تعريض سفينته أو بحارتها أو المسافرين عليها لخطر جدي أن يقدم المساعدة لكل شخص يوجد في البحر معرضاً لخطر الهلاك ولو كان من الأعداء.
ويعاقب ربان السفينة الذي لا يقدم المساعدة المذكورة في الفقرة السابقة بالحبس مدة لا تجاوز ستة شهور وبغرامة لا تجاوز ستة آلاف دينار أو بإحدى هاتين العقوبتين، ولا يسأل المالك أو المجهز عما يحكم به للغير من تعويض بسبب هذه الجريمة".

(19) Article 10 of the *Convention* provides that:
'Duty to render assistance:
1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.'

(20) [1897] A.C. 337.

(21) 123 LMNL, 19/7/1984.

> "...there is one element invariably required by Admiralty law in order to found an action for salvage, there must be something saved more than life, which will form a fund from which salvage may be paid, in other words, for the saving of life alone without the saving of ship, freight, or cargo, salvage is not recoverable in the Admiralty Court."[(22)]

In modern times, however, the harshness of the doctrine has been softened. The entitlement of life salvors is now governed by Article 16 of the *Convention* which has the force of law in the United Kingdom[(23)]. This allows life salvors to share in the eventual award given to the property salvors 'for salving the vessel or other property or preventing or minimising damage to the environment'[(24)].

It is worth noting here that the U.K. Merchant Shipping Act 1995[(25)] authorizes the Secretary of State, if he thinks fit, to pay to a salvor a sum or an additional sum in respect of life salvage. This applies: a) where services are rendered wholly or partly in United Kingdom waters in saving life from a vessel of any nationality, or elsewhere in saving life from any ship registered in the United Kingdom; and b) either the vessel and other property are destroyed, or the sum to which the salvor is entitled under Article 16(2) of the *Convention* is less than a reasonable amount for the life-saving services[(26)].

3. ELEMENTS OF A SALVAGE SERVICE

KML, the *Convention* as well as English law require as necessary, three fundamental elements in order to establish a valid salvage claim:

(i) a marine danger;

(ii) a service voluntarily rendered when not required as an existing duty or from a special contract; and

(iii) success in whole or in part, or that the service rendered contributed to such success.

(22) (1883) 8PD 115, 117.
(23) See (section 224 of the Merchant Shipping Act 1995).
(24) Article 16 of the *Convention*.
(25) See Section 224(2) and Schedule 11, Part II, para. 5(2).
(26) Ibid., para. 5(1)(a) and (b).

3.1. Danger

The assistance given to a ship or cargo may have the character of a salvage service and so entitled a person to an award, when it has been rendered in rescuing the property from an impending danger(27). Exposure to danger is critical, because the preservation of property from danger is the underlying policy reason justifying the rewards given to maritime salvors. If some property is exposed to danger, but other property is not, the latter will not be liable in respect of salvage. Thus, in The ***Helmsman***(28) a tanker lay alongside a steamship which was in turn moored alongside a wharf on the Tyne. The former was transferring oil to the latter. The steamship's moorings broke and both ships drifted across the river at the mercy of the tide and a gale force wind. With the aid of tugs the ships were re-berthed. The steamship paid salvage but it was disputed that the tanker had ever been in danger. It was held that the tanker, although adrift, could have used her engines and could have saved herself at any time. No salvage was payable in respect of any services to her.

In determining the presence of danger the task is to decide if, when the assistance was provided, the vessel was in a perilous situation that exposed it to loss or destruction. As Lindley, L.J. said in ***The City of Chester***(29) "Salvage is the compensation made to those by whose assistance a ship or its cargo has been saved from impending peril or recovered from actual loss." However, such danger does not have to be absolute or immediate. A reasonable apprehension of future danger will also suffice. This is illustrated by ***The Aldora***(30) where a vessel ran aground outside a dredged channel leading into Blyth harbour. At that point, the vessel was held to be in a position of danger because it was unlikely that she would have refloated without assistance. Even if she had been able to do so, it was unlikely that she would have been able to keep clear of the west bank of the dredged channel.

(27) See Article 234 of the *KML* and Article 1(a) of the *Convention*.
(28) (1950) 84 Ll.L.Rep. 207
(29) (1884) 9 P.D. 182, 201.
(30) [1975] QB 748.

In assessing danger to maritime property, the salvor must prove that a reasonably prudent and skilful person in charge of the venture would not have refused the salvor's help.

'Danger' usually entails physical danger to the maritime property. Non-physical danger, such as the possibility of that property incurring liability to third parties, is probably insufficient on its own to constitute danger, but, when combined with physical danger, will be a factor tending to enhance a salvage award(31).

Whether or not a vessel or other property is in a condition of danger is a question of fact to be determined from the circumstances present in each case. As a general rule, the property must be in danger, either presently or reasonable to be apprehended. It is not the degree of the danger which makes for a salvage service; the degree, whether slight or serious, can affect the amount of the award, but not the establishment of a salvage service.

The following examples illustrate these points:

In ***The Charlott***,(32) a ship was proceeding on a voyage from Bombay to Liverpool. The master of the ship missed the harbour he was aiming for and the vessel was caught up in a violent gale, with fog and rain, which drove the ship towards the rocks. After a day of effort to board her, the salvors took the ship in tow with great exertion and labour having to force their way through a heavy sea before they could get the vessel towed in. Then, they claimed salvage remuneration. The owners' defence was that no salvage services had been rendered because during the whole time of the towing of the ship, the weather was fine and that there was an agreement for towage at the cost of 20 shillings each. It was held that, on the facts, it was undisputed that the vessel's masts and all her sails had been cut away, and that in her dismasted state she was towed into Long Island Channel, and that, prima facie, salvage services had been rendered.

In ***The Helenus***(33)a ship fully laden, was to sail for Rotterdam, but the voyage was cancelled as a gale began with mighty and forceful winds

(31) The Whippingham (1934) 48 LlL Rep 49.
(32) (1848) 3 W Rob 68.
(33) [1982] 2 Lloyd's Rep. 261.

that afternoon. It gradually became stronger, causing the stern ropes of *The Helenus* to part. Her master made a call for assistance. The vessel, surging under the influence of the wind and tide, came into collision with *The Motagua* which was lying close to *The Helenus*. As a result, *The Motagua* rendered her own moorings. Both vessels drifted north and rubbed up against *The Imichil* pushing that vessel's bows to port pressing it up against a large dockyard crane. The crane was lifted off its feet on one side, so that it was leaning over dangerously. This was the dangerous position the vessels were in when the tugs arrived. The tugs made fast to *The Helenus* and pulled her away. They were unable to reach *The Motagua* but, once *The Helenus* was removed, *The Motagua* was in a less dangerous situation and was assisted to her berth. A salvage award was claimed. Sheen J examined the dangers in the circumstances:

> "... having regard to the fact that it was night, there was a very high wind; they were in a very confined space; the tide was ebb; there were dangers of damage to the side of the vessel from ranging against *The Motagua* and the danger to both vessels from that source. There was the possibility, if they tried to move, of fouling other vessels or doing more damage or even possibly damaging their propellers if they got too close to the wharves."

It was held that salvage services had been rendered to *The Helenus*, but the services rendered to *The Motagua* was to be treated as a comparatively minor service.

In ***The Albion***(34) owing to a gale a vessel was obliged to put out to sea in the Thames estuary. In doing so, she lost her anchors and cables. She was later towed to London by two tugs from a position off the North Foreland. The court held that although the vessel was in no immediate danger, it was doubtful whether she could anchor safely, and that, therefore, there was sufficient danger to render the service of the tugs a salvage service.

In ***The Ella Constance***(35)salvage was awarded to the steamship "Isis", with passengers on board, which was in distress from want of fuel,

(34) (1861) Lush. 282.

(35) (1864) 33 L.J. Adm. 189, 193.

and had burnt her main topmast and one of her boats. The court said that there was no immediate risk and no immediate danger, but there was a possible contingency that serious consequences might have ensued.

In ***The Ottercaps***(36) salvage was awarded to the mate of a barque for navigating another vessel of the same type whose master was ill and whose mate had been disrated for incompetence.

In ***The Glaucus***(37) a steamship became disabled by boiler trouble whilst being towed by "*The Rhesus*", another steamship, to a safe port where repairs could be affected. The "*Antenor*", another steamship, towed the "*Glaucus*" to another port where repairs were carried out. The owners denied that the service of the "*Antenor*" were salvage services, in that the "*Glaucus*" was in no danger at the first port or thereafter. The court held that so long as her main boilers were still disabled, the *Glaucus* was potentially in a position of danger. Salvage was awarded in respect of both steamships.

In ***The Troilus***(38)a steamship bound for Liverpool from Australia carrying a cargo of food lost her propeller in the Indian Ocean. She was towed by a motor vessel 1,050 miles to an anchorage at Aden. Salvage services were acknowledged. However, Aden had no facilities to repair the ship or to discharge or store the cargo on board. Accordingly, a second vessel towed her to the United Kingdom, with the exception of through the Suez Canal when canal company tugs took over. Salvage was claimed by the second vessel. The cargo owners' defence to the claim was that the danger to the *Troilus* had finished at Aden and that therefore the service was merely in the nature of towage. It was held that although the vessel and her tug were physically safe once they had reached Aden, both would have deteriorated if they had not been removed and the likelihood of expense and delay should be considered. The second towing vessel's services were therefore properly salvage services.

KML, Article 234 requires that the danger to be '*real*' in order to give rise to a salvage service(39).

(36) (1876) Pritch. Adm. Dig., 3rd ed., Vol. 2, p.2094.
(37) (1948) 81 Ll.L.Rep. 262.
(38) (1951)1 Lloyd's Rep. 467, HL.
(39) Yousif Sarku, *The Explanation of Kuwaiti Maritime Law*, Vol. 2, 1989, p. 63.

