

The “CMA CGM LIBRA”

Passage planning and unseaworthiness following the Supreme Court judgment

John Russell QC

Notice to Mariners NM 6274(P)/10



The dredged fairway has at least a depth of 14 metres

But- outside the dredged fairway:

**“Numerous depths less than the charted exist within,
and in the approaches to Xiamen Gang”**

The defective passage plan



Inadequate and wrong

Wrong courses

No proper UKC calculations

No "NO-GO" areas

Crucially...



The uncharted shallows warning

- NOT marked on the chart
- NOT recorded in the pro forma passage plan

The prudent owner test



“The usual test of unseaworthiness is whether a prudent owner would have required the relevant defect, had he known of it, to be made good before sending his ship to sea”

Due diligence/ non-delegability



“It must be shown that those servants or agents relied upon by the owner to make the ship seaworthy before and at the beginning of the voyage have exercised due diligence. That is because the duty is non-delegable.”

Causation



The key admission:

“The master accepted, when cross-examined, that if the area west of buoy 14-1 had been marked as a "no go" area he would not have attempted the manoeuvre that he did.”

Extrapolation from that....

The Judge's view of the case



The application of well established principles in a (relatively) new factual context.

The Controversy

Timing.
The wording
of III(1)



Nature of activity.
Navigational fault
is not
unseaworthiness

The CA decision



“Article III rule 1 of the Hague Rules draws **a clear temporal line**”

(Per Haddon-Cave LJ)

The CA decision



“This reflects the balance struck at the inception of the Hague Rules in 1924. The signatories to the Convention agreed to divide the allocation of risk for maritime cargo adventures into two separate regimes.”

The CA decision



“The first regime imposes a nondelegable duty on carriers to exercise due diligence to make the ship seaworthy “before and at the beginning of the voyage” (Article III rule 1)”

The CA decision



“The second regime excuses carriers from liability for loss or damage caused by errors of crew or servants “in the navigation or in the management of the ship” thereafter, i.e. during the voyage (Article IV rule 2(a)).”

The CA decision



The Owners' submission that, "because the preparation of a passage plan can be said to be an act of navigation involving an exercise of judgment and seamanship, it falls within the exception in Article IV rule 2(a) and a defect in the plan cannot constitute unseaworthiness"

was....

"a fallacy"

(Per Flaux LJ)

The appeal to the Supreme Court



Two main strands to owners' argument.

FIRST

- Unseaworthiness- a “**category based distinction**” between unseaworthiness and acts of navigation/ navigational decisions

The appeal to the Supreme Court



Two main strands to owners' argument.

SECOND

- Due diligence- “**tools for the job**”- if owners properly equip the ship with all the tools to enable the Master to navigate safely, they have discharged their obligation

The appeal to the Supreme Court



Both arguments firmly rejected:

- NO category based distinction. The temporal approach of the CA reaffirmed.
- Non-delegability principle reaffirmed

The appeal to the Supreme Court



Two points left open by CA addressed by SC:

- No “attributes threshold”.
- Dangerous cargo can render a vessel unseaworthy. (BUT, not delegability will not extend to those outside the carrier’s orbit.)

The appeal to the Supreme Court



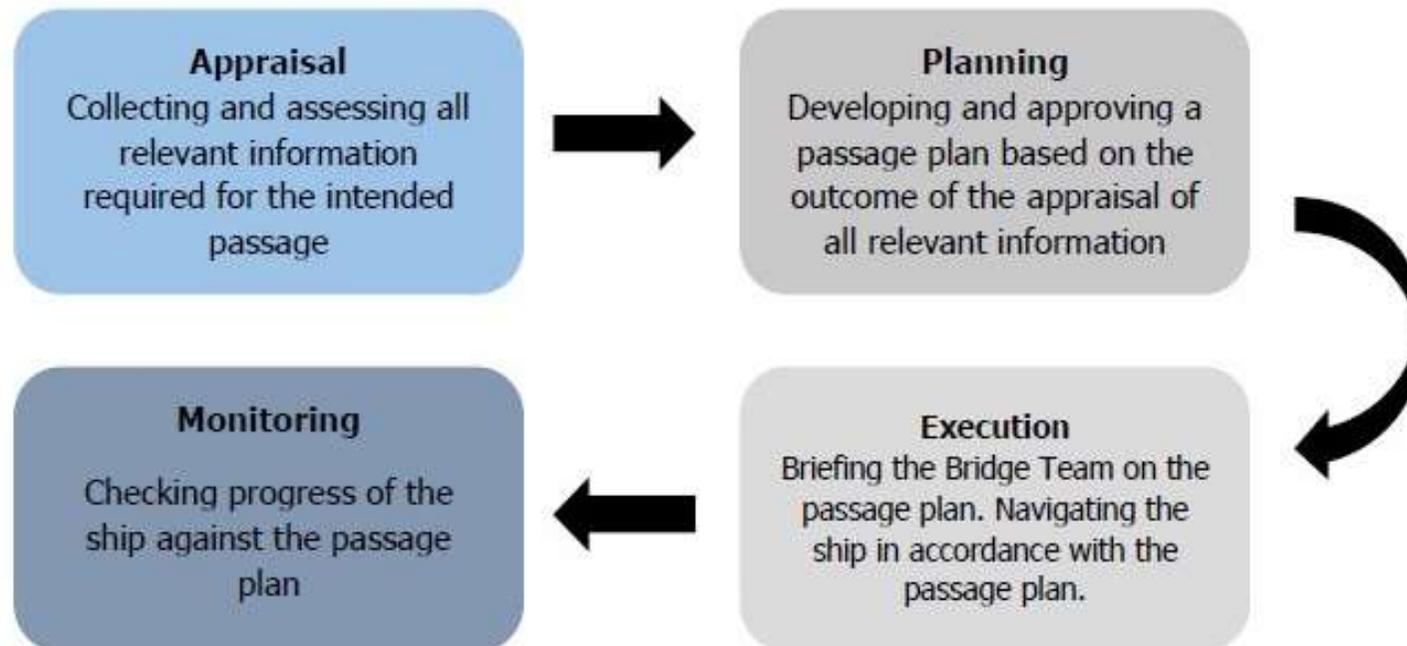
Not a complete thesis on unseaworthiness:

“Save for exceptional cases at the boundaries of seaworthiness, the prudent owner test is an appropriate test of seaworthiness, well suited to adapt to differing and changing standards.”

