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Liabilities and Claims against Local Shipping Agents under the Laws of Pakistan

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Abstract
This paper explores the liability of shipping agents in Pakistan, investigating whether it is independent or co-extensive with their principals. It examines if local shipping agents are responsible for claims related to damage or short delivery of cargo established against their principals. The study highlights the agent's role in filing declarations under Pakistani Customs laws to discharge such claims. Additionally, it clarifies that agents are liable for shortages if established against the vessel owner after departure from a Pakistani port. Judicial decisions affirm that the shipping owner's and agent's liabilities are co-extensive. The paper dismisses a claim excluding shipping owners from a suit and recommends measures to safeguard the interests of ship owners, managers, local agents, and the industry at large.

Keywords: Co-Extensive, Customs Penalty, Declaration, Disbursement, Indemnity, Shipping Agents

Introduction

A shipping agent has been defined as "any person (natural or legal) engaged on behalf of the owner, charterer or operator of a ship, or of the owner of the cargo, in providing shipping services including negotiating and accomplishing the sale or purchase of a ship; negotiating and supervising the charter of a ship; collection of freight and charter or hire where appropriate and all related financial matters; arrangements for Customs and cargo documentation and forwarding of cargo; arrangements for procuring, processing the documentation and performing all activities required or related to dispatch of cargo; organizing arrival or departure arrangements for the ship and arranging for the supply of services to a ship while in port." (Mohammad, 2010).

In many countries, ship agents and, in some cases, ship managers can be involved in claims owing to their joint and several liabilities with their principal, whether the ship owner or charterer. This liability arises from local law or port statute (statutory liabilities). Examples include cargo claims, payment of freight tax, Customs duties and penalties, removal of wrecks, abandoned cargo, containers, dock damage, immigration fines, repatriation costs, and oil pollution. In the ordinary course of events, these liabilities should be handled by the principal and, where appropriate, their P&I Club.

The agent may also be liable, either at law or by port statute, to pay the principal's commercial debts, such as port and harbor dues, pilotage, bunkers/stores, and repairs. Statutory liabilities form part of the cover provided by insurers. However, commercial debts are not insured, as they can theoretically be taken care of by a prudent agent obtaining funds in advance.

In most jurisdictions, even where there is a joint and several liability, the principal, and not the agent, is the prime target for claims (e.g., although ship agents in Singapore are jointly and severally liable for dock damage and wreck removal, in practice the port authority will always look to the principal to ensure that security is provided before the ship leaves the port). However, in other jurisdictions (e.g., Pakistan) the ship may be allowed to sail, and the port authority will send their bill to the ship agent, who then must obtain payment from his principal. In the United Kingdom, the agent's liability is restricted to the costs and fines relating to illegal immigrants.

Experience has revealed that the authorities in the following countries may look to the shipping agent, rather than the principal, for various liabilities: Argentina, Australia, Bangladesh, Brazil, Canada, Chile, Ecuador, Colombia, Ecuador, India, Kuwait, Pakistan, Philippines, Spain, Taiwan, Turkey, United Kingdom, United States of America and Venezuela. It is not an exhaustive list, and consideration must be given to changing laws and revising port authority enactments.

Of the countries listed above, several have legal systems that take many years to process claims. It means that during the intervening years, there is always the risk that the ship will be sold or the owner will cease trading, in which case the agent will be left to deal with the claim. If the agent becomes aware of the claim while the ship is still in port, attempts should be made, with the assistance of insurers, if necessary, to obtain a P&I Club letter of guarantee (LOG) before the ship sails. If there is substantial damage to cargo or dock damage which cannot be defended or disputed, then it may be possible to do this amicably. When a LOG is provided, it is essential to check the letter's wording to ensure that the agents' liability is fully protected and that adequate consideration is given concerning interest and legal costs." (ITIC, 2006).

Research Question

What legal liabilities and claims may arise against local shipping agents under the laws of Pakistan, and how are these addressed and regulated within the maritime legal framework of the country?