It is submitted that the ignorance of those to whom the service is rendered may will form in itself an element of real danger to them and to the property in their charge. This was shown in the case of ***The Eugenie***[40] where a vessel would have been safe if handled by a skilful master, but was in a situation of real danger because her master was not possessed of such skill and knowledge.

Further, the ship and the cargo need not be in common danger, and salvage services may be rendered to the cargo only even when the ship is in no danger. The distress does not have to be caused by something inherent or incidental to maritime adventure. Similarly, it does not matter whether a ship is on the high sea or inland water. No distinction is drawn between assistance or salvage, and services may be rendered in the form of assistance to a ship with the crew in charge, or in the form of salvage to a ship abandoned by the crew.

As was decided in the case of ***The Wilhelmine***[41] the onus of proof of real danger rests upon those who claim a salvage service. As some evidence of danger, the Admiralty Court of England, in cases in which the existence of danger to the ship is questioned, accepts the use of distress signals, signaling for assistance or the mere acceptance for services. The Court has also held in several cases[42] that volunteers induced by an ambiguous signal to go out and assist a vessel, are entitled to rely upon that signal of distress and to be treated as salvors.

Before leaving the issue of danger, consideration must be given to the question of whether property may be salved other than at the express request of its owners. The answer would seem to be a qualified 'yes', provided that the situation in which the ship finds herself is one in which a prudent person would accept the services on offer[43]. In such a situation, the salvor will still be entitled to its reward, even if it performs the services in the face of the objections of the owner of the property in question[44]. In ***The Charlotte***[45] Dr. Lushington in the course of his

(40) (1844) 3 Not. of Cas. 430, 431.
(41) (1842) I Not. of Cas. 376, 378.
(42) The Nary (1842) I W. Rob., 448, 452, 453.
(43) The Annapolis (1861) Lush 295; ***The Vandyck (1882) 5 Asp MLC 17, CA.***
(44) The August Legembre [1902] P 123. See, also, ***The Jonge Bastian (1804) 5 C.Rob. 322, 323.***
(45) (1848) 3 W. Rob. 68, 71.

judgment pointed out that "... it will be sufficient that at the time the assistance is rendered the ship has encountered any danger or misfortune which might expose her to destruction if the service were not rendered."(46)

Another consideration must be given to the question of whether a danger threatening a third party entitles the salvor to an award. Article 234 of the *KML* considered only the danger run by the salved vessel, her passengers, crew and cargo as a criterion for fixing salvage remuneration. By contrast, Article 13(1)(b) of the *Convention* lists the relevant factors for the assessment of the award, amongst which is 'the skill and efforts of the salvors in preserving or minimising damage to the environment'. Also, Article 14 allows special compensation to salvors who prevent or minimise damage to the environment.

3.2. Voluntariness

Voluntariness is the required condition to enable a person to be entitled to a salvage reward(47). It is an essential element of salvage, in the sense that if a service is rendered only under a pre-existing contractual or official duty owed to the owner of the property, or only in the interest of self-preservation, it is not a salvage service.

"What is a salvor?" asked Lord Stowell in the case of The Neptune(48) "one who, without any particular relation to a ship in distress, proffers useful service and gives it as a volunteer adventurer without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship."

In accordance with the general principle of rewarding only

(46) Under *KML*, Article 236 'the salvors shall not entitled to any remuneration, if the ship to which the assistance is made refused the assistance thereof explicitly and for a reasonable cause.'

"لا يستحق الأشخاص الذين ساهموا في أعمال المساعدة أية مكافأة إذا كانت السفينة التي قدمت لها المساعدة قد منعتهم عن معونتها صراحة ولسبب معقول".

(47) The definition of salvage in Article 235 of the *KML* and in Article 1(a) of the *Convention* contains no requirement of voluntariness. However, this point is dealt with in Article 237 of the *KML*, and Article 17 of the *Convention* which provides that no reward is payable if the services do not exceed what can reasonably be considered as due performance of a contract entered into. See Yousif Sarku, *The Explanation of Kuwaiti Maritime Code*, Vol. 2, 1989, p. 66.

(48) (1824) 1 Hag Adm, 227, 236.

volunteers as salvors, all persons are ordinarily held entitled to obtain salvage reward in respect of the services rendered by them in the preservation of the ship or of the lives, or of the cargo which she carriers,(49) except the crew, the pilot navigating ship, the owner, master or crew of tug under a contract of towage, and the ship's agent. In special circumstance, however, these persons may earn a salvage reward when they have done or rendered services which were outside the normal scope of their contractual duties(50).

Pilots may be entitled to a salvage award if they rendered exceptional services- that is, not within the normal services expected from the pilot. The rule of law was held to be as follows:

"... in order to entitle a pilot to salvage reward he must not only show that the ship is in some sense in distress, but that she was in such distress as to he in danger of being lost, and such as to call upon him to run such unusual danger or incur such unusual responsibility, or exercise such unusual skill, or perform such an unusual kind of service, as to make it unfair and unjust that he should be paid otherwise than upon the terms of salvage reward."(51)

The following cases show the exceptional circumstances in which such an award can be made:

> In ***The Akerblom v Price***(52) a vessel was driven by the violence of tile wind and sea to dangerous sands. The locality was strange both to her captain and crew, and therefore she was in danger of being lost. Seeing the peril, the pilots put to sea to assist her. The heavy seas prevented them from boarding the ship, but preceded her in the pilot's boat, gave signals and thus saved her. The question put to the Court of

(49) Clarke J in ***The Sava Star*** [1995] 2 Lloyd's Rep 134, p 141 said:
'There are no rigid categories of salvor. They include any volunteer who renders services of a salvage nature.'

(50) See ***The Sandefjord*** [1953] 2 Lloyd's Rep. 557 where the master of a vessel stranded on the Goodwin Sands, after a breakdown of the steering gear, in charge of a pilot accepted the pilot's advice that offers of assistance by tugs should be rejected and that a kedge anchor should by laid by a lifeboat. The court found that the pilot's services were salvage services and upheld his claim for salvage.

(51) The Akerblom v Price (1881) 7 QBD 129, p 135, per Brett LJ.

(52) (1881) 7 QBD 129.

> Appeal was whether the amount paid to the pilots was only for pilotage services, or was it to be treated as payment for salvage services.

It was held that in the circumstances of the case the pilots had exceeded their duty as pilots and had in addition performed salvage services therefore the payment to the pilots ought to be considered as payment for salvage.

Another good example of a pilot rendering exemplary salvage services is ***The Hudson Light***(53) While the ship was lying at anchor, there was a strong ebb tide and, shortly before evening hours, she began to drag her anchor under the influence of the tide. Despite attempts to combat tile drag, she continues to move down river and eventually went aground. Efforts to refloat her with her engines were unsuccessful. Tug assistance was called, and in response, five tugs came to her rescue, but were unable to move her as she was aground on tile bottom of sand and gravel covered by a thick layer of mud. A pilot was requested and he took charge of the operations for refloating the ship, giving instructions to each of t e tugs. He displayed a very considerable degree of skill both in planning and executing the refloating operation. The ship was eventually refloated and safely moored at a buoy, at about midnight. The pilot claimed a salvage reward for his services contending that a high degree of skill and care was needed bearing in mind especially the congested area of the operation. The defendants, rejecting the claim, argued that only ordinary skill and care were needed and that the method to be used for refloating the vessel was obvious.

It was held that, not only did the pilot display considerable skill, but the responsibility which he undertook in rendering the services and running the risks involved was commendable. He was entitled to salvage reward. It was also held that, in assessing the reward, it was necessary to consider the merits of t e contribution made by him to what were in effect joint services rendered by the tugs and him.

Crewmen can also claim salvage if their contract of employment has been actually or constructively terminated before the salvage service

(53) [1970]1 Lloyd's Rep 166.

commenced, since it is implied in the terms and conditions of their contract of service that they shall use their best endeavours and strive to the best of their ability to save and preserve their ship in time of peril.

Termination of their employment contract could be brought about by:

(1) the authorized abandonment of ship under the master's authority.

(2) the master's discharge of the crewmen concerned.

(3) the capture of the vessel in hostile encounter.

The following examples will serve by way of illustration:

In ***The San Demetrio***(54)a tanker was severely damaged in the North Atlantic by gunfire from a German warship. She was fully loaded with a cargo of petrol. The master, concerned for the lives of his crew, gave the order to abandon ship. The whole crew left in three lifeboats. Two days later, one of the lifeboats, manned by the second officer and fourteen others, again sighted the tanker. Seeing it still afloat but still on fire they reboarded her. They put out the fire, stopped the innumerable holes which shell splinters had made in the deck, restarted the engines and

sailed the ship with her cargo 700 miles to Ireland. The crew claimed salvage awards. It was held that the vessel had been properly abandoned under the orders of her master. Therefore under the circumstances the vessel's own crew were entitled to claim salvage.

(54) (1941) 69 Ll.L.Rep. 5. But see ***The Albionic*** (1941) 70 Ll.L.Rep. 257 a ship caught fire and was completely out of control. The master shouted for all hands to jump overboard in the lifeboats, which had been made ready to pick them up. Some of the crew and the master did so, but the chief officer, who had now taken control, forbade the rest of the crew from abandoning the ship. Those who remained on board rendered valuable assistance in getting the ship to port and keeping the fire under control. The wireless operator of the ship claimed salvage for the services rendered after half the crew had left the ship. He contended that the circumstances in which they left the ship amounted to abandonment. It was held that there was not complete abandonment but conflicting orders given to the crew by senior officers. It was, therefore, not an order which the men were bound to obey, or by which their contract of service was terminated. The conclusion was that those who remained on the ship did so in the ordinary discharge of their duty and were not entitled to any salvage. The claim was dismissed. Lord Greene MR held that the mere order of the master to abandon the ship was not enough to constitute abandonment. Whether or not there had been abandonment, depended on the facts of each individual case. He agreed with the trial judge that, on the facts shown below, the master did not give an order in the ordinary sense of the word, but he gave 'a piece of advice' in a state of panic.

