"Liability In Maritime Collision Case: How Is Fault Apportioned?"

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DECLARATION OF ORIGINALITY

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Almost 25% of the maritime claims arise from collision. With the development of technology in the maritime sector though the number of collision incident reduces, but the extent of damage in case of a collision has increased due to high speed and steel hull of the vessels. The modern equipment in the navigation assists to find out the blameworthy ness more accurately than earlier. On the contrary, the legal framework to establish collision liability and apportionment of fault is not yet well structured and developed.

The objective of this study is to find out the legal basis for establishing and the apportionment of collision liability from the precedence of the Admiralty courts. It is also intended to show the importance of the International Convention related to preventing collision at sea in determining collision liability and its preventive and deterrent role in relation to collision accidents. This dissertation aims to unify the rules of apportionment of liability in collision cases.

The mixed research methodology of quantitative and qualitative research and analysis has been utilized in this paper. The solution of the problem is to systematically analyze the data of chronological development of the subject matter and then categorize the incidents of collision and the apportionment decided for those cases. The research findings of the rules of apportionment of liability in collision cases are highly contributory in the field of legal knowledge also the research is found very useful to the mariners, maritime lawyers, Judges, Ship-owners, Ship managers, agents, operators, charterers, brokers, P&I clubs, hull underwriters, salvers and many other interested parties in the maritime field.
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CHAPTER 1

INTRODUCTION

1.1 Background

The sea seems big enough so one would expect collision to be something of a rarity, but unfortunately there are many collisions between ships on the high sea, rivers and channels. Though the collision numbers are reducing now days due to modern technological development on board, but the extent of damage where there is a collision has become extremely high due to the speed and steel hull of the ship. The after effects of a ship’s collision on marine and human life are immeasurable in addition to the detrimental environmental effects. There have been accidents in past where ships has sank within minutes of collision, giving no chance to the people on board to escape. Studies have shown that 89% of the collision casualty is the result of sheer human error. So the development of collision liability rules together with collision prevention regulation is badly required to reduce the collision casualty. Since 1910 the apportionment fault rule gave good opportunity to the court to investigate into the collision incident and ascertain the liability of each ship according to their fault. Such system of law also assisted to develop the interpretation and application of the collision regulation. I have tried to find out more equitable approach of apportionment by measuring the degree of fault in relation with collision regulation. So I hope that, this dissertation will play key role in two ways; first for lawyers and judges to apportion the liability in collision case with more accuracy and justice, second for mariners to understand the collision regulation better in respect with collision liability. In both cases the prime goal of this huge effort is to reduce the number and severity of collision casualty.
1.2 Legal History

General admiralty law recognizes negligence as an actionable wrong similar to the land-based actions. Before maritime convention act 1911 there was a difference between marine and shore based tort law. In admiralty it was established that where two ships were blame by violating any statutory or general provisions for a collision claim, the loss was divided equally among the parties liable. This rule was abolished and replaced by modern rule that the loss is to be divided in proportion to the degree of blame of each ship. The court considers blameworthiness (culpability) and causative relative potency of the fault by the ships to make an assessment of the liability. So this development of determining collision liability plays an important role in the shipping industry in two ways. One is preventive, giving birth to a system of rules focused to prevent the risk of collision between vessels. Another is civil nature of judicial action, translated into a law system with the function of guaranteeing the compensation of losses caused by a vessel at fault, which is the center of interest of this study.

The recent development in shipping has heightened the need for study in ascertaining the collision liability. Because when two ships collide, the accident usually causes enormous financial loss, claims for human lives, claims for environmental pollution and leads to protract legal wrangling. The legal issues involved in a collision have also been proven to be quite complicated, as many parties tend to be involved with different interest and risks. The collision claims are based on the Law of tort. But the traditional tort laws are not capable to cope up with the maritime tort liability. Usually, at shore the defendant of a tort action shall be the party responsible for the damage but in maritime law, many different actors with different responsibilities might be present. Foremost, it must be determined who should be held responsible for the collision and how the loss should be apportioned between the owners of two colliding ships.
1.3 Objectives Of The Topic

The main purpose of this study is to develop an understanding of collision liability between vessels, especially to investigate the actual apportionment of liability. The scope of the work is to find out the liability between vessels, not liability between vessels and bridge or docks; neither liability to owners of cargo, passengers or other third parties. This research intends to determine whether there is any general tendency of apportionment of liability by the admiralty court and also if there is different mode of apportionment what are the characteristics. Also the second objective of the work is to critically analyze and co-relate between understanding and utilization of Rules of the Road among the mariners and lawyers, which is the special point of interest to me as I have experience in working at sea as Master Mariner and also at shore as Maritime Lawyer.

The research topic is very much timely and has focus of interest in the shipping sector. The mariners, maritime lawyers, Judges, Ship-owners, Ship managers, agents, operators, charterers, brokers, P&I clubs, hull underwriters, salvers and all interested parties involved in any collision case will be highly motivated from this research paper. The legal framework on apportionment of liability will be able to contribute in the field of legal knowledge; also the research will be practically very useful for the interested parties mentioned above. Though the apportionment theory is not new but still there are plenty of scope of work with the aim to uniform the law on apportionment of liability with the development of modern shipping world.

1.4 Research Methodology

The research will be based on the analysis of equality and fairness among the vessels collided with each other. The important feature is the person comes forward for compensation must come with clean hand. Mixed research methodology of quantitative and qualitative research and analysis methods are utilized being more appropriate for this specific
topic. The apportionment of liability theory is being used for nearly 100 years and by this
time the shipping has developed in various ways. As such the research has scope to lead
either discovery of a new theory or refinement of an existing theory. The majority of the
research is subjective and involves more explicit judgment or interpretation or critical
evaluation of the problem.

1.5 Limitations

The blameworthiness and the relative causative potency to ascertain the
apportionment of the liability is depend on the violation of collision regulation by the vessel.
Whereas the rules are not specially designed for finding the liability, fault or damages. Also
there may be difference of understanding of the collision regulation between the mariners and
lawyers, which is the main limitation of this research.

Another limitation is the judicial decisions may vary country to country. Also another
problem is that every collision case is unique and individual, there is very less complete
similarity among the cases, as such to analyze the cases and searching for any standard
pattern or law for apportioning the liability will be very difficult.

1.6 Conclusion

The debate of the research topic is whether there is any strict rules or factors to
ascertain the collision liability and apportionment of fault. Though the answer is negative but
the hypothesis is to find out any formulation or fine weight on the basis of judicial decisions.
The tentative solution of the problem is to systematically analyze the data of chronological
development of the subject matter and then categorize the incidents of collision and the
apportionment decided for those cases. Also to construct a format of apportionment rule if
require the interpretation of the rules of the road to be revised.
CHAPTER-2

COLLISION LIABILITY BETWEEN VESSELS

2.1 Development Of The International System Of Collision Liability

Collision liability can be defined as the legal obligation of compensation for damages arising out of a collision between vessels. The basic International law applicable to determine the attribution of collision liability is embodied in the 1910 Brussels Collision Convention. The entire system of the attribution is based according to the principle of “Proved Fault”.

Previously the liability was incurred on the basis of a rule of presumption of fault, which imposed an obligation upon the court to find fault for the collision by reason of mere breach of a collision regulation, without proof of negligence. After implementation of Maritime Conventions Act (MCA) 1911, the presumption of fault rule was abolished. Since then the principles of the law of negligence is applicable where the claimant must establish that there was a duty of care, there was a breach of that duty by the defendant, which caused the collision, and also that the breach caused the damage claimed, which is subject to the remoteness rule. Thus, the same rule of common law pertains also in admiralty that the claimant has to make out, by adducing evidence, a prima facie case of negligence by the defendant.

2.2 Fault Of Vessels

The Maritime Convention Act 1911 refers to the fault of “a vessel”, but this simply means fault on the part of those responsible for the vessel. Warrington J explained this: “The . . . Act personifies the vessel, treating it at one time as the actor, at another as suffering damage or loss, and at another as liable to make good such damage or loss. The truth is, of course, that for the purpose of ascertaining the legal effect, the word in one context connotes those responsible for the navigation of the vessel; in another those who are interested in her,
her cargo or freight; and in another those who are in law answerable for the conduct of those in charge."

However, it is clear that “fault” is not limited simply to faults in navigation, and the section applies to other faults as well. Thus The Brandon J held that on the true construction of the Act it extended to faults in management as well.

2.3 Concept Of Collision

Collision means any accident involving two or more vessels, which causes loss or damage even if no actual contact has taken place. The collision without actual contact occurs when one vessel violates navigating rules and causes damage to another vessel, as for example, by proceeding at excessive speed causing another vessel to sink, or compelling the vessel to go out of the fairway and run aground, or negligently dragging down on another vessel so as to compel the other vessel to slip her anchor and chain and put to sea to avoid collision, or causing a collision between her and a third vessel.

2.4 Elements Of Collision Liability

To establish civil liability resulting from a collision between ships the claimant must prove the facts that have given rise to liability incurred due to negligence or want of good seamanship. Since a duty of care exists in determining civil liability of a defendant in collision cases for physical and consequential financial loss, the onus of proof is on the party alleging negligence. The claimant should discharge three elements of the burden in order to establish liability of the defendant, namely:

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1. Cairn-bahn(1914) P25 CA
2. Norwhale vs HMS Eagle(1975) QB 589
3. Lisbon Rules 1987
4. The Royal Eagle(1950)84 LLR543
5. The Bow Spring and The Manzanillo II(2004)1 LLR 647
6. The Port Victoria(1902)9ASP MLC 314
7. Heranger v Diamond(1939) AC94(HL),per Lord Wright
(a) Breach of duty of care (Negligence);

(b) That the breach contributed to the collision (causation in fact); and

(c) It caused the damage claimed, which must not be too remote (causation in Law).

2.4.1 Breach Of Duty Of Care (Negligence)

The duty owed to other vessels at sea is based on the principles of the tort of negligence and, as early as 1823, Lord Stowell stated the essential elements of actionable negligence in collision cases: “Want of that attention and vigilance which is due to the security of other vessels that are navigating the same sea, and which, if so far neglected as to become, however unintentionally, the cause of damage of any extent to such other vessels, the maritime law considers as a dereliction of bounden duty, entitling the suffered to reparation in damages.”