Research Justification

The study on "Liabilities and Claims Against Local Shipping Agents Under the Laws of Pakistan" is crucial for several reasons:

1. **Legal Compliance and Governance:** Understanding the liabilities and claims against local shipping agents is essential for ensuring compliance with Pakistan's maritime laws. This research will shed light on the legal framework governing shipping activities and provide insights into the obligations imposed on local shipping agents.
2. **Risk Management:** Shipping agents play a pivotal role in the maritime industry, facilitating the movement of goods and vessels. Identifying potential liabilities and claims against them is vital for effective risk management. This research will assist shipping agents, maritime companies, and stakeholders in developing strategies to mitigate legal risks and liabilities.
3. **Protection of Stakeholder Interests:** The maritime sector involves various stakeholders, including shipowners, cargo owners, and insurers. Understanding the liabilities and claims against local shipping agents will contribute to protecting the interests of these stakeholders. This research will provide valuable information for stakeholders to assess the legal implications of engaging with local shipping agents in Pakistan.
4. **Legal Precedents and Case Studies:** Examining past legal cases involving local shipping agents in Pakistan will contribute to establishing legal precedents. This research can be a valuable resource for legal practitioners, scholars, and policymakers, providing insights into how courts have interpreted and applied relevant laws in specific situations.
5. **Improvement of Legal Framework:** Identifying gaps or ambiguities about local shipping agents in the existing legal framework will be essential for proposing improvements or amendments. This research can contribute to the ongoing dialogue on legislative reforms, ensuring that the legal framework aligns with the evolving needs and challenges of the maritime industry in Pakistan.
6. **International Comparative Analysis**: Comparative analysis with international maritime laws and practices will provide a broader perspective on how other jurisdictions handle liabilities and claims against shipping agents. It will facilitate the adoption of best practices and contribute to harmonizing legal standards in the global maritime community.

In conclusion, this research is indispensable for fostering legal clarity, promoting effective risk management, protecting stakeholder interests, establishing legal precedents, contributing to legislative improvements, and fostering international collaboration within the maritime industry in Pakistan.

Liabilities and Claims Against Local Shipping Agents in Pakistan

The liability of the local shipping agents in Pakistan is not independent but co-extensive with his principal. Firstly, the claimant must establish its claim against the carrier, and then the liability of the local shipping agents arises. The local shipping agents work under the license issued by the Customs authority, and they can only work by obtaining such a license. The local shipping agent is answerable for the discharge of all the claims for damage or short delivery of cargo if it is established against their principal regarding imported goods. Section 55 (1) (e) of the Customs Acts, 1969 prohibits port clearance to a vessel until certain conditions are fulfilled or complied with. The sub-clause (e) of subsection (1) thereof provides as under:

> The appropriate officer may refuse to give port clearance to a vessel or permission to depart any other conveyance until: [...]
>
> (e) the agent, if any, delivers to the appropriate officer a declaration in writing to the effect that such agent is answerable for the discharge of all the claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods.

Therefore, the Customs Act of 1969 makes the agent answerable for the discharge of all the claims for damage or short delivery. The local shipping agent is appointed only to comply with the Customs formalities and limited purposes on a particular voyage of the vessel, such as to obtain freight to issue delivery orders or to settle claims, and its nature of work is slightly different from the agent defined under the Contract Act, 1872. In the case of M/s. Alliance Insurance (Hussain, 1977), Mr. Justice Zafar Hussain Mirza defined the duties and liabilities of the shipping agent and observed that:

> "It is clear that such agent is responsible for performing specified duties in discharging his obligations, for which, under the statute, he is personally liable, whatever may be his rights for contribution or compensation against his principal. In performing his limited duties, such an agent cannot be said to be carrying on generally the business of a particular principal by exercising his discretion as an agent doing business on behalf of his principal. The shipping agent provides his services to all and sundry who may choose to avail his services so that he does not act for a single principal but does his own business in his name for his clients."

Liability of local shipping agents was also considered in the case of Global Tradeways Ltd (Alam, 2004). The Court observed that the shipping agent was not made liable to pay the port dues in any of the statutes or acts. He acts as a general agent for various principals or vessels. By representing various principals (i.e., vessels or owners of vessels), It does not mean that his acts or deeds carried out for one principal are binding on other principals, nor the liability of one principal can be foisted or thrust upon other principals represented by the same agent. Liability of shipping agents in terms of the Customs Act of 1969 is confined to the extent of short landing or delivery of goods or cargo.

Further, Section 230 of the Contract Act of 1872 provides that (Contract Act, 1872):

> **"Agent cannot personally enforce, nor be bound by, contracts on behalf of principal:**
>
> In the absence of any contract to that effect, an agent cannot personally enforce contracts he entered into on behalf of his principal, nor do they bind him personally."

Under the Customs Act of 1969, the shipping agent files a declaration before the Customs authorities stating therein that he is answerable for discharging all the damages or short delivery of goods regarding importing cargo. A declaration filed should be strictly construed as the same is general (Sea Customs Act, 1878). Further, under the said section, a shipping agent is not required to file a separate declaration for each vessel. In the case of M/s. Pakistan Industrial Chains Company (Arfin, 1968), the Court held that:

> "Declaration of liability by ship's agent for damages or short delivery of goods – may be "general" or "continuing," and not necessarily a separate declaration in respect of each vessel – Section 64 to be construed strictly."