In ***The Warrior***(55) a steamship was disabled and drifted in calm weather onto a rocky shore in the Canary Islands. Subsequently she filled with water and some hours later the Master and crew left the vessel and went ashore. On the following day the Master formally discharged his entire crew in a written document. Subsequent to that discharge some crew members at the chief officer's request returned to the ship and after several days' effort were successful in saving stores and a substantial amount of the cargo. It was held that the seamen concerned were entitled to a salvage reward since their contract of employment was validly terminated by the discharge given by the master and, in the absence of any fraud in accepting such discharge, the crew who had returned to the vessel were truly salvors.

In ***The Two Friends***(56) seamen claimed a salvage reward for their successful efforts in recapturing their ship from the possession of French captors. That hostile capture such as this automatically brings about the dissolution of a seaman's contract of employment was emphatically affirmed even in those early days. It was said to be no part of the general and expected duties of a seaman to rescue or take his ship back from an enemy captor, and to refuse to attempt to do so would not amount to desertion from any such duty.

Further, services performed under contracts of towage if they go beyond those called for by the particular contract of towage, salvage may become payable.

"The Court is... careful to scrutinize a claim for salvage by a tug engaged to tow. It is essential in the public interest, for obvious reasons, that the towage contract should not be easily set aside, and a salvage service substituted for it. A tug ought to make a clear case before she can convert herself into a salvor."(57)

The tug must show that she was well equipped for the towage contract and that the additional services became necessary without any shortcomings on her part(58). This happened in ***The Aldora***(59) where tugs were engaged to tow a ship into harbour. The ship then went aground

(55) (1862) Lush 476.
(56) (1799) 1 Ch Rob 271
(57) The Marechal Suchet [1911] P. I, *per* Sir Samuel Evans P at p. 12.
(58) Ibid.
(59) [1975] QB 748.

and the tugs rendered services to refloat her that went beyond the services contemplated by the prior contract of towage. Accordingly, salvage became due in respect of services rendered while the vessel was in danger, with the towage contract relating the parties' relations once the vessel was out of danger. Contractual services were also turned into salvage in ***The Star Maria***(60) where a steering tug assisted a tug rendering salvage services under LOF. When the towage connection between this tug and the casualty broke, the steering tug assisted the casualty, which was in danger of grounding, by pulling her stem out of shallow waters and holding her in position. These services went beyond those contemplated in the contract and were not foreseeable at the time that the tug was engaged as a steering tug. Accordingly, the steering tug was entitled to salvage remuneration at common law, in respect of services rendered to the casualty from the time at which she lost her connection with the salving tug until the time at which that connection was resumed.

In contrast, in ***The Texaco Southampton***(61) a contract was made specifically to tow a disabled vessel in danger. Salvage, therefore, could not be claimed by the head contractor as the services to be performed would not go beyond the ambit of those for which it had been engaged under its particular contract of towage. For the same reason, neither the subcontractor that actually towed the vessel, nor its crew, were entitled to claim salvage(62).

Article 17 of the *Convention* maintains the existing law by providing:

> 'No payment is due under the provisions of this Convention- unless the services exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.'

Other likely persons/corporation who would be deemed to be under a pre-existing duty to render services in the nature of salvage are port or harbour authorities. In the ***Gregerso***(63), a ship grounded in port obstructing navigation to and from the port. She called for assistance and a tug of the port authority was sent. The dock and harbour masters

(60) [2003] 1 Lloyd's Rep 183.

(61) [1983] 1 Lloyd's Rep. 397.

(62) See, too, ***The Tramp*** [2007] 2 Lloyd's Rep 363. A tug may make a salvage claim where the vessel to be towed is impeded in manoeuvring and is effectively immobilised, so that a reasonable person would not refuse salvage assistance in such circumstances.

(63) [1971] 1 Lloyd's Rep. 220

had to spend the whole night on board her because the tug could not free the ship by towage that night as the tide had fallen In the morning, when the tide was higher, the vessel was freed without much difficulty. The tug rendered further assistance by getting her a short distance down the river to a position where she could proceed safely on her own. The port authority, the dock and harbour masters and the master and crew of the tug claimed salvage from the owners of the ship.

It was held that it was in the interest of the port to clear the channel from the obstruction created by the casualty. The authority and its employees were not entitled to salvage because their services were not voluntary but in discharge of duties.

Brandon J said:

> "[T]he Boston port authority was under a statutory duty to exercise the powers of removal, which duty was owed by the corporation to all users of the port including the owners of the Kungso herself. This duty of the Boston Corporation could only be performed through the agency of its employees, the dock and harbour Master and the Master and crew of the tug. The work done by these employees was, as I find, within the ordinary work which they were respectively employed to do."

Where there is a custom in a particular trade to give such mutual assistance, or with regard to the vessels of a particular port, such custom may have the same effect as a special agreement. But the agreement and custom "must be proved in very definite terms, and by arguments of irresistible cogency, in order to afford a defence to a clear and general right," as was stated by Lord Stowell in the case of ***The Waterloo***(64) where services were rendered to an East India Company vessel in distress in the Indian Ocean.

The mere presence of the interest of self-preservation, if it is not the only interest, does not necessarily take the services outside the scope of voluntariness.

In ***The Lomonosoff***(65) British and Belgian soldiers, who had been assisting the 'White' Russians in the civil war, escaped from Murmansk, which was about to fall to the Bolsheviks, by boarding a steamship that they navigated to safety and handed over to its owners after their escape.

(64) (1820) 2 Dods. 433, 436.

(65) (1921) P. 97, 102.

The soldiers were entitled to a salvage award for saving the vessel, even though, in doing so, they had also saved their own lives. Hill J stated that 'where in a case like the present the salvor has two means of saving himself and elects one which also saves maritime property I have no doubt that qua that property he is a volunteer'. More recently, in ***The Sava Star***(66) Clarke J. allowed a claim for salvage by the owners of cargo on board the distressed ship. He regarded the motives of the potential salvor as being irrelevant. Provided that the cargo owners did more than could be expected of someone in their position, such as merely relaying information to the shipowner regarding the cargo, there was nothing to debar them from claiming salvage.

The *KML* and the *Convention* contain no prohibitions on claims for salvage in respect of one's own property and 'sister ship' salvage is specifically permitted under Article 235(3)(67) of the *KML* and Article 12(3)(68)of the *Convention*. It is therefore likely that, in future, persons who render salvage services within the definition contained in Article 235 of the *KML* and Article 1(a) of the *Convention* will be debarred from claiming a salvage reward under the *KML* and the *Convention* only if they fall within Article 237(69) of the *KML* and Article 17(70) of the *Convention* in relation to contractual ones.

(66) [1995] 2 Lloyd's Rep. 134.

(67) KML, Article 235(3) provides that:
'The remuneration shall fall due even if the assistance or rescue thereof occurred between ships owned by the same person.'

(68) The *Convention*, Article 12(3) reads as follows:
This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

(69) KML, Article 237 states that:
'(Free translation)
In case of towage and pilotage. no remuneration should be made to the ship carrying out such operation relating to the assistance and rescue of the ship being towed or piloted or the goods available thereon. unless the ship that carries out the towage or pilotage makes exceptional services not usually included in the towage and pilotage operations.'
"في حالة القطر او الارشاد لا تستحق أية مكافأة - للسفينة التي تقوم بهذه العمليه - عن مساعدة او انقاذ السفينة التي تقطرها او ترشدها او البضائع الموجودة عليها الا اذا قامت السفينة القاطرة او المرشدة بخدمات استثنائية لا تدخل عادة في عمليات القطر والارشاد".

(70) The *Convention*, Article 17 provides that:
'Services rendered under existing contracts
No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.'

3.3. Success

The requirement of success as a pre-requisite to the making of a salvage award is preserved by *KML*, Article 235 and the *Convention*, Article 12 and no payment is due under the *KML* and the *Convention* if the salvage operations have had no useful effect.

Article 235(1) of the *KML* reads as follows:

'Every act of assistance and the salvage operations whenever it makes useful result, shall give the right of a fair remuneration thereto.'(71)

And Article 12 of the *Convention* provides that:

'1 - Salvage operations which have had a useful result give right to a reward.

2 - Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.'

The phrase "useful result" is obviously fundamental to these Articles, but is not further defined. However, there is no reason to suppose that it can mean anything other then that the preservation of some part of the property the subject of the salvage operation. This view is confirmed by Article 235 of the *KML* and Article 13(2) of the *Convention*, which provide for the reward to be paid by the owners of the salved property in proportion to the salved value of their property. Thus, the existence of salved property remains a pre-requisite for payment. Article 235/3(72) of the *KML* and Article 12(3) of the *Convention* clarify the fact that salvage may be claimed, notwithstanding the fact that casualty and salving vessel are both in the same ownership.

Under English law no right to a salvage reward, in the proper sense of the term, can arise in respect of services rendered either to property or to life unless by some means part at least of the property concerned, e.g., ship, cargo or freight, is ultimately preserved. The principle was laid down by Dr Lushington in ***The India***(73)

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(71) KML, Article 235/1 reads in Arabic as follows:

"كل عمل من أعمال المساعدة أو الإنقاذ يعطي الحق في مكافأة عادلة إذا أدى إلى نتيجة نافعة".

(72) KML, Article 235/3 provides that:

'The remuneration shall fall due even if the assistance or rescue thereof occurred between ships owned by the same person.'

"وتستحق المكافأة ولو تمت المساعدة أو الانقاذ بين سفن مملوكة لشخص واحد".

(73) (1842) 1 Wm Rob 406.