The existence of a duty of care is mostly self-evident. More than ever negligence can be established by application of internationally recognized rules in regard to good seamanship. In 1990, Lord Bridge of Harwich structured the question for the existence of a duty of care in negligence cases in a three-stage inquiry according to which there must be:

First: “A reasonable foreseeability”

Second: “A close and direct relationship of ‘proximity’ between the parties”

Third: “It must be fair, just and reasonable to impose liability”

One of the crucial points is the assessment of negligence. The negligence or breach of duty of care may arise because of:

a) Negligence or lack of proper care or skill on the part of navigator,

b) Violation of the statutory and regulatory rules of navigation

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8 The Dundee(1823) 1Hag. Ad.109,120
9 Caparo Industries plc v. Dickman (1990) 2 A.C.605(HL) at 609
2.4.1.1 Good Seamanship

A maritime collision usually amounts to a tort arising out of negligence to exercise due nautical skill. The test of negligence under maritime law will not be the “ordinary man” but determined rather by an analysis of the “ordinary seaman”. Every seaman has to exercise reasonable skill in order to avoid collisions. Lord Normand defines\textsuperscript{10}: \textit{“The ship must conform to the practice of good seamanship, it lays upon those in charge of her the duty of taking account of all the concrete circumstances of the emergency, and of acting with reference to them in their totality as a skilled seaman of ordinary prudence would act.”}

Consequently everybody considering ex post conducts in regard to collision cases has to put himself in the position of the master and crew. This was expressed in the US case H. F. Dimock: \textit{“(a) Vessel should not ordinarily be held in fault simply because the courts, with cool deliberation, after all the facts, determine that what was done was mistaken. In such cases, a court should put itself in the position of a master at the time of the circumstances involved, and consider that the rights of the parties, when maritime contingencies are difficult and unusual, must ordinarily be settled according to his determination, provided he has suitable experience and capacity, and exercises a discretion not inconsistent with sound and good seamanship.\textsuperscript{11}.”}

\textit{“Dr. Lushington has stated: “We are not to expect extraordinary diligence, but that degree of skill and that degree of diligence which is generally to be found in person who

\textsuperscript{10} The Queen Mary(1949) 82LIL Rep 303, HL
\textsuperscript{11} The HF Dimock(1896),77 Fed 226,229
Accordingly, maritime law requires a professional seafarer to exhibit ordinary presence of mind and ordinary skill.

2.4.1.2 Statutory And Regulatory Rules

So far as civil liability is concerned, the general principal of tort will apply, breach of the regulations is likely to constitute good evidence of negligence, and per Sheen J. “a well run ship will be navigated in accordance with the regulation”\textsuperscript{13}. However there is no presumption that the breach was causative of the collision.

The most important international rules are “The International Regulations for Preventing Collisions at Sea, 1972” and “The International Convention on Standards of Training, and Certification and Watch keeping for Seafarers, 1978”. The collusion regulation is the rules of the road for seamen as well as for maritime lawyers. Most maritime nations have ratified both the Conventions.

2.4.1.3 Local Navigational Customs And Usage

Collision case tends to be fact specific and the circumstances of each case will be controlling. Also a vessel may be held liable for violating a local navigational custom. A party seeking to rely on a custom to establish fault has the burden of establishing that such custom in fact exists. Customs may be relied on only if it does not conflict with statutory rules of the navigation.

2.4.1.4 Unseaworthiness Or Failure Of Equipment

One general demand is the seaworthiness of a ship. As long as the unseaworthiness of a ship causes a collision, the ship-owner of the unseaworthy ship will be faced with liability. In the US case Tug Ocean Prince\textsuperscript{14}, seaworthiness was determined as: “. The vessel must be staunch, strong, well equipped for the intended voyage and manned by a competent and

\textsuperscript{12} Thomas Powll and Cuba(1866),14LT.603 at 603
\textsuperscript{13} in the Roseline(1981) 2, LLP 410
\textsuperscript{14} The Tug Ocean Prince 584 F.2d,1155(2\textsuperscript{nd}. Cir.1978)
skillful master of sound judgment and discretion....” Furthermore the owner’s duty to use due and proper cares to provide a competent master and to see that the ship is seaworthy, any loss occurring by reason or neglect in these particulars is within his privity.

2.4.2 The Breach Contributed To The Collision (Causation In Fact)

No liability will be imposed even when negligent navigation is shown unless it is proved that the negligence was the contributory cause of the collision. A contributory negligence must, however be a substantive factor in bringing about the collision. There may be more than one contributory cause of the collision. Once the claimant proves breach of duty of care by the defendant, he must also prove that the breach caused the collision.

The development of international cooperation generated a system to prevent collisions at sea and also contributed to the determination of causative negligence in regard to ship management, offshore as well as onshore. In case of collision liability between vessels, causation is still basically governed by logical approach developed by lawyers and Judges. Therefore it is more accessible for comparative analysis, which I have tried to do in chapter 4, 5 and 6.

There are many cases exemplifying the point that the breach must have caused the collision; for example, the fact that one vessel was travelling the wrong way in the traffic separation zone was left out of account as it was not causative of the collision.\textsuperscript{15} Similarly, failure by the defendant’s vessel to blast a sound signal on turning her helm to port at the last minute, to avoid collision, was held to be non-causative, as the collision would have happened even if the signal had been given\textsuperscript{16}.

\textsuperscript{15} The Estrella(1977) 1 LLR 525
\textsuperscript{16} The Tempus(1913) P166; also The Stella Antares(1978)1 LLR 41
2.4.3 The Breach Caused The Damage Claimed (Causation in law)

After the elimination of irrelevant factual causes, the court has then to ascertain which of the relevant causes is to be regarded as the cause in law for the loss or the damage suffered. In other words, it has to answer the question whether the defendant is legally liable. It has been sorted out which of the remaining relevant causes have effectively cause the damage. Lawyers tried to circumscribe such causes by using descriptions like proximate, adequate, direct, effective, operative, legal, predominant, or responsible.

To establish the liability the court has to ascertain that the defendant’s fault was an effective (substantial) cause of the claimant’s loss, and that no event amounting to a novus actus interveniens or remoteness of damage has intervened between the two.

2.4.3.1 Novus Actus Interveniens

Whenever any act of the claimant reasonably in response to an accident for which the defendant was at fault, any negligence of the former in trying to mitigate the loss will not break the chain of causation. It was held that the grounding of the barge, without any intervening independent moving cause, was a natural and reasonable consequence of the collision, and that the owners of the steamer were liable for the damages caused thereby.\(^\text{17}\)

This defense will succeed if there is a break in the chain of causation, whereupon the defendant will cease to be liable for what could otherwise be regarded as the consequence of his fault. Lord Wright stated, “To break the chain of causation it must be shown that there is something which I will call ultroneous, something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or extraneous or extrinsic.”\(^\text{18}\)

\(^{17}\) The City of Lincoln (1889) 15 PD 15
\(^{18}\) The Oropesa (1943) P32(CA)
2.4.3.2 Remoteness Of Damage

It contradicts equity if a defendant would be liable for damage that he could not reasonably have foreseen. Lindley LJ touches this issue as, “a defendant would only be liable for damage, which in the ordinary course of things would have flown from his wrongful act”\(^1\). Scrutton LJ summarized the principle: “To determine whether an act is negligent, it is relevant whether any reasonable person would foresee that the act would cause damage. Once the act is negligent, the fact that its exact operation was not foreseen is immaterial\(^2\).” To maintain the chain of causation the court added, “It is a principle of civil liability that a man must be considered responsible for the probable consequence of his act. To demand more of him is too harsh a rule.\(^3\)”

2.5 Damage Caused By Force Majeure Or Inevitable Accident

The liability for collision is fault based. Article 2 of collision convention states that if the collision is caused by “force majeure” (irresistible force), or if its causes are unknown, each party bears its own losses. A force majeure is one, which cannot be controlled by the parties, for example a sudden unpredicted storm of such intensity as to cause a properly anchored vessel to drag its anchor and collide with another vessel.

The defendant pleading inevitable accident must show that the proximate cause of the accident was some extended event which was totally unavoidable, which the party charged with the damage could not possibly prevent by the exercise of ordinary care, caution and maritime skill\(^2\). The question is not whether all that could be done, was done as soon as the danger of collision arose, but whether sufficient precautions had been taken much earlier.

\(^1\) The City of Lincoln(1890)p.15,18
\(^2\) The Res Polemis(1921) 3 KB(CA)560,577
\(^3\) In the case The Wagon Mound (No. 1) and in The Arzew (more recently) the judges diverged from The Res Polemis decision.
\(^2\) The Marpesia(1872)LR 4PC212
The perils at sea though are available in cargo claims but the same pattern rule of inevitable accident is rare in collision case. Moreover the same option had made stringent by providing that any negligence at any time will override the defence of inevitable accident, which is again contradictory to the contributory negligence. The burden of proof for this defence is heavy and has been successful only in a few cases.

2.6 The Defence Of Agony Of Moment

One typical question is that whether a defendant will liable for navigation in the agony of the moment in order to minimize a peril caused by the negligence of the claimant’s servant. Hill J said, “What is demanded of the man who had to choose is that he should exercise judgement and discretion as becomes a reasonable and prudent seaman.”

The agony of the moments defence reduces the standard of negligence. A special perilous circumstance which causes a shortage of time and hence mental pressure have to be taken into account in regard to setting standards of negligence. Therefore a master might be excused despite his failures, which would establish negligence regardless of the agony of the moment. James LJ considered the standard of negligence in the moment of agony: “My opinion is that in the moment of extreme peril and difficulty, such other ship to do something wrong, so as to be contributory to the mischief, that would not render her liable for the damage, in as much as perfect presence of mind, accurate judgement, and promptitude under all circumstances.”

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23 The Crown(Adolph Woermann) v Hessa (1921)9 LLR 271,273
24 In Bywell Castle(1879) 4 PD 219, p 223
CHAPTER - 3

APPORTIONMENT OF LIABILITY

3.1 Regulation Of Apportionment Of Liability

The equal division of fault rule was abolished by the 1910 Brussels Convention, which is incorporated in Maritime Conventions Act 1911 and replaced by the modern rule that the loss is to be divided in proportion to the degree of blame of each ship. Davies LJ stated, “the section does not say that there must be proved a clear preponderance of culpability. What it says is: ... the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault, subject of course to the proviso that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally ... Now that section, as I read it, is mandatory. It does not say that the liability shall be apportioned equally unless different degrees of fault are shown. It is the other way round. It says that the court must apportion the liability in proportion to the degree in which each vessel was at fault unless it is impossible so to do. Of course, the different degrees of fault must be proved, like anything else in a court of law”.25

3.2 Elements Of The Apportionment Of Liability

In apportioning liability, there are no strict rules, but there exist some guidelines for the court to take into account. It is only fault, which causes or contributes to the damage, which is relevant to the apportionment of liability. The Scott LJ said: “On the question of apportionment, one has to remember that the law of apportionment, under the Maritime Conventions Act, is not one of distribution of moral blame, but of the comparative

25 The Anneliese (1970)1 LLP 355
appreciation of the degree in which the respective faults of the vessels have contributed to the result."\(^{26}\)

If the requirements of collision liability are established, then the responsibility and the allocation of blame has to be assessed by the following questions:

Firstly, whether and to what extent the defendant is blameworthy.

Secondly, Does the fault of the defendant have "causative potency" and should it therefore be taken into account when examining overall blame?

3.2.1 Culpability Or Blameworthiness

It is the omission to do something, which a reasonable, prudent and honest seaman would do, or the doing something, which such an ordinary seaman would not do under all the circumstances surrounding each particular case.

