



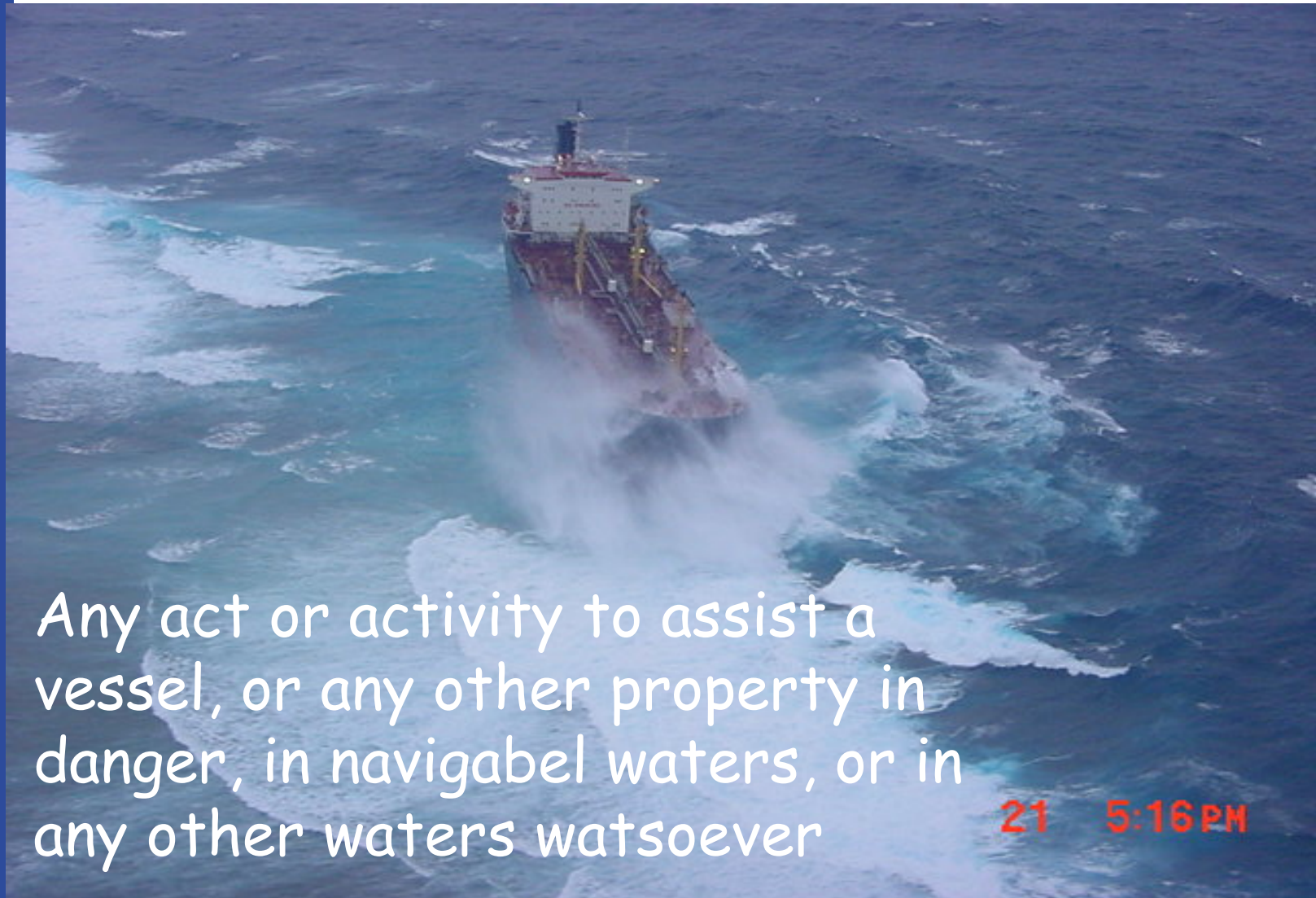
# The Law of Salvage

---

Professor, jur. dr Svante O. Johansson



# What salvage is about



Any act or activity to assist a vessel, or any other property in danger, in navigable waters, or in any other waters whatsoever



# Intended purposes

- Counter the temptation to misappropriate property from shipwrecks
- Incentive for salvage operation in order to save
  - Property
  - Environment
- This has influenced the rules on
  - The reward
  - No reward without success



# Unique to maritime law

- No direct counterpart on land
  - *Negotiorum gestio*
  - Lost property Act
- Relation to other statutory legislation
  - Sea Finds Act
  - Exclusive Right to Salvage Act



# The legal background

- 1910 Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea
  - Incorporated into Ch. 16 SMC up until 1996
  - Amoco Cadiz demonstrated weaknesses
- International Convention On Salvage 1989
  - Incorporated in Ch. 16 SMC as from 1996
- Lloyd's Open Form (LOF) 2000
  - Agreement of Salvage



# The concept of salvage

- Interest or property subject to salvage
- Rewarded according to law under the following conditions
  - Danger
  - Voluntariness
  - Useful result
    - No cure - No pay
- Salvage under contract



# Common salvage operations and services

## *Operations*

- Stranding and Grounding
- Sinking
- Rescue Towing

## *Included services*

- Refloating
- Pumping, raising and repair
- Hook up and Tow in
- Surveys
- Fire fighting - assistance
- Cargo/equipment recovery
- Wreck removal
- Standing by
- Prevention of third party damage