> "... unless the salvors by their services conferred actual benefit on the salved property, they are not entitled to salvage remuneration."

Article 12 of Sched 11 to the consolidating Merchant Shipping Act 1995 provides that a salvor will be entitled to a reward if the salvage operations had a useful result. The exception to this is contained in Art 14, which gives salvors the right to recover special compensation for salvage services rendered to a vessel, or its cargo, when by Itself or its cargo threatened damage to the environment."

Lord Diplock in ***The Tojo Maru***(74) examined certain characteristics f salvage contracts which differentiate them from ordinary contracts for work and labour:

"The first distinctive feature is that the person rendering the salvage services is not entitled to any remuneration unless he saves the property in whole or in part. This is what is meant by 'success' in cases about salvage."(75)

The necessity of this condition (i.e. success) in order to maintain a claim for salvage, whether by proceeding "*in rem*" or "*in personam*", has had general recognition. In ***The Cheerlul***(76) a ship broke down in the Channel ten miles off Anvil Point. She was taken in tow by the City of Hamburg. After several hours towing, when both ships were off the Shambles lightship the hawser parted and the ship dropped anchor. She was then in a position of greater danger than before the towage commenced. In attempting to pass another hawser, both ships were damaged owing to unskilful though not negligent manoeuvring on the part of the City of Hamburg. The latter then had to give up the salvage which was completed by two tugs which arrived from Portland. It was held that the City of Hamburg was not entitled to a reward. Her services had resulted in placing the ship temporarily in a worse position than she was before. No actual benefit had been conferred on the salved property. In ***The Marguerite Malinos***(77) the coxswain of a lifeboat, before going

(74) [1972] AC 242 (HL).
(75) Ibid, p 293.
(76) (1885) 11 P.O. 3.
(77) [1903] P. 160.

out to a vessel in distress, sent a telegram for tugs, but these were already on their way on other information. It was held that the lifeboat was not entitled to salvage. Its message had not been instrumental in salving the property.

There may, indeed, be circumstance in which the master of a ship in danger or distress is justified in binding the shipowner by a special agreement to pay for certain assistance, independently of the ultimate safety of the vessel. But such salvage agreement is an agreement which may fix the amount to be paid for salvage, but leaves out all the other conditions necessary to support a salvage award.

In ***The Renpor***(78) in the judgment of the Court of Appeal, which was delivered by Brett MR it was pointed out that the claim failed both on principle as a salvage claim, and upon the true construction of the contract itself. It failed in principle, because it lacked the element which is "invariably required by Admiralty law in order to found an action for salvage" viz., that "there must be something saved more than life, which will form a fund from which the salvage must be paid, in other words, for the saving of life alone without the saving of ship, freight and cargo, salvage is not recoverable in the Admiralty Court. It failed also upon the construction of the contract, because the agreement therein contained was "a proper salvage agreement" which "fixes the amount of salvage to be paid both for services to life and property, but leaves untouched all the other conditions necessary to support a salvage award..."

An agreement, however, may provide for salvage remuneration in the event of the services proving successful or beneficial, and for payment of expenses incurred if the services are not successful or beneficial. Thus, in ***Admiralty Commissioners v. Valverda (owners)***(79) the Admiralty Standard Form of Towage Agreement provided in clause 4 that the remuneration should, if the services were successful or beneficial, consist of a reasonable amount of salvage, and that if the services were not successful or beneficial the compensation for the endeavours to salve or assist the vessel would not exceed £ 350 for any loss or damage incurred in such endeavours.

(78) (1883) 8 P.D. 115, C.A.
(79) (1938) A.C. 173.

It is submitted that when a salvage is finally effected, those who meritoriously contributed to that result are entitled to share in the reward; but there is a doubt as to whether they have in fact contributed to the safety of the vessel. On this point the Admiralty Court of England has been inclined to lean to the view that in fact they have so contributed.

As Lord Phillimore pointed out in ***The Melanie (owners) v. San Onofre (owners)***(80) "services, however meritorious which do not contribute to the ultimate success, do not give a title to salvage reward," and in the same course, following the cited learned judge, "services which rescue a vessel form one danger but end by leaving her in a position of as great or nearly as great, danger though of another kind, are held not to contribute to the ultimate success and do not entitle to salvage reward.

There is, however, one class of cases which entitle to award although the services have not contributed to ultimate success or preservation of the property. Supposing that the master of a ship in distress requires services of another ship, to stand by her in storm, for example; and that for any cause whatsoever the ship which assists cannot perform her services, e.g. due to a change of weather. It would seem unfair not to compensate such assistance bearing in mind that she could be exposed to the same dangers or that she wasted her time. That was the case of ***The Helvetia***(81) in the course of which Gorell Barnes J. in awarding salvage remuneration said: "It seems to me that if there is in fact a request to render assistance...a request to attempt to tow the ship, and the service requested is in fact performed as far as it is possible to do it, and the ship afterwards is saved by other means, then the persons who rendered the services are entitled to some salvage remuneration..."

This class of case is sometimes distinguished from that of services rendered or "engaged" or "employed" services. In the first case the English Court of Admiralty maintains on the basis that the doer of these services is entitled to payment for work and labour done. In the absence of an express agreement to the contrary, such services give a title to reward, only if the property in peril, or at least some part of it, is ultimately saved; and the reward for such services is assessed by the court

(80) (1925) A.C. 246, 262.
(81) (1894) 8 Asp. 264.

not as it would be assessed in an action at law upon a contract for the employment of labour, but upon the more liberal scale of salvage remuneration(82).

Another important point to consider is if those, whose services have contributed to the preservation of the property for any circumstance, in the course of their service, mistake, negligence or misconduct occasion some damage to that property, are they entitled to their right to reward? The answer is that they are, although the amount of remuneration would be diminished for compensation of the damage(83).

4. PERSONS ENTITLED TO A SALVAGE AWARD

A salvage claim may be made by the owners of the vessel rendering assistance. It may also be made by the crew of the salving vessel and by any other person who renders personal assistance or who allows their property to be used in rendering assistance. In appropriate circumstances, even the owners of cargo carried on board the salved vessel may perform services entitling them to claim a salvage reward. Where a vessel is salved by the exertions of more than one salvor, a single award will be made, which will be apportioned between them, with a further apportionment being made between the owners and crew of each vessel.

4.1. Owners and Charterers

Where the salving vessel is herself the chief instrument in effecting the salvage service, it is the owner who gets the principal share in the reward and his right to be rewarded has received liberal recognition in the court. As Lord Wright said in ***The Valverda***(84) "the world has become accustomed to heavy claims and awards for salvage being made to shipowners in respect of their vessels, which are regarded as agents or instruments of the salvage." Similar recognition applies where a charterer is the "*pro has vice*" owner,(85) in which case it is the charterer and not the owner who is entitled to claim salvage whether the charter party amounts

(82) Lord Wright in ***The Beaverford v. Kafiristan*** (1938) A.C. 136.
(83) The Atlas (1862) 1 Lush. 518.
(84) [1938] A.C. 173, H.L.
(85) Fenton v City of Dublin Steam Packet Co. (1838) 8A & E. 835.

to a demise of the ship (*locatio navis*), or whether by the express terms of the charter-party he becomes, in reference to salvage, *pro hac vis* owner[86].

On the contrary, where there exists a charter-party not amounting to a demise and it is silent as to salvage, it is the owner who is entitled and not the charterer[87]. Where the charter-party provides for the sharing of salvage between both, the charterer may claim his share from the owner in accordance with the terms of the charter-party[88].

"The legal effect...of a charter-party by way of demise is that if salvage services are rendered by a vessel under such a charter-party and an award is made in respect of those services, the money goes not to the owners, but to the charterers of the vessel."[89]

It seems practically impossible to make a good claim to a reward where the owners and crew of a salving vessel have through their own fault brought about the need for salvage. In The Marechal Suchet[90] there was a towage contract between the salved vessel and a tug. Services rendered necessary by the faulty performance of the towage contract were performed by the tug and also by three other tugs belonging to the tug owners. The owners, master and crew of the tug were disqualified from a salvage reward, as well as the masters and crews of the other three tugs.

Where the salvage vessel and the salved vessel belong to the same owners, the question which arises is whether the owner and crew of the salving vessel are or are not precluded from being entitled to a reward.

Where a ship, which has been damaged by collision through the negligent navigation of another ship, is salved, not by the 'wrongdoing' ship but by a different ship, which has been, as a ship, unconnected with the collision, not only the crew of the salving ship but also her owners, although they are also interested in the 'wrongdoing' ship, are held to be entitled to a salvage reward;[91] and this is so even where the "wrongdoing" ship was alone to blame for the collision[92].

(86) See per Dr. Lushington ***The Maria Jane*** (1850) 14 Jur. 857, 858; in that case the owner of salving vessel was the charterer of the salved vessel.
(87) The Waterloo (1820) 2 Dods. 433.
(88) George Booker Poclington [1899] 2 Q.B. 690
(89) Bailhache J. in ***Admiralty Commissioners v. Page*** [1918] 2 K.B. 447, 452
(90) [1911] 80 L.J.P. 51.
(91) The Glengaber (1872) 1 Asp. 401.
(92) The Susan v. Luckenback [1951] P. 197.

In ***The Beaverford v. The Kafiristan***(93) a collision took place in the Gulf of St. Lawrence, between Canadian Pacific line ''Empress of Britain,'' owned by the appellants, and the steamship ''Kafiristan,'' owned by the Hindustan Steamship Co. Ltd. The ''Kafiristan'' was so badly damaged as to require salvage assistance. ''The Empress of Britian'' stood by for about six hours, when the ''Beaverford,'' a vessel owned by the appellants, came up. At the request of the master of the ''Kafiristan'' the master of the ''Beaverford'' took the ''Kafiristan'' in tow for Sydeny, and towed her stern first for about 100 miles. Then a salvage vessel, the ''Foundation Franklin'' arrived and duly completed the towage to Sydney. Lord Wright in the course of his judgment stated:''... It is not disputed that the ''Beaverofrod'' performed services of such a nature as materially to contribute to the safety of the ''Kafiristan,'' and to entitle her to a salvage award.''