"The term culpable negligence should be construed to mean a negligence of a higher degree than that which in civil cases is held to be gross negligence, and must be a negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life."\(^{27}\)

In Exxon Co USA V Sofec Inc\(^{28}\) case the second circuit defined culpability as "how extensively each ship departed from a proper standard of care," The violation of the collision regulation will constitute a culpable conduct for any party. For example if a vessel failed to keep proper look out or failed to proceed in safe speed in restricted visibility there are sufficient ground to blame overwhelmingly a party for his misconduct.

\(^{26}\)The Buccinum(1936)55 LLR 205(CA), in the course of a dissenting judgement cited with approval by Willmer J in the Panther Vs Erickbank(1957) 1 LLR57 p68

\(^{27}\)[Smith v. State, 197 Miss. 802 (Miss. 1945)]

\(^{28}\)Exxon Co USA V Sofec Inc US 830,1996 AMC
3.2.2 Causative Potency

In Exxon Co USA V Sofec Inc case the second circuit defined causative potency as “the extent to which each ship’s culpable conduct contributed to causing the collision.”29 Causation is the relationship of cause and effect of an act or omission and damages alleged in collision claim.

A collision claim requires causative fault. The breach of duty must have caused the collision. The assessment of causation can be structured into two stages. The need of a two-stage inquiry is predicated on the too broad approach of the “but for” test. Causation can be established if the damages would not have caused but for the conduct of the defendant. But, if the accident would have occurred in any event, there is no causation. For example the House of Lords did not take a failed proper look out into account, because that failure was, according to the “but for” test, irrelevant.30

However, when considering whether a particular fault has or has not contributed to the result, it is important to note that it is not simply the contribution to the collision that is relevant, but the contribution to the damage. The liability is in respect of the damage done as a result of the collision and not simply for the fact of the collision.

Thus Brett LJ said: “But if it be asserted that the Plaintiff was guilty of contributory negligence: Then the question is, what is contributory negligence? To my mind, strictly stated, it is whether the plaintiff has by negligence of his own contributed to that which is the cause of action, and not merely the collision.”31

3.2.3 Relation Between Culpability And Causative Potency

One of the hottest disputed questions is the question how to assess degrees of fault and how to evaluate contributed negligence. Both blameworthiness and causative potency has

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29 Exxon Co USA V Sofec Inc US 830,1996 AMC
30 “but for” test was applied in The Statue of Liberty(1971) 2LLR 277
31 Margaret(1881) LR 6PD(CA)
to be taken into consideration and both these factors are to be borne in mind while apportioning. By considering the fault or causation individually it is not possible assess the negligence of two joint tortfeasors together in a unit.

Lord Reid said that one must consider both the causative potency and blameworthiness of the faults. He found it hard to assess “causative potency” in terms of percentages.\textsuperscript{32}

Justice Brandon held “... So far as culpability concerned it seems to me that the faults on both sides were serious… If culpability alone had to be considered I should find it difficult to differentiate between the two vessels. But when I turn to causation, different consideration… apply …. I consider that the causative potency of the Belgulf Union’s fault were much greater than that of the Ballylesson’s fault.\textsuperscript{33}

3.3 Factors To Determine The Degree Of Apportionment

3.3.1 Qualitative Not Quantitative

The court will look at the nature and quality of faults rather than their number; it will also look at the seriousness and extent to which such faults contributed to the collision and damage. Mr Justice Teare said “It is well established that such apportionment requires the weighing of the culpability and causative potency of the respective faults. Apportionment is not a matter of adding up the faults on each side. Apportionment is a qualitative not a quantitative exercise.”\textsuperscript{34}

To get a fair apportionment it is necessary to weigh the fault of each against that of the others. It is, or may be, quite misleading to substitute for a measurement of the individual fault of each contributor to the accident a measurement of the fault one against the joint fault of the rest.

\textsuperscript{32} The Statue of Liberty (1971) 2LLR 277
\textsuperscript{33} Belgulf Union vs Ballylesson Lloyds Rep 69 (1968)
\textsuperscript{34} MIOMI Ltd V Sea Echo ENE (2010) EWHC 3180(Admiralty)
Judge Alvin B Rubin mentioned, “It is profitless to attempt to weigh fault against fault as if shortcoming could be measured in some sort of scale. Both vessels were at fault and actively so. The error of neither was minor. Each vessel committed acts that contributed to the collision. No single act of either can be completely disentangled.”

### 3.3.2 Fault Creating Danger

The court will distinguish a fault-creating danger from a fault, which was a reaction to danger. Mr Justice Teare said “It seems to me that it is right in principle to consider which vessel has created the situation of danger for that will assist in determining the relative causative potency of the each vessel’s fault.” It will often be the case that the vessel which creates the dangerous situation will bear a greater share of responsibility than the vessel which has to react to that situation. Sometimes fault creating danger may have less causative potency than the fault in reaction.

### 3.3.3 Deliberate Act

Ships embarking on a deliberate action bear a greater degree of fault. By assessing the various acts it always has to bear in mind that deliberate acts (or omissions) weight much more than a negligent act. For example the stand-on vessel make deliberate wrong action, which causes collision, as such to bear a greater responsibility for a collision than the give-way vessel.

### 3.3.4 Clear Preponderance Of Blame

The expression ‘clear preponderance of blame’ was derived from Lord Atkinson that a clear preponderance of culpability must be proved. Since then, the courts had used that approach. Though after rejecting this by Davies LJ the Admiralty court reduces the use of

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35 SS Helena V White Alders 1976 AMC 2013
36 Samco Europe Vs MSC Prestige 1(2011) LR 571,Para 84
37 MIOM 1 Ltd v Sea Echo ENE (2012)1 LR 140 at para 95
38 The Estrella [1977] 1 Lloyd’s Rep 525
39 The Peter Benoit(1915)13Asp MLC 203 p 207
this provision but preponderance theory can always be utilized after assigning the fault in any case in one specific bench line.

3.3.5 Making Assessment, Inquiry and Investigation

However, a fair result will not be reached by plaint accumulation of negligent acts. Therefore Sir Gordon Willmer LJ demanded an inquiry, which should include a more qualitative approach rather than a quantitative one\textsuperscript{40}. The fair and just apportionment in any case will ultimately depend upon an assessment of the relative causative potency and blameworthiness of the faults of each vessel taking into account all the circumstances of the case\textsuperscript{41}. To assess the culpability in respect of causative potency, it would seem preferable to submit simply the usual interrogatory, to what extent in terms of percentage did the negligence of the plaintiff (defendant) contribute to the collision? If the parties negligent action or inaction had been omitted the collision would have occurred?

3.3.6 Chain Link Of Causation

Both practical lives aboard ships and also everyday life ashore show that accidents are seldom due to only one cause. At first glance one factor may seem to be major triggering event, but further analysis of the accident often reveals several contribution factors, which were necessary links in the chain of events leading to the accident or to further damage. As concisely set out in Marsden, it is not every act of negligence committed at or about the time of a collision that is actionable; to found a claim for damages, the negligence in question must form "a link in the chain of causation ending in the collision" and thereby cause damage\textsuperscript{42}.

\textsuperscript{40} The British Aviator(1965) 1 LR 271
\textsuperscript{41} The Mineral Damper(2001) 2 LR 419
\textsuperscript{42} Marsden (12th ed.), par. 13-01
3.3.7 Causation To The Damage Not Collision

An important factor to keep in mind when liability is apportioned is that a vessel’s contribution to the damage rather than the collision is relevant. After all the collision itself is not the problem but the damage done by it. So for example in the Margaret case the vessel was found to be partly to blame even though she was moored, only due to hanging of her anchor outside which is contrary to local regulation and the barge that struck her was holed by that anchor.43

3.4 Theory Of Comparative Negligence

In Brussels convention it has been mentioned that the liability of each vessel is in proportion to the degree of the fault respectively committed. The Maritime Convention Act 1995 provides that the liability shall be in proportion to the degree in which each ship was in fault. Though the English Law accepted the culpability and causation as the base of finding the apportionment of liability but the Brussels convention stated further that the fault to be compared respectively to apportion the liability.

In Reliable Transfer Co case the USA court states that, “We hold that when two or more parties have contributed by their fault to cause property damage in maritime collision or stranding liability for such damage is to allocated among the parties proportionately to the comparative degree of the fault.”44

In English court the Judges are also using comparative theory by commenting that some fault of any vessel is greater than the other vessel. For that reason the Admiralty Judges often consider, “where one ship is more to blame than the other, how many more times to

43 Margaret(1881) LR 6PD(CA)  
44 United States Vs Reliable Transfer Co Inc 1975.
blame one vessel is than the other\textsuperscript{45}. For example the court held, “MSC Prestige was not as much as twice to the blame as Samco Europe.\textsuperscript{46}

In the apportionment of fault under the comparative fault doctrine, should the court compare causation or culpability? Theoretically, causation is an absolute, not apportionable by degrees unless there are distinct harms. Proser has commented that once causation is found, the apportionment must be made on the basis of comparative fault rather than comparative contribution. On the other hand, Wade has commented that, in the event, consideration needs to be given not only to the measure of culpability but also to the relative closeness of the causal relation between the actor’s conduct and the injury.\textsuperscript{47}

Many USA courts have taken into account only the “relative culpability” of the vessels rather than their degrees of physical causation.\textsuperscript{48} In Exxon Co USA the court stated, “We continue to use the term “comparative fault” employed in Reliable Transfer case, but we do not mean thereby to take position on which of these system is the appropriate one, assuming that there is in fact a distinction between them.”\textsuperscript{49}

3.5 Various Degrees Of Apportionment Of Liability

The tendency of the courts is to deal with apportionment in a fairly broad way. The most usual division of blame has been 60/40, 75/25 and 80/20. To understand the various apportionments we have analyzed the data of English Admiralty court from 1928 to 2013. The case of all available degree of apportionment is described below:

\textsuperscript{45} The Angelic Spirit(1994) 2 LR 695 at page 698 per Clarke J. and The Mineral Damper at para 52 per Lord Phillips Mr.
\textsuperscript{46} Samco Europe Vs MSC Prestige(2011) 2 LR 579 per Teare J. para 99
\textsuperscript{47} Louisiana Law Review, Comparative Negligence in Maritime Personal Injury Cases- David R.Owen- Vol 43 No 4 March 1983 Page 956
\textsuperscript{48} Afran Trans Co V S/T Maria Vanezelos 1978
\textsuperscript{49} Exxon Co USA Vs Sofec Inc ( US 830, 1996 AMC)
3.5.1 Apportionment Of 0: 100

In 270 numbers out of 568 cases, which is equal to 48% of the total cases ended with a 0/100 division of the liability. The maximum sole fault cases were due to ships maneuvering in the river violating local laws\(^{50}\), injured party was in anchor\(^{51}\) or moored or a privileged ship, the ship’s position in the wrong side of the narrow channel\(^{52}\), the sudden unexpected faulty maneuver\(^{53}\), approaching channel and crossing the head of the vessel in channel\(^{54}\) due to wrong appreciation by outdated chart\(^{55}\), turning or crossing in a river negligently in improper time\(^{56}\), failure to take early and substantial action by overtaking vessel\(^{57}\), serious breach of the give way rules by one of the parties, while the other party has done what possible to avoid the collision. Where the court concluded with the full blame on the negligent parties, then ordinarily the innocent party will be awarded all of the cost\(^{58}\).