BUT

“There may, however, be cases at the boundaries of seaworthiness where it is not appropriate merely to apply the prudent owner test, as *The Aquacharm* illustrates.”

The future... timing



The future...battlegrounds



The likely battlegrounds- now principally factual

- Breach:
 - Is the prudent owner test satisfied?
 - New facts, eg ECDIS

The future...battlegrounds



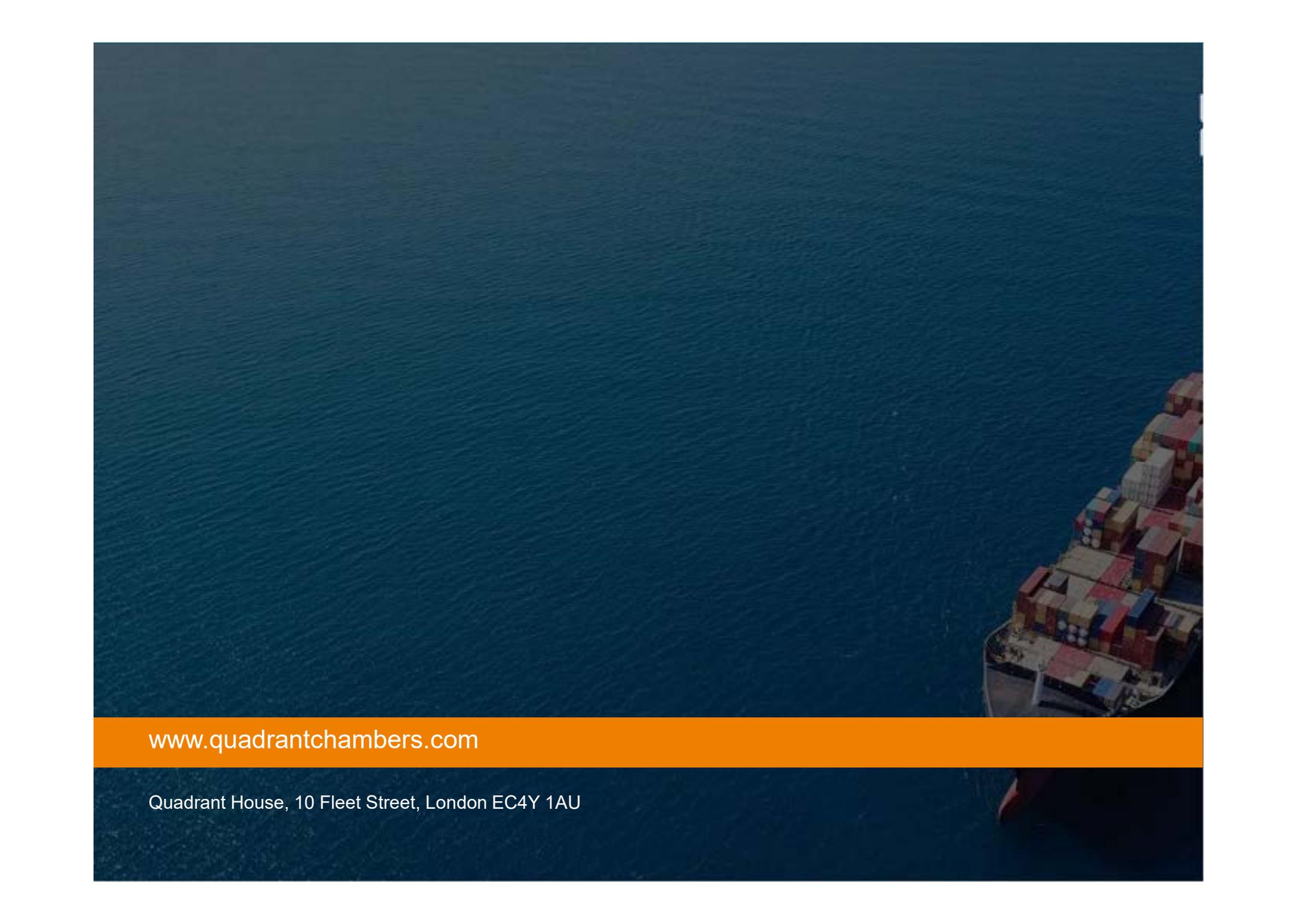
The likely battlegrounds- now principally factual

- Causation:
 - Is a defective PP causative at all?
 - Does negligent navigation break the chain?
 - And, if so, is the negligence itself caused by a systemic failing/ incompetence?

The future... Legal issues?



- The “exceptional cases” where the prudent owner test not the answer
- The relevant voyage for passage planning
- Burden of proof in relation to unseaworthiness

An aerial photograph of a large container ship sailing on a deep blue ocean. The ship is heavily loaded with multi-colored shipping containers (red, blue, yellow, white) stacked high on its deck. The ship is positioned in the lower right corner of the frame, moving towards the left. The rest of the image is dominated by the textured surface of the water.

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Quadrant House, 10 Fleet Street, London EC4Y 1AU