The first question to consider is whether the owner of the salving vessel and the salved ship is one and the same person. May he be considered as a claimant? It seems that he cannot, for the claim in such a case, would be one against his own property. However, this is not always so, for there are some cases where the crew are entitled to a reward when the services which they render to the salved ship or her cargo are outside the contracts entered into by them and are not paid for by their ordinary wages(94). It seems also to be just that claims can be made by the owner against the cargo on board the salved ship. In each case it will depend on the circumstances.

Furthermore, if the owner of the salving ship is only the charterer of the salved ship under an ordinary charter-party which is not a demise charter-party, is the owner entitled to claim for salvage reward against the salved ship? The answer seems to be that he can claim, according to the judgment decided in ***The Collier***(95)

Where there are several part-owners of the salving ship and only some of them are owners or ''*pro hac vice* owners'' of the salved ship, the other part-owners of the salving ship are entitled to claim a salvage

(93) [1938] A.C. 136.
(94) The Miranda (1872) L.R. 3 A. & E. 561.
(95) (1866) L.R. 1A. & E. 83.

reward against the salved ship; and the court may compute the amount to be paid to them, by deducting from the reward which it considers the service to deserve so much as would have gone to the share of the part-owners who are also interested in the salving vessel if they could have joined in the salvage proceedings(96).

The second question is what is the position of the owner of the salving vessel, being also the owner or owner "*pro hac vice*" of the salved vessel, in relation to the cargo which is on board, and has suffered damage or loss.

Whether he is so precluded or not depends in each case upon the answer to the question: would he, if the salvage service had not taken place, have been responsible in damages to the owners of the cargo for the loss of it? Or; in other words, did the salvage service become necessary owing to that which could have constituted a breach of duty or contract on the part of the bailee and carrier of the cargo? If the damage or loss incurred is a consequence of a wrongdoing of the owner of the salving vessel who is at the same time carrier of the goods in the salved vessel, or is a wrongdoing of his servants, the answer must be negative(97). On the other hand, if the circumstances are such that the loss or damage to the cargo has taken place without the fault of the owners of the salving vessel, as carrier of the cargo in the salved ship, then it seems that his claim to reward as a salvor against the cargo of the salved ship is a valid one.

4.2. Master, Officers and Crew of the Salving Vessel

No agreement between owners of the salving and salved vessels can deprive the crew of their rights to the award. Also inoperative are stipulation by which any seaman consents to give up his right that he has or may obtain in the nature of salvage. They may sue jointly as a crew; by the master on behalf of himself and the crew; by one member of the crew on behalf of himself and others in the same situation, or on behalf of the crew; by the owner on behalf of himself, the master or the crew, or by the individual salvor suing in an individual capacity.

(96) The Caroline (1861) Lush. 334.

(97) The Cargo ex Capella (1867) L.R. 1 A. &E. 356.

As a general rule, the master of the salving ship who bears the responsibility of the operation receives a large recompense in recognition of his important burden. He is often granted a lump sum, separate from the award given to officers and crew. In most cases he shares it with the crew. The position of the master is so peculiar and he has so many powers that sometimes it is difficult to ascertain whether he has performed his duty properly or has exceeded his powers. In conducting a salvage operation the master of the salving ship, usually remain on board his own vessel, directing the task. However, sometimes he leaves his ship and takes over the navigation of the salved vessel. As a representative of the owner, he acts with his authority to use his property in good will, to the extent that it has been said that if he loses his ship, it is the owner's loss and it is not the master who may be called upon to make good the loss.

In The Albionie(98) it was held that a claim on the part of the officers and crew in respect of the services rendered to their own vessel, lives or property, was not a valid one, on the ground that the crew must protect the ship through all perils, so that their entire services for this purpose is pledged to that extent.

Only in the case of dissolution of the seaman's contract may he be entitled to earn salvage, when such dissolution is effected by the act of the master discharging him, as was the case in The Warrior(99) or by the abandonment of the ship "*bona fide*" and with the master's authority,(100) or by a hostile capture(101).

4.3. Other Persons who can Claim

A pilot on board the salved vessel, who has been engaged for reward as such, cannot claim salvage remuneration, but it has been well settled that the circumstances of danger at the commencement of his services or after his services have commenced, may be such as to alter their

(98) (1941) 70 Ll.L. Rep. 257, 263.
(99) (1862) Lush. 476.
(100) The Florence (1852) 16 Jur. 572.
(101) The Beaver (1800) 3 C. Rob. 92.

character, and his services may be treated by the Court in the line of salvage and not of mere pilotage(102).

Furthermore, a pilot in charge of a vessel engaged in salving another vessel may be entitled to award from the owners of the salved vessel on the basis that he has performed pilotage services which could not be considered within the scope of his contract as a pilot, as it was decided in ***The Santiago***(103)

Similarly, a tug under a towage agreement may be entitled to a salvage reward, but the tug is not entitled merely because some unexpected difficulties or delays occur in the performance of her undertaking, or because of interruption or because fair weather changes to ordinary weather(104).

Foy boatmen performing their work outside the ordinary course of their day to day duties paid at the ordinary tariff rate, may be entitled to a salvage award(105).

It appears to be impossible to draw from the decided cases any clear or satisfactory conclusion as to the circumstances under which a person who has accepted the position of ship's agent, and then renders services in saving the ship or cargo, can claim to rank as a salvor in respect of them, This only seems plain, that the Court, from motives of public policy, will lean rather to the admission than to the rejection of the salvage claim(106).

A passenger has no engagement of service, but he is to a certain extent bound up with the ship by the contract of carriage, and he is obliged by moral duty and by the necessity of self-preservation, if a common danger arises, to work for the safety of the ship. In certain circumstances, however, passengers may rank as salvors, as was the case in ***Newman v. Walters***(107) in which a passenger chose to remain in peril on board his ship with the purpose of saving her; or if he performs some

(102) The Bengloe (1940) 67 Ll.L. Rep. 309, 309.
(103) (1900) 9 Asp. M.L.C. 147.
(104) The Galatea (1858) Swab. 349.
(105) The MacGregor Laird [1953] 2 Lloyd's Rep. 59.
(106) The Purissima Conception (1849) 3 W. Rob. 181.
(107) The Queen Mab (1835) 3 Hagg. 242.

extraordinary service. If he performs services as a volunteer in a ship other than that in which he is traveling, the title to claim is more justified.

5. ASSESSMENT OF SALVAGE REWARD

5.1. Under the *KML* and the Convention:

The *KML* and the *Convention* provide that if the salvage operations have had useful result the salvor will be rewarded and, except as otherwise provided, no payment is due under the *KML* and the *Convention* if there is no useful result. Article 241(108) of the *KML* and Article 13(109) of the *Convention* set the criteria for assessing the salvage award.

(108) KML, Article 241 reads as follows:

'1- The court shall consider upon determining the compen-sation the compliance with the following two basic conditions in sequence:

(a) The amount of the interest resulted from the rescue operation. the effort made by the salvors and their relevant competancy, the danger faced by the ship to which the assis-tance operation were made. The passengers therein. the crew. the goods shipped together with the danger faced by the salvors. the ship that carried out the rescue and assistance, the time take for such operations, the expenses and injury resulted thereofrom, the risks of liability and other risks faced by the salvors and the value of the equipment used with consideration to the specialization of the ship in rescue and the assistance operations whenever necessary.

(b) The value of the items rescued.

2- The court shall observe the two basic conditions stated in the preceding paragraph upon distribution of the remuneration between those who carried out the rescue operations if they are many.'

" ١- تراعي المحكمة في تحديد المكافأة - تبعاً للظروف - الأساسين الآتيين حسب ترتيب ذكرهما:

أ- مقدار الفائدة التي نتجت عن الإنقاذ، وجهود المنقذين وكفاءتهم، والخطر الذي تعرضت له السفينة التي قدمت لها المساعدة والمسافرون عليها وبحارتها والبضائع المشحونة فيها، والخطر الذي تعرض له المنقذون والسفينة التي قامت بالمساعدة والإنقاذ، والوقت الذي استغرقته هذه العمليات، والمصاريف والأضرار التي نتجت عنها.

ب - قيمة الأشياء التي أنقذت.

٢- وتراعي المحكمة الاساسين المذكورين في ا لفقرة السابقة عند توزيع المكافأة بين القائمين بالانقاذ إذا تعددا".

(109) Article 13 of the *Convention*:

'Criteria for fixing the reward:

(a) the salved value of the vessel and other property;

(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of the danger;

(e) the skill and efforts of the salvors in salving the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of vessels or other equipment intended for salvage operations;

(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.'

1) The salved value of the salved vessel and other property must be considered. The value is the ceiling of a salvage payment in most circumstances. According to the common international shipping practice, the higher the value of the salved property, the higher the salvage payment should be. The salvage payment should not exceed the total value of the vessel and cargo on board the vessel as salvaged by the salvor(110). The vessel owner and cargo owner do share no joint liability towards the salvor, and they share the salvage payment according to the proportion of the value of their property in the total value of the property salvaged by the salvor. The total value is the estimated value of the vessel and cargo saved. The estimated value must be determined by a registered assessor in pursuance of the market prices of the place where the salved vessel and cargo are delivered to the owners. If the salved vessel or other property is auctioned, their total value is the actual income from the sale, deducting from it the taxes, customs duties, survey costs, quarantine charges and other expenses, such as loading, storage, assessment and auction. The personal belongings of the crew members and hand luggage of passengers are not regarded as salved property and cannot be counted for the calculation of the total value of the salved property. The value of the freight saved refers to the freight which will be earned by the vessel owner from the cargo saved, deducting from it the total expenses to be paid by the vessel owner in order to earn the freight.