Distinction between Ship Agent's liability and answerability

The scope of S. 64 (d) of the Sea Customs Act of 1878 was also discussed in another case. Reference can be made to Burjorjee Cowasjee (Mahmood, 1975), in which the said section was under consideration. It was held that a shipping agent is not personally liable on his declaration given under S. 64(d) of the Sea Customs Act before the claim is established against the carrier. The liability of the shipping agent in respect of different Sections of the Customs Act, 1969 was highlighted by Mr. Justice Shaiq Usmani (Usmani, 2000), who observed as follows:

> "Section 55 (1) (d), therefore, makes the agent liable for Customs penalty. In complete contradistinction to it, section 55 (1) (e), which deals with damage or short delivery of cargo, does not make the shipping agent liable but only "answerable for discharge of all claims for damage or short delivery." This distinction between the liability or answerability of the Customs penalty and cargo claim, respectively, carries over to section 55 (2), which makes the agent liable for payments of all Customs penalties, which may be imposed on the master of the ship under section 156 (1) of Customs Act but merely binds the agent to discharge all cargo claims. What, then, is the significance of the use of the words "liable" for Customs penalty and "answerable" and "discharge" for cargo claim? There was nothing to prevent the lawmakers from using the same words for both, but the fact they chose to use different words for the two shows that they had intended the responsibility for two types of claims to be different."

It was further observed on page 1922 of the above judgment:

> "The meanings of "liable" and "discharge" used in the context of Customs penalty and cargo claims respectively it is easy to see that since the word "liable" connotes legal responsibility the use of it. In the context of Customs penalties, it appears to align with the intention and anxiety of lawmakers to prevent evasion of Customs duties by consignees in collusion with ship owners. However, the word "discharge" in the context of cargo claims connotes nothing but an "act of paying off" by the ship agent not on his own but on behalf of his principals. However, why should the shipping agent pay off the consignee's claim when he has no contractual relationship with the consignee? It would be understandable for this to happen if the ship agents were the exclusive agents of their principals, who would then be deemed to carry on their business in Pakistan through the agent, but not when they are general ship agents who offer their services to all and sundry. It would appear lawmakers wanted to make the shipping agent co-extensively responsible with the carrier for answering cargo claims; they did not want the agent to be personally liable for payment of the claim. They were all contemplating that once the carrier's liability was established, the shipping agent should discharge the cargo claims on behalf of their principals. If the ship agents are required to discharge the cargo claims, they will do so on behalf of their principals, and beyond their liability to do so would be essentially secondary liability, that is to say, the liability of the guarantor as contrasted with that of strict surety. Consequently, it is only when the consignee cannot recover from the carrier, either because of his refusal or avoidance or unavailability within the boundaries of Pakistan, that the consignees/underwriters may proceed to recover from the shipping agent. It would seem that the courts should refrain from passing joint and several decrees in cargo claim cases against the carrier and ship agents. The interest of the consignees/underwriters will be sufficiently protected if the decree is sought and granted generally against the carriers and, in the alternative, against the ship agents."

Section 55 of the Customs Act, 1969 has also been considered in the case of Crescent Sugar Mills (Akhter, 1983), where the Court observed that the agent would be liable to pay all the penalties as specified in the above section and further held that agent's liability is co-extensive with the carrier and not independent of his principal. It will arise after the damage or short delivery is established.

Liability of Shipping Agents under the Customs Laws of Pakistan

The position of the Customs Laws under which the liability of a ship agent arises is as follows: -

The master of a vessel calling at the Pakistani port must apply for port clearance 24 hours before it departs, along with an export cargo manifest. However, a shorter period may be allowed by the Collector of Customs (Customs Act, 1969). Under Section 54, such port clearance is filed by a conveyance other than a vessel (Customs Act, 1969).

Under Section 55, the Customs officer may refuse the port clearance to a vessel unless (Customs Act, 1969):

a) Section 53 of the Customs Act is complied with.
b) All port dues, penalties, taxes, and duties by the owner concerning such vessel or other vessel are paid or secured by a guarantee.

c) In the case of export cargo, all duties and taxes are paid until such goods are unloaded, or if it is not possible to unload, a guarantee is given for the deposit of the amount.
d) A declaration in writing to a fact that the agent will be liable for penalty under clause 24 of sub-section 156 is given to discharge the liability.
e) The agent, if any, delivers to the appropriate officer a declaration in writing that such agent is answerable for the discharge of all claims for damage or short delivery, which may be established by the owner of any goods comprised in the import cargo in respect of such goods.