3.5.2 Apportionment Of 50: 50

In 97 cases out of all the collision cases, which are 17% of the total cases, both parties found equally blameworthy for the incident. The judge should not decide too readily that the vessels are equally to blame, merely because it is difficult to assess the degree of blame of each ship. Only when it is not possible to establish different degrees of fault, having regard to the circumstances of the case, will the liability be apportioned equally.\(^{59} \ 60\)

\(^{50}\) Esso Brussel\(1972\) 1 LR 286; The Olderek\(1974\) 1 LR 65, The Filiatra Legay\(1986\) 2 LR 257
\(^{51}\) The Monarch\(1953\) 2 LR 151, Esso Brussel\(1972\) 1 LR 286; The Arya Rokh\(1980\) 1 LR 68
\(^{52}\) The Global Mariner\(2005\) 1 LR 699, The Marinegra\(1960\) 2 LR 1, The Regina D\(1990\) 2 LR 227
\(^{53}\) Contship Success Vs Selat Arjuna\[2000\] 1 Lloyd’s Rep 627
\(^{54}\) The Thomas everett\(1981\) 1 LR 1, The Avance\(1979\) 1 LR 143
\(^{55}\) The Troll River\(1974\) 2 LR 181
\(^{56}\) The Boleslaw Chroby\(1974\) 2 LR 308, The Toluca\(1984\) 1 LR 131, The Homer\(1972\) 1 LR 429, The Staya Padam\(1985\) 1 LR 338
\(^{57}\) The Frosta\(1973\) 2 LR 348,
\(^{58}\) The Contship Success \[2000\] 1 Lloyd’s Rep 627;
\(^{59}\) Modern Marine Law and Risk Management, Chapter 12
\(^{60}\) The Pearl and The Jahre Venture \[2003\] 2 Lloyd’s Rep 188 where both vessels dragged her anchor without appreciating it and failed to take proper action
The equal to blame case were maximum when vessel maneuvering in fog with excessive speed\textsuperscript{61}, both vessel severely faulty look out, both vessel dragging, failed to announce sound signal in time, both vessel taken wrong action in narrow channel or river\textsuperscript{62}, both vessel violated local law and customs while maneuvering in river or narrow channel,\textsuperscript{63} and give way vessel failed to take proper action earlier as well as the stand on vessel took wrong action\textsuperscript{64} or in wrong side of the TSS\textsuperscript{65}.

3.5.3 Apportionment Of 90:10

There are only two case of such apportionment. If the failure of anchored vessel to sound a whistle signal had been one of the causes of the collision with a moving ship only 10 per cent of the blame may be attributed to her.\textsuperscript{66}

3.5.4 Apportionment Of 85:15

There are only six cases held by the English admiralty court in last 85 years where the degree of liability apportioned among the parties as 85:15. The fault of the overtaken vessel\textsuperscript{67}, or anchor vessel without sound signal in fog, failed to keep in the correct side of the channel while the other vessel also taken wrong action\textsuperscript{68}, stand on vessel in crossing situation failed to take any action whose fault are minor nature\textsuperscript{69} are the liable for such apportionment.

3.5.5 Apportionment Of 80:20

There are only 21 cases held on such apportionment. In the case where the blame of one party were so minor that they should attract only a de minimis share of the blame, such as give way vessel failed to take early and substantial action according to the rule and stand on

\textsuperscript{61} Maloja II Vs John M(1994) 1 LR 374, The Pulkovo Vs Oden (1989) 1 LR 280
\textsuperscript{63} The Jan Laurenz(1973)1 LR 329, The Sanwa Vs Choyang Star(1998) 1 LR 283
\textsuperscript{64} The Toni(1973)1 LR 79
\textsuperscript{65} The Golden Mistral(1986) 1 LR 407
\textsuperscript{66} St Louis Vs Kwai(1986) 2 LR 125
\textsuperscript{67} The Koszierzyana Vs Hanjin Singapore(1996) 2 LR 124
\textsuperscript{68} The Martin Fierro(1975)2 LR 130
\textsuperscript{69} The State of Himachal Vs Capulonix (1985)2 LR 573 The State of Liberty Vs Andulos(1971)2 LR 277
vessel failed to keep course and speed or take action according to rule 17 a(ii) or 17b,
overtaken vessel was failed to give signal to attract attention of the overtaking vessel and take
action as stand on vessel, passing vessel taking wrong action in channel, canal or river,
failed to follow the general direction of traffic flow in TSS and take early action in case of
crossing situation.

3.5.6 Apportionment Of 75:25(3/4:1/4)

There are 41 cases found according to such apportionment, which is the 3rd highest
apportionment (7% of the total cases) after sole and equal division. The judges prefer this
proportion to realize that when the fault is two fold to one another. Where one party had the
right of way (stand on) but he ought to have exercise greater care and his failure to keep a
proper look out and taking wrong action, vessels approaching in opposite direction on
reciprocal course and one vessel taken wrong action in improper time, vessel proceeding in
same direction and confused whether overtaking or crossing and failed to take action by
coming up vessel, are the major contributory negligence for making such apportionment.

3.5.7 Apportionment Of 70:30

There are 10 cases according to such apportionment. The defendant vessel was
primarily to blame for a collision where it continued at excessive speed into a close quarters
situation and when she used only its marine VHF radio to avoid collision and, having seen
the other vessel at close range fine to port, selected the wholly improper option of coming to
port. When the give way vessel failed to take proper early action and stand on vessel make

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71 Iran Torab Vs Tan(1988) 2 LR 38, Kylix Vs Rustringen(1979)LR 133,
72 The Da Ye(1993) 1 LR 30
73 The Hagieni Vs Barbarossa(2000) 2 LR 292
75 Horta Barbosa vs Sea Star(1976)1 LR 115, Devotion Vs Golden Polydinamos(1993)2LR464
76 The Nowy Sacz Vs Olympian(1976) 2 LR 682
77 “Rickmers Dalian” [2010] EWHC 1949 (Admlty) (David Steel J)
wrong action will lead to such type apportionment of liability\textsuperscript{78}. Also during fog when the action taken towards the vessel forward of the beam (violating rule no 19) or taken wrong action by giving helm order and both vessel in excessive speed are the cases for such type of apportionment.\textsuperscript{79}

### 3.5.8 Apportionment Of $1/3^{rd}:2/3^{rd}$

This type of apportionment is the highest rulings by English Admiralty court within last 85 years among the apportionment of liability cases except the cases held as sole and equal fault, which is 68 in number and about 12\% of the total cases. Where both party were seriously negligent and one party has bear the preponderance of the blame for the collision, when one vessel was proceeding with excessive speed, wrong action, faulty maneuver and at the same time no sensible steps were taken to avoid collision by another vessel,\textsuperscript{80} or the other vessel was negligent in the care of ship’s machinery or equipment, although did not bear directly on the collision\textsuperscript{81}; in narrow channel vessel failed to keep on her own side and the other vessel failed to reduce speed,\textsuperscript{82} in TSS the stand on vessel on wrong lane,\textsuperscript{83} liability found to be apportioned two-thirds and one-third.

### 3.5.9 Apportionment Of 60:40

There are 51 cases held according to such apportionment, which is the 2\textsuperscript{nd} highest apportionment (9\% out of all cases) after sole and equal division. The fault of give way vessel for not taking early and substantial action to keep out of the way had greater causative potency and culpability but the wrong action of the stand on vessel reduced the greater culpability of give way vessel. When the greater culpable ship was not as much as twice to

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\textsuperscript{79} Almizar(1971) 2 LR 277
\textsuperscript{80} “Hakki Devat” [2006] EWHC 2809 (Admlty) (David Steel J) , Francesco Nullo (1973) 1 LR 72, Puritan Vs Navios Enterprise
\textsuperscript{81} The Adolf Leonhardt(1973) 2 LR 318, Sagittarius Vs Scwarzburg(1976) 1 LR 26
\textsuperscript{82} The Genimar(1977) 2 LR 17
blame the apportioned held as 60:40\textsuperscript{84}. Where both vessels failed to reduce speed in restricted visibility and one vessel has clear preponderance of either faulty look out, taken action later, failure to give signal or taking wrong action the apportionment held as 60:40.\textsuperscript{85} Where before the visibility was reduced both vessels were in crossing situation. The give way vessel would have taken action earlier than the restricted visibility applied, also both vessels were failed to reduce speed the culpability and causative potency found greater for the initial give way vessel and apportioned as 60:40\textsuperscript{86}. Where both vessel was confused whether overtaking or crossing situation but held that it was never a overtaking situation as the coming up vessel was visible only 10 degree abaft the beam, as the give way failed to take action and stand on vessel take wrong action held such type of apportionment.\textsuperscript{87}

3.5.10 Apportionment Of 55:45

There are only one cases held on such apportionment. Both vessels committed the serious faults of maintaining a speed, which was unsafe in a dense fog at coastal region, and allowing a close quarters situation to develop, both vessel are grossly negligent but one vessel is slightly less blameworthy while taking action found apportioned as 55:45\textsuperscript{88}.

3.6 Appeal On Judgment Of Apportionment

When the findings of fact of the trial judge are not challenged or are accepted by the Court of Appeal, then the apportionment of liability made by the trial judge will only be interfered with by the Court of Appeal if some error of law is shown, or the judge has misapprehended some vital fact or the judge’s reasoning is invalid or there is some other exceptional reason to revise his apportionment.

\textsuperscript{86} The Auriga (1977) 1 LR 384
\textsuperscript{87} Shanshin Victory (1980) 2 LR 359
Sir Gordon Willmer said, “Apportionment of fault is not an easy task for any Judge, but it must be said that the trial Judge, who has the benefit of hearing the evidence at first hand and sensing the atmosphere of the case, enjoys an enormous advantage over any appellate tribunal”. In the same case Lord Wright\textsuperscript{89} said: “.. I think, that an appellate court has been warned against interfering, save in very exceptional circumstances, with the judge’s apportionment.” And the Lord Simon said “Where an appellate court finds no error of law and accepts the finding of fact of the trial Judge, it is only in quite exceptional circumstances that it should revise the apportionment of the trial Judge.”\textsuperscript{90}

During last 50 years about 25 cases where the Court of Appeal did not revise the distribution of the blame, few are Bow Spring, Selat Arjuna, Devotion, Maloja II, Regina D, Ouro Fina, State of Himachal, St Louis, Toluca, Thomasverett, Djerada, Martin Fierro, Toni, Homer, Jan Laurenz, Lucile Bloomfield, Marinegra, Alida Gorthon, and Prins Alexander.\textsuperscript{91}

And about 9 cases where the Court of Appeal revised the apportionment of fault, few are\textsuperscript{92} Nowy Sacz, Savina, Eglantine, Esso Brussel, Fina Canada and British Confidence.