2) The salvor's efforts and skills applied for the purpose of preventing and minimising marine environment damage must be considered. This requirement is consistent with Article 14 of the *Convention*, which sets out the concept of 'special compensation'. The purpose of Article 14 is to protect the marine environment for the common interest of human society(111).

3) The result of a salvage operation must be considered. This reflects the traditional 'no cure-no pay' principle. The purpose of salvage is to save the vessel, other property and lives from the danger threatening their

(110) See *KML*, Article 235/2 which provides that:
'Under any circumstances. the remuneration value shall not exceed the value of the things being rescued.'

(111) KML, Article 241 does not mention as a criterion the skill and efforts of the salvors in preventing or minimising damage to the environment.

safety. Thus, compensation to the salvor is linked to performance. The salvage result also reflects the level of due diligence exercised by the salvor, which is one of the basic obligations of the salvor.

4) The nature and degree of the danger from which the vessel and other property concerned are salved are a relevant element for fixing the salvage payment. The higher the danger is, the more valuable and more risky the salvage operation is. *KML* does not set out specific criteria for assessing the degree of danger in a salvage operation.

5) The skill and efforts of the salvor in salvaging the vessel, other property and life are relevant for determining the salvage payment. A skilful salvor usually produces a better salvage result than an inexperienced salvor. Similarly, a good effort should normally produce a greater success. However, sometimes the measure of success obtained by a salvor may not fairly and reasonably reflect the skill and efforts exercised by the salvor. Therefore, there is a need to consider the level of the skill and efforts of the salvor when fixing the sum of salvage payment. Appropriate compensation should be made to the skill possessed and efforts made by the salvor in performing the salvage contract.

6) The time used and expenses and losses incurred by the salvor must be taken into account for the determination of the salvage payment. This element is relevant to the compensation made to the salvor for the loss of time and financial expenses incurred for the purpose of carrying out the salvage operation. This type of compensation is not relevant to the principle of 'no cure-no pay'. Such compensation does not represent profit received by the salvor from performing the salvage contract.

7) The risk of liability and other risks run by the salvor or his equipment are one of the elements to be considered for fixing the salvage payment. The salvor may sometimes put himself at risk by providing salvage assistance to another vessel or other property. A salvor running a high risk in providing salvage assistance should be encouraged and properly acknowledged, especially when such assistance is crucial. More compensation should be given to a vessel running a higher risk than a vessel running a smaller risk.

8) The promptness of the service rendered by the salvor is a relevant element. Encouraging the salvor to provide prompt and effective salvage

assistance is one of the major considerations for making salvage payment. Thus, how prompt the salvor responds to the request for assistance from the vessel in distress must be one of the elements for fixing the payment. Particularly when marine environment protection is one of the crucial concerns for maritime salvage, timely salvage assistance appears to be important.

9) The availability and use of vessel or other equipment intended for salvage operation is also a relevant element. The effectiveness of a salvage operation may be affected by the availability of the salvage vessel and equipment. To maintain the vessel and equipment and keep them available are costly. Therefore, due allowance should be made for the availability of the vessel and equipment in the total salvage payment payable to the salvor.

10) The state of readiness and efficiency of the salvor's equipment and the value of the equipment in the salvage operation need also be considered when determining salvage payment. This consideration is relevant for encouraging the salvor to maintain equipment adequately. The actual contribution of the equipment to the success of the salvage operation must be considered in considering how much compensation should be made to the salvor for efforts to keep the equipment ready for any possible salvage operation.

Special Compensation under the Convention

Article 14 of the *Convention* sets out the concept of 'special compensa- tion'(112). The purpose of providing special compensation is to

(112) Article 14 of the *Convention* provides that:

'1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor. =

compensate the salvor for contributions in preventing and minimising environmental damage.

In the light of Article 14, the concept of 'special compensation' can be understood from the following aspects:

1. 'Special compensation' means compensation given to a salvor for efforts to salvage a vessel or other property which has become environmentally risky because of the maritime danger threatening its safety.

2. 'Salvage expenses' refers to the total of reasonable cost incurred by the salvor for carrying out the salvage operation and the reasonable expense arising from the actual use of the salvor's equipment and personnel in the salvage operation. When fixing the sum of salvage expenses, the promptness of the service rendered, the availability and use of the vessel and other equipment intended for salvage operations and the state of readiness and efficiency of the salvor's equipment and the value therefore must be given due considerations.

3. 'Special compensation' represents the minimum compensation a salvor, who has completed a salvage operation to rescue a vessel or other property threatening to harm the marine environment, is entitled to receive. Therefore, if the salvage payment calculated in pursuance of Article 14 is less than the 'salvor's expenses' calculated under Article 13, the salvor is entitled to claim a sum of 'special compensation' equivalent to the 'salvor's expenses'. The principle of 'no cure-no pay' does not apply in such circumstances. The provision of special compensation enables a salvor to claim the difference between a salvage payment fixed under Article 13 and the salvage expenses fixed under Article 14. For the

= 3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.'

same reason, the special compensation is payable only when the sum of special compensation calculated under Article 14 exceeds the sum of salvage payment received by the salvor under Article 13, and the salvor can only claim the difference between the two sums of payments.

4. The sum of special compensation can be increased to exceed the salvage expenses if the salvor has succeeded in preventing and minimising the environment damage that might have been caused by the salved vessel and other property. In most cases, the part of special compensation awarded for the salvor's contributions to the environment protection is 30 per cent of the salvage expenses. The court or arbitral tribunal determining the sum of special compensation under Article 14 is entitled to award a sum of special compensation up to 100 per cent of the salvage expenses incurred in the same salvage operation.

5. The right to claim special compensation can only be exercised against the vessel owner, who has a right of recourse against the owner of other property. The right of recourse may be subrogated by the insurer who has compensated the loss of the vessel owner under the relevant vessel insurance contract.

6. The salvor loses the right to claim special compensation under Article 14 if the salvor has failed, due to his or her own negligence or fault, to prevent and minimise the environmental damage of the salved vessel and other property. The right to claim special compensation may be deducted in proportion with the degree of the salvor's fault and negligence in the salvage operation.

Article 14 applies only to the salvage assistance provided to the vessels falling under Article 1(b) of the *Convention*. Salvage operations carried out for rescuing a government or military vessel are not subject to Article 14. In most cases, reasonable compensation should be awarded to the vessel which has succeeded in preventing and minimising environmental damage in the rescue of a government or military vessel.

5.2. UNDER ENGLISH LAW:

English Courts regards the reward of salvage services not merely as compensation to be meted out "*pro opere at labore*" or according to the exact amount of benefit conferred in the particular case, but also as the

proper subject of important consideration of a public and general character.

"Some circumstances are always material for consideration, and these have been ascertained by experience and the Court has for its guidance a long cause of judicial decision to assist it in coming to a proper conclusion in each particular case."(113)

The "material circumstances" may be classified as follows:

As regards the salved property:

(1) the degree of danger, if any, to human life.
(2) the degree of danger to the property.
(3) the value of the property as salved.

As regards the salvors:

(1) the degree of danger, if any, to human life.
(2) the salvor's skill and conduct.
(3) the degree of danger, if any, to property employed in the salvage service and its value.
(4) the time occupied and work done in the performance of the salvage service.
(5) responsibilities incurred in the performance of the salvage service.
(6) loss and expenses incurred in the performance of the salvage service.

Where all or many of these elements are found to exist, or some of them are found to exist in a high degree, a large reward is given. Where a few if them are found, or they are present in only a low degree, the salvage remuneration awarded is comparatively small.

5.2.1. As regards the salved property:

i. Degree of danger, if any, to human life on salved vessel:

In ***The Thomas Fielden***(114) Dr. Lushington said "... I can come to the conviction that when human life has been at stake even for a short time, it is the duty of the Court amply to reward the persons concerned; first because from the necessity of the case, a very great reward should be given wherever there has been a sacrifice of human life, and secondly,

(113) Per Lindley LJ in ***The City of Chester*** (1884) 9 P.D. 182, 202.
(114) (1862) 32 L.J. Adm. 61,62.

that human life is above all other considerations, and ought never to be exposed to unnecessary hazard and risk. These are the principles."

ii. Danger to property salved:

The circumstances of danger which may have to be considered are obviously infinite in their variety. Among these may be the character of the salved ship, her condition of seaworthiness, her motive power, the number, capacity, health and spirit of her crew, the knowledge and skill of her commander, the season of the year, the weather, the character of her cargo, and so on.

iii. Value of the salved property:

As Lord Esher, M.R., pointed out in ***The Lindfield***(115) "the value of the property saved is the most material and important consideration, "and "for in proportion to that value is the benefit to the owner, and that is one of the primary principles in settling the amount of remuneration," but "the Court must not be induced by it to award a sum which is out of proportion to the services of the salvors."(116) Where the property salved is large, the amount of the reward usually bears a much smaller proportion to the value of the property than in cases where the property saved is small. The reason for this is that in the case of property of small value a small proportion would not hold out a sufficient consideration, whereas in cases of considerable value a small proportion would afford no adequate remuneration(117).

Lindley L.J. said in giving judgment in ***The City of Chester***(118)that it is obvious that whilst a small percentage on a very large value might be an ample remuneration in one case, a very large percentage on a small value might be a very inadequate remuneration in another case.