Section 156 of the Customs Act provides for punishment for offenses under the Customs Act, and the provision relating to shipping vessels is contained in sub-section (i) of clause 24 of Section 156, which is reproduced as follows (Customs Act, 1969): -

1	2	3
(i) If any goods entered in the import manifest of a conveyance are not found in that conveyance or (ii) if the quantity found in the conveyance [12][container or any other package] is short, the shortage needs to be accounted for to the satisfaction of the officer-in-charge of the Customhouse.	the person-in-charge of such conveyance shall be liable to a penalty not exceeding twice the amount of duty chargeable on the goods not found on the conveyance or, if such goods are not dutiable or the duty thereon cannot be ascertained, to a penalty not exceeding [13][fifteen thousand rupees] for every missing or deficient package of separate article and in the case of bulk goods to a penalty not exceeding the value of the goods, or [1][twenty-five thousand rupees], whichever be higher.	45, 53 & 55

Column 1 above describes the offenses, whereas column 2 describes the penalties for offenses concerning Sections 45, 53, and 55 of the Customs Act. Section 45 requires that the import manifest be signed by the person in charge of the conveyance (Customs Act, 1969). Regarding legal provisions under the Customs Act, the primary purpose of giving a bond under Section 55 is to obtain port clearance for a vessel.

Under clause (e), the agent files a declaration "for discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods." Given these words used in clause (e) of Section 55, an agent is held liable. On this basis, an agent is held liable for the shortages if the same is established against the owner of a vessel after it departs from the Pakistani port. According to judgments of superior courts, the liability of the ship owner and its agent is co-extensive, and an agent is not liable individually unless liability against the principal is also established; on this basis, the High Court has been dismissing the claims in which the ship owners were not impleaded in the suit.

Liability of Shipping Agents and the Contract of Indemnity

If the shipping agent claims an indemnity provided under the Contract Act of 1872, Section 124 of which defines it as follows (Contract Act, 1872):

> "**Contract of Indemnity**"—A contract by which one party promises to save the other from loss caused to him by the promisor himself or by the conduct of any other person is called a "contract of indemnity."

It is to be noted that though the Customs Declaration given to the Customs Authorities of Pakistan contains an undertaking by the shipping agent to indemnify the losses that the owners of goods may suffer for damage or short delivery, it is not a Contract of Indemnity, between the cargo owner and agent; however, it is based on this declaration that Pakistani Courts have held agents to be liable for the cargo shortages established by the owners against a vessel. Like other common law jurisdictions, a contract under Pakistani law may be either express or implied, extending to a contract of indemnity.

It is also relevant to reproduce Sections 140 and 141 of the Contract Act in support of the contention that the right to claim indemnity will only arise when a surety (or an agent) has been indemnified:

"**Right of Surety on payment or performances------** Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor (Contract Act, 1872).

Surety's right to benefit of creditor's securities- A surety is entitled to the benefit of every security that the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security." (Contract Act, 1872).

In support of the above principles, there are Pakistani authorities as well as several authorities in English as well as in Indian jurisdiction (which too are common law jurisdictions) to the effect that a person could only enforce his right of indemnity on proof of actual loss suffered by him under the contract of indemnity. In this connection, it is relevant to mention Article 83 of the Limitations Act 1908, under which a person may file an action under a contract to indemnify within three years. The said Article is reproduced as follows (Limitations Act, 1908):

Description of suit	Period of Limitation	Time from which the period begins to run
Contract to Indemnify	Three years	When the Plaintiff is indemnified

Invoking the Admiralty Jurisdiction by the Shipping Agents

Section 3 of Admiralty Jurisdiction of the High Courts Ordinance 1980, under which the Pakistani Courts exercise Admiralty Jurisdiction, is as follows (AJHCO, 1980):

"**Admiralty Jurisdiction of the High Court. —**

(1) The Sindh High Court and the High Court of Baluchistan shall have and exercise Admiralty jurisdiction within their respective territorial jurisdiction as this Ordinance provides. The Lahore High Court and the Peshawar High Court shall, within their respective territorial jurisdiction, have and exercise the jurisdiction in cases where any question or claim relating to aircraft is to be determined.

(2) the Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following causes, questions, or claims:

(a) any claim to the possession or ownership of a ship to the ownership of any share therein or for recovery of documents of title and ownership of a ship, including registration certificate, logbook, and such certificates as may be necessary for the operation or navigation of the ship.

(b) any question arising between the co-owners of a ship as to possession, employment, or earnings of that ship.

(c) any claim regarding a mortgage or charge on a ship or any share therein.

(d) any claim for damage done by a ship.

(e) any claim for damage received by a ship.

(f) any claim for loss of life or personal injury sustained in consequences of any defect in a ship or her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults, the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship.