\textsuperscript{89} 1943 AC 197 HL The Macgregor
\textsuperscript{90} Koningin Juliana(1975) 2 Lloyds Rep 111
\textsuperscript{92} Fina Canada(1962) 2 LR 445 and British Confidence(195101 LR 447; Eglantine Vs Inez(1990) 2 LR 390; Esso Brussel(1972) 1 LR 286; Nowy Sacz Vs Olympian(1976) 2 LR 682; Savina(1975) 2 LR 141
3.7 Apportionment When More Than 2 Ships Are Involved

Although the most common case will be where two ships are at fault, the section applies equally to the case where there are more than two ships at fault. The issue for decision was which ship or ships was or were liable to make good the damage caused by the collision. The liability should not be considered individually rather the whole incident and blame of the each party should be calculated framing in one incident. The major fault to passing TSS in wrong direction will bear greater responsibility as such the vessel Inez will be 75% and other two vessel will share rest equal of the liability.\textsuperscript{93}

The prominent cases\textsuperscript{94} are Eglantine, Ouro fino, MSC Panther, Karen Toft, American Jurist, and Marpessa.

\textsuperscript{93} Eglantine Vs Inez(1990) 2 LR 390
CHAPTER-4

ROLE OF COLLISION REGULATION IN APPORTIONMENT

4.1 Backgrounds And Historical Development

The Brussels convention on 1910 established the liability for damages caused by a collision between vessels is attached to the one, which has committed the fault. The convention emphasized to investigate whether there has been negligent conduct. As a consequence of this principle the question of appropriate conduct, a conduct free of fault, became of crucial importance. This was the reason of the development of the international Regulation of Preventing Collision at Sea.

The first international maritime conference to consider regulation for preventing collision at sea was held in Washington in 1889 and further in Brussel in 1910, where the international agreement was reached on a set of regulations. In the middle and later part of the 20th Century, there were sequential amendments to the collision regulation. The 1910 regulation was superseded by the 1948 regulation, then by 1960 regulation and finally by the 1972 regulation, which were put into force in 1977. The convention is adopted by 144 contracting states, which was the 98 percent of world tonnage. Since then the collision regulation have international application and constitute the authoritative measurement of conduct of ships in navigation. These regulations were subsequently amended in 1983, 1989, 1991 and 2003.

4.2 Breaching Collision Regulation Is A Prima Facie Evidence Of Negligence

Though in the civil context, it is accepted that a breach of the Collision Regulations is prima facie evidence of a breach of the standards of good seamanship, it does not create a presumption of liability or impose a reverse onus on the Defendant that they were not
negligent. The Plaintiff must still make the full proof of their assertion and adduce evidence of negligence. Where a defendant is being held accountable for actions allegedly causing an accident, the standard against which they will be measured is that of the ordinary ‘seaman’. Navigating in accordance with the rules will go a long way to making a case that good seamanship was exercised. However, circumstances will arise where following the rules will not be possible, or perhaps even contrary to the exercise of good seamanship.

4.3 Significance Of The Collision Regulation

The collision regulations are a legal aid for any seaman to prevent collisions and respectively to minimize collision damages. These international guidelines provide the possibility for any master and his crew to foresee and therefore anticipate the conduct of other ships. Every seaman will comply with the regulations for liability reasons. The collision regulation shall not only prevent the collision but also shall prevent the risk of collision. The proper mode of construing them is to read them literally. Mariners must be able to predict how a court will interpret the rules in order to be able to follow them. Without judicial interpretation, the rules would be just words on paper as the “gray area” and the leeway provided for judgment would swallow up the rules. Without judicial enforcement mariners would be free to construe the rules broadly or even disregard them. Likewise if judicial enforcement is erratic and inconsistent in different courts, mariner’s incentives to follow the rules closely will be diminished.

4.4 Role Of Collision Regulation To Apportion The Liability

4.4.1 Rule No 5 Look Out

This rule refers to the duty of the Officer of the Watch (OOW) to keep proper look out at all times in order to have sufficient overview of the situation. The look out man should

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96 Hodgins J., at para. 19 of Lake Ontario & Bay of Quinte Steamboat Co. v. Fulford, (1909) 12 Ex. C.R. 483
be solely designated for such task. Extra look out is to be posted during the dark hours of the night and sometimes at day especially when the visibility is restricted or increased traffic density. The performance of lookout duty is an inexorable requirement of prudent navigation.

Maintaining “a proper lookout” duty is a pre-requisite for safe navigation at sea, and the case law makes it clear that considerable weight is placed on ensuring that this duty is satisfied, American Courts have found that violation of the lookout rule is serious and results in the offending vessel being held wholly or partially at fault.97 It was held that both vessels were to blame equally for the collision because they failed to keep a good lookout.98 Holding that vessel which failed, inter alia, to post a proper lookout was 100% at fault for collision.99

A faulty lookout has contributed to or has been the sole cause of, many collisions. Whether or not it has been faulty is judged objectively. It involves an appreciation of what is taking place.100 The privileged vessel but was apportioned 1/3 of the liability mainly because of its failure to maintain a proper look out.101 Failure to keep a proper look out along with the duty of give way the vessel was given full blame for the collision. The Supreme Court of Norway stated that: The lack of look out to the starboard for a continuous period of ten minutes must be considered to be very blameworthy.102

4.4.2 Rule No 6 Safe Speed

From the time the steamship started appear on the scene, speed has been important element of the nautical rules of the road. In the present set of rules the obligation to proceed at safe speed is perhaps the most important risk management factor. Excessive speed reduces the time available to detect and assess the developing risk on the other hand increase the potential or more devastating damages if a collision occurs. Rule 6 enumerates a list of

100 The Golden Polydinamos( 1993)
101 ND 2001-254-Lofotferje I
102 ND 2001-157 Strand-Vitin
extensive, but not exhaustive, risk assessment factors to be considered by the mariner when determining what would be the safe speed under the circumstances. An unsafe speed involves a speed that is slow as well as one that is excessive, depending on the circumstances. Safe speed is a matter of good seamanship and is a relative term requiring various factors to be taken into account in any given case. It was held that the collision was caused solely due to approach too close to the bank at an excessive speed, which failed to correct her course in time.

**4.4.3 Rule No 7 Risk Of Collision**

This rule requires gathering information about the traffic picture. The Officer of The Watch (OOW) is to avoid taking decision based on scanty information. Radar is to be used under most circumstances both in good and bad visibility with proper adjustments.

The Deepdale case is particularly pertinent to so-called ‘radar assisted collisions’. The vessel saw a risk of collision she put her engines hard astern which rather than reduce the risk of collision in fact increased it. Her fault was, however, less of a contributory factor apportionment was 2/3:1/3. A false echo on radar leads the Master to wrong action caused collision held wholly to blame. The overtaken vessel was held 15% liable for not taking bearing. The vessel failed to determine the risk associated with changing bearing but not appreciable held 60% of the liability.

**4.4.4 Rule No 8 Action To Avoid Collision**

This Rule covers actions to be taken in circumstances where there is a risk of collision, It requires that ‘any action taken to avoid collision shall, if the circumstances of the

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104 Fraternity L(1994) 2 LR 582
105 Mancuniunl Deepdale(1987) 2 LR 627
106 Selat Arjuna Vs Contship Success(2000) 1 LR 627
107 Koscielzenia vs Hanjin Singapore(1996)2 LR 124
108 British Aviatar (1964)2 LR 403
case admit, be positive, made in ample time and with due regard to the observance of good seamanship. Alterations of course shall be big enough to be obvious to the other vessel visually or by radar, and if necessary, the vessel shall slacken her speed or take off her way by stopping or engaging astern. The alteration of the vessel for 15 Degree to the starboard by the give way vessel caused the overwhelming blame and for the liability apportioned as 85%.

4.4.5 Rule No 9 Narrow Channel

This Rule covers “narrow passages”. A vessel proceeding along the course of a narrow channel, meant the whole width of the navigable water and that or fairway means a dear passageway by water wherever there is an open navigable passage used by vessels proceeding up and down a river or channel shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable starboard side as is safe and practicable. In maximum case of narrow channel where the vessel failed to maintain her position in the starboard side, crossed the Centre line of the channel and stayed at the opposite lane also speed not reduced and subsequently collided, was found to be overwhelming blameworthy and was apportioned the sole liability for the incident.

4.4.6 Rule No 10 Traffic Separation Scheme

This Rule covers traffic separation zones adopted by the International Maritime Organization (IMO). It is the obligation that a vessel shall proceed in the appropriate traffic lane and join a zone, which is generally located in a congested area, at as small an angle to

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110 Mineral Damper Vs Hanjin Madras(2001) 2 419
111 Koningin Juliana ; The Treherbert [1934] P 31
112 The Blue Bell [1895] P 242 at 264, 7 Asp MLC 601 at 602, DC. See also The Clutha Boat 147 [1909] P 36, 11 Asp MLC 199;
113 Toluca(1981) 2 LR 548;  Regina D(1990) 2 LR 227;
the traffic flow as possible, and when crossing a lane in a zone, she shall do so as nearly as practicable at right angles.\textsuperscript{114}

The overriding consideration in this case was that The Barbarossa was at all material times persisting in navigating in the southbound lane or separation zone. She created a situation of danger and inevitably instilled the maximum of confusion as to her intentions. Therefore, she was 80% to blame.\textsuperscript{115} Due to crossing at the wrong lane of the TSS Dardanelles and subsequently collided the vessel held to be liable $\frac{3}{4}$ of the damage.\textsuperscript{116} Genimar in failing to comply with the traffic separation scheme and in failing to keep her course, were also serious but were less culpable than those of Larry L and had a less causative effect as such the blame apportionate for Genimar was $1/3$.\textsuperscript{117} Inez was proceeding in the wrong direction in a traffic separation lane without any excuse and without any good reason and was blame as 75%.\textsuperscript{118}

\textbf{4.4.7 Rule No 13 Overtaking}

This Rule refers an overtaking vessel must keep out of the way of all vessels she is passing. A vessel is deemed to be overtaking when coming up\textsuperscript{119} from a direction more than 22.5 degrees abaft the beam. The great significance of Rule 13(d) is that, confirms the advantage ‘once an overtaking vessel, always an overtaking vessel.

The non-response of overtaking vessel in maneuvers had to be judged on the basis that they were highly blameworthy and potently causative of the collision. The court held the

\textsuperscript{114} Collision Regulations r 10 (c). In The Nordic Clansman,[1984] 1 Lloyd’s Rep. 31, a vessel in entering the Arabian Gulf through the Straits of Hormuz, used the southerly lane instead of the northerly lane for inbound traffic as required by the Traffic Separation Zone for that area. Her Master was charged with breaching rule 10 (d) of the Collision Regulations in that he had wilfully used the wrong traffic lane.

\textsuperscript{115} Hagieni vs Barbarossa(2000) 2 LLR 291

\textsuperscript{116} Siboeva Vs Vitastar(2002) 2 LR 210

\textsuperscript{117} Genimar (1977) 2 LLR 17

\textsuperscript{118} Eglantine, Crado and Inez (1990)2 LLR 390

\textsuperscript{119} A vessel is deemed to be ‘coming up’ with another when there is some proximity in space between them even though there is no risk of collision at that time: The Nowy Sacz [1977] 2 Lloyd’s Rep. 91 t 96, CA
apportionment 80:20 in favor of the overtaken vessel.120 If the overtaken vessel failed to draw attraction or take proper action in time, when the collision cannot be avoided by action of the give way vessel alone15 percent of the responsibility for the collision would be apportioned to the overtaken vessel. 121

4.4.8 Rule 14 Head On Situation

This Rule refers when two vessels in sight of one another are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision, each vessel to alter course to starboard thus to pass on each other's port side. The Argo Hope bore the substantial blame (85 per cent) by wrongly altering to port and the Bebington (15 per cent) for not navigating with sufficient caution in a head on situation.

4.4.9 Rule No 15 Crossing Situation

This rule refers when two vessels approach each other from different angles so as to involve risk of collision, and the one has the other on its starboard side to keep out of the way. When the vessels were crossing courses and give way vessel was shaping to pass with a CPA of 4.3 cables ahead of stand on vessel, held was sufficiently close to establish risk of collision, as Mr. Macdonald, Q.C. phrased it, "uncomfortably close"122.

In Nowy Sacz case the trial court held the situation as crossing, but the learned Judge of Court of Appeal concluded that the risk of collision arose by the time the vessels were in sight of each other and less than three miles apart, the Olympian was coming up with the Nowy Sacz and from that time the Nowy Sacz was the stand-on ship and the Olympian was the give-way ship. The apportionment of blame would be varied than trial Judge as 1/4:3/4 in favour of Nowy Sacz.123

120 The Iran Torab(1988), 2 LR 38
121 Koscierzyna and Hanjin Singapore,(1996)2 LLR 124
122 Sitarem Vs Spirit(2001) 2 LR 107
123 The Nowy Sacz(1977)2 LLR 221
4.4.10 Rule No 16 Action By Give Way Vessel

This rules refers that, a vessel required to keep out of the way shall take early and substantial action. For an action of altering only 15 degree by give way vessel and wrong alteration to port by stand on vessel a fair apportionment was given 80:20. The give way vessel failed to take early and substantial action to keep clear and stand-on vessel failed to take bold action, which did not make matters, worse; held 70:30.

4.4.11 Rule 17 Action By Stand On Vessel

Rule 17(a)(ii) is couched in permissive language, while the primary duty of the stand-on vessel is to keep her course and speed, she "may" take action to avoid collision, sometimes the situations may arise in which good seamanship requires the stand-on vessel to take avoiding action before the stage at which rule 17(b) applies.

Rule 17(b): As its terms make clear, this rule is mandatory, the difficulty, here, lies in determining when the time has arrived for the stand-on vessel to take action. The officer in charge of the stand-on vessel faces a dilemma; he runs the risk of being criticized if he acts too soon or too late. Plainly he must be allowed some latitude in determining precisely when to act. The point is summarized in Marsden, “The conduct of a prudent seaman in such circumstances is not to be tried by mathematical calculations subsequently made.”

A vessel will not be held at fault for keeping her course and speed, although she could have avoided collision by an alteration of either, if the other vessel by her action alone could also have avoided it. In some cases the stand-on vessel in failing to keep her course and instead making successive slight alterations to port may properly be held to bear a greater responsibility for a collision than the give-way vessel. If the stand on vessel in crossing

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124 The Mineral Dampier and Hanjin Madras (2001) 2 LR 419
125 Y Mariner and Angelic Spirit (1994) 2 LR 595
127 (sup.) as follows, at par. 6-128:.
128 Estrella (1977) 1 LR 525
situation did not take any proper action as per rule 17 a(ii), 17(b) and 17(c) of collision regulation\textsuperscript{129} the court held partial blame for stand on vessel but lesser than the give way vessel according their degree of fault, for example Samco Europe was given 40% blame, Enif and Angelic Spirit was given 30% blame, Lok Vivek and Spirit was given 25% blame, Topaz and Glenfalloch was given 20% blame,

4.4.12 Rule No 19 Conduct Of Vessel In Restricted Visibility

This rule only applies during restricted visibility together with rules of section I, It repeats the safe speed requirements. Sir Gorell Barney said, “\textit{Good seamanship requires the vessel should be at moderate speed so as to approach the place (fog) under proper control.}”\textsuperscript{130} In maximum case when both vessels failed to reduce speed or take all her way off after became aware of the risk of collision or close quarter situation in restricted visibility the court held blame on both vessels equally.\textsuperscript{131} When one vessel has taken wrong helm action also failed to reduce speed and other vessel also under unsafe speed, former vessel will hold a superior blame as 60:40\textsuperscript{132}. In rare cases where blame given solely to one vessel, when the defendant vessel responsible for violating some major local law or staying at wrong side of the lane of a river or narrow channel in dense fog.\textsuperscript{133}

4.5 Relation Between Collision Regulation And Seamanship

The regulations are not a comprehensive code of good seamanship; the rules are code of good practice rather than a code of law. The second rule makes it clear that they try to avoid self-conception of a closed book of seamanship. The rule state that their provision do

\textsuperscript{130} St Pault(1909)
\textsuperscript{131} Anneliese (1970)1 LLP 355; Maloja II Vs John Mc(1994) 1 LR 374; Pulkovo Vs Oden (1989) 1 LR 280; Linde(1969)2 LR 556
\textsuperscript{132} ER Wallonia[1987] 2 Lloyd’s Rep 485; Roseline(1981) 2, LLP 410; Tenes ( 1989) 2 LR 367
\textsuperscript{133} Filiatra Legay(1986)2 LR 257; Boleslaw Chroby(1974)2 LR 308; Regina D (1990)2 LR 227
not exonerate any one from the consequences of neglecting to comply with any precaution required by the ordinary practice of seamanship or by the special circumstances of the case.

Rule 2 (b) of collision regulation allows a departure from these Rules if necessary to avoid immediate danger. It is a heavy burden of proof for a defendant who violates the Rules and who has to show: Firstly, “that the departure was necessary in order to avoid immediate danger,” secondly, “that the course adopted by her was reasonably calculated to avoid that danger,” and thirdly, “the action taken must be in accordance with the requirements of good seamanship.”

Dr. Lushington in the John Bundle stated: “All rules are framed for the benefit of ships navigating the seas; and no doubt circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule however wisely framed. It is at the same time of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary, are most distinctly proved and established; otherwise vessels would always be in doubt, and doing wrong.”

4.6 Collision Regulations For Mariners And Lawyers

The first, and arguably primary, role of the collision regulation is to provide comprehensive international guidelines for mariners in preventing accidents at sea. In order to do that the rules need to be clear, simple and well defined. But they must also provide sufficient flexibility to fit the wide array of situations that mariners encounter at sea. Ambiguous, complex, and inflexible rules would not lend themselves to efficient application by the mariner when situations arise, and would result in confusion and potentially more collisions.

134 Hodgins J. Lake Ontario & Bay of Quinte Steamboat Co v Fulford(1909) 12 Ex C.R. 483
In contrast, a secondary role of the collision regulation is to provide a means for judges and lawyers to determine fault and allocate liability for accidents that are not prevented. To meet that need the rules have to provide sufficient detail for reasoned deliberation and interpretation by the judiciary in determining fault and apportioning liability. Although there is no way to completely eliminate the tension inherent in the collision regulation between the needs of mariners and the courts, reasoned analysis and consistent application of the collision regulation will mitigate the conflict among all interested groups.
CHAPTER-5
DATA ANALYSIS AND CRITICISMS ON APPORTIONMENT RULE

5.1 Data Analysis And Result Obtained

To fulfill the objectives of this research I have looked at the collision liability rules in relation to the English collision case law from 1928 to 2013. The various apportionments during this 85 years has been shown in the table below:

Data Analysis of Apportionment of liability in English Court (1928-2013)
From the table it has been revealed that after sixtieth century the cases of sole fault of one party and equal blame on both party decreased significantly. Mr. Ringdal also pointed out that the finer adjustments are an older day, before World War II, and in recent years finer adjustments have practically disappeared.\footnote{Arkiv for Sjorett.V-12,p 377(1975) Judicial Evalution of fault in Maritime Collision case} It also found from the chart that the result of 80:20 and 60:40 division has uprising index. Also we can see that without sole and equal blame the other apportionment was about 20 percent in thirtieth century, which rose up to 72 Percent during twentieth century, which reveals that the apportionment fault rules has been successfully implemented in English Admiralty court. A total number of 270 cases resulted in sole fault and 97 cases found both to blame equally out of 568 cases analyzed. Other than sole and equal fault the common apportionment shown in the bar chart in English court as follows:

**Number of cases in various apportionments in English Court (1928-2013)**

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Number of cases in various apportionments in English Court (1928-2013)}
\end{figure}
5.2 Various Criticism On Apportionment Fault Rule

5.2.1 Dr. Lushington who considered that, it is impossible to accurately apportion the damages under such circumstances, and that, as a result, much difficulty will introduce into collision litigation; that no two judges would agree as the exact proportion to be made, and it would prove impossible for counsel in any collision case to advise with accuracy.\(^{136}\)

5.2.2 The contributory negligence has less deterrent and enforcing capacity to marine safety statutes. For many cases the court held that failure of look out, failure to take compass bearing, failure to give proper whistle was not causative and hence the culpable vessel was free from liability.

5.2.3 Some faults that were once given a relatively small percentage (such as look out) are now considered serious enough to give a substantial degree of fault. The responsibility of the stand of vessel was not accepted as serious fault earlier but at present a significant portion of blame given for not taking action according to rule 17 a (ii) by a stand on vessel.

5.2.4 Also there appears to be growing requirements for privileged vessels (such as super tanker) to take action to avoid a collision in hazard created by the burdened vessel. The deep draft vessel was blamed for 40 percent for excessive speed\(^{137}\), where as it is the practice or normal seamanship that the privileged vessel continued with her course and speed. Which is controversial to the negligent theory.

5.2.5 The question then raised, should allocation of fault be with respect to the seriousness of the faults or with respect to causation of the incident? Do ten minor violations of the rules of the road equal one major violation? Whether the court is able to ascertain the

\(^{136}\) quoted from: A study of Compararative Negligence, A Chalmers Mole nd Lyman P Wilson; Cornell Law Quarterly Vol XVII April 1932, Number 3 Page 349

\(^{137}\) The Pelopidas(1999) 2 LR 675
good and bad seamanship? It has been criticized by academic legal scholars that Contributory negligence works as inherent unfairness by barring plaintiff from any recovery, even when it is proved in a particular case that, a defendants negligence was primarily responsible for the act or omission which resulted in a plaintiff’s injury.