In one important case called ***The Amerique***(119) the Privy Council enunciated the law in the following terms: "The rule seems to be that though the value of the property salved is to be considered in the estimate

(115) (1894) 10 T.L.R. 606.
(116) Per Gorell Barness J. ***The Glengyle*** (1898) P. 97, 103.
(117) The Blenden-Hall (1814) 1 Dods. 414, 421.
(118) (1884) 9 P.D. 182, 202.
(119) (1874) L.R. 6 P.C. 468.

of the remuneration; it must not be allowed to raise the *quantum* to an amount altogether out of proportion to the services actually rendered.''

In ***The Queen Elizabeth***(120) claims for salvage were made on behalf of the owners, masters and crew of various tugs in respect of services rendered to the ''Queen Elizabeth'' which ran ground just outside Southampton Water. Her sound value was £6, 000,0,00, her salved value £5,983,000, and that of her cargo £225,000, making a total value £6,208,000. Willmer, J. in delivering the judgment said: ''I am not saying that you can measure salvage awards as sums in arithmetical proportion in relation to the salved property when you have value of the magnitude that you have in this case, but equally it could not be right to say that the addition of subtraction of a few millions would make no difference whatsoever. Thus, I think that the increase of value must involve some, although possibly not great, increase in the award over and above that might have been awarded had the value been much smaller.''(121)

Further, where the property salved is of great value, the Court of Admiralty, in assessing the award, looks not only at the merits of the service, but to the large considerations of public interest.

5.2.2 As regards the salvors:

i) Degree of danger, if any, to human life on salving vessels:

It has been stated already that the court attaches a very high value to any danger to human life which may exist whatsoever on board the salving or the salved vessels. Where it exists in the case of the salved vessel, this is an important factor in the reward(122).

ii) Salvor's skill and conduct:

In regard to all salvors, the skill and knowledge displayed by them bears a proportion in the assessment of the salvage reward.

In the same way, unskilfulness tends to reduce the award. Dr. Lushington in ***The Cape Packet***(123) said that ''a person undertaking the

(120) (1949) 82 Ll.L.Rep. 803.
(121) Total £43,500 in respect of the 12 tugs represented.
(122) ***The Bartley*** (1857) Swab. 198.
(123) (1848) 3 W. Rob. 122.

performance of a salvage service is bound to exercise ordinary skill and ordinary prudence, in the execution of a duty which they take upon themselves to perform, according to their station in life."[124]

In considering whether a salvor has shown reasonable skill and knowledge, the Court inclines to the lenient view and takes into favourable consideration any special circumstances which tend to exonerate the salvor from blame[125].

It is understood that the goods conduct of salvors, their promptitude, courage and diligence, according to the degree in which these qualities are displayed, enhances their claim to a liberal award.

On the other hand, it is reasonable to make a reduction of the award, as it was held in ***The Magdalen***[126] when any misconduct, negligence or damage has occurred on their part during the services, or on the part of their agents.

iii) Degree of danger, if any, to property employed in the salvage service and its value:

The degree of danger to property used in the performance of the salvage service and its value are elements in the character of the salvage claim. They both deserve recognition not only in justice to the owner of the salving vessel, but also in the public interest, and in order to encourage the owner of vessels to render salvage services.

However, it is only considered where the value of the property is very great. It cannot be an argument against the amount to be awarded that it exceeds the value of the property put in peril in performing the services[127].

iv) Time occupied by the salvage service:

It is obvious that if the service is dangerous, the duration of labour in its performance will enhance the salvor's reward[128].

In the same way, where there has been a long but easy towage of a disabled ship by a powerful steamer in favourable weather, it seems that

(124) The Lockwoods (1845) 9 Jur. 1017, 1018.
(125) The Dygden (1841) Not. of Cas. 115.
(126) (1861) 31 L.J. Adm. 24, 26.
(127) The Fusilier (1865) Br. & L. 341, 350 P.C.
(128) The Andalusia (1865) 12 L.T. 584.

the time occupied appears to deserve consideration in the element of risk or skill.

Where a ship goes out in consequence of a signal to render assistance to a ship in distress, the time[129] and expense in doing so ought to be considered in the assessment of the award.

In general, any kind of work done in the performance of the salvage service must be considered for the award, although such kind of work is not enhanced by the exhibition of scientific or nautical skill. For example, in ***The Watt***[130] the ship's agent who superintended the salvage operation which consisted in the mere discharge, landing and custody of the cargo, was held entitled to salvage, although the reward was very moderate.

Similarly, when the question of apportionment is considered, the sailor ordinarily receives less share than the officer of the salving ship.

v) Responsibilities incurred in the salvage operation:

The responsibilities that the salvor incurs in regard either to pecuniary interests affecting his own property, or to his obligations of contract or duty to other persons, is considered in the assessment of the reward.

For example, if the shipowner is not protected by reason of a deviation made only in order to save property, he is responsible unless his insurance policy and his contracts for the carriage of the cargo contain express provisions, giving his ship liberty to make any kind of deviation. The question was finally stated by the case of ***Scaramanga v. Stamp***[131] in which it was decided that the owner of the salving ship had the right to have the risk of loss considered in the assessment of the reward.

vi) Losses and expenses of the salvor:

Sometimes the salvor incurs losses and expenses in the performance of the service; the court has stated in various judgments, the salvor's right to be compensated for them[132]. The most important point are:-

(129) The Graces (1844) 2 E. Rob. 294, 301.
(130) (1843) 2 W. Reb. 70,71 per Dr. Lushington.
(131) (1880) 5 G.P.D. 295,305.
(132) The City of Chester (1884) 9 P.D. 182.

(i) The fact of damage, expense or loss of earnings ought not to be disregarded in the assessment of the amount of reward.

(ii) All the circumstances must be considered.

(iii) It does not mean that because the salvor proves such damages, expenses or losses, the court should fix a sum high enough to cover them.

(iv) In a meritorious salvage service where the salvor has incurred serious pecuniary loss and where the value of the property saved is ample, he should be remunerated with a sum sufficient both to reward him for his risk, labour and skill, and also to cover damages during the rendering of the service. Evidence of such damages, expenses and losses ought to be received by the judge, so that they may be ascertained with precision.

(v) The amounts of damage, expense or loss ought not to be taken as "moneys numbered," that is to say, as an amount to be added to the amount of the award for actual salvage services. If the Court gives the amount of the damage, loss or expense specifically, it will take care not to give the amount twice over by again considering them when it comes to fix the amount due for salvage remuneration proper, that is, the remuneration for risk, etc., in the service[(133)].

In all cases where the salved and salving vessels are not in the same ownership, the owners, master and crew of the salving vessel can claim against the salved ship, her cargo and freight; and such a claim generally is the result of obtaining a gross sum, covering both the salvage remuneration pure and simple and also any allowance for losses and expenses of the salvors.

Sometimes it may be desirable and proper to make a separate assessment in cases where the owner of the salving vessel has incurred in losses and expenses, by reason of them he receives a high proportion of the reward. This is so only in cases where the Court is requested to make such apportionment[(134)]. Apportionment between the owner and the master and the crew may then require to be made later.

(133) The De Ray (1883) 8 App. Cas. 557, 566.
(134) The City of Chester (1884) 9 P.D. 182.

Again, there may be, as there was in the case of ***The Sunniside***(135) an antecedent agreement between the different salvors to share the salvage reward in certain proportions. In this case, such apportionment should be required to be made by the Court, for it would be unjust that, at the expense of one salvor whose ship has been injured, his co-salvors should derive a benefit from the award being enhanced by an allowance for the loss which he had sustained.

There is still another case which gives reason to fix the amount of compensation separately. In ***The Caladonien Steamship Co. v. Hutton***(136) where the underwriters on the salving ship had paid the shipowner the cost of the repairs rendered necessary by the salvage service. It seems just that they ought to be enabled to recover over from him any amount which the Court might award him in respect of the cost of such repairs.

For what expenses the court may indemnify salvors:

The only expenses for which a court may indemnify them are:

(1) expenses in the furtherance of the salvage service and before the vessel assisted has been placed in a position of safety; and

(2) expenses directly occasioned by the performance of the salvage services; e.g., the cost of repairing the salving vessel.

6. APPORTIONMENT OF THE SALVAGE REWARD AMONG SALVORS

Article 238 of the *KML*(137)

'1 - The two parties shall determine the compensation amount otherwise it shall be specified by the court.

2 - It shall be determined in the same manner the ratio of distributing the relevant compensation between the ships participating in the assistance or rescue operations as well as the distribution ratio between the owner of each ship. its shipmaster and the crew.

(135) (1883) 8 P.D. 137.

(136) (1847) Not. of Cas. 156.

(137) Article 238 of the *KML reads in Arabic as follows:*

"١- يحدد الطرفان مقدار المكافأة وإلا فتحدده المحكمة.

٢- وتحدد بالكيفية ذاتها نسبة توزيع المكافأة بين السفن التي اشتركت في عمليات المساعدة أو الإنقاذ، وكذلك نسبة التوزيع بين مالك كل سفينة وربانها وبحارتها.

٣- وإذا كانت السفينة التي قامت بالإنقاذ أجنبية فيتم التوزيع بين مالكها وربانها والأشخاص الذين في خدمتها طبقا لقانون الدولة التي تتمتع السفينة بجنسيتها".

3 - In case of a foreign ship carrying out the rescue operations. the distribution between the shipowner. its shipmaster and the persons serving therein. shall be made in accordance with the laws of the country which the ship entertain its nationality.'

Article 15 of the *Convention* provides that:

'Apportionment between salvors

1 - The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2 - The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.'

6.1. Apportionment among Owner, Master and Crew of a Salving Vessel.

6.1.1. Owner's share:

The apportionment between the owners of a salving vessel, on the one hand, and the master, officers and seamen, on the other hand depends upon the nature and circumstances of the service.

In the days of sail, the shipowner's share was comparatively small, but with the advent of steam, the 'principal salvor' is really now the ship itself. The shipowner's share is relatively much greater. It is customary these days for an ordinary apportionment to be that the shipowner takes about three-quarters, but " depend upon the particular circumstances, there is no such rule," as Lord Esher MR remarked in ***The Gipsy Queen***(138) In this particular case an award reduced by the Court of Appeal to £800 was apportioned: £620 to owners, £50 to the master and £130 to crew.