(g) any claim for loss of or damage to goods carried in a ship.

(h) any claim arising from any agreement relating to the carriage of goods in a ship or the use or hire of a ship.

(i) any action or claim like salvage of life from a ship or cargo or any property on board a ship of the ship itself or its apparel, whether services rendered on the high sea or within territorial waters or internal waters or in a port, including any claim arising by the application by or under section 12 of the Civil Aviation Ordinance 1960, (XXXII of 1960), of the law relating to salvage to aircraft and their apparel and cargo;

(j) any claim like towage in respect of a ship or an aircraft, whether services were rendered on the high sea or within territorial waters or internal waters or in a port,

(k) any claim like pilotage in respect of a ship or an aircraft.

(l) any claim in respect of necessaries supplied to a ship,

(m) any claim in respect of the construction, repair, or equipment of a ship or dock charges or dues,

(n) any claim by a master or members of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts or the Merchant Shipping Act, 1923 (XXI of 1923), is recoverable as wages or in the Court and in the manner in which wages may be recovered.

(o) any claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship.

(p) any claim arising from an act that is or is claimed to be a general average act.

(q) any claim arising out of bottomry or respondentia,

(r) any claim of the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship as a Naval Prize in a violation of Customary law of the sea or otherwise, or for the restoration of a ship or any such goods after seizure, or droits of Admiralty. Together with any other jurisdiction for the grant of such reliefs as are provided under the Merchant Shipping Acts of the Merchant Shipping Act, 1923 (XXI of 1923), any other jurisdiction which was vested in the High Court as a Court of Admiralty immediately before the commencement of this Ordinance or is conferred by or under any other law and any other jurisdiction connected with ships or aircraft in respect of things done at sea which has by tradition or Customs of the sea been exercised by a Court of Admiralty apart from this section."

Action in rem, disbursement on account of a ship, and payment on account of the owner

In the recent past, the two shipping agents, namely, Pacific Maritime (Pvt) Ltd and Transtrade (Pvt) Ltd, filed actions in rem for the arrest of M.T. 'GALAXY' for the recovery of losses they suffered on account of payment of decrees passed against them. The owners of the vessels and Glory Ship Management were acting as the Managers on behalf of the owners. They also claimed bank guarantees for decreed and pending claims. They stated that they acted as agents for vessels M.T. CHANGI, M.T. OLYMPIC, and several other vessels on the instructions of Glory Ship Management.

The Single Bench of the High Court dismissed the application for the arrest of M.T. 'GALAXY.' The Division Bench of the High Court, maintaining the order in the appeal against the order of the Single Judge, held that the agent's claim did not fall under any of the clauses. Therefore, action in rem was not maintainable. The Learned Division Bench made the observations in paragraph 11 of the judgment which is as follows (Ahmed & Bajwa, 2011):

"In the context of the claim made by the appellant, it is clear that the appellant appears to have paid the sum towards the satisfaction of decree on account of a claim which arose out of the short landing of consignment from the ships and claimed it as a disbursement on account of the ship. The disbursement to qualify on account of a ship, as noted in the above two judgments, has a direct nexus to ship in that without such disbursement, the ship will not be in a capacity or capability to be a ship or to sail/trade as a ship. Though the ship owner is liable in personam for the short landing of goods and such claim having been settled by its agent, the agent itself apparently will not be in a position to claim payment as a disbursement on account of a ship for that after unloading the consignment from the ship, the claim of the short landing of consignment did not prevent the ship from being a ship or from trading/sailing. The money the agent pays may be the liability of the ship's owner, to which the agent may claim reimbursement, but it is not a disbursement on account of a ship. At best, it can be termed payment on the owner's account. We, therefore, do not find that the claim of the appellant comes within the ambit of disbursement as provided in section 3(2)(o) of the Ordinance."

For the above Judgment, the Division Bench of the High Court placed reliance on its earlier judgment 18-02-2011 in Admiralty Appeals No. 1 & 2 of 2011 (Gulzar & Bux, 2011). This judgment has discussed in detail the ownership of a vessel and liability attached to it, Admiralty Jurisdiction, liability of ship management company, prevalent practice of one ship companies, and corporate veil

The learned Division Bench, which upheld the order of the Single Judge, stated that ownership of a vessel is vested only in its registered owners and liability of a ship cannot be enforced against a ship owned by a different owner relying upon various judgments pronounced in Pakistani, Indian and English Jurisdictions and section 4(4) of Admiralty Jurisdiction of the High Courts Ordinance, 1980 which is reproduced as follows (AJHCO, 1980):

"Mode of exercise of Admiralty Jurisdiction—

(1) Subject to the provisions of section 5, the Admiralty jurisdiction of the High Court may, in all cases, be invoked by an action in personam.