# Interests subject to salvage

- Vessels
  - 16:1 1 (441 a and b) SMC
- Mobile drilling units
  - 16:2 3 (special in Sweden) 507.2 SMC
- Other property
  - Not permanently attached to shoreline
  - 16:1 1 and 2 (441 a and c) SMC
  - NB! 16:2 3 (442.4) SMC (fixed units)
- No Salvage alone of
  - Persons
    - NB! 16:5.2 (445.2) SMC
  - Liability
    - NB! Environmental damage 16:1 3 (441(d)) SMC
  - Loss of time





# In danger, foundered or wrecked

- Danger 16:1 (441) SMC
  - Risk of damage
- Types of danger
  - Total loss or physical damage
  - Total loss or extensive damage
  - Delay is not excluded
- Degree of danger
  - Severe peril of the sea
  - Actual danger as opposed to perceived danger
    - *Loran* ND 1996 p. 238
    - *Los 102* ND 1999 p. 269
    - *Norsk Viking* ND 2004 p. 383



# Voluntariness

- Legal or official obligation to act determines
  - Coastguard
  - Crew
    - The proper abandon of the ship
  - Pilot
  - Tug
- Salvage operation by public authorities now permitted



## Useful result

- No cure no pay-principle 16:5 (445) SMC
  - Reward or remuneration or compensation
- Reward cannot exceed the saved value
- What is success?
  - Out of danger
- Damage to the environment treated outside the principle
  - Special compensation 16:9 (449) SMC
    - Unsuccessful efforts:
      - Expenses
    - Successful efforts:
      - Expenses + 30 to 100 percent



# Assessment of the reward

- Aim to encouraging salvage efforts
- Criteria 16:6.1 (446.1) SMC
  - a. the saved value of the vessel and other property;
  - b. the skill and efforts of the salvors in preventing or minimizing damage to the environment;
  - c. the measure of success obtained by the salvor;
  - d. the nature and degree of the danger;
  - e. the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - f. the time used and expenses and losses incurred by the salvors;
  - g. the risk of liability and other risks run by the salvors or their equipment;
  - h. the promptness of the services rendered;
  - i. the availability and use of vessels or other equipment intended for salvage operations;
  - j. the state of readiness and efficiency of the salvor's equipment and the value thereof
- Without regard to the order of the criteria
- Never to exceed the saved value
  - 16:5.1 (445.1) SMC
- Reduction (16:3 4 (443.3), 16:9 4 (449.4) and 16:10 3 (450.3))

# Background to the treatment of special compensation

- **PIOPIC 1972 assuming liability from salvors in oil pollution salvage**
- **New Salvage Convention 1989 introducing "Special Compensation".**



- **Article 14 Special Compensation included in LOF salvage contract since 1990.**



- **1996 July 14th. The Salvage Convention came into force**



- **1995 UK ratified the Salvage Convention.**



# Special compensation

- Requirements for compensation
  - The vessel must threaten to damage the environment
  - Damage means
    - substantial physical damage to human health or to marine life or resources
    - Causes only from certain pollutant
- Problems
  - What constitute expenses?
  - Can profit be included?
  - How to measure success?
  - How to assess the uplift (+30-100 %)?
  - Insurers exposed to unmonitored risks
- The solution to the problems
  - SCOPIC-clause into the salvage contract
  - Special compensation scheme not applicable



# SCOPIC-clause

- Main advantages compared to art. 14 of the salvage convention
  - No threat of damage to the environment required
  - No geographical restrictions
  - A fixed uplift (25%) not linked to success
  - Agreed tariff rates for tugs personnel and equipment
  - Firm agreement on security
  - P&I clubs' and property underwriters' rights to be represented during the salvage operation



# Salvage under contract

- The parties can agree on other conditions
  - Contractual salvage
    - Fixed rate
  - Pure salvage
    - No cure no pay
- A salvage contract can be modified and annulled
  - 16:3 (443) SMC





# Salvage v. Towage

- Towage
  - Agreed price
    - Daily hourly rate (BIMCO Towhire)
    - Lump sum (BIMCO Towcon)
  - No claim for salvage compensation, if not in danger
- Salvage
  - Danger
  - Open form of pure salvage



# Special salvage operations

- Salvage operations by sister vessels
  - 16:2 para. 2 (442.1) SMC
- Salvage operations by public authorities
  - Compare voluntariness
  - 16:11 para. 5 (442.2 and 451) SMC



# Exceptions to the right of compensation

- Services rendered under existing contracts
  - Compare voluntariness
  - 16:10.1 (450.1) SMC
    - If extraordinary it should be rewarded
- Express and reasonable prohibition of the owner
  - 16:10.2 (450.2) SMC
- Salvor's misconduct
  - 16:10.3, *cf.* 16:3 para.4 (450.3) SMC
    - Caused danger
    - Have damaged during operation
    - Acted dishonestly
  - *Cf.* on relation to 16:9 para. 4 (449) SMC on special compensation



# Apportionment between salvors

- Apportionment between independent salvors
  - 16:8 (448) SMC
- Apportionment between owner, master and crew
  - 16:11 (451) SMC
- Apportionment between owner and time charterer
  - 14:66 (386) SMC



# Related rules

- Maritime lien
  - In ship 3:36.5 (51) SMC
  - and cargo 3:43.1 (61) SMC
- General Average
  - Allowed in YAR 1994 rule VI
    - Outside YAR 2004 (complicated rules)
- Marine Insurance
  - NMIP § 4-8.1
  - CICG § 40



# Thanks for your attention!

---