6.1.2. Master's share:

Because of his peculiar burden of responsibility in undertaking and in conducting the salvage operation, the master is entitled to receive out of the salvage reward a special separate recompense(139).

(138) [1895] P. 176, 177.

(139) Per Sir R. Phillimore, ***The Charles*** (1872) L.R. 3 A. & E. 536, 538.

The share allotted to him is usually about one-third[140] of what remains after deduction of the owner's share. There is, however, no rule,[141] and the amount of recompense will vary according to the particular facts of each case. In ***The Empire Gulf***[142] Willmer J. held that war bonus payment, which every member of the crew was receiving during and for some time after the war irrespective of rank or status, should not be taken into consideration in apportioning the crew's share of the salvage award; the correct method of apportioning the crew's share (including the master) was on the footing of their respective basic wagers. In ***The Southern Venturer***[143] where Lord Sorn held that bonus payments calculated in proportion to the success of a whaling expedition were to be disregarded in apportioning among the crew (and master), it was held that the awards should be based on basic wages.

6.1.3. Crew's share; officers and seamen:

The apportionment, as to the officers and seamen, usually takes the form of a lump sum to be shared by them according to their rating. An exception may be made in respect of navigation officers, whose rating is lower than that of engineers,[144] by a direction that for the purpose of apportionment they should be treated as rated equally with the corresponding rank of engineers. In the case of radio-officers who are not paid by the ship, the usual practice is that they rank as second or third officers[145].

"Runners," that is men engaged as crew for a single "run" shared in the award in ***The Rasche***[146] in the proportions in which they would have shared had they been able seamen. In ***The Persia***[147] their shares were directed to be calculated on the basis of the ratings of the members of the crew whose places they were filling at the time of the salvage services.

(140) Resco's ADM. Pr. (5th ed.), 163.
(141) [1948] P. 168.
(142) [1948] P. 168.
(143) [1953] 1 Ll.L.Rep. 428.
(144) The Italia (1906) 10 Asp. 284.
(145) The Albionie (1941) 70 Ll.L. Rep. 257.
(146) (1873) L.R. & A.
(147) [1902] W.N. 210.

There appears to be no rule with regard to apportionment among apprentices, midshipmen or cadets. In ***The Beulah***(148) Dr. Lushington decreed that the share of an apprentice should be one half of those of the seamen. In ***The Rasche***(149) however, Sir Robert Phillimore held that the shares of an apprentice should be calculated as if they were able seamen. In ***The Elpenor***(150)midshipmen carried at nominal wages were allowed to rank as able seamen.

Pilots on board a pilot cutter when salvage services were rendered by the cutter have been held not to be members of the crew so as to share in the salvage reward. It appears that if they had claimed in the salvage actions passengers who rendered services they might have obtained part of the reward, but the only claims were by the owners, master and crew of the cutter. Not being members of the crew they were entitled to nothing in the apportionment proceedings, and the motion was dismissed with costs.

The position of radio officers on the articles but neither employed by the shipowner, save as regards the contractual relationship between him and the wireless company, nor paid by him, would have to be a matter of doubt. It is a general principle that the rule of participation in salvage awards does not extend beyond those who are really in the employ of the owner of the salving ship, even if, as in ***The Coriolanus***(151) they are on the ship's articles, unless they performs personal services.

In ***The Elpenor***(152)Langton, J., was asked to make a special award to the sole wireless operator on board the salving vessel who had remained continuously on duty for twenty-four hours. In the course of his judgment the learned judge said: "One thing that appears from the narrative is the importance of the wireless officer... In a case of this class one has to reckon that a very great strain is put upon these men, and one is glad that apparently they always respond to it. I have been asked to deal separately with his position, and I am very glad to do so."

(148) [1842) 1 W. Reb. 477, 478.
(149) (1873) L.R. 4
(150) (1934) 47 Ll.L Rep. 183.
(151) (1890) 15 P.D. 103.
(152) (1933) 47 Ll.L. Rep. 183, 184.

The rule of participation certainly extends to other non-navigating members of the crew. In ***The Spree***(153) the doctor, four stewards, the stewardess, two cooks, the baker and two cabin boys on board the salving steamship who took no part in the navigation of the ship were awarded half shares according to their rating.

But in the absence of a special direction by the Court the rule of participation does not appear to extend beyond these who are really in the employment of the shipowner.

In respect of boat's crews and engineers, the Court may order that they are to receive extra shares for additional work or hardship.

In some cases the Court of Admiralty has apportioned to a mate or to a common seaman an amount exceeding the reward of the master of the salving vessel, only when it is considered that they should be specially rewarded for their skill or hardship(154).

6.2. Apportionment among various salving Vessels or set of salvors:

There may be cases where apportionment has to be made among several salvors, between whom there is no association outside the salvage service such as exists between whom there is no association outside the salvage service such as exists between the member of the crew of a salving vessel. In such cases the Court may fix the share of each salvor in the salvage fund by ascertained what has been the value of his services including any responsibility incurred, as well as the skill or risk, as compared with those of his co-salvors(155).

Each case has to be considered according to its particular circumstances.

Where the services of the salving vessels or set of salvors have been practically contemporaneous the apportionment is generally determined by the same consideration as affect the assessment of the total salvage award.

Where the services of the different salving vessels or set of salvors have not began together, and the second or further vessels or sets of

(153) [1893] P. 147, 152, 153.
(154) The Santigo (1900) 9 Asp. M.L.C. 147.
(155) The San Demstrio (1941) 69 Ll.L. Rep. 5.

persons have taken up a salvage service which the first salvors, after rendering some assistance, have been obliged by the force of circumstances to discontinue, the relative share of each in the total award will be more or less affected by the consideration that the first salvors are no grounds of public policy, always to be treated with special liberality in the apportionment.

It may be the case that a salving vessel or set of salvors have been dispossessed, against their will, by others whilst they are engaged in salving the vessel is spite of their perseverance in the services already begun. In these cases the Court allows the claim only if it clearly proved that there was "reasonable cause" for the dispossession.

In the absence of such proof, the burden of which lies upon the second or later salvors, the Court considers the dispossession to be wrongful and treats the subsequent services as benefiting of those who have been dispossessed.

The meaning and affect of "reasonable cause" for dispossession has been considered be Lord Stowell in ***The Blenden-Hall***(156) as if "not actual, at least an apparent necessity... I do not say any absolute necessity, but such as, under all circumstances, and the impression they were calculated to make, would justify the interference..."

If the Court finds that the dispossession of the original salvors was due to an honest, although erroneous opinion as to its necessity on the part of those who claim as second salvors, it will not decline to allot them some small salvage reward, whilst awarding to the original salvors the same amount as it would have awarded to them if they had completed the service themselves.

Again, if the services of the original salvors are not continuous but intermittent, although it is not proved that they could not by themselves have completed the salvage, the Court may allot to the second salvors, who come in and act against the wish of the original salvors, some share in the reward.

(156) (1814) 1 Dods. 414.

7. COCLUSION:

Salvage refers to an act of a vessel to rescue another vessel, cargo and life from immediate danger threatening their safety. The origins of salvage in maritime law are both ancient and obscure. Evidence of salvage reward is found in the Rhodian Law of approximately 800 B.C.

A study of the salvage under English law, *KML* and the *Convention*, reveals a close similarity between them.

a) The subject of salvage in the three systems is the ship, the freight, and the cargo on board the ship. A ship must be within the meaning of a ship as defined by them.

Under the three systems no salvage reward is granted to a person who rescues human lives, whether they are endangered on a ship or at risk at sea. Rescue of human lives are left to the human conscience and is not supposed to be motivated by financial gain. However, a person who was engaged solely in rescuing human lives in the course of a salvage operation is also entitled to a fair share of the fund. To that extent, a life salvor acquires a direct right against the person whose property is salved.

b) A ship to be salvaged must be actually in distress at sea. The danger to a ship does not have to be imminent, but must be so serious that she cannot overcome the danger by herself. The ship and the cargo need not be in common danger, and salvage services may be rendered to the cargo only even when the ship is in no danger.

c) Salvage services must be given voluntarily. A person who carries out service in pursuance of a contract has no claim for salvage reward. However,

a person, who has a duty to render certain services relating to a ship, but is discharged from such duty because of the grave danger involved, may then become a salvor by providing extraordinary serjust as strangers to the ship.

d) The three systems require that the salvor must succeed in saving maritime property in distress in order to claim a salvage award. If he fails to rescue the property, no matter how much effort and expense he laid out, he may not claim remuneration for the service. Success must be brought about by the services rendered by the salvor. For this reason, it is

commonly said that salvage services are performed on a no cure, no pay basis.

The amount of remuneration for salvage is limited to the value of property saved, unless the parties agree otherwise. For this purpose, property is regarded as being saved when it is no longer in danger of sea perils.

e) English and Kuwaiti courts are to decide how much a salvor is entitled to claim as remuneration for salvage services, unless the parties agree to an amount. The courts, in arriving at an equitable sum, takes into account all of the circumstances of the salvage services. In particular, courts will look to the degree of danger, efforts and expense put in to the salvage, the value of the property salved, and efforts made to prevent environmental damage.

f) When a salvage operation is carried out jointly by several salvors, each salvor is entitled to a fair share of the fund in proportion to his contributions. When the parties cannot agree to apportionment, a court decides the share of each salvor. In so deciding, courts are guided by the same considerations as those taken into account when assessing the amount of award.

When a ship is engaged in a salvage operation, a fair share is allocated to the shipowner, taking into account the damages and expenses he bore, and then the remaining sum is divided equally between the master and the crew.