(2) ----------

(3) ----------

(4) In the case of any such claim as is mentioned in clauses (e) to (h) and (j) to (q) of subsection (2) of section 3, being a claim arising in connection with a ship, where the person who would be liable on the claim in action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, the Admiralty Jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against.

(a) that ship, if at the time when the action is brought, it is beneficially owned as respects majority shares therein by that person, or,

(b) any other ship which, when the action is brought, is beneficially owned as aforesaid."

After discussing the above provision of law, the Court observed that the shipping agents have not suffered any losses and are not entitled to claim surety or reimbursement under the Admiralty Jurisdiction concerning pending or decreed claims. Since agents filed the Customs bond(s) on behalf of the owners of the vessels, they could claim reimbursement only from the registered owners of the vessel or its sister vessel.

Under Pakistani law, an agent is entitled to invoke the Admiralty Jurisdiction of the High Court for a claim of disbursements made on account of a ship as stated in section 3(2)(o) of Admiralty of the High Court's Jurisdiction (AJHCO, 1980).

For the above reasons, Agents are not entitled to invoke Admiralty jurisdiction; however, they may be entitled to claim reimbursement from the owners of the offending vessel under the ordinary civil jurisdiction only after they have been indemnified. In case of their inability to recover the losses, they could go as far as liquidating the owner's company to recover the damages.

Agents may be entitled to equitable relief such as indemnity or constitution of funds under the ordinary jurisdiction if they can establish that the owner's assets are likely to be disposed of to deprive them of recovering the decretal amount. Pakistan Civil Procedure Code provides a provision for attachment before judgment under the ordinary civil jurisdiction. However, the scope of this provision is minimal and has been rejected by the High Court in a case for attachment of a ship before the judgment for security. Order XXXVIII Rule 5 for Attachment before Judgment is reproduced as follows (CPC, 1908):

"Where a defendant may be called upon to furnish security for production of property---(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him-----

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

The Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the decree or to appear and show cause why he should not furnish security.

(2) unless the Court otherwise directs, the plaintiff shall specify the property required to be attached and the estimated value thereof.

(3) The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property so specified."

The scope of the order above is minimal, and the provisions are strictly followed; the Court may grant relief for attachment before judgment, which is an equitable relief, only if the claimant has fulfilled the conditions mentioned in the said order of the Civil Procedure Code.

An order for attachment, if made, is vacated by the Court upon furnishing solvent security equivalent to the claim amount. This security may be in the form of a bank guarantee and bonds.

Research Limitations

While researching "Liabilities and Claims Against Local Shipping Agents Under the Laws of Pakistan," it is essential to acknowledge certain limitations that may impact the scope and generalizability of the findings. Some potential limitations include:

1. **Legal Complexity:** Maritime law can be intricate and multifaceted. Understanding and interpreting legal provisions may be challenging, leading to potential misinterpretations or oversights in the research. The complexity of legal language and the dynamic nature of legal systems may contribute to these challenges.
2. **Availability of Information:** Access to relevant and up-to-date information, including legal cases, may be limited. Confidentiality issues, restricted access to court records, or incomplete documentation may hinder a comprehensive analysis of liabilities and claims against local shipping agents in Pakistan.
3. **Limited Case Studies:** The availability of specific case studies involving local shipping agents in Pakistan might be limited. The need for real-world examples could constrain the depth of the analysis and the ability to draw practical insights from past experiences.
4. **Dynamic Legal Environment:** Maritime laws are subject to amendments and revisions. The legal environment may change over time, potentially rendering certain aspects of the research outdated or requiring continuous updates to maintain relevance.
5. **Industry-Specific Challenges:** The maritime industry's inherent challenges, such as the confidentiality of contracts and business practices, may restrict access to firsthand information. Participants within the industry may be hesitant to disclose sensitive details, affecting the depth of the research.
6. **External Factors:** External factors, such as geopolitical events, economic fluctuations, or global health crises, can impact the maritime industry and the legal landscape. These factors may introduce uncertainties that could affect the generalizability of the research findings.
7. **Bias and Perspectives:** The researcher's perspective and potential biases may influence the interpretation of legal principles and case outcomes. Acknowledging and mitigating these biases is crucial to maintaining objectivity in the research.

By recognizing these limitations, researchers can adopt a cautious and nuanced approach, providing a clear understanding of the constraints and potential implications for the research outcomes. Additionally, addressing these limitations enhances the credibility of the study.