5.2.6 There may nevertheless be some differences between a system of apportionment based on responsibility and one based purely on fault. For example, fault may depend on the mental culpability of the claimant, such that there is a greater degree of fault if the claimant harms himself intentionally or recklessly than if he does so negligently.

5.3 Factors Other Than Culpability And Causation:

In deciding any case the court must make judgments based on a multitude of factors to try to come to the "right" decision. Some of those choices are more complicated and require the court to look more deeply at the reasons for making them such as international uniformity, general and specific deterrence, and risk assessment and management.

5.3.1 International Uniformity of the collision regulation is crucial and essential for the rules to be efficient and effective, both in their usage by mariners and their application by courts in litigation. For example in recent case in Hong Kong court handed down judgment apportioning 100 percent of the blame to the give way vessel He Da 98 which is the clear contradiction to the proportionate fault rule and recent development of the rules.138

5.3.2 The collision regulations require interpretation and proper application in order to be effective. Mariners must be able to predict how a court will interpret the rules in order to be able to follow them. Again the court is bound to look at the ordinary practice of seaman. The submission made in The Savina to the effect that the duty of the give-way ship was a higher duty than the duty of the stand-on vessel and should therefore attract the greater

138 Gard News 206, May/July 2012
measure of blame\textsuperscript{139}. That proposition was rejected by Sir David Cairns\textsuperscript{140}: “In any particular case the need for the give-way ship to take helm or engine action may assume greater or less importance than the need for the stand-on ship not to embarrass the give-way ship by alteration of course or speed. Neither obedience to rules of the road 19, 22 and 23 nor obedience to rule 21 can be said as a matter of law to be paramount.” The submission of giving more weight on stand on vessel to take action is contradictory to the normal practice of seaman as well as long custom and usage of mariners.

5.3.3 The primary goal of accident law, and thus of systems of rules such as the collision regulation, is to reduce the number and severity of accidents\textsuperscript{141}. Such reductions can be accomplished through general and specific deterrence. For example, when the steamers Newyork and Conemaugh collided in the Detroit river one night in 1981 they set up such a litigation as should evermore be a solemn warning to navigators tempted to neglect their look out. In English court it has been found in Inez case, “The Dover Strait is seriously congested. The International Maritime Organization adopted traffic separation scheme is designed to minimize collision risks and it is of the utmost importance that vessels should abide by it. If they do not and as a result a collision occurs they must normally expect to bear the major part of the blame”\textsuperscript{142}. The decision of the court will create deterrence to violate the normal traffic flow of the Traffic Separation Scheme.

5.3.4 The courts and its application of the collision regulation in holding vessel accountable and liable for their actions can play a large part in the risk assessment conduct by mariners. If mariners think their risk of being held liable in court is low that may motivate them to weigh the risks as worth the cost.

\textsuperscript{139} [1975] 2 Lloyd’s Rep 141
\textsuperscript{140} The Samco Europe Vs MSC Prestige(2011) 2 LR 579 Para 82; [Rules 19, 22 and 23 of the 1960 Regulations correspond to rules 15, 17 and 16 of the 1972 Regulations respectively]
\textsuperscript{141} THE COSTS OF ACCIDENTS, Guido Calabresi
\textsuperscript{142} Eglentine, Credo and Inez(1990)2 LR 390
5.4 Analysis Of The Interview Of The Mariners

While interviewing the mariners regarding apportionment fault rule, opinion of the major mariners found positive and in favour of the rule. According to the mariners, presently the seafarer became more alert than earlier to avoid the collision, knowing that as per proportionate fault rule no vessel would be able to escape the liability for his fault. For example it was understood by mariners that stand on vessel in crossing and overtaking situation had no responsibility but at present as the court is holding the stand on vessel partially liable in many cases, the vigilance and awareness of the mariners in navigation increased in those two situations. But one thing the mariners criticized that, sometimes the gross negligent party are getting better treatment, due to lack of the causation of that fault, which also spreading wrong message to the seafarer with negligent mind. For example in a crossing situation a give way vessel failed to see the opposite vessel in collision course by sight or radar even 5 minutes before the collision the court reduced the blame from sole proportion in recent cases to give some blame on the stand on vessels also\textsuperscript{143}. But according to the mariners comment in such cases the blame should be solely to a vessel, which is totally negligent, behave unruly, and unaware of the International rules and regulation to prevent the collision at sea.

From data analysis it has revealed that there were many cases where in spite of improper look out, failed to exhibit proper lights or shapes, excessive speed in coastal or river water, failed to give or hear whistle signal\textsuperscript{144} and even passing the traffic separation scheme in the wrong direction lane the vessel were blamed partially or even released from blame as the faults were non-causative. But according to the mariners suggestion the above faults to be considered as severe and gross nature. As such the mariners view is not to relieve any party

\textsuperscript{143} Sitarem Vs Spirit92001) 2 LR 107, Topaz vs Irapus(2003)2 LR 19, Enif vs Alexia(1999) 1 LR 643
\textsuperscript{144} Troll River(1974)2 LR 181
who has violated any collision regulation unless proved that the departure was in exceptional case.

It has been found that the court is reluctant to accept the defence of inevitable fault theory, where as the ship is always moving with danger and risk. As such it is expected by the mariners that the court will consider the cases as inevitable accident where both party proved reasonable care and due diligence but the accident was due to extra-ordinary situation for example sever rough weather (though predictable), sudden machinery failure which was not foreseeable, perils of sea, Act of God, extreme critical situation where the decisions of a prudent seaman may be hampered. For example in English court in Puritan case in spite of hurricane and machinery failure the fault was apportioned\textsuperscript{145} where as in case of defendants steel hull vessel broke loose form its moorings and struck the plaintiff's sail boat during hurricane Juan was pounding Nova Scotia Coast was held collision due to inevitable accident.\textsuperscript{146}

\begin{footnotesize}
\begin{enumerate}
\item[145] The Puritan\textsuperscript{91998}) 2 LR 16
\item[146] Wolverine Motor Works Shipyard LLC vs Canadial Naval Memorial trust,2011 NSSC 308
\end{enumerate}
\end{footnotesize}
CHAPTER-6
THEORY ON APPORTIONEMENT OF LIABILITY

6.1 Proposed Rate Of Apportionment

The tendency of the Admiralty court is to hold the apportionment among the parties in two forms, either in fraction (2/3:1/3) or percentage (60:40). To maintain uniformity the apportionment may be done in percentage, which has a systematic gradual progression. It has been revealed from data analysis that a total of 68 cases, which is 12% of the total cases held on fraction 2/3:1/3 and other all cases held on percentage or in such a fraction which is convertible in round figure of percentage for example ¼: ¾ equal to 25:75. In recent cases the court is automatically coming out from the judgment of fraction. Since 1970 out of 64 case only 7 cases was held on 1/3: 2/3.

Already we have found that about 10 degree of apportionment of the liability held in admiralty court, including sole and equal blame. Some divisions are commonly used, such as 60:40, 2/3:1/3, 75:25 and 80:20 and some divisions are rarely used, such as 90:10, 85:15, 70:30, 55:45.

The financial liability on collision case became huge due high speed and steel hull of the vessel, as such a very small amount of apportionment will cause shifting of large amount of financial liability among the parties. Therefore it has been found that the scale of various proportionate amounts is available in English court. Though for natural justice it is better to have more degree of apportionment in close range, but if we see the history of apportionment of liability we will feel to restrict the number of degree of apportionment.

When the apportionment rule was introduced the major criticism was, how the liability will be apportioned by ascertaining the degree of fault. As such it also found that until Eightieth century the court was very much unwilling to apportion except sole or equal
blame. Many a times the judges commented that it is hard, difficult, and not possible to apportion the liability. As such Lord Wright said: “[Apportionment] It is a question, not of principle or of positive findings of fact or law, but of proportion, of balance and relative emphasis, and of weighing different considerations. It involves an individual choice or discretion, as to which there may well be differences of opinion by different minds”\(^{147}\).

For that reason we are in the opinion to reduce the number of more type of division unless a more concise theory of apportionments established and we propose only following five degree of apportionment with their name, which includes sole and equal blame.

01. Grievous and casual fault \((100 : 0)\)  
02. Outrageous and minor fault \((87.5 : 12.5)\)  
03. Overwhelming and Significant fault \((75 : 25)\)  
04. Severe and Substantial fault \((62.5 : 37.5)\)  
05. Delinquent, derelict and serious fault \((50 : 50)\)

**6.2 Benefit Of Proposed 5 Degrees Of Apportionment**

**6.2.1** Admiralty judges often consider, where one ship is more to blame than the other, how many more times to blame one vessel is than the other\(^{148}\). Proposed rules of division will relieve the Judges to apportion the liability, as there is gradual progression of the rate. The difference of fault among the parties in five different degree of apportionment is 100, 75, 50, 25, and 0.

**6.2.2** As there are name of each degree of apportionment, so the criteria of fault will be easily understood and distinguishable.

\(^{147}\) The Macgregor, [1943] A.C. 197; (1942) 74 L.I.L.Rep. 82 at pp. 201 and 85;  
6.2.3 It has been revealed it that after rejecting the preponderance rule, the court is giving the equal blame on the basis of fault only. Again the convention is silent regarding the sole fault, though the court from his discretion held in many cases solely liable by one party considering the degree of fault of innocent party as nil. In our proposition as such the solely blame and equal to blame and innocent apportionment has been introduced literally.

6.2.4 If the rules has been established the Appellate court also will not feel embarrassed to judge on the rate of apportionment as the procedure will guide to ascertain the degree of fault.

6.3 Definition And Description Of 5 Degrees Of Apportionment

6.3.1 Grievous And Casual Fault (100:0)

When one party is extravagantly negligent, make a series of fault of higher nature in relation with collision regulation and very ordinary practice of seaman and all are causative and the other party is innocent or bear very minor or casual fault either less causative or not, the liability of each vessel may be apportioned as 100:0.

This type of apportionment will be very rare in case of two moving ships on the other hand very common for the collision between moving and moored vessel. In case of vessel under way while collided with anchored vessel who does not have fault of proper look out, anchor at wrong position, uncontrollable sheer, exhibition of proper light, shape and sound signal the moving vessel should bear the whole blame.

In case of two vessel moving in open sea, such type of apportionment may be given when there is no risk of collision but one ship suddenly take deliberate action wrongly and create the risk of collision within short notice, where as the opposite vessel had got no chance to take action to avoid collision or due to agony of moment the opposite vessel will bear no blame for wrong action at last minute.
In case of ship’s moving in narrow channel, or river if one party violates the local rules or custom, which has a greater culpability and causative potency to the collision or a vessel obstructing the safe navigational channel of the other ship, or a vessel is coming from opposite direction and staying in the wrong position or wrong side of narrow channel according to the collision regulation will bear the 100 percent of the blame.

6.3.2 Outrageous And Minor Fault (87.5: 12.5)

When one party is outrageously negligent, make a number of faults of higher nature in relation with collision regulation and ordinary practice of prudent seaman and all are causative, the other party bear negligible fault with causative potency, the liability of both vessel will be apportioned as 87.5:12.5.

If a collision case seems to fall within the scope of Grievous and Casual fault level, but the innocent party violated any rules of collision regulation or failed to act as prudent seaman, which causes or build the chain link of causation the party with minor fault may be blamed for 12.5%.

For example an overtaken vessel being stand on has got minor obligation to take action but if the vessel failed to keep proper look out or draw attraction of the other negligent vessel may bear the blame of 12.5%. If an anchored vessel failed to exhibit proper light or signal or anchored in wrong position, which contributed in the collision, the liability may be apportioned as 87.5:12.5.

This type of apportionment will be applicable where the comparative fault of the vessels are one degree more than the solely blame cases.

6.3.3 Overwhelming And Significant Fault (75:25)

When a vessel is liable for her deliberate wrongful act or gross violation of the collision regulation or failure to take proper action which she suppose to do at first hand and
other vessel also failed to show due care and diligence over the negligence of the first party the fault may be apportioned as 75:25.

For example if a give way vessel failed to take early action, or substantial action, failed to keep proper look out and liable for breach of traffic regulations on the other hand the stand on vessel failed to keep course and speed and take action according to the rule 17 a (i), (ii) and 17 (b) and 17 (c), the give way vessel must bear overwhelming portion of the blame as 75% and the stand on vessel also must attract some significant share of blame as 25%.

6.3.4 Severe And Substantial Fault (62.5: 37.5)

When both the vessel seems initially to be seriously negligent as such both are suppose to blame equally, but after investigation it found that one vessel has got clear preponderance on other, both vessels liability may be apportioned as 62.5:37.5 in favor of the less blameworthy vessel.

This type of apportionment may hold when both are give way vessel, such as in head on situation or in restricted visibility situation and when the negligence of one vessel is slightly more than the other.

In case of crossing situation if stand on vessel alter course port in violation of rule 17(c) while she has got optional responsibility to take action according to 17 a(ii), or a stand on vessel committed wrong agreement over VHF also failed to comply the action according to the agreement may be held liable for 37.5%.This type of apportionment will be applicable where the comparative fault of the vessels are one degree more than the equal blame cases.

6.3.5 Delinquent, Derelict And Serious Fault (50:50)

When both vessels are guilty of several faults, which contribute the collision, and it is difficult to apportion different degree of fault or it appears that the faults are equal, the liability is apportioned equally.
When both vessel are liable for major deviation of collision regulation for example failed to reduce speed in case of fog or both is completely negligent on basic seamanship to keep proper look out may be held in such type of apportionment.

6.4 Method To Measure The Appropriate Type Of Apportionment

In case of collision after proving the fault of both party, then the apportionment of the liability should be decided on the basis of culpability and causative potency. The court may list out the each individual fault whether causative or not at first stage and subsequently to ascertain the causativeness the court may interrogate against all fault, if the negligence withdrawn from the scene whether the collision would be avoided. Unless there is bold answer of NO we can assume that the fault of the party will fall within the chain link of the negligence leading to the accident. It is possible to assess the degree of culpability but not the causation. The court had to consider the blameworthiness and causative potency of the various wrongful acts and omissions and then make a comparative appreciation of the degree in which the faults of the respective vessels contributed to the damage.

To determine the liability according to the proposed 5 degrees of apportionment, the court may assess the case on primary findings whether the liability of the vessel will approximately fall on sole fault or equal fault. If the case appears to be on equal blame and clear preponderance is proved then the case may be apportioned as severe and subsequent fault. Again if the case appears to be on sole blame and one party found slightly more negligent than an innocent or party with casual fault then the case may be apportioned as outrageous and minor fault. When the culpability of one vessel found overwhelming and another vessel is significant the liability among the vessel may be apportioned 25:75.
CHAPTER-7

CONCLUSION

In conclusion we can state that in spite of plenty criticism and doubt the age of the rule of apportionment of liability in collision case has reached up to century. During this period the court also kept pace with the technical and structural development of the ship. One of the greatest achievements of apportionment rule is to get a well-framed collision regulation including interpretation.

The method of assessing the fault may not be perfect system; however to a reasonable extent it has proven acceptable result comparing with previous system. I have tried to discuss some proposal on method and degrees of various apportionments in this dissertation paper. I consider that with this system of 5 degrees of apportionment there will be less chance of error. I also consider that these degrees of apportionment may be increased in future after more development of apportionment fault rule. There may be plenty debate on those proposals but I would be successful if any framed system established to measure the apportionment of the liability of the vessel.

There is also phycology behind all judgments that is to avoid collision, minimize casualty, to reduce pollution and other relevant factors. While apportionment the court also considers that the interpretation of the collision regulation will affect the mariners understanding and use of collision regulation to eliminate the extent and severity of collisions at sea. From data analysis it has been revealed that the collision cases reduced drastically during last 50 years. Together with many other factors the rule of apportionment of liability also plays a vital role in this achievement.

In conclusion I also wish to raise another issue regarding the requirement of the research on the development of the collision regulation so that each vessel can be more alert
to avoid the collision. A finer adjustment in collision regulation is required so as to match the preventive and civil policy together so that the rule can impose liability directly at some cases. I have a mind to do the same in future if Almighty gives me the opportunity. I feel a further research is also required to determine the degree of apportionment more precisely, specially weighing the culpability between vessels navigating with constrains and openness.
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APPENDICES - I

DISSERTATION TRIAL

The dissertation involved a discussion of the legal position of apportionment of liability between vessels in a collision case. The objective of this study is to find out the legal basis for the apportionment of the liability from the precedence of the Admiralty court. It is also intended to show the importance of the collision regulation in determining the collision liability as well as the preventive and deterrent role to the collision accident. The outcome of the paper is to uniform the rules of apportionment in a collision case with the development of the modern shipping world.

The mixed research methodology of quantitative and qualitative research and analysis are being utilized in this paper. The research was started at a basic level by reading various textbooks regarding the collision liability. I found most useful text books were Modern Maritime Law and Risk Management, Admiralty Jurisdiction and Practice, and A guide to the collision avoidance rules. Although these gave a general picture on collision liability and apportionment, as the subject was extremely specific and topical it was clear that the textbooks were not likely to reach me on the main focus of research. Then I went to Internet with key words and subject names. A subject search of “collision liability” and “apportion of collision liability” yielded several important sources; in particular the article by Dr. Abdullah Hasan Mohammed in Journal of Sharia & Law of UAE gave me many links to search. During this time I got various case laws but which could not satisfy me. Then I got i-law, which provides me the full list of maritime law from where I have segregated the collision cases preferably the apportionment cases. Then I have again started sorting the case for the period of about 85 years from 1928 to 2013 according to the topic, amount of apportionment and period wise. For example the collision while the vessels were on head on, crossing,
overtaking or in restricted visibility. Also I have started to make the notes after reading the case law specifically the apportionment and the comment of the Judges.

At the end I prepared a data sheet in excel format with all information of each case, which gave me comparison of various information at a glance. The recent and major cases of various situation and apportionment help to find out the pattern and development of various theories on apportionment of collision liability.
APPENDICES - II

LLM PERSONAL DEVELOPMENT PORTFOLIO (PDP)

SELF EVALUATION SUMMARY OF PERSONAL DEVELOPMENT

It was my pleasure and I feel proud to be the student of postgraduate programme of Lloyds Maritime Academy as well as London Metropolitan University. I have done postgraduate diploma from the same institute, which gave me primary adaptation with the environment.

Initially I was swimming in a sea thinking what should I do, which topics may be the best for me? From researching business law handbook I got some factors to chose my topic. Then I feel as a mariner as well as having legal background it would be better for me to choose any topic, which will be my point of interest. Then I came to conclusion that I will work on collision, which is very important and vital for both sides. So then my thoughts were swinging into two points, whether I should work on Collision Regulation or Collision Liability. Initially I was afraid to segregate these two issue and prepared literature review accordingly with combination of both sector of knowledge. I thought that I would not be able to get sufficient material and interesting points in one topic. But after feedback of the literature review I got only 57.5% mark, which make me disappointed at the same time helped to came out from shagginess. The comments from my course director awake me by giving good jerk. I was thinking to crux my research as the course director was again and again pointing out the issue.

Finally I boldly took decision to do my research on Collision liability. Then I have started to collecting the materials and studying slowly on the topics. Subsequently I found that the apportionment of collision liability still has got good discussion value in maritime law field. Still I could not firmly find out what should be the question of my research? I was thinking should I make some hard line question or keep it in soft way so that it will be easy for me to make the answer at the end. As such I submitted the literature review with a soft question on collision liability and apportionment of fault. My title was “Is there any strict rules or factors to determine collision liability and evaluate apportionment of fault in Maritime Collision case?” By this time I have collected plenty materials but I was weak in finding the debate in the topic. There was a few debate included in my literature review.

Then to prepare the research proposal I have studied the specimen copy given in the handbook but that does not fulfill my thrust. Luckily I got some textbooks on legal research
methodology, which helps me to understand the procedure of research. Also to prepare the research proposal, I make some plan of work and gradually I was proceeding to the innovative idea.

During that period I have collected plenty case law of various country’s regarding the apportionment of liability. Specially from i.law I have got the list of cases in the admiralty court regarding collision liability. I got my idea that I will try to sort out the various cases in different situation of collision and try to find out whether there is any general pattern of apportionment. If there is scope I will try to find out any formative way for apportionment.

When I have got the feedback of my literature review and research proposal and got the number, I was happy to see that I have got 70% number. Which give me immense courage that I would be able to do well in the research.

Then I have started taking notes of the cases and writing in one notebook. Being a mariner it was easy for me to understand the situation reading the description of the case. But after that also I found that it will take plenty time for me to read the all situations of the case. Then I make some points, which I will require for my research and started taking notes of those points.

Again I became panic how to square up the information. Then I put some major information in the excel sheet, for example name of the case, apportionment given by the court, whether it was in open sea, coastal or in river, or whether it was in fog or clear visibility. Then this give me immense pleasure that as if the 100 years judgment in my one page. I can sort out the information in any way, for example how many cases held as 70:30 apportionment. From the database I make two tables, which make me realize the degree of apportionment more easy.

Then I have decided to come to the real point of my work, I have to find out the tendency of the apportionment and also formulate some theory on it. By this time it became clear to me that which are the important policy making cases. I have started further study of the cases and find out the suggestions and recommendations of the judges of that case regarding apportionment. Especially I have seen the cases in Court of Appeal have maximum policy making decisions. Then with those recommendations I got idea what are the factors the judges following to apportion the vessels.

At the end I prepare my proposals correlating the gradual progression of the case law in English court. I am confident that the proposals will help in legal field to ensure the justice in
collision case. Mean time I feel that my confidence on research increased very much and in conclusion of my present research paper I wished to do more two research in future which will be also interesting and helpful to enlighten the maritime field.

I feel my research capabilities will help in my both personal and professional life. I will be able to prepare the crux question and the method to reach on any focused point either in my personal or academic life.