Conclusion

In the light of the preceding discussion, it is concluded that in Pakistan, the ship agent is co-extensively responsible with the carrier for answering the cargo claims. The agent is not personally liable for the payment of the claim. Once the carrier's liability is established, the shipping agent must discharge the cargo claim on behalf of his principal. If the shipping agent is required to discharge the cargo claim, he would do so on behalf of his principal. Only when the consignee cannot recover from the carrier can the consignee/underwriter proceed to recover from the shipping agent.

Liability of shipping agents in terms of the Customs Act of 1969 is confined to the extent of short landing or delivery of goods or cargo. It is based on a Customs declaration which is given to the Customs authorities of Pakistan, which contains an undertaking by the shipping agent that he will indemnify the losses that may be suffered by the owner of goods for damage or short delivery that Courts in Pakistan have held ship agents liable for the cargo shortages established by the owners against a vessel. However, such a declaration is not considered a contract of indemnity between the cargo owner and the shipping agent. The right to claim indemnity will arise only when a surety or an agent has been indemnified.

Admiralty Jurisdiction of the High Courts Ordinance, 1980 is the law under which the High Courts of Pakistan exercise Admiralty Jurisdiction. The law confers upon the High Court's jurisdiction to hear and determine causes, questions, or claims relating to the ship, its masters, crew members, or goods carried on the same as mentioned in Section 3 thereof. When the claim of the shipping agent does not fall under any of the clauses of Section 3, the Courts have held that an action in rem is not maintainable. Though the ship owner is liable in personam for the short landing of goods and such a claim having been settled by his agent, the shipping agent himself will not be able to claim payment as a disbursement on account of a ship. The money the agent pays may be the liability of the ship's owner, to which the agent may claim reimbursement, but it is not a disbursement on account of a ship. At best, it can be termed payment on the owner's account.

When the ship agent has not suffered a loss, the courts have held that he is not entitled to claim surety or reimbursement under the Admiralty Jurisdiction concerning pending or decreed claims. In Pakistan, an agent is entitled to invoke the Admiralty Jurisdiction of the High Court for a claim of disbursements made on account of a ship as stated in section 3(2)(o) of Admiralty of the High Court's Jurisdiction. Agents are not entitled to invoke Admiralty jurisdiction; however, they may be entitled to claim reimbursement from the owners of the offending vessel under the ordinary jurisdiction only after they have been indemnified. Agents may be entitled to equitable relief such as indemnity or constitution of funds under the ordinary jurisdiction if they can establish that the owner's assets are likely to be disposed of to deprive them of recovering the decretal amount. Pakistan Civil Procedure Code provides a provision for attachment before judgment under the ordinary civil jurisdiction.

Recommendations

In summing up the analysis and discussion above, the authors suggest the following recommendations to protect the interests of ship owners, ship managers, local ship agents, and the interests of the industry in general:

1. The agency agreements between the ship owners and the local agents should be exhaustive to cover all aspects of ships trading under the agreement.

2. Local Shipping Agents are duty-bound to protect their principals' interests and give the utmost benefit to the owners/members of the vessel. This duty must be a fiduciary duty.

3. The local agents must provide all necessary assistance to their principal to enable the smooth sailing of the vessel immediately after the completion of its discharge of cargo, and this duty ought to be enforced more transparently by law.

4. In case the vessel is arrested, the local agent must furnish the bank guarantee on behalf of the principal as early as possible.
5. The liabilities of one ship should not be transferred to another, even if the local agent for both is the same.

6. An amendment in the Karachi Port Trust (“KPT”) Rules is to be made to ensure that all ship agents must keep enough amount in late pass account with KPT to enable them to adjust the port charges and other dues after the departure of the vessel from the port and to obtain a ‘No Demand Certificate’ from the Port Authorities Port without delay.

7. In the case of liquid bulk cargo, calculations to determine the quantity of an alleged claim of short landing must contractually require volume and density to be taken into account to avoid frivolous claims.

8. Ocean loss tolerances specified in contracts must factor in the cargo size and internal surface area of the ship's tanks to adequately mitigate the risk of litigation.

The research on "Liabilities and Claims Against Local Shipping Agents Under the Laws of Pakistan" holds several implications for various stakeholders, including legal practitioners, policymakers, industry participants, and academics:

Research Implications

1. **Legal Guidance and Compliance:** The research findings can serve as a valuable resource for local shipping agents, legal practitioners, and businesses involved in maritime activities in Pakistan. Clear insights into liabilities and claims will guide legal compliance, helping stakeholders navigate the complex regulatory landscape effectively.
2. **Risk Management Strategies:** The research can contribute to developing robust risk management strategies within the maritime industry. Understanding potential liabilities allows shipping agents and stakeholders to implement proactive measures to minimize legal risks, ensuring smoother operations and protecting financial interests.
3. **Policy Formulation and Legislative Reforms:** Policymakers can use the research outcomes to evaluate the effectiveness of existing maritime laws in Pakistan. Identified gaps or areas of improvement can guide the formulation of new policies or amendments to existing legislation, fostering a legal framework that aligns with the evolving needs of the industry.
4. **Educational Resources:** Academic institutions and legal training programs can incorporate the research findings into curricula. It ensures that future legal professionals and industry experts are well-informed about the liabilities and claims associated with local shipping agents in Pakistan, enhancing the quality of education in maritime law.
5. **International Collaboration:** Comparative analysis with international maritime laws allows for identifying best practices and areas where Pakistan can align its legal framework with global standards. It facilitates international collaboration and harmonization of legal standards within the maritime industry.
6. **Enhanced Dispute Resolution Mechanisms:** The research can shed light on common issues leading to disputes involving local shipping agents. This understanding can contribute to developing efficient and fair dispute resolution mechanisms, potentially reducing the burden on the legal system and fostering a more cooperative industry environment.
7. **Investor Confidence:** A transparent and well-defined legal landscape inspires confidence among investors and stakeholders in the maritime sector. By addressing and mitigating potential liabilities, the research can contribute to a more stable business environment, attracting domestic and international investments.
8. **Advocacy for Industry Best Practices:** Industry associations and advocacy groups can leverage the research findings to promote best practices among local shipping agents. It can contribute to establishing industry standards prioritizing legal compliance and ethical conduct.
9. **Continuous Monitoring and Adaptation:** Given the dynamic nature of the maritime industry and the legal environment, the research implies a need for continuous monitoring and adaptation. Regular updates and revisions to the study can ensure its ongoing relevance and applicability in light of changes in laws, regulations, and industry practices.

By considering these implications, stakeholders can actively engage with the research outcomes, leading to positive developments within the maritime sector in Pakistan.

Future Research Directions

The research on "Liabilities and Claims Against Local Shipping Agents Under the Laws of Pakistan" opens up avenues for future investigations. Some potential directions for further research include:

1. **Cross-Border Comparative Analysis:** Explore and compare the liabilities and claims against local shipping agents in Pakistan with those in other maritime jurisdictions. This comparative analysis can provide insights into global best practices and facilitate the harmonization of legal standards.
2. **Impact of Emerging Technologies:** Investigate how emerging technologies, such as blockchain, artificial intelligence, and the Internet of Things, may impact the liabilities and claims against shipping agents. Explore the potential for these technologies to enhance transparency, reduce risks, and improve accountability within the maritime industry.
3. **Contractual Analysis:** Conduct a detailed analysis of the contractual agreements between local shipping agents and their clients. Examine standard contractual clauses, dispute resolution mechanisms, and their effectiveness in addressing and preventing liabilities. It can provide practical insights for industry stakeholders and legal professionals.
4. **Case Studies and Practical Applications:** Undertake in-depth case studies involving actual disputes and legal proceedings against local shipping agents in Pakistan. Analyze the outcomes, judicial interpretations, and lessons learned from these cases to provide practical guidance for industry participants and legal practitioners.
5. **Regulatory Compliance Challenges:** Explore the challenges local shipping agents face in ensuring regulatory compliance. Investigate the factors contributing to non-compliance and potential gaps in the regulatory framework and propose recommendations for addressing these challenges.

6. **Stakeholder Perspectives:** Gather and analyze the perspectives of various stakeholders, including shipping agents, shipowners, cargo owners, insurers, and legal professionals. Understand their experiences, concerns, and suggestions regarding liabilities and claims in the local maritime context.
7. **Environmental and Sustainability Considerations:** Assess how environmental regulations and sustainability concerns impact the liabilities of local shipping agents. Explore the role of shipping agents in ensuring compliance with environmental laws and mitigating potential claims related to environmental damage.
8. **Evolution of Legal Frameworks:** Track and analyze any changes or developments in the legal frameworks governing the maritime industry in Pakistan. Explore how legislative amendments or new regulations impact the liabilities and claims against local shipping agents over time.
9. **Public Policy Implications:** Examine the broader public policy implications of liabilities and claims against shipping agents. Evaluate how these issues align with national economic goals, trade facilitation, and the overall development of the maritime sector.
10. **Industry Self-Regulation Initiatives:** Investigate the potential for industry self-regulation initiatives to set ethical standards, codes of conduct, and best practices for local shipping agents. Assess the effectiveness of such initiatives in reducing liabilities and enhancing industry professionalism.

Future research in these directions can contribute to a more comprehensive understanding of the legal landscape surrounding local shipping agents in Pakistan and offer practical insights for stakeholders and policymakers